

Employment Act

VOLUME: X
EMPLOYMENT
CHAPTER: 47:01
EMPLOYMENT
ARRANGEMENT OF SECTIONS

SECTION

PART I

Preliminary

1. Short title
2. Interpretation
3. Commissioner of Labour
4. Appointment of labour officers
5. Power of Commissioner to delegate his functions
6. Power of Minister to give directions
7. Power of Minister to restrict application of Act
8. Saving for other enactments

PART II

Administration

9. Information to be provided by employers
10. Institution and undertaking of proceedings in connection with Act
11. Functions of officers
12. Offence to delay or obstruct, etc.
13. Obligations of officers

PART III

Contracts of Employment

14. Oral and written contracts of employment
15. Existing contracts of employment to continue in force
16. Duty of employer to provide work
17. Termination of contracts of employment generally

Employment Act

18. Termination of contracts of employment for unspecified periods of time
19. Termination of contracts of employment for unspecified periods of time, normally subject to notice, without notice
20. Termination of contracts of employment for unspecified periods of time during probationary period
21. Breaches of contracts of employment
22. Liability following certain breaches of contracts of employment
23. Restriction of grounds on which employers may terminate contracts of employment
24. Certificates of employment
25. Redundancy
26. Termination of contracts of employment without notice
27. Entitlement to severance benefit on termination of contract of employment
28. Change of employer
29. Transfer of Botswana citizen abroad in same undertaking
30. Death or disappearance of employee during contract
31. Employment cards
32. Repatriation
33. Exemption from obligation to repatriate
34. Duty of employer to provide means of transport on repatriation
35. Duty of employer to provide medical facilities in certain circumstances
36. Duty of employer to keep register of casual employees
37. Certain terms of contract of employment to be void
38. Offence where contract contravenes this Part

PART IV

Special Contracts in relation to Recruitment

39. Application of Parts III and IV
40. Contracts to be in writing
41. Family not bound by contract

Employment Act

42. Responsibility of employer
43. Contents of every contract
44. Attestation of contracts required
45. ...
46. Medical examination
47. Contracting age
48. Transfer to other employment
49. Termination of contract in certain circumstances
50. Period of employment
51. Foreign contracts of employment and contracts of employment made abroad
52. Offence to induce persons to proceed abroad under informal contract

PART V

Recruitment

53. Application of Part V
54. Prohibition of recruitment except under licence
55. Issue of recruiter's licence
56. Prohibition of assisting recruitment without permit
57. Power of Commissioner to take security from applicants
58. Power of Commissioner to cancel or suspend licences and permits
59. Renewal of licence or permit
60. Liability of recruiter for offences committed by his employees
61. Prohibition of recruitment of children, etc.
62. Families of recruited persons
63. Prohibition of recruitment by public officers
64. Transport of recruited persons and their families to place of engagement
65. Transport of recruited persons and their families in special circumstances
66. Transport of recruited persons and their families to place of employment

Employment Act

- 67. Supply of necessaries during journey to place of engagement or employment
- 68. Regulations in connection with employment

PART VI Forced Labour

- 69. Application of Part VI
- 70. Prohibition of exaction of forced labour
- 71. Penalty for official constraint
- 72. Saving

PART VII Protection of Wages

- 73. Exclusion from application of VII
- 74. Fixing of wage periods
- 75. Time of payment
- 76. Payment of wages, etc., on termination of contract of employment by employer
- 77. Payment of wages, etc., on termination of contract of employment by employee
- 78. Payment of wages, etc., to be made during working hours
- 79. Prohibition of unauthorized deductions from wages, etc.
- 80. Authorized deductions from wages, etc.
- 81. Limitation on attachments and assignments, etc.
- 82. Wages to be paid in legal tender
- 83. Agreement as to place or manner of spending wages illegal
- 84. Partial payment of wages in kind
- 85. Wages not to be paid on certain premises
- 86. Authority of employer to open shop
- 87. Advance of wages
- 88. Prohibition of interest on advances
- 89. Power of Commissioner to require security from employer

Employment Act

- 90. Payment of wages for partial performance of contract of employment
- 91. Priority of wages
- 91A. Employee's claims arising out of his employment
- 92. Duty of employer to keep records, etc.

PART VIII

Rest Periods, Hours of Work, Holidays and other Conditions of Work

- 93. Rest periods
- 94. Payment for work during rest period
- 95. Hours of work
- 96. Task work
- 97. Shift work
- 98. Leave with pay
- 99. Paid public holidays
- 100. Paid sick leave

PART IX

Contractors and Contracting

- 101. Powers of Commissioner to secure payment of wages due to employees of contractors, subcontractors and employers

PART X

Employees in Special Categories

- 102. Regulations at variance with Act in relation to employees in special categories

PART XI

Employment of Children and Young Persons

- 103. Application of Part XI
- 104. Power of Minister to exempt occupations
- 105. Employment of children prohibited
- 106. Prohibition of employment underground

Employment Act

- 107. Prohibition of night work
- 108. Restriction on employment of children and young persons
- 109. Hours of work of children and young persons in industrial undertakings
- 110. Prohibition of employment of children and young persons on rest days and paid public holidays
- 111. Regulations regulating employment of children, etc.

PART XII

Employment of Females

- 112. Application of Part XII
- 113. Absence from work in connection with confinement and maternity allowance
- 114. Payment of maternity allowance
- 115. Right to maternity allowance unaffected by notice of termination of contract of employment
- 116. Prohibition of serving notice of termination of contract of employment during maternity leave
- 117. Female employee entitled to only one maternity allowance
- 118. Female employee to be permitted to nurse child
- 119. When employer not liable for medical expenses

PART XIII

Employment of the Infirm and Handicapped

- 120. Regulations in relation to employment of infirm or handicapped persons

PART XIV

Labour Health Areas

- 121. Application of Part XIV to labour health areas
- 122. Housing
- 123. Feeding of employees
- 124. Supply of water
- 125. Provision of medicine and medical treatment

Employment Act

- 126. Care of employees on journeys
- 127. Return of employees to place of origin or engagement
- 128. Regulations in relation to labour health areas

PART XV

Labour Clauses in Public Contracts

- 129. Certain public contracts to contain declaratory clause in relation to contracts of employment
- 130. Sanctions available to Government in respect of contracts of employment made pursuant to certain public contracts

PART XVI

Determination of Minimum Wages

- 131. Establishment of Minimum Wages Advisory Board
- 132. Duty of Minister to seek advice of Board before fixing minimum wage
- 133. Duties of Board
- 134. Powers of Board
- 135. Power of Minister to fix minimum wages
- 136. Amendment of Fourth Schedule
- 137. Power of Minister to adjust minimum wage
- 138. Effect and enforcement of minimum wages order
- 139. Power of Commissioner to exempt infirm or handicapped person from minimum wages order
- 140. Duty of employer to keep certain records for enforcement of this Part
- 141. Duty of employer to exhibit certain notices in connection with minimum wages order
- 142. Regulations in relation to this Part

PART XVII

Labour Advisory Board

- 143. Establishment of Labour Advisory Board

Employment Act

144. Duty of Minister to consult Board

PART XVIII

Remedies, Jurisdiction, Procedure and Penalties

145. Failure to pay wages, etc. or detaining employee's property
146. Entering or leaving employment with fraudulent intent
147. Penalty for keeping and harbouring employees
148. False pretences
149. Furnishing false information
150. Making false entries in records
151. Penalties for offences under Act

PART XIX

Supplementary

152. Saving of proceedings under other laws
153. Rendering of annual reports to National Assembly
154. Power of Minister to make regulations

First Schedule - Persons to whom Property of Deceased or Missing Employee may be Delivered

Second Schedule - Paid Public Holidays

Third Schedule - Minimum Wages Advisory Board

Fourth Schedule - Trades, Sections of Trades, Industries and Sections of Industries in which Minister may Fix Minimum Wage

Fifth Schedule - Labour Advisory Board

Employment Act

Act 29, 1982,
S.I. 148, 1984,
S.I. 13, 1990,
Act 26, 1992,
S.I. 52, 1996,
Act 14, 2003,
S.I. 73, 2007,
Act 6, 2008,
S.I. 27, 2008,
Act 10, 2010.

An Act to repeal and replace the Employment Act in order to amend the law relating to employment, to make comprehensive provision therefor and to provide for matters incidental thereto and connected therewith.

[Date of Commencement: 14th December, 1984]

PART: I PRELIMINARY SS 18

1. Short title

This Act may be cited as the Employment Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

"agricultural undertaking" means any undertaking or part of an undertaking engaged in cultivation, animal husbandry, including livestock production and care, forestry, horticulture, plantations, the primary processing of agricultural products by the operator of a holding or any other form of agricultural activity other than such an undertaking or part of an undertaking in which members of the same family alone are employed;

"attesting officer" means a labour officer or any other public officer authorized by the Commissioner in writing to perform the functions of an attesting officer under this Act;

"basic pay" means the rate of payment, including any payment in kind, made by an employer for work done or services performed during an hourly, weekly, fortnightly or monthly period excluding all other remuneration;

"casual employee" means an employee whose terms of contract are for a period of not more than twelve months, and which contains provisions limiting employment to not more than three days', or more than twenty-two and a half hours', work per week;

"child" means a person under the age of 15 years;

"collective labour agreement" means a written agreement relating to the terms and conditions of employment concluded between one or more registered trade unions or branches thereof or, where no such organization exists, the representatives of the employees concerned duly elected and authorized by them and one or more employers or registered employers' organizations;

"Commissioner" means the Commissioner of Labour referred to in section 3 or any person acting in or lawfully performing the functions of his office;

"confinement" means delivery of a child;

"construction contractor" means any person established for the purpose of undertaking, either exclusively or in addition to or in conjunction with any other business, any type of construction work for or on behalf of some other person under a contract entered into between them or the heirs, executors, administrators, assigns or successors of any person so established;

"construction work" means any building or civil engineering work, including repair, maintenance, alteration and demolition work;

"continuous employment" means employment (including employment during a probationary period) with the same employer, whether such employment commenced before, except for the purposes of section 27, at or after the commencement of this Act, which employment is

Employment Act

uninterrupted except by periods of absence from work for which provision is made by this Act or which-

- (a) are authorized by the employer;
- (b) are due to injury caused to or disease suffered by the employee in respect of which compensation is payable in accordance with such legislation as may for the time being be in force governing workmen's compensation; or
- (c) are occasioned by industrial action which is not unlawful by virtue of such legislation as may for the time being be in force governing trade disputes;

"contract of employment" means an agreement, whether oral or in writing, expressed or implied, whereby one person agrees for a wage or other benefit or both to let his labour to and to perform it under the orders of another person who agrees to hire it;

"contractor" means a person who contracts with a principal to supply labour or to carry out the whole or any part of any work undertaken by the principal in the course of or for the purposes of the principal's trade or business;

"day" means any period of 24 hours commencing at midnight;

"domestic employee" means a house servant, a garden servant or a motor car driver employed in or in connection with the domestic services of any private premises.

"employ" means, in relation to the person employing, to use as an employer the labour of an employee;

"employee" means any person who has, either before or after the commencement of this Act, entered into a contract of employment for the hire of his labour:

Provided that the expression shall not include a public officer.

"employer" means any person who has entered into a contract of employment for the hire of the labour of any person, including a public authority, or the person who owns or is carrying on for the time being or is responsible for the management of the undertaking, business or enterprise of whatever kind in which the employee is engaged:

Provided that the expression shall not include the Government in respect of all of its officers;

"employment" means the performance by an employee of a contract of employment;

"forced labour" means all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself voluntarily, other than labour-

- (a) required in consequence of a sentence or order of a court;
- (b) required of any person while the person is lawfully detained and that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interest of hygiene at the place at which that person is detained;
- (c) required of a member of a disciplined force in pursuance of the member's duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, required by law of such person in place of such service;
- (d) required during any period of public emergency or in the event of any other emergency or calamity which threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or
- (e) reasonably required as part of reasonable and normal communal or other civic obligations;

"guardian" means any person lawfully having charge of a child or young person whether having parents or no parents or whose parents are unknown;

Employment Act

"industrial undertaking" include any industrial undertaking of the Government or other public authority or of any part thereof and, in particular, includes-

- (a) mines, quarries and other works for the extraction of minerals from the earth;
- (b) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished or in which materials are transformed including undertakings engaged in ship-building or in the generation, transformation or transmission of electricity or motive power of any kind;
- (c) undertakings engaged in building or civil engineering works, including repair, maintenance, alteration and demolition work; and
- (d) undertakings engaged in the transport of passengers or goods by road, rail, air or water, including the handling of goods at warehouses or airports;

"intoxicating liquor" has the same meaning as in the Liquor Act;

"labour health area" means an area declared under section 121 to be a labour health area for the purposes of this Act;

"labour officer" means a person appointed under section 4 to be a labour officer for the purposes of this Act;

"maternity allowance" means the allowance payable to a female employee by virtue of section 113(5);

"medical officer" means-

- (a) a medical practitioner employed by the Government; or
- (b) any other medical practitioner appointed by the Minister in writing to be a medical officer for the purposes of this Act;

"mine" includes any undertaking, whether public or private, for the extraction of any substance from under the surface of the earth;

"minimum wage" means the wage fixed by the relevant minimum wages order;

"minimum wages order" means an order made under section 135 or 137 fixing or adjusting a minimum wage;

"overtime" means the number of hours worked in any one day or in any one week in excess of those prescribed by Part VIII;

"place of employment" means any place provided by an employer where work is carried on by an employee in the course of his employment;

"prescribed" means prescribed by regulations made under this Act;

"principal" means any person who, in the course of or for the purposes of his trade or business, contracts with a contractor for the supply of labour or for the execution by or under the contractor of the whole or any part of any work undertaken by the principal;

"public authority" means a corporation established by a written law or corporation registered in accordance with the Companies Act in which the Government owns a majority of all the equity shares;

"public officer" means an officer or employee of a public authority;

"quarters" means any building provided or intended to be provided for an employee to live and sleep in either temporarily or permanently and any additional room or building used or intended to be used by an employee, whether communally or privately, for the purposes of cooking, eating, washing or bathing and any latrines or urinals used or intended to be used by an employee;

"recruiter" means the holder of a valid recruiter's licence issued to him under Part V;

"recruitment" includes all operations undertaken with the object of obtaining or supplying from a place of recruitment the labour of persons who do not spontaneously offer their labour at the place of work or at an office of engagement conducted by an employers' organization under the supervision of the Commissioner;

Employment Act

"registered nurse and midwife" means a person who is duly registered both as a nurse and as a midwife under the Nurses and Midwives Act;

"subcontractor" means any person who contracts with a contractor for the supply of labour or for the execution by or under the subcontractor of the whole or any part of any work undertaken by the contractor for his principal or any person who contracts with a subcontractor to supply labour or to carry out the whole or any part of any work undertaken by the subcontractor for a contractor;

"wage" in relation to any contract of employment, means remuneration or earnings, however designated or calculated, which is paid by an employer to an employee, is capable of being expressed in monetary terms, is fixed by mutual agreement or by legislation, and is payable by virtue of a written or unwritten contract of employment;

"week" means any period of seven consecutive days;

"young person" means a person who has attained the age of 15 years but is under the age of 18 years.

(2) Every reference in this Act to a member of an employee's or recruited person's family shall, unless the context otherwise requires, be deemed to be a reference to his wife, husband, child (including a legally adopted child), father, mother, brother, uncle, father-in-law, mother-in-law or son-in-law, where that person lives habitually with or is dependent on the employee or recruited person.

(3) The provisions of Part VIII shall not apply in the case of an employee who falls into a category of persons commonly known as managers, administrators or executives or as professional staff or into some other category of persons of the same or a similar status.

(4) A certificate of the Minister to the effect that any person named therein is or is not or was or was not at any time specified therein a person to whom section 27 and the provisions of Part VIII apply or applied shall be conclusive for all purposes, including those of legal proceedings, as to the matter so certified.

3. Commissioner of Labour

There shall be a Commissioner of Labour.

4. Appointment of labour officers

The Minister may appoint from among public officers any persons whom he considers to be suitably qualified therefor to be labour officers for the purposes of this Act.

5. Power of Commissioner to delegate his functions

Except where he is expressly forbidden to do so by this Act, the Commissioner may, with the consent of the Minister, in writing delegate to any person by name or to the person for the time being holding or acting in the office designated by him the exercise of any power or the performance of any duty conferred or imposed on him by or under this Act, subject to such conditions, exceptions or qualifications as the Commissioner may specify, and, thereupon or from such date as the Commissioner may specify, that person may exercise that power or shall perform that duty in conformity with any conditions, exceptions or qualifications so specified.

6. Power of Minister to give directions

(1) The Minister may give directions, either generally or with reference to a particular case, to all or any persons appointed or authorized by the Minister or the Commissioner under this Act as to the carrying out of their functions under this Act and, where such directions are given generally, they shall be in writing.

(2) Notwithstanding the other provisions of this Act, every person to whom directions are given by the Minister under subsection (1) shall comply with those directions.

7. Power of Minister to restrict application of Act

The Minister may, by order published in the Gazette, declare that this Act or any provisions thereof shall not apply to any premises or to premises belonging to any class or description of premises specified in the order:

Provided that the Minister shall, before making such an order-

Employment Act

(i) consult the Labour Advisory Board; and

(ii) take every reasonable step to ensure that the order contemplated does not conflict with any international agreement or other obligation to which Botswana or the Government is a party or by which Botswana or the Government is otherwise bound.

8. Saving for other enactments

Nothing in this Act shall operate to relieve any employer of any duty or liability imposed on him by or under any other enactments for the time being in force or limit any powers conferred on any public officer by or under any such law.

PART:II ADMINISTRATION SS 913

Information to be provided by employers

(1) The Commissioner may, by notice published in the Gazette, require every employer or every employer belonging to any class or description of employers specified in the notice to furnish him with such particulars of his business relating to employment, in such manner and within such reasonable period of time as may be specified in the notice.

(2) Without prejudice to the exercise of the powers conferred on him by subsection (1), the Commissioner may, by notice in writing served on an employer, require him to furnish the Commissioner, either periodically or otherwise, with written returns and statistics as to the number of employees employed by him in any particular employment, their basic pay or wages and the conditions generally affecting such employment, in such manner and within such period of time as may be specified in the notice.

(3) Where the shut-down of an undertaking or business is anticipated, the employer shall, not less than 30 days immediately before the date of the anticipated shut-down, furnish the nearest labour officer and the Commissioner in writing with that date:

Provided that the Commissioner may, by order published in the Gazette, exempt any employer or every employer belonging to any class or description of employers specified in the order from the operation of this subsection.

(4) The Commissioner shall keep at his principal office registers in which he shall enter or cause to be entered all information furnished him under or in accordance with this section and shall ensure that the same are maintained in such a manner as to facilitate the administration and enforcement of every written law in respect of which the Commissioner or any labour officer has any administrative or enforcement function.

(5) Any employer who fails to comply with this section or with a requirement made of him under this section or, in compliance or purported compliance with this section or with such a requirement, furnishes any information which he knows to be false or does not believe to be true shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

10. Institution and undertaking of proceedings in connection with Act

(1) Where the Attorney-General is satisfied that any labour officer is suitably qualified therefor, he may in writing authorize that labour officer to institute and undertake proceedings in any magistrate's court-

(a) in respect of any contravention of this Act; and

(b) on behalf of any employee or former employee in respect of any civil claim arising under this Act.

(2) The powers of a duly authorized labour officer to institute and undertake proceedings in respect of any contravention of this Act shall be exercised in accordance with the Attorney-General's general or special instructions.

Employment Act

(3) Where a duly authorized labour officer institutes proceedings in respect of any civil claim arising under this Act, he may, instead of appearing and conducting the case in person, appear and conduct the case by a person having a right of audience.

11. Functions of officers

(1) The provisions of this section shall be in addition to and not in derogation from any other powers or duties conferred or imposed on any person by this Act.

(2) For the purpose of satisfying himself that the provisions of this Act are being duly observed the provisions of subsections (3) and (4) shall have effect.

(3) The Commissioner or any labour officer may at any reasonable time-

(a) enter, inspect and examine any land, building, camp, vehicle, place, structure or article whatsoever where or about which any employee is housed or employed or there is reason to believe any employee is housed or employed;

(b) enter, inspect and examine any hospital or dispensary or any latrines or other sanitary arrangements used or intended to be used by employees in any place or building or any water supply available for the use of employees and enquire and ascertain whether in any hospital, dispensary or place of employment suitable medicines and remedies are provided for employees;

(c) inspect and examine kitchens and places in which food provided for employees is stored, prepared or eaten and inspect and examine all such food;

(d) take and remove, for the purposes of analysis, samples of any material or substances available or provided for the use of or handled by employees; so, however, that any sample taken under this paragraph shall be taken in duplicate in the presence of the employer or a person acting on his behalf and shall be labelled and sealed in the presence of the employer or that person and one sample so labelled and sealed shall be left with him;

(e) require any employer forthwith to produce any employee employed by him or any documents or records relating to such an employee; and

(f) question, either alone or in the presence of witnesses, as he thinks fit, any employer or employee or any other person whose evidence he has reasonable cause to consider necessary regarding matters connected with carrying out any of the provisions of this Act:

Provided that, on the occasion of any such visit of inspection, the Commissioner or a labour officer, as the case may be-

(i) shall notify the employer or his representative of his presence unless he believes, on reasonable ground, that such notification might be prejudicial to the performance of his duties;

(ii) shall not offer any advice directed towards securing compliance with the provisions of this Act if in any case he considers it necessary himself first to obtain relevant professional advice from the appropriate Government department; and

(iii) shall not enter or inspect any dwelling-house without the consent of the occupier thereof.

(4) The Commissioner or any labour officer may-

(a) by notice in writing served on an employer, require the employer to meet him, at such reasonable time and at such reasonably situated public office as shall be specified in the notice, in order to discuss any matter for which provision is made by this Act, which matter shall also be specified in the notice:

Provided that-

Employment Act

(i) no requirement shall be made under this paragraph unless at least two written requests for such a meeting transmitted to the employer by the Commissioner or labour officer, as the case may be, have failed, for whatever reason, to result in such a meeting; and

(ii) no employer shall be compelled to comply with a requirement made under this paragraph if he satisfies the Commissioner or a labour officer, as the case may be, in writing that his attendance at such a meeting would cause significant economic harm to his business, enterprise or concern and he indicates, at the same time, what steps have been or are proposed to be taken to ensure compliance with this Act in respect of the matter in question and those steps are acceptable to the Commissioner or a labour officer, as the case may be;

(b) at all reasonable times, require any recruiter or person engaged in recruitment or seeking to recruit any person to produce any recruited person or any document relating to the engagement or recruitment of such a person;

(c) at all reasonable times demand of any recruiter or person engaged in recruitment or seeking to recruit any person the production of any licence or permit issued under this Act; and

(d) copy or make extracts from any documents or records in the possession of an employer relating to any employee in connection with the provisions of this Act.

(5) The Commissioner or any labour officer may-

(a) require all rooms, stores, places and premises in any camp or building used by or on behalf of any employer or recruiter to be kept clean and in a sanitary condition;

(b) require the employer or recruiter, as the case may be, at the earliest reasonable opportunity and at the employer's or recruiter's expense, to return to the place of his recruitment or send to hospital any person who, in the opinion of the Commissioner or a labour officer, as the case may be, or of a medical officer, is ill and for whom the conditions prevailing at any place of employment or engagement are not conducive to the recovery of his health and strength;

(c) require the employer or recruiter, as the case may be, at the earliest reasonable opportunity and at the employer's or recruiter's expense, to return to the place of his recruitment, following the recovery of his health and strength, any person sent to hospital by the employer or recruiter in compliance with a requirement made by the Commissioner or a labour officer under paragraph (b); and

(d) if, in the opinion of the Commissioner or a labour officer, as the case may be, any land, building, camp, vehicle, place, structure or article whatsoever where or about which any employee is employed or which is provided for occupation or use by any employee or other person is insanitary or in such a condition as to be dangerous to health or unfit for occupation or use by the employee or other person, in writing direct the person for the time being responsible for the management of the same to discontinue such occupation or use from a date to be specified in the direction until such requirements of repair or reconstruction or otherwise specified in the direction have been fulfilled and until the same has been certified by the Commissioner or a labour officer to be fit for further occupation or use.

(6) The Commissioner may prohibit the engagement of further employees to be employed at any place of employment where he is satisfied that the conditions therein do not comply with this Act or the regulations concerning the care and welfare of employees.

(7) It shall be the duty of the Commissioner and of every labour officer, when and as often as he considers it necessary or expedient to do so, to furnish technical information and advice to any employer or employee regarding the most effective means of complying with this Act.

(8) It shall be the duty of every labour officer to bring to the notice of the Commissioner any abuses which do not appear to him to be covered by this Act and any other defects or omissions therein.

Employment Act

(9) Where the Commissioner or any labour officer gives any direction under subsection (5) (d) or the Commissioner makes any prohibition under subsection (6), the person to whom the direction or prohibition is addressed may, if he is of the opinion that the terms of the direction or prohibition are harsh or unreasonable or that the requirements of the direction cannot be fulfilled within a reasonable time, after giving notice thereof to the Commissioner or to the labour officer concerned, as the case may be, appeal to the Minister who shall confirm, rescind or vary the terms of the direction or prohibition; any direction or prohibition so appealed from shall remain in abeyance until the appeal is determined by the Minister:

Provided that, where the Commissioner is of the opinion that for the direction or prohibition so to remain in abeyance would or might result in imminent danger to human health or safety, he may direct that the direction or prohibition shall not remain in abeyance pending the Minister's determination.

(10) Every appeal under subsection (9) shall be in writing and shall be delivered to the Minister not later than 21 days immediately after the day on which the direction or prohibition appealed from was communicated to the employer or other responsible person and the Minister shall determine the appeal as soon as is reasonably practicable.

(11) Regulations may prescribe the procedure for hearing appeals under subsection (9).

12. Offence to delay or obstruct, etc.

Any person who wilfully delays or obstructs the Commissioner or any labour officer in the exercise of any power or the performance of any duty conferred or imposed by this Part or who fails to comply with any direction, requirement, demand or prohibition of the Commissioner or of a labour officer given or made under this Part or who conceals in order to prevent or otherwise prevents any person from appearing before or being questioned by the Commissioner or a labour officer or who attempts so to conceal or otherwise prevent any person shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

13. Obligations of officers

(1) Subject to such exceptions as may be prescribed for the purposes of this subsection-

(a) neither the Commissioner nor any labour officer shall have under his immediate supervision in pursuance of this Act any undertaking in which he has any direct or indirect interest or reveal the source of any complaint bringing to his notice a defect in or breach of the law or give any intimation to an employer or his representative that a visit of inspection was made in consequence of such a complaint; and

(b) any person who, in the exercise of his powers or the performance of his duties under this Act, acquires information relating to the financial affairs, secret processes, plant or equipment of any other person shall not disclose such information to any other person except-

(i) for the purpose of legal proceedings under this Act;

(ii) to a court of law or to a person invested by law with the power to compel disclosure of such information; or

(iii) to the Minister or any other person acting in the execution of this Act, but only in so far as such information is necessary for the execution thereof.

(2) Any person who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

PART:III CONTRACTS OF EMPLOYMENT SS 1438

14. Oral and written contracts of employment

(1) Subject to Part IV, contracts of employment may be oral or in writing, expressed or implied.

Employment Act

(2) This Part shall apply to every contract of employment:

Provided that this Part shall not apply to a contract of employment entered into by the government to hire the labour of any person who is not an employee as defined by section 2.

15. Existing contracts of employment to continue in force

Every contract of employment valid and in force immediately before the commencement of this Act shall continue to be in force thereafter and, to the extent that the same is not in conflict with this Act, shall be deemed to be made under this Act and the parties thereto shall be subject to and entitled to the benefits of this Act.

16. Duty of employer to provide work

(1) Every employer shall, unless the employee has broken his contract of employment or the contract of employment becomes, without default on the part of the employer, impossible of performance, provide his employee with work in accordance with the contract of employment during the period for which the contract is binding on a number of days equal to the number of working days provided for, either expressly or by implication, in the contract of employment.

(2) If an employer fails to provide work in accordance with subsection (1), he shall pay to his employee, in respect of every day on which he so fails, wages at the same rate as if the employee had performed a full day's work, whether the employee is or is not released from the workplace.

17. Termination of contracts of employment generally

(1) A contract of employment for a specified piece of work, without reference to time, or for a specified period of time shall, unless otherwise lawfully terminated, terminate when the work specified in the contract is completed or the period of time for which the contract was made expires.

(2) A contract of employment for an unspecified period of time (other than a contract of employment for a specified piece of work, without reference to time) shall be deemed to run until lawfully terminated.

18. Termination of contracts of employment for unspecified periods of time

(1) A contract of employment for an unspecified period of time (other than a contract of employment for a specified piece of work, without reference to time) may be terminated by either party-

(a) where the wages are payable in respect of any period not exceeding a day, at the close of any day's work without notice having been given to the other party of the intention to do so unless the contract of employment provides for the giving of such notice in these circumstances, in which the last case the termination of the contract shall be subject to such notice having been given in accordance therewith; or

(b) where the wages are payable in respect of any period exceeding a day, at any time, notwithstanding anything to the contrary contained in the contract of employment, subject to notice having been given to the other party of the intention to do so.

(2) Notwithstanding anything to the contrary contained in the contract of employment, the minimum length of any notice referred to in subsection (1)(b) shall-

(a) where the wages are payable in respect of any period exceeding a day but less than a week, be one day; or

(b) where the wages are payable in respect of any period not less than a week, be equal in length to the period:

Provided that-

Employment Act

(i) where an employee whose wages are payable in respect of any period not less than a week but less than two weeks have been in continuous employment for two or more but less than five years, the minimum length of notice shall be two weeks;

(ii) where an employee whose wages are payable in respect of any period not less than a week but less than a month has been in continuous employment for five or more but less than 10 years, the minimum length of notice shall be one month; or

(iii) where an employee whose wages are payable in respect of any period exceeding a day has been in continuous employment for 10 or more years, the minimum length of notice shall be six weeks.

(3) Notwithstanding subsection (2), where the contract of employment provides for a minimum length of any notice such as is referred to in subsection (1)(b) which is longer than the appropriate minimum length prescribed by subsection (2), the minimum length of any such notice shall be that for which the contract of employment provides.

(4) Nothing in this section shall prohibit either party to a contract of employment from waiving his entitlement to notice in any particular case.

(5) Notwithstanding anything to the contrary contained in a contract of employment, notice of intention to terminate the contract shall be in writing and shall be given on a working day at any time and, except where the wages are payable in respect of any period not exceeding a week, that day shall be included in the period of notice:

Provided that, notwithstanding anything to the contrary contained in the contract of employment, notice of intention to terminate the contract may be given orally by either party if he is illiterate.

19. Termination of contracts of employment for unspecified periods of time, normally subject to notice, without notice

Notwithstanding section 18, either party to a contract of employment for an unspecified period of time (other than a contract of employment for a specified piece of work, without reference to time), which contract may be terminated by either party subject to notice having been given to the other party of the intention to do so, may-

(a) terminate the contract without giving such notice by paying to the other party a sum equal to the amount of basic pay which would otherwise have accrued to the employee during the minimum lawful period of such notice; and

(b) where such notice has already been given, whether the period thereof is the appropriate minimum lawful period or a longer period, terminate the contract, without waiting for the expiry of the period of notice, by paying to the other party a sum equal to the amount of basic pay which would otherwise have accrued to the employee during the balance of the period of notice.

20. Termination of contracts of employment for unspecified periods of time during probationary period

(1) In the case of a contract of employment for an unspecified period of time (other than a contract of employment for a specified piece of work, without reference to time), such period not exceeding three months in the case of unskilled employees, and twelve months in the case of skilled employees, as the contract may specify immediately after the commencement of employment under the contract may be a probationary period (hereinafter referred to as a "probationary period") if the contract so provides.

(2) Where a contract of employment is terminated during a probationary period by either the employer or employee under section 18 or 19 by not less than 14 days' notice, the contract shall be deemed, for the purposes of this Part, to have been terminated with just cause and neither the employer nor the employee shall be required to give any reasons therefor.

Employment Act

(3) Before entering into a contract of employment which is to provide for a probationary period, the prospective employer shall inform the prospective employee in writing of the length of the probationary period.

(4) Any person who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

21. Breaches of contracts of employment

(1) The employer shall be deemed to be in breach of a contract of employment if he fails to pay basic pay or wages in accordance with Part VII.

(2) The employee shall be deemed to be in breach of a contract of employment if he is absent from work without the prior consent of his employer or his employer's representative unless he has reasonable cause for such absence and, as soon as it is reasonably practicable to do so, informs his employer or his employer's representative of that cause.

22. Liability following certain breaches of contracts of employment

Subject to any agreement to the contrary, the party in breach of a contract of employment whereby or as a direct result of which employment under the contract ceases shall be liable to pay to the other party a sum equal to the amount he would have been liable to pay to the other party in order to terminate the contract in accordance with section 19(a) or (b), as is appropriate.

23. Restriction of grounds on which employers may terminate contracts of employment

Notwithstanding anything contained in a contract of employment, an employer shall not terminate the contract of employment on the ground of-

(a) the employee's membership of a registered trade union or participation in any activities connected with a registered trade union outside working hours or, with that consent of the employer, within working hours;

(b) the employee seeking office as or acting or having acted in the capacity of an employees' representative;

(c) the employee making, in good faith, a complaint or participating in proceedings against the employer involving the alleged violation of any law;

(d) the employee's race, tribe, place of origin, social origin, marital status, gender, sexual orientation, colour, creed, health status or disability; or

(e) any other reason which does not affect the employee's ability to perform that employee's duties under the contract of employment.

24. Certificates of employment

(1) Upon the termination of a contract of employment, the employee may require his employer to deliver to him a certificate specifying the dates of the employee's engagement and of the termination of the contract of employment and the type or types of work on which the employee has been engaged.

(2) A certificate such as is referred to in subsection (1) shall contain nothing unfavourable to the employee.

(3) Any employer who fails forthwith to comply with a requirement made of him under subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

25. Redundancy

(1) Where an employer terminates contracts of employment for the purpose of reducing the size of his work force, he shall do so in respect of each category of employee, wherever reasonably practicable, in accordance with the principle commonly known as first-in-last-out:

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

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

Employment Act

- (ii) the ability, experience, skill and occupational qualifications of each employee concerned.

(2) Without prejudice to the other provisions of this Part in relation to the giving of notice, when an employer forms an intention to terminate contracts of employment for the purpose of reducing the size of his work force, he shall forthwith give written notice of that intention to the Commissioner and to every employee to be or likely to be directly affected by the reduction.

(3) Where contracts of employment have been terminated for the purpose of reducing the size of a work force, the employer shall, if he again seeks employees in the occupations to which those contracts related, give priority of engagement, to such extent as is reasonably practicable, to those persons whose contracts of employment were so terminated:

Provided that this subsection shall not apply where the employer seeks such employees more than six months immediately after the contracts in question were terminated.

(4) Any employer who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

26. Termination of contracts of employment without notice

(1) Notwithstanding the other provisions of this Part, the employer may terminate any contract of employment without giving notice of his intention to do so or making any payment such as is referred to in section 19(a) or (b) where the employee is guilty of serious misconduct in the course of his employment:

Provided that the employer shall be deemed to have waived his right under this subsection unless he exercises it within a reasonable period in all the circumstances after becoming aware of the misconduct in question.

(2) An employee whose contract of employment is for an unspecified period of time (other than a contract of employment for a specified piece of work, without reference to time) may terminate the contract of employment without giving notice of his intention to do so or making any payment such as is referred to in section 19(a) or (b) and an employee whose contract of employment is for a specified piece of work, without reference to time, or for a specified period of time may terminate the contract of employment immediately, notwithstanding that the work specified by the contract of employment is not completed or the period of time for which the contract was made has not expired, on the ground that-

(a) he is employed on work markedly different in nature from the work he was originally engaged to perform;

(b) his continued employment necessitates a change of residence for which no provision is made by his contract of employment;

(c) he is transferred to lower grade work;

(d) he is badly treated by his employer or his employer's representative; or

(e) by virtue of his employment he or his dependants are immediately threatened by danger to the person from violence or disease such as he did not undertake to accept by his contract of employment.

(3) The employee shall be deemed to have waived his right to terminate his contract of employment under subsection (2) unless he exercises it within a reasonable period in all the circumstances after becoming aware of the existence of the ground conferring that right.

(4) For the purposes of this section the term "serious misconduct" shall, without prejudice to its general meaning, include or be deemed to include the following-

(a) wilful disobedience of lawful and/or reasonable orders given by the employer;

(b) wilful, express or implied, misrepresentation by the employee in respect of his skills or qualifications;

Employment Act

- (c) habitual or wilful neglect of duties;
- (d) acts of theft, misappropriation or wilful dishonesty against the employer, another employee, or a customer or client of the employer;
- (e) acts of violence;
- (f) damage caused wilfully or by gross negligence to movable or immovable property of the employer;
- (g) wilful disclosure of confidential information or trade secrets where such disclosure is or is likely to be detrimental to the interests of the employer;
- (h) inability to carry out normal duties, due to the consumption of alcohol or habit-forming drugs;
- (i) wilful refusal to obey or comply with any safety rules or practices for the prevention or control of accidents or diseases;
- (j) consistent work performance below average despite at least two written warnings;
- (k) offering or receiving bribes;
- (l) persistent absence from work without permission.

27. Entitlement to severance benefit on termination of contract of employment

(1) Without prejudice to section 30, on the termination of a contract of employment, whether by reason of the death or retirement of the employee or for any other reason, the employer shall pay to an employee who has been in continuous employment with him for 60 months or more, a severance benefit at the rate prescribed:

Provided that-

- (i) severance benefit shall be payable at the conclusion of each period of 60 months continuous service by the employee, or at the termination of his employment, at the option of the employee;
- (ii) where, upon the date of payment of any severance benefit, the employee, or his dependant or beneficiary, is at that date or some future date entitled to the payment of a gratuity or pension or both a gratuity and pension in respect of the period of employment under the contract, no severance benefit which would otherwise be payable in terms of this section to the employee or his dependant or his beneficiary shall be payable.
- (iii) where the continuous employment began at any time before the commencement of this Act, that employment shall be deemed, for the purposes of this section, to have begun at the commencement of this Act.

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

(2) For the purposes of calculating the severance benefit payable in accordance with this section-

(a) in subsection (1)-

- (i) "month", in relation to the first 60 months of continuous employment, means a complete month and, in relation to continuous employment thereafter, means a complete month or any fraction thereof; and

Employment Act

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

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

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

(4) Where the employer or employee is dissatisfied with any determination made by the nearest labour officer in accordance with subsection (3), he may appeal against that determination, within such period and in such form and manner as may be prescribed, to the Commissioner who may either dismiss the appeal and confirm the labour officer's determination or allow the appeal, either wholly or in part, and vary the amount of the benefit accordingly.

(5) A final determination of the amount of any severance benefit made by the nearest labour officer or the Commissioner under subsection (3) or (4), as the case may be, shall be conclusive of the amount of the benefit payable in accordance with this section.

(6) Any employer who fails to comply with this section shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

28. Change of employer

(1) If a trade, undertaking, business or enterprise (whether or not it is established by or under any written law) is transferred from one person to another and an employee in the trade, undertaking, business or enterprise continues to be employed therein, the period of continuous employment immediately preceding the transfer shall be deemed, for the purposes of this Act, to be part of the employee's continuous employment with the transferee immediately following the transfer.

(2) If, by or under any written law, a contract of employment between a body corporate and an employee is modified by the substitution or some other body corporate as the employer, the period of continuous employment immediately preceding the substitution shall be deemed, for the purposes of this Act, to be part of the employee's continuous employment with such other body corporate immediately following the substitution.

(3) If, on the death of an employer, an employee continues to be employed by the legal personal representatives or trustees of the deceased, in their capacity as such, the period of continuous employment immediately preceding the death shall be deemed, for the purposes of this Act, to be part of the employee's continuous employment with the legal personal representatives or trustees immediately following the death.

(4) If there is any change in the partners, legal personal representatives or trustees who employ any person, that person shall be deemed, for the purposes of this Act, to remain in employment with the same employer and such change shall be deemed, for the purposes of this Act, not to interrupt such employment.

29. Transfer of Botswana citizen abroad in same undertaking

(1) Where an employer in any undertaking in Botswana establishes or operates branches of the undertaking outside Botswana, he shall not transfer any employee who is a citizen of Botswana engaged in Botswana for employment at any such branch outside Botswana without the written permission of the Commissioner for that transfer.

(2) Every employer wishing to obtain the Commissioner's written permission under subsection (1) shall submit a written application to the Commissioner, together with a copy of the contract of employment under which the employee is employed, and every such application shall contain particulars as to-

(a) the period of the employee's intended absence from Botswana;

Employment Act

- (b) the conditions and nature of employment at the place to which the transfer is required;
- (c) the method of travel and the protection to be given to the employee; and
- (d) the payment of expenses of the journey and the provision of subsistence both to and from the place to which the transfer is required.

(3) The Commissioner may require the employer to furnish such particulars in addition to those prescribed by subsection (2) as he may think it necessary to have and may, on being satisfied as to the terms of the transfer, grant his written permission for the transfer, subject to such conditions as to security or the like as he may think fit to impose.

(4) Where permission is granted under subsection (3), the Commissioner may in writing, on written application being made to him therefor, grant an extension of the period of the transfer in question for such period as he may think fit.

(5) Any employer who contravenes this section or any condition attached to the Commissioner's written permission granted under this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

30. Death or disappearance of employee during contract

(1) Where a contract of employment is terminated by the death of the employee or in such other circumstances as to prevent the employer paying the employee, as required by this Act, his basic pay or any other payments due to him or delivering to him any of his property in the possession of the employer, the employer shall deliver to any person specified in the First Schedule such basic pay, other payments or property and that person shall dispose of the same in accordance with such general or special directions as the Minister may give in this connection or, in the absence of such directions, as otherwise required by law.

(2) Regulations may prescribe the form of indemnity to be rendered to an employer by a person specified in the First Schedule to whom money or property has been delivered by the employer in accordance with subsection (1).

(3) The Minister may, by order published in the Gazette, amend the First Schedule.

31. Employment cards

(1) The Commissioner may, by written notice served on the employer concerned or by order published in the Gazette, require any employer or every employer belonging to any class or description of employers specified in the order, to issue an employment card to each employee or to each employee belonging to any class or description of employees specified in the notice or order, as the case may be.

(2) The Minister may prescribe the conditions attaching to the issue of an employment card under this section, the form thereof and the particulars to be contained therein.

(3) Any employer who fails to comply with a requirement made of him under this section shall be guilty of an offence and liable to the penalties prescribed by section 151(a).

32. Repatriation

(1) Every employee who has been brought to the place of employment by the employer or by any person acting on behalf of the employer shall have the right to be repatriated at the expense of the employer to his place of recruitment in the following cases-

- (a) at the expiry of the period of time for which the contract of employment was made;
- (b) on the termination of the contract of employment by reason of the inability of the employer to fulfil the contract;
- (c) on the termination of the contract of employment by reason of the inability of the employee to fulfil it owing to sickness, accident or his rejection after medical examination under section 46;

Employment Act

(d) on the termination of the contract of employment by the employer for just cause, whatever that cause may be;

(e) on the termination of the contract of employment by agreement between the parties, unless the contract otherwise provides; or

(f) on the termination of the contract of employment by order of a court, unless the court otherwise directs.

(2) Where the family of the employee has been brought to the place of employment by the employer or by any person acting on behalf of the employer, the family shall be repatriated at the expense of the employer in the event of the employee being repatriated or of his death.

(3) The expenses of repatriation shall include-

(a) travelling and subsistence expenses or rations during the journey; and

(b) subsistence expenses or rations during the period, if any, between the date of termination of the contract of employment and the date of repatriation.

(4) The employer shall not be liable for subsistence expenses or rations in respect of any period during which repatriation of the employee has been delayed-

(a) by the employee's own choice;

(b) for unavoidable reasons, of which the Commissioner shall be the sole judge; or

(c) if, throughout the said period, the employer has continued to employ the employee in accordance with the terms of his recently concluded contract of employment.

(5) If the employer fails to fulfil his obligations in respect of repatriation, those obligations shall be discharged by or under the directions of the Commissioner and any sums expended in consequence thereof may be recovered from the employer by civil suit.

(6) Any employer who, without reasonable excuse, fails to fulfil any obligation imposed on him by this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b); and in any proceedings in respect of an offence under this subsection the court shall presume the absence of a reasonable excuse on the part of the person charged unless the contrary is proved.

33. Exemption from obligation to repatriate

The Commissioner may exempt the employer from liability for repatriation expenses where he is satisfied that the employee has-

(a) by a declaration in writing or otherwise, signified that he does not wish to exercise his right to repatriation and has been settled at his request or with his consent at or near the place of employment; or

(b) by his own choice, failed to exercise his right to repatriation within a reasonable period immediately after the date of termination of the contract of employment.

34. Duty of employer to provide means of transport on repatriation

(1) The employer shall provide the means of transport for employees who are being repatriated.

(2) The Commissioner shall take all necessary measures to ensure and may give such directions to the employer or to any person acting on behalf of the employer as will ensure that-

(a) the vehicles or vessels used for the transport of employees are suitable for such transport, are in good sanitary condition and are not overcrowded;

Employment Act

(b) when it is necessary to break the journey for the night, suitable provision in all the circumstances is made for the employees; and

(c) in the case of long journeys, all necessary arrangements are made for the welfare of the employees.

(3) When employees have to make long journeys in groups, they shall be conveyed by a person who, in the opinion of the Commissioner, is fit to assume responsibility.

(4) Any person who, without reasonable excuse, fails to comply with this section or with any direction of the Commissioner given thereunder shall be guilty of an offence and liable to the penalties prescribed by section 151(b); and in any proceedings in respect of an offence under this subsection the court shall presume the absence of a reasonable excuse on the part of the person charged unless the contrary is proved.

35. Duty of employer to provide medical facilities in certain circumstances

(1) Where an employee is to perform work under his contract of employment in an area within Botswana where medical facilities are not readily available, the employer shall provide reasonable medical facilities for the employee and for every member of his family who the employer has agreed may accompany him.

(2) Regulations may prescribe the scale of medical facilities required to be provided by subsection (1).

(3) Where an employee employed in the circumstances described by subsection (1), or a member of his family who the employer has agreed may accompany him, falls ill and it appears necessary that he should attend or be admitted to hospital, the employer shall provide suitable transport to the nearest hospital able to provide suitable treatment.

(4) Any employer who fails to comply with this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

36. Duty of employer to keep register of casual employees

(1) Every employer who employs casual employees shall keep a register of such employees in such manner as may be prescribed.

(2) The employer shall keep in safe custody until the expiry of two years immediately after the date of the last entry therein every register kept by him in pursuance of this section and shall forthwith make it available for inspection by any labour officer on being required to do so by such officer.

(3) Where an employer winds up any undertaking, business or enterprise of whatever kind in which casual employees have been engaged, he shall forthwith deposit every register kept by him in pursuance of this section in relation to that undertaking, business or enterprise with the Commissioner.

(4) Any employer who fails to comply with this section shall be guilty of an offence and liable to the penalties prescribed by section 151(a).

37. Certain terms of contract of employment to be void

Where a contract of employment, whether made before or after the commencement of this Act, provides for conditions of employment less favourable to the employee than the conditions of employment prescribed by this Act, the contract shall be null and void to the extent that it so provides.

38. Offence where contract contravenes this Part

Any employer who enters into a contract of employment or a collective labour agreement containing terms contrary to the provisions of this Act shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

Employment Act

PART:IV SPECIAL CONTRACTS IN RELATION TO RECRUITMENT SS 3952

39. Application of Parts III and IV

This Part shall apply in addition to Part III to every contract of employment entered into by an employee in consequence of his recruitment and which-

- (a) relates to work outside Botswana; or
- (b) falls into a category of contracts prescribed by the Minister for the purposes of this Part.

40. Contracts to be in writing

(1) Every contract of employment to which this Part applies shall be in writing and the employee shall indicate his consent to such contract either by signing the same or affixing thereto the impression of his thumb or finger.

(2) If a contract of employment to which this Part applies is not made in writing it shall not be enforceable except during the period of one month immediately after the making thereof:

Provided that, where a note or memorandum in writing is made setting out the terms of the contract of employment and a party to the contract has indicated his consent thereto, prior to the expiry of the period for which the contract was made, the contract shall be enforceable against that party notwithstanding the expiry of the period of one month immediately after the making thereof and the note or memorandum may be presented for attestation to an attesting officer.

(3) If a contract of employment to which this Part applies is not made in writing, the employee may apply to the Commissioner for the cancellation of the contract.

(4) Where, following an application to him under subsection (3), the Commissioner is satisfied that the omission to make the contract in writing was due to the wilful act or the negligence of the employer, he may order the cancellation of the contract and thereupon the contract shall cease to be enforceable against the employee notwithstanding that the period of one month immediately after the making thereof has not expired.

(5) Where the omission to make the contract of employment in writing was due to the wilful act or the negligence of the employer-

(a) the employer shall be liable in damages for any loss occasioned to the employee by virtue of the contract having been made; and

(b) the employer shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

41. Family not bound by contract

No contract of employment to which this Part applies shall be binding on the family of an employee unless it contains an express provision to that effect.

42. Responsibility of employer

The employer shall be responsible for the performance of any contract of employment to which this Part applies made by any person acting on his behalf.

43. Contents of every contract

Every contract of employment to which this Part applies shall contain in clear and unambiguous terms all which may be necessary to define the rights and obligations of the parties thereto and, without prejudice to the generality of the foregoing, shall in all cases include the following particulars-

(a) the names of the employee, the place of engagement, the place of recruitment and any other details necessary for his identification;

(b) the names and addresses of the next-of-kin of the employee;

Employment Act

- (c) the name of the employer or group of employers and, where appropriate, the name of the undertaking and the place of employment;
- (d) the nature of the employment;
- (e) the duration of the employment and the method of calculating that duration;
- (f) the appropriate period of notice to be given by the party wishing to terminate the contract of employment;
- (g) the wages and method of calculation thereof, the manner and periodicity of payment of wages, the advances of wages, if any, and the manner of repayment of any such advances;
- (h) the measures to be taken to provide for the welfare of the employee and any members of his family who may accompany him under the terms of the contract of employment;
- (i) the conditions of repatriation; and
- (j) any special conditions of the contract of employment.

44. Attestation of contracts required

(1) Every contract of employment to which this Part applies shall be presented for attestation to an attesting officer.

(2) Before attesting any contract of employment, the attesting officer shall-

- (a) ascertain that the employee has freely consented to the contract of employment and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake;
- (b) satisfy himself that-
 - (i) the contract of employment is in due legal form;
 - (ii) the terms of the contract of employment are in accordance with the requirements of this Act;
 - (iii) the employee has fully understood the terms of the contract of employment before signing it or otherwise indicating his assent;
 - (iv) the provisions relating to medical examination contained in this Part have been complied with; and
 - (v) the employee declares himself not bound by any previous engagement; and

(c) where the contract of employment contains provisions for wages to be deposited, satisfy himself that the employee has specifically consented thereto by endorsement of the relevant provisions and that the consent thereto of the Commissioner has been obtained in accordance with this Part.

(3) An attesting officer may refuse to attest any contract of employment in respect of which he is not satisfied in regard to any of the matters specified in subsection (2) and any contract of employment which an attesting officer has refused to attest shall have no further validity.

(4) A contract of employment to which this Part applies which has not been attested shall not be enforceable except during the period of one month immediately after the making thereof but either of the parties shall be entitled to have it presented for attestation at any time prior to the expiry of the period for which it was made.

Employment Act

(5) If a contract of employment to which this Part applies is not presented for attestation to an attesting officer, the employer may apply to the Commissioner for the cancellation of the contract.

(6) Where, following an application to him under subsection (5), the Commissioner is satisfied that the omission to present the contract of employment for attestation was due to the wilful act or the negligence of the employer, he may order the cancellation of the contract and thereupon the contract shall cease to be enforceable against the employee notwithstanding that the period of one month immediately after the making thereof has not expired.

(7) Where the omission to present the contract of employment for attestation was due to the wilful act or the negligence of the employer-

(a) the employer shall be liable in damages for any loss occasioned to the employee by virtue of the contract having been made; and

(b) the employer shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

(8) Three copies of every contract of employment attested under this Act shall be attested together with the original; one copy shall be delivered to the employer, one copy to the employee and one to the labour officer of the district of employment or, where the place of employment is outside Botswana, to the appropriate government official in the district within which the place of employment is located; the original of every attested contract of employment shall be deposited with and preserved by the attesting officer.

(9) There shall be paid to the attesting officer by the employer or the recruiter, as the case may be, in respect of each contract of employment attested by him such fee as may be prescribed.

46. Medical examination

(1) Subject to subsection (3), every employee who enters into a contract of employment to which this Part applies shall be examined by a medical officer.

(2) Except in exceptional circumstances, the employees shall be medically examined and a medical certificate issued before the attestation of the contract of employment.

(3) Where an employee is not medically examined before the attestation of the contract of employment, the attesting officer who attests the contract shall endorse the contract to that effect and the employee shall be medically examined within seven days immediately after his arrival at the place of employment and a copy of the medical certificate relating thereto shall be sent forthwith by the employer to the attesting officer concerned who shall attach it to the copy of the relevant contract of employment deposited with him.

(4) The Minister may, by order published in the Gazette, exempt from the requirement of medical examination employees entering into contracts of employment for-

(a) employment in agricultural undertakings not employing more than a limited number of persons, which limit shall be specified in the order; or

(b) employment in the vicinity of the employees' homes-

(i) in agricultural work; or

(ii) in non-agricultural work which the Minister is satisfied is not of a dangerous character or likely to be injurious to the health of the employees.

(5) There shall be paid to a medical officer by the employer or the recruiter, as the case may be, in respect of each employee examined by him under this section such fee as may be prescribed.

(6) If any omission to present the employee for medical examination was due to the wilful act or the negligence of the employer or the employer's representative, the employer or his

Employment Act

representative, as the case may be, shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

47. Contracting age

(1) A child or young person shall not be capable of entering into a contract of employment to which this Part applies:

Provided that a young person may enter into such a contract of employment in any occupation approved by the Minister, by order published in the Gazette, as not being injurious to the moral and physical development of non-adults.

(2) This section shall apply notwithstanding anything contained in Parts XI and XII relating to the employment of children and young persons and females.

48. Transfer to other employment

(1) The transfer of any contract of employment to which this Part applies from one employer to another shall be subject to the consent of the employee and the endorsement of the transfer upon the contract by a labour officer.

(2) Before endorsing the transfer upon the contract of employment under this section, the labour officer concerned shall satisfy himself-

(a) of the matters prescribed by section 44(2)(b); and

(b) that the employee has freely consented to the transfer and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake.

49. Termination of contract in certain circumstances

(1) If the employer is unable to fulfil a contract of employment to which this Part applies or if owing to sickness or accident the employee is unable to fulfil such a contract, the contract may be terminated, subject to conditions safeguarding the right of the employee to any wages earned, any compensation due to him in respect of sickness or accident and any right to repatriation.

(2) A contract of employment to which this Part applies may be terminated by agreement between the parties-

(a) subject to conditions safeguarding the employee from the loss of his right to repatriation unless the agreement for the termination of the contract of employment otherwise provides;

(b) where the employee's consent to the agreement has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake; and

(c) subject to the settlement of all monetary liabilities between the parties have been settled.

50. Period of employment

The maximum period of employment outside Botswana which may be agreed upon in a contract of employment to which this Part applies shall be two years.

51. Foreign contracts of employment and contracts of employment made abroad

(1) Where a contract of employment made within Botswana relates to employment in another country (in this section referred to as "the country of employment"), this Part shall apply in the following manner-

(a) the attestation required under section 44 shall take place before the employee leaves Botswana;

(b) the copy of the contract of employment required by section 44(8) to be delivered to the appropriate government official in the district within which the place of employment is located shall be so delivered by sending it to the government of the country of employment for transmission to the appropriate official;

Employment Act

(c) the medical examination required under section 46 shall take place at the latest at the time and place of the departure of the employee from Botswana:

Provided that the Minister may, by direction under his hand, waive the operation of this paragraph where he is satisfied that-

(i) in all the circumstances of the case, it is not reasonably practicable for the employee to be medically examined in Botswana;

(ii) the employee will be medically examined before he commences work in accordance with his contract of employment; and

(iii) the employee, if found unfit to work as a result of the medical examination, will forthwith be repatriated to his place of recruitment;

(d) without prejudice to section 47, a person whose age, as determined by a medical officer, is less than the minimum age of capacity for entering into a contract of employment of the kind in question prescribed by the law of the country of employment shall not be capable of entering into the contract of employment;

(e) the Commissioner shall co-operate with the appropriate authority of the country of employment to ensure the application of section 34(2); and

(f) the period of employment stipulated in any re-engagement contract of employment shall not exceed nine months or the maximum period prescribed by the law of the country of employment if it is less than nine months.

(2) Where a contract of employment to which this Part applies is made within another country (in this section referred to as "the country of origin") and relates to employment in Botswana, this Part shall apply in the following manner-

(a) the endorsement of a transfer as required by section 48 shall be made by an attesting officer in Botswana;

(b) the conditions under which the contract is subject to termination shall be determined by the provisions of this Act;

(c) if the employer fails to fulfil his obligations in respect of repatriation, those obligations shall be discharged by the Commissioner who may recover from the employer any sums expended for that purpose by civil suit;

(d) the authority which may exempt the employer from liability for repatriation expenses shall be the Commissioner;

(e) the Commissioner shall co-operate with the appropriate authority of the country of origin to ensure the application of section 34(2); and

(f) the period of employment stipulated in any re-engagement contract of employment shall not exceed nine months or the maximum period prescribed by the law of the country of origin if it is less than nine months.

(3) Where the Contracts of Employment (Indigenous Workers) Convention, 1939, and the Contracts of Employment (Indigenous Workers) Convention, 1947, (in this section referred to as "the Convention"), are not in force for either the country of origin or the country of employment, subsections (1) and (2) shall apply subject to the following provisions-

(a) where the Convention is not in force for the country of employment, the attesting officer of Botswana shall not attest the contract of employment unless he is satisfied that the employee will

Employment Act

be entitled in the country of employment, either by virtue of the law of that country or by virtue of the terms of the contract of employment, to the rights and protection provided by sections 17, 32, 33, 34 and 48; and

(b) where the Convention is not in force in the country of origin-

(i) the attestation of the contract of employment required by section 44 shall take place before an attesting officer of Botswana as soon as is reasonably practicable after the employee enters Botswana;

(ii) section 44(8) shall apply; and

(iii) the medical examination required by section 46 shall take place as soon as is reasonably practicable after the employee enters Botswana,

unless the attesting officer of Botswana is satisfied that the matters to which subparagraphs (i), (ii) and (iii) relate have in fact been dealt with in accordance with the Convention by the appropriate authority of the country of origin.

(4) The Government may, whenever it considers it to be necessary or desirable, enter into agreements with the governments of other countries for the purpose of regulating matters of common concern in connection with the application of the Convention and may in any such agreement derogate from the provisions of subsections (1) and (2) in respect of contracts of employment made in one country party to the agreement for employment in another such country:

Provided that, before any such agreement is entered into by the Government, the Minister shall consult the appropriate registered employers' organization and the appropriate federation of registered employees' organizations and advise the Government accordingly.

52. Offence to induce persons to proceed abroad under informal contract

Any person who-

(a) induces or attempts to induce another person to proceed beyond Botswana with a view to being employed or, if that other person is already an employee, continuing his employment outside Botswana without a contract of employment made and dealt with in accordance with this Act or otherwise than in accordance with this Act; or

(b) knowingly aids in the engagement or transfer of any person so induced by forwarding or conveying him or by advancing money or by any other means whatsoever,

shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

PART:V RECRUITMENT SS 5368

53. Application of Part V

This Part shall apply, in addition to and not in derogation from Parts III and IV, to the recruitment of persons for employment either within or outside Botswana:

Provided that this Part shall not apply to recruitment for employment within Botswana unless such recruitment is undertaken by a person or association engaged in professional recruitment.

54. Prohibition of recruitment except under licence

(1) No person shall be engaged in recruitment unless he is the holder of a valid recruiter's licence issued to him under this Part.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(d).

55. Issue of recruiter's licence

Employment Act

(1) Every application for a recruiter's licence shall be made to the Commissioner in the prescribed manner and every such licence shall be issued in the prescribed form and contain the prescribed particulars.

(2) Subject to the other provisions of this section, every recruiter's licence shall be valid, unless previously cancelled or suspended, during such period not exceeding 12 months as shall be specified therein and there shall be paid for the licence such fee or fees as may be prescribed.

(3) A recruiter's licence shall be issued at the discretion of the Commissioner; but before issuing such a licence the Commissioner shall-

(a) take into account the possible effects of the withdrawal of adult males to be recruited on the health, welfare (both physical and moral) and development of the local population concerned;

(b) satisfy himself that adequate provision has been made for safeguarding the health and welfare of the persons to be recruited; and

(c) satisfy himself that the applicant is a fit and proper person to hold a recruiter's licence and is in a position to fulfil his obligations thereunder.

(4) Every recruiter's licence shall be subject to such conditions as the Commissioner may, subject to any general or special directions he may be given by the Minister, think fit to specify therein and, without prejudice to the generality of the foregoing, the Commissioner may, for the purpose of safeguarding the population of any area likely to be adversely affected by the withdrawal of adult males therefrom following their recruitment under the licence or for any other good and sufficient reason, specify in the licence conditions as to any of the following matters-

(a) the restriction of the number of adult males which may be recruited under the licence in any area;

(b) the closing of any area to recruitment under the licence; or

(c) the employment of persons recruited under the licence in a particular area within a specified area only.

(5) The holder of a recruiter's licence who fails to comply with any condition specified therein by the Commissioner shall be guilty of an offence and liable to the penalties prescribed by section 151(d).

(6) Any applicant for a recruiter's licence who is aggrieved by any decision of the Commissioner to refuse to issue the licence or to specify any condition therein may appeal against that decision to the Minister.

(7) Every appeal under this section shall be in writing and shall be delivered to the Minister not later than 30 days immediately after the day on which the decision complained of was communicated to the applicant.

(8) The Minister shall consider every appeal made to him under this section and shall-

(a) in the case of an appeal against a decision to refuse to issue a licence, either dismiss the appeal or allow the appeal, in which last case the Commissioner shall forthwith issue a recruiter's licence to the applicant; or

(b) in the case of an appeal against a decision to specify any condition in the licence, either dismiss the appeal or allow the appeal, either wholly or in part, and rescind the condition or vary its terms accordingly, in which last case the condition as so varied shall be deemed, for the purposes of this section, to have been specified in the licence by the Commissioner.

56. Prohibition of assisting recruitment without permit

(1) No person shall assist a recruiter in recruitment and no recruiter shall employ any person to assist him in recruitment unless that person is the holder of a valid recruitment permit to do so issued to him under this Part.

Employment Act

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

(3) Every application for a recruitment permit shall be made to the Commissioner in the prescribed manner and every such permit shall be issued in the prescribed form and contain the prescribed particulars.

(4) Subject to the other provisions of this section, every recruitment permit shall be valid, unless previously cancelled or suspended, during such period not exceeding 12 months as shall be specified therein and there shall be paid for the permit such fee or fees as may be prescribed.

(5) A recruitment permit shall be issued at the discretion of the Commissioner and shall be subject to such conditions as the Commissioner may think fit to specify therein; but before issuing such a permit the Commissioner shall satisfy himself that the applicant is a fit and proper person to hold a recruitment permit and is in a position to fulfil his obligations thereunder.

(6) The holder of a recruitment permit who fails to comply with any condition specified therein by the Commissioner shall be guilty of an offence and liable to the penalties prescribed by section 151(d).

(7) Subject to any general or special directions he may be given by the Minister and without prejudice to the generality of subsection (5), the Commissioner may specify as a condition of a recruitment permit that the holder thereof shall not receive from the recruiter for his services remuneration calculated at a rate per head of employees recruited; where the Commissioner permits such remuneration, he shall specify in the permit a condition that such remuneration shall not exceed such amount per head as shall be specified.

(8) Every recruiter shall, on being required to do so by a labour officer, tender his recruiter's licence to the labour officer for entry therein of the name of every person in his employment who is the holder of a valid recruitment permit issued to him under this Part.

(9) Any applicant for a recruitment permit who is aggrieved by any decision of the Commissioner to refuse to issue the permit or to specify any condition therein may appeal against that decision to the Minister.

(10) Every appeal under this section shall be in writing and shall be delivered to the Minister not later than 30 days immediately after the day on which the decision complained of was communicated to the applicant.

(11) The Minister shall consider every appeal made to him under this section and shall-

(a) in the case of an appeal against a decision to refuse to issue a permit, either dismiss the appeal or allow the appeal, in which last case the Commissioner shall forthwith issue a recruitment permit to the applicant; or

(b) in the case of an appeal against a decision to specify any condition in the permit, either dismiss the appeal or allow the appeal, either wholly or in part, and rescind the decision or vary its terms accordingly, in which last case the condition as so varied shall be deemed, for the purposes of this section, to have been specified in the permit by the Commissioner.

57. Power of Commissioner to take security from applicants

Before issuing a recruiter's licence or a recruitment permit, the Commissioner may require the applicant to execute a bond in the prescribed form for such amount as the Commissioner may consider reasonable for the due observance and fulfilment of any condition which may be specified in the licence or permit and for the due observance of this Act.

58. Power of Commissioner to cancel or suspend licences and permits

(1) The Commissioner may-

(a) cancel any recruiter's licence or recruitment permit if, in the opinion of the Commissioner, the holder thereof has committed an offence under this Act or is guilty of other misconduct rendering him unfit to engage in recruitment; or

(b) suspend any recruiter's licence or recruitment permit pending the result of any enquiry by the Commissioner into the fitness of the holder thereof to continue to hold the licence or permit.

Employment Act

(2) Any person aggrieved by any decision of the Commissioner to cancel or suspend a recruiter's licence or recruitment permit may appeal against that decision to the Minister.

(3) Every appeal under this section shall be in writing and shall be delivered to the Minister not later than 30 days immediately after the day on which the decision complained of was communicated to the appellant.

(4) The Minister shall consider every appeal made to him under this section and may either dismiss the appeal or allow the appeal, in which last case the Minister shall set aside the cancellation or suspension, as the case may be.

59. Renewal of licence or permit

A recruiter's licence or recruitment permit may be renewed by the Commissioner and the material provisions of sections 55, 56 and 57 shall apply, with all necessary modifications, in respect of every such renewal and application therefor.

60. Liability of recruiter for offences committed by his employees

(1) Where any employee of a recruiter commits an offence under this Act, the recruiter shall be deemed, for the purposes of this Act, also to have committed that offence unless he proves that the offence was committed without his knowledge or consent.

(2) Where a recruiter is deemed by virtue of subsection (1) to have committed an offence under this Act, he may be prosecuted for the offence either alone or jointly with the employee who in fact committed the offence.

61. Prohibition of recruitment of children, etc.

(1) No person shall recruit any child or young person.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(d).

62. Families of recruited persons

(1) No member of the family of a recruited person shall be treated as if he has himself been recruited solely by reason of the recruitment of that other person.

(2) Where the wife or child of a recruited person has been authorized by the employer to accompany or follow the recruited person to and to remain with him at the place of employment, the wife or child shall not be separated from the recruited person except with that person's express consent.

(3) The authorization by the employer of the wife or child of a recruited person to accompany or follow him to the place of employment shall be deemed, for the purposes of this section, to be an authorization to remain with him at the place of employment for the full duration of his term of employment:

Provided that this subsection shall not apply where the recruited person has entered into an agreement to the contrary before his departure from the place of recruitment.

(4) Any person who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

63. Prohibition of recruitment by public officers

(1) No public officer shall-

(a) recruit, either directly or indirectly, for a private undertaking except where the recruited employees are to be employed on works of public utility for the execution of which a private undertaking is acting as contractor for a public authority;

(b) exercise pressure on persons to engage or not to engage for employment; or

(c) receive from any source whatsoever any remuneration or other special inducement for assistance in recruitment.

(2) No person shall give or offer to give any money or other consideration whatsoever to a public officer for the purpose of obtaining a supply of labour.

Employment Act

(3) Any person who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(d).

64. Transport of recruited persons and their families to place of engagement

(1) Every recruiter shall at his own expense provide the persons recruited by him with reasonable means of transport to the place of engagement.

(2) Subsection (1) shall apply to the members of the family of the recruited person who have been authorized to accompany or follow him to the place of engagement.

(3) Any recruiter who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(d).

65. Transport of recruited persons and their families in special circumstances

(1) Where any recruited person-

(a) becomes incapacitated through sickness or accident during the journey to the place of employment;

(b) is not engaged after recruitment for any reason for which he is not responsible;

(c) on arrival at the place of employment is not employed for any reason for which he is not responsible or is found on medical examination to be physically unfit to perform the work contemplated by his contract of employment; or

(d) after arrival at the place of employment is found after due enquiry by a labour officer to have been recruited by misrepresentation or mistake,

the employer shall at his own expense provide that person and his family with reasonable means of transport to the place of recruitment.

(2) Where any recruited person dies during the journey to the place of employment or during the period of his employment, the employer shall at his own expense provide the family of that person with reasonable means of transport to the place of recruitment and pay the reasonable expenses of a decent burial.

(3) Any employer who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(d).

66. Transport of recruited persons and their families to place of employment

(1) In addition to his obligations under section 64, every recruiter shall at his own expense provide the person recruited by him with reasonable means of transport to the place of employment.

(2) Subsection (1) shall apply to the members of the family of the recruited person who have been authorized to accompany or follow that person to the place of employment.

(3) Any recruiter who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(d).

67. Supply of necessaries during journey to place of engagement or employment

(1) Every recruiter who is required under this Act to provide transport for recruited persons or their families during a journey to the place of engagement or the place of employment shall provide them with everything necessary for their welfare during the journey at the recruiter's expense and, without prejudice to the generality of the foregoing, shall-

(a) where it is necessary to break the journey for the night, supply them, except in the case of an unforeseeable stoppage, with suitable housing and sanitary accommodation;

(b) obtain for them, when required, such medical attention as is reasonably procurable; and

(c) where the Commissioner so requires, cause them to be accompanied by an authorized employee of the recruiter or the employer, as the case may be.

Employment Act

(2) Any recruiter who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

68. Regulations in connection with employment

Regulations may be made under this Act for any of the following purposes-

(a) prescribing measures to be taken for the following purposes in any area within which a scheme of economic development which is likely to involve recruitment is to be applied-

(i) to avoid the risk of pressure being brought to bear on the inhabitants of the area by or on behalf of any employer in order to obtain the labour required;

(ii) to ensure that, as far as possible, the political and social organization of such inhabitants and their powers of adjustment to the changed economic conditions will not be endangered by the demand for labour; and

(iii) to deal with any other possible untoward effects of such development on such inhabitants;

(b) prescribing the records to be kept and the returns to be rendered by employers and recruiters in connection with recruitment;

(c) prescribing the housing accommodation and the transport, feeding, medical and other arrangements to be made available where recruited persons and their families are carried to and from the place of employment;

(d) requiring recruited persons to be medically examined;

(e) prescribing measures to be taken for the acclimatization of recruited persons and the protection from and immunization against disease of recruited persons and their families travelling with them;

(f) regulating recruitment for service outside Botswana and the travel arrangements from Botswana of persons so recruited;

(g) providing for the repatriation of recruited persons who become unfit or whose services are not required and of their families;

(h) prohibiting the employment of recruited persons in any prescribed industry, business or undertaking;

(i) restricting the amounts which may be paid to recruited persons in respect of advances of wages and regulating the conditions under which such advances may be made;

(j) providing for the regulation of vehicle loading and for the proper cleanliness and disinfection of vehicles.

PART:VI FORCED LABOUR SS 6972

69. Application of Part VI

This Part shall have effect to the exclusion of the other provisions of this Act.

70. Prohibition of exaction of forced labour

Any person who exacts or imposes forced labour or causes or permits forced labour to be exacted or imposed for his benefit or for the benefit of any other person shall be guilty of an offence and liable to the penalties prescribed by section 151(d).

71. Penalty for official constraint

Employment Act

Any public officer who puts any constraint upon the population under his charge or upon any individual member of that population to work for any private individual, company or association shall be guilty of an offence and liable to the penalties prescribed by section 151(d).

72. Saving

Nothing in this Part shall authorize the exaction from any person of any work or service for which such person does not offer himself voluntarily where apart from this Part the exaction of such work or service would be illegal.

PART:VII PROTECTION OF WAGES SS 7392

73. Exclusion from application of Part VII

The Minister may, after consultation with the registered organizations of employers and employees directly concerned, if such exist, by order published in the Gazette, exclude from the application of all or any of the provisions of this Part the wages paid to categories of employees whose circumstances and conditions of employment are such that the application to them of all or any of the said provisions would, in the opinion of the Minister, be inappropriate.

74. Fixing of wage periods

(1) A contract of employment may fix periods (in this Act each of which is referred to as a "wage period") in respect of which wages earned shall be payable:

Provided that-

(i) except in relation to casual employees as defined by section 2, no wage period shall be less than one week; and

(ii) no wage period shall exceed one month.

(2) Where the contract of employment is silent as to the wage period, such period shall be deemed to be one month.

75. Time of payment

Wages earned by an employee under his contract of employment shall, where it is reasonably practicable to do so, be paid before the expiry of the third working day immediately after the last day of the wage period in respect of which the wages are payable or, where it is not so practicable, as soon as it is reasonably practicable to do so:

Provided that, in the case of the completion of the period of employment, the total wages and other payments which may be due to an employee shall, where it is reasonably practicable to do so, be paid to him before the expiry of the third day immediately after the day on which the period of employment was completed or, where it is not so practicable, as soon as it is reasonably practicable to do so.

76. Payment of wages, etc., on termination of contract of employment by employer

(1) Subject to this Act, the total wages and any other payments which may be due to an employee whose contract of employment has been terminated by the employer under section 18, 19, 20(2) or 26(1) shall, where it is reasonably practicable to do so, be paid by the employer on the day of the termination or, where it is not so practicable, as soon as it is reasonably practicable to do so.

(2) Any employer who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

77. Payment of wages, etc., on termination of contract of employment by employee

(1) Subject to this Act, the total wages and any other payments which may be due to an employee who terminates his contract of employment under section 18, 19, 20(2) or 26(2) shall be paid by the employer on the day of the termination where it is reasonably practicable to do so.

Employment Act

(2) Subject to this Act, the total wages and any other payments which may be due to an employee who terminates his contract of employment without giving prior notice in accordance with section 18, in circumstances in which he is required to give such notice, or before the expiry of any period of notice he may have given in accordance with that section, shall be paid by the employer before the expiry of the third day immediately after the day on which the employee terminated the contract of employment:

Provided that-

(i) where such third day is a rest day or public or other holiday, such wages and other payments shall be paid before the expiry of the first day immediately after the rest day or public or other holiday which is not a rest day or public or other holiday; and

(ii) the employer may deduct, subject to any order made by a court or the Commissioner to the contrary, from the total wages and any other payments which may be due to the employee such sum as the employee is liable to pay by virtue of section 19(a) or (b).

(3) Any employer who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

78. Payment of wages, etc., to be made during working hours

(1) All payments of wages and any other payments which may be due to the employee shall be made on a working day and during working hours at or near the place of employment:

Provided that such payments may be made elsewhere than at or near the place of employment with the prior consent of the employee concerned.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

79. Prohibition of unauthorized deductions from wages, etc.

(1) Except where otherwise expressly permitted by this Act or any other written law, no employer shall make any deduction or make any agreement with any employee (whether or not the agreement is contained in the contract of employment) for any deduction from the wages to be paid by the employer or from any other payments which may be due to the employee or for any payment to the employer by the employee:

Provided that this subsection shall not apply to deductions deposited with the sanction of the Commissioner under section 45.

(2) Any employer who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(d).

80. Authorized deductions from wages, etc.

(1) Notwithstanding any other provision of this Act, an employer may-

(a) deduct from the wages and any other payments which may be due to the employee any amount due by him-

(i) in respect of any tax or rate imposed by law; or

(ii) as a contribution to any provident or pension fund or scheme established and maintained in accordance with regulations made under this Act to which the employee has agreed to contribute;

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

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

Provided that no such deduction shall be made where, by any custom, quarters are provided free of charge in addition to wages; or

Employment Act

(ii) the deduction whereof is provided for under any collective agreement made between any registered organization of employees of which the employee is a member and the employer or a registered organization of employers of which the employer is a member;

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

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

(i) in respect of unauthorized absence from work;

(ii) in respect of the actual cost of meals, or so much of the actual cost of meals as is not subsidized by the employer, supplied by the employer at the request of the employee;

(iii) in respect of such amenities and services supplied by the employer as may be authorized by the Commissioner;

(iv) in order to recover any overpayment of wages:

Provided that no deductions shall be made for this purpose unless the deductions are made in such a manner as will cause no undue hardship to the employee;

(v) in respect of contributions payable by the employee by virtue of any legislation which may for the time being be in force establishing a national provident fund;

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

(vii) for any other purpose which may be approved by the Minister.

(2) For the purposes of subsection (1)(d)(iii), "services" does not include the provision or supply of tools or raw materials required for the purposes of the employment in question.

(3) Notwithstanding any other provision of this Act to the contrary, where-

(a) an employer or any fund contributed to by an employer makes a loan to an employee;

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

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

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

Provided that-

(i) where regulations determine the maximum amount of loans or instalments and the terms and conditions upon which such loans may be made or recovered, no loan or instalment may be recovered in excess of the relevant prescribed amount nor may such loan or instalment be recovered upon terms more onerous to the employee than those provided for in such regulations; and

Employment Act

(ii) nothing in this subsection shall permit the recovery of any loan irrecoverable under any other law.

81. Limitation on attachments and assignments, etc.

Notwithstanding the provision of any law to the contrary, no court shall make an order for the attachment or assignment of the wages or any other payments which may be due to an employee such as seriously to jeopardize his wellbeing or that of the dependent members of his family.

82. Wages to be paid in legal tender

(1) Except where otherwise expressly permitted by this Act, the entire amount of the wages earned by and any other payments which may be due to any employee under his contract of employment shall be paid-

(a) to him in legal tender; or

(b) with his consent or at his request and subject to such limitations and conditions as may be prescribed-

(i) into a bank account maintained by him; or

(ii) to him by cheque, postal order or money order expressed in legal tender,

and every payment of, or on account of, any such wages or other payments made in any other form shall be null and void.

(2) Every employee shall be entitled to recover in court so much of his wages and any other payments which may be due to him, exclusive of sums lawfully deducted therefrom in accordance with this Act, as shall not actually have been paid to him in accordance with subsection (1).

(3) Any employer who enters into a contract of employment providing for the payment of wages or any other payments which may be due to the employee or pays wages or makes any other such payments contrary to this section shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

83. Agreement as to place or manner of spending wages illegal

(1) No employer shall impose in any contract of employment, any term which limits the manner in which an employee may expend the employee's wages or any other payments due to the employee after they have been paid to the employee, and every contract of employment which contains such a term, is void to the extent that it so provides.

(2) Any employer who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

84. Partial payment of wages in kind

(1) Nothing in this Act shall render null and void any contract of employment or other agreement with an employee solely by virtue of the fact that the contract of employment or other agreement provides for the payment of the employee's wages or other payments which may be due to him in the form of payments in kind, other than in the form of intoxicating liquor or noxious drugs, where-

(a) such payments in kind are appropriate for the personal use and benefit of the employee and his family; and

(b) the value attributed to such payments in kind is fair and reasonable:

Provided that any employer who enters into a contract of employment or other agreement with an employee under which the employer may or shall make a payment in respect of wages or of any other payments which may be due to an employee more than 40 percent of which payment

Employment Act

is accounted for by a payment in kind or who makes such a payment shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

(2) Any employer who makes any payment of an employee's wages or other payments due to him wholly or in part in the form of intoxicating liquor or noxious drugs shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

85. Wages not to be paid on certain premises

(1) Wages or any other payments which may be due to an employee shall not be paid to him in premises used for the sale of intoxicating liquor or for the retail sale of goods, except in the case of an employee employed in such premises.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

86. Authority of employer to open shop

(1) Nothing in this Part shall prohibit an employer otherwise lawfully entitled to do so from establishing a shop for the sale of provisions generally to the employer's employees or other people rendering services connected with the employer's undertaking; but no employee or other person shall be compelled by any contract of employment, agreement or order, written or oral, to purchase provisions at any such shop, or buy services operated in connection with that undertaking.

(2) Any person who compels or seeks to compel-

(a) any employee by any contract of employment, agreement or order; or

(b) any other person by agreement or order,

to purchase provisions at any such shop, or buy services operated in connection with that undertaking to employees or such other persons shall be guilty of an offence and liable to the penalties prescribed by section 151 (c).

87. Advance of wages

(1) Any person who gives or promises to any other person any advance of wages or valuable consideration upon condition, expressed or implied, that such other person or any dependant of his shall enter upon any employment shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

(2) The amount of wages which may be advanced to an employee at the time of his engagement and the method of repayment thereof shall be as may be prescribed.

88. Prohibition of interest on advances

(1) No employer shall make deductions by way of discount, interest or any similar charge on account of any advance of wages made to an employee in anticipation of the regular period of payment of such wages.

(2) Any employer who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

89. Power of Commissioner to require security from employer

(1) The Commissioner may require any employer with whom any sums of money have been deposited by his employees for safe-keeping-

(a) to deposit with him a sum of money by way of security;

(b) to enter into a bond in the form prescribed for the due refund to the employees concerned of any moneys so deposited; or

(c) to place such moneys into a separate banking account which shall not be utilized for any purpose other than refunding amounts so deposited at the employee's request and paying interest earned thereon in accordance with subsection (2).

Employment Act

(2) Any interest earned on a sum of money deposited for safe-keeping with an employer by an employee shall be payable by the employer to the employee and shall be paid by the employer to the employee when and as often as the employee requires it to be so paid.

(3) Any employer who-

(a) fails to comply with a requirement made of him by the Commissioner under subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(b); or

(b) utilizes a banking account such as is referred to in subsection (1)(c) for a purpose forbidden thereby or fails to pay interest to an employee in accordance with subsection (2) shall be guilty of an offence and liable to the penalties prescribed by section 151(d).

90. Payment of wages for partial performance of contract of employment

(1) Subject to this Act and to the terms, expressed or implied, of the contract of employment, an employee shall be entitled to such wages in respect of the partial performance of his contract of employment as correspond-

(a) where the wages are calculated under the contract of employment by reference to any period of time, to the length of the period worked; or

(b) in any other case, to the amount of work performed.

(2) Any period during which an employee is on leave with pay and any weekly rest period in respect of which, by agreement or custom, the employee is not required to work under his contract of employment shall be deemed, for the purposes of subsection (1)(a), to be part of the period worked.

(3) Any employer who fails to pay the wages to which an employee is entitled by virtue of this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

91. Priority of wages

Notwithstanding the provisions of any other law, whenever any attachment has been issued against the property of an employer in execution of any judgment against him, the proceeds realized in pursuance of such execution shall not be paid by any court to the judgment creditor until any judgment obtained against the employer in respect of an employee's wages has been satisfied to the extent of a sum not exceeding three months' wages to the employee:

Provided that nothing in this section shall prevent an employee from recovering any balance due on such judgment by ordinary process of law.

91A. Priority of wages

(1) In the event of an employer's insolvency, an employee's claims arising out of his employment shall be payable out of the assets of the insolvent employer before non-privileged creditors are paid their shares.

(2) The protection referred to in subsection (1) shall extend to the following claims-

(a) the employee's claims for wages up to three months prior to the insolvency or to the termination of employment;

(b) the employee's claims for payment as a result of work performed during holidays within a period of twenty-four months prior to the insolvency or termination of employment;

(c) the employee's claims for any amount due to him in respect of other types of paid absence for a period not less than three months prior to the insolvency or to the termination of employment; and

(d) such severance benefits or other terminal benefits as the employee is entitled to.

92. Duty of employer to keep records, etc.

Employment Act

(1) Every employer shall keep such records, books and accounts in respect of employees employed by him as may be prescribed and every employer shall, at all reasonable times, afford every facility to the Commissioner or any labour officer for the examination of such records, books and accounts.

(2) Any employer who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

PART:VIII REST PERIODS, HOURS OF WORK, HOLIDAYS AND OTHER CONDITIONS OF WORK SS 93100

93. Rest periods

(1) Every employee shall be granted by the employer in every period of seven consecutive days a rest period comprising at least 24 consecutive hours, which period shall ordinarily be or include a Sunday:

Provided that, where the employee is engaged on shift work, he shall be granted a rest period comprising any period of 30 consecutive hours.

(2) Notwithstanding subsection (1), the Commissioner may, in writing or orally, exempt any employer from the provisions of that subsection, for such period and subject to such conditions as he may think fit and as are reasonable, having regard to the welfare of the employees concerned, in the particular circumstances.

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

(4) Any employer who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

94. Payment for work during rest period

Any employee who works during a rest period, either by agreement with the employer or on being required to do so under section 95, shall be paid at least double the wages he would have been paid had the period been an ordinary working period, or at his option be granted a day or days off, as the case may be, in lieu thereof.

95. Hours of work

(1) Except as hereinafter provided, an employee shall not be required under his contract of employment to work-

(a) more than five consecutive hours without a period of rest which shall not be less than 30 minutes; or

(b) more than an ordinary working period of eight hours in any one day or more than 48 hours in any one week:

Provided that-

(i) an employee engaged in work which by reason of its nature requires to be carried on continuously may be required to work for eight consecutive hours if those hours include a period or periods of rest of not less than 45 minutes in the aggregate during which period or one of which periods he shall be provided with the opportunity to have a meal; and

(ii) where the working week is one of five days, the hours of work in each day may be increased to nine; but these hours shall be interrupted by a period or periods of rest of not less than one hour in the aggregate during which period or one of which periods the employee shall be provided with the opportunity to have a meal.

Employment Act

(2) An employee may be required by his employer to exceed the limit of hours prescribed by subsection (1) or to work during a rest period prescribed by section 93 in the case of-

- (a) an accident, actual or threatened;
- (b) work, the performance of which is essential to the life of the community;
- (c) work essential for national defence or security;
- (d) urgent work to be done to machinery or plant;
- (e) an interruption of work which it was not reasonably possible to foresee; or
- (f) work to be performed by employees in any industrial undertaking considered by the Minister to be vital to the economy of Botswana or in any service declared by the Minister, by order published in the Gazette, to be an essential service for the purposes of this Part:

Provided that where an employee is required to work during a rest period, he shall be granted a similar rest period in substitution therefor, before the next following rest period is due.

(3) An employee engaged in work which by reason of its nature requires to be carried on continuously by a succession of shifts may be required by his employer to work during a rest period prescribed by section 93; and, where the Commissioner rules that any work does not by reason of its nature require to be carried on continuously by a succession of shifts, such work shall be deemed, for the purposes of this section, not to be of such a nature.

(4) If an employee works, on being required to do so under paragraph (i) of the proviso to subsection (1), for eight consecutive hours, the period or periods of rest of not less than 45 minutes in the aggregate therein prescribed shall count as working time and be paid accordingly.

(5) If an employee is required to work in any one day more than the number of hours in the ordinary daily working period, the number of hours so worked in excess shall be deemed, for the purposes of this Act, to be overtime, and the employee shall be paid for such overtime one and a half times the wages he would have been paid had the time worked not been overtime.

(6) Notwithstanding subsection (5), where a contract of employment provides for the payment of wages without reference to the number of hours worked by the employee and further provides that he may be required to work overtime in exceptional circumstances and he is on occasion so required to work, he shall not be entitled to be paid for the overtime unless the contract of employment otherwise provides.

(7) An employee shall not be required or permitted to work overtime for more than 14 hours in any one week:

Provided that the Minister may, by order published in the Gazette, declare that this subsection shall not apply to employees in such industry or undertaking as shall be specified therein.

(8) For the purpose of calculating the daily rate of payment and/or benefits due for overtime to an employee employed on a monthly rate of pay the following divisors shall be applied-

22 in respect of a 5 day working week;

24 in respect of a 5 1/2 day working week;

26 in respect of a 6 day working week:

Provided that the Minister may, by regulations, prescribe different methods of calculation in respect of any particular specified circumstances.

(9) The Minister may make regulations for calculating the payments due to an employee for overtime in any particular circumstances.

(10) Except where an employee is required to work under subsection (2) or in exceptional circumstances not covered by that subsection, no employee shall work for more than 12 hours in any one day.

Employment Act

(11) The Minister may prescribe the maximum number of hours which may be worked as overtime over any given period.

(12) Notwithstanding subsection (7), where the Commissioner is of the opinion that circumstances exist which justify an employee being required or permitted to work overtime for more than 14 hours in any one week, he may, in writing or orally, authorize the employer to require or permit the employee to work overtime for such greater number of hours in any one day as the Commissioner shall specify, for such period and subject to such conditions as he may think fit.

(13) Where the Commissioner is of the opinion that exceptional circumstances exist which are not covered by subsection (2) but are, nevertheless, such as to justify an employee being required by his employer to exceed for a limited period the limit of hours prescribed by subsection (1) or to work during a rest period prescribed by section 93, he may, in writing or orally, authorize the employer to require the employee to exceed such limit or to work during such rest period, subject to such conditions as the Commissioner may think fit.

(14) Where, by virtue of his employer having been authorized under subsection (13), an employee is required to exceed the limit of hours prescribed by subsection (1) or to work during a rest period prescribed by section 93, the employee shall be deemed, for the purposes of this Act, to be required to do so under subsection (2) and the proviso thereto shall apply in respect of any rest period or part thereof forfeited in consequence of the requirement.

96. Task work

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

97. Shift work

(1) Notwithstanding section 95(1), an employee engaged under his contract of employment in regular shift work may be required by his employer to work more than five consecutive hours without a period of rest, more than eight hours in any one day or more than 48 hours in any one week; but the average number of hours worked over any period of four weeks shall not exceed 48 per week.

(2) Section 95(5) shall not apply to any employee engaged under his contract of employment in regular shift work; but any such employee who works for his employer for more than an average of 48 hours per week over any period of three weeks shall be paid in accordance therewith in respect of those hours worked in excess of the average of 48 hours per week.

(3) Where there is any contravention of this section, the employer shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

98. Leave with pay

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

(2) Every employer shall grant to every employee employed by him leave with basic pay at the rate of not less than 1,25 days per month.

(3) Of the 15 working days' leave earned in respect of any period of 12 months not less than eight working days shall be taken no later than six months immediately after the end of the period in respect of which the leave was earned.

(4) Any balance of leave not taken in accordance with subsection (3) may be accumulated, year by year; but such leave shall not be accumulated for longer than three years immediately after the end of the period in respect of which leave was first accumulated, and at the end of that three years' period all the accumulated leave together with all the leave earned in respect of the immediately preceding period of 12 months shall be taken.

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

Employment Act

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

(a) in respect of any period of leave accumulated under subsection (4) or which has otherwise accrued to him but has not been granted before the termination of the contract of employment; and

(b) at the rate of 1,25 days in respect of every month or part of a month of continuous employment after he last became entitled to leave under subsection (2).

(7) All days between days on which contracts of employment are in force between the same parties shall be deemed, for the purposes of subsections (2) and (6)(b), to be part of the employee's continuous employment:

Provided that this subsection shall not apply where the number of such days exceeds in the aggregate 12 in any one month.

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

(9) Any employer who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

99. Paid public holidays

(1) Each of the public holidays specified in the Second Schedule shall be a paid public holiday for the purposes of this section:

Provided that, within the mining industry alone, paid public holidays for the purposes of this section shall be those public holidays customarily recognized by the industry as paid public holidays.

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

(3) Any employee who works on a paid public holiday or on a day observed as a public holiday by virtue of the provisions of subsection (2) shall-

(a) be paid at least double the wages he would have been paid had the day been an ordinary working day; or

(b) be granted a paid day off in lieu of that day within 10 days immediately thereafter.

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

(5) The Minister may, by order published in the Gazette, amend the Second Schedule.

(6) Any employer who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

100. Paid sick leave

(1) Any employee shall, after medical examination at the expense of the employer by a medical officer nominated by the employer, or after medical examination at the expense of the employee, be entitled to such sick leave as the medical officer concerned recommends, and shall be entitled to be paid his basic pay for at least 20 working days of such sick leave in any one year of continuous employment.

(2) Any employee who absents himself from his place of employment on the grounds of sickness shall-

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

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

Employment Act

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

(4) Any employer who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

PART:IX CONTRACTORS AND CONTRACTING S 101

101. Powers of Commissioner to secure payment of wages due to employees of contractors, subcontractors and employers

(1) Notwithstanding the provisions of any other law, where the Commissioner is satisfied that a contractor, subcontractor or an employer has ceased to carry on business or operate as such within Botswana and that a significant number of the contractor's, subcontractor's or employer's employees or former employees are due wages under their contracts of employment from the contractor, subcontractor or employer the Commissioner may summarily seize any movable property belonging to the contractor, subcontractor or employer that the Commissioner is satisfied has been used to carry on the business of the contractor, subcontractor or employer and cause the same to be sold by public auction.

(2) The Commissioner shall have control of the proceeds of any sale by public auction in terms of this section and shall use the same towards payment of such wages as he is satisfied are due to the employees or former employees of the contractor, subcontractor or employer in question.

PART:X EMPLOYEES IN SPECIAL CATEGORIES S 102

102. Regulations at variance with Act in relation to employees in special categories

(1) Regulations may be made in respect of any matter within the purview of this Act, which need not be in conformity with the other provisions of this Act in relation to employees belonging to any category or description of employees for which it is considered that special provision ought, in the interests of Botswana, to be made:

Provided that before making such regulations, the Labour Advisory Board shall be consulted.

(2) Regulations made under this section may provide, in respect of any contravention of the regulations, that the offender shall be liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding 18 months, or to both:

Provided that the Minister shall, before fixing the penalty with reference to any particular contravention, have regard to the scale of penalties prescribed by section 151.

PART:XI EMPLOYMENT OF CHILDREN AND YOUNG PERSONS SS 103-111

103. Application of Part XI

This Part shall be in addition to and not in derogation from the other provisions of this Act which shall apply unless varied by this Part.

104. Power of Minister to exempt occupations

If, having regard to the nature of the work involved in any occupation which forms part of an industrial or agricultural undertaking, the Minister considers that such occupation should be excluded from all or any of the provisions of this Part relating to such undertakings, he may, by order published in the Gazette, provide that employment in such occupation shall be deemed, for the purposes of this Part, not to be employment in such occupation to the extent specified in the order.

105. Employment of children prohibited

(1) Subject to the other provisions of this section, no child shall be employed in any capacity whatsoever.

(2) A child who has attained the age of 14 years and is not attending school may be employed on light work not harmful to his health and development-

Employment Act

- (a) by a member of the family of such child; or
- (b) if such work is of a character approved by the Commissioner,

but so that, where the employment is other than of a domestic character in connection with which suitable accommodation is provided, the child shall be readily able to return each night to the house of his parent or guardian or such other persons as may be approved by his parent or guardian:

Provided that no child shall be required or permitted to work more than six hours a day or 30 hours a week.

(3) A child who has attained the age of 14 years and is still attending school may, whilst on vacation from school, be employed on light work not harmful to his health and development of a character approved by the Commissioner for not more than five hours a day between 6 a.m. and 4 p.m.

(4) No child shall be required or permitted, in the course of his employment, to lift, carry or move anything so heavy as to be likely to endanger his physical development.

(5) Any person who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

106. Prohibition of employment underground

(1) No child or young person shall be employed on underground work.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

107. Prohibition of night work

(1) No child or young person shall be employed on any kind of work during the night:
Provided that a young person may be employed on work during the night-

(i) in the case of an emergency which could not reasonably have been foreseen and prevented, which is not of a periodical character and which interferes with normal working; or

(ii) if the young person is so employed under a contract of apprenticeship or indenture to learn.

(2) For the purposes of this section, "the night" means a period of not less than 12 consecutive hours including-

(a) in the case of a child, the period between 10 p.m. and 6 a.m. the following morning; or

(b) in the case of a young person, the period between 11 p.m. and 6 a.m. the following morning.

(3) Any person who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

108. Restriction on employment of children and young persons

(1) No young person or child shall be employed on any work which is harmful to his health, development, safety or morals.

(2) The Commissioner may notify any employer in writing or, by notice published in the Gazette, all employers or every employer belonging to any class or description of employers specified in the notice that the kind of work on which a young person is employed by him or them is harmful to his health and development, dangerous, immoral or otherwise unsuitable, and every employer who is so notified shall immediately cease so to employ the young person concerned.

(3) Where a contract of employment is terminated in consequence of a notification by the Commissioner under subsection (2), the termination shall not affect the right of the young person concerned to be paid such wages as he may have earned, up to the time of the termination, under the contract of employment.

Employment Act

(4) No employer shall continue to employ any child or young person after receiving notice, whether oral or in writing, from his parent or guardian that he is employed against the wishes of his parent or guardian:

Provided that this subsection shall not apply where a young person is employed under a written contract of employment entered into by the young person with the approval of the Commissioner.

(5) Any person who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b):

Provided that where an employer contravenes subsection (2) he shall be liable to the penalties prescribed by section 151(c).

109. Hours of work of children and young persons in industrial undertakings

(1) No child or young person shall, without the express permission of the Commissioner in writing, be required or permitted to work in an industrial undertaking-

(a) for more than three consecutive hours in the case of a child; or

(b) for more than four consecutive hours in the case of a young person,

without a period of rest which shall not be less than 30 minutes.

(2) Without prejudice to the limitations imposed by section 105 on the number of hours a child may be required or permitted to work, no young person shall, without the express permission of the Commissioner in writing, be required or permitted to work in an industrial undertaking for more than seven hours a day.

(3) Where a young person employed on work in an industrial undertaking is attending school, the hours of his attendance at school shall be deemed, for the purposes of subsection (2), to be hours of work in the industrial undertaking:

Provided that this subsection shall not apply where the young person is employed on work in an industrial undertaking carried out in any Government technical school or other technical school supervised by a public authority or under any apprenticeship or vocational training scheme approved by the Commissioner.

(4) Any person who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

110. Prohibition of employment of children and young persons on rest days and paid public holidays

(1) No child or young person shall, without the express permission of the Commissioner in writing, be required or permitted to work on a rest day or paid public holiday by virtue of section 99.

(2) Where a child or young person works on a rest day or paid public holiday or for part thereof, the employer shall grant him a day or part of a day off, as the case may be, in substitution for such rest day or paid public holiday or part thereof before the rest day next following is due unless the time interval involved renders this impracticable.

(3) Any person who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

111. Regulations regulating employment of children, etc.

Regulations may be made regulating the employment of children and young persons and, without prejudice to the generality of the foregoing, such regulations may provide for the registration of children and young persons where they are to be employed in an industrial undertaking.

PART:XII EMPLOYMENT OF FEMALES SS 112119

112. Application of Part XII

Every female employee shall be entitled to the benefits conferred by this Part.

113. Absence from work in connection with confinement and maternity allowance

Employment Act

(1) A female employee shall give notice to her employer of her confinement by delivering to him a written certificate signed by a medical officer or a registered nurse and midwife certifying his opinion that the employee's confinement will probably take place within six weeks immediately after the date of the certificate.

(2) On receipt of the notice under subsection (1), the employer shall immediately permit the female employee in question to absent herself from work until her confinement and thereafter he shall not permit or require her to return to work until the expiry of six weeks immediately after her confinement.

(3) Within 21 days immediately after her confinement, a female employee shall inform her employer of the date of the confinement by delivering to him a written certificate signed by a medical officer or a registered nurse and midwife certifying that date.

(4) Notwithstanding subsection (2), where a female employee delivers to her employer a written certificate signed by a medical officer or a registered nurse and midwife certifying his opinion that the employee is suffering from an illness arising out of her confinement and is consequently unfit to return to work, the employer shall not permit or require her to return to work until the expiry of eight weeks immediately after her confinement.

(5) The employer shall pay every female employee whilst she is absent from work in pursuance of subsection (2) or (4) an allowance of not less than 50 per cent of the basic pay and other benefits she would otherwise have been entitled to receive, and this subsection shall apply notwithstanding the provision of any law for the time being in force relating to the determination and payment of a minimum wage:

Provided that the Minister may, by order published in the Gazette, amend this section to increase the rate of maternity allowance herein prescribed after consultation with the Minister for the time being responsible for health and with registered organizations of employers and employees.

(6) When giving notice in accordance with subsection (1) or delivering the certificate to her employer in accordance with subsection (3), a female employee may in writing nominate another person to whom her maternity allowance shall be paid on her behalf and any subsequent payment of the maternity allowance to that person shall be deemed, for the purposes of this Act, to have been made to the female employee entitled to the allowance.

(7) For the removal of doubt, it is hereby declared that every absence from work in pursuance of subsection (2) or (4) shall be deemed, for the purposes of this Act, not to interrupt the employment of the female employee concerned.

(8) Any employer who-

(a) contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(c); or

(b) knowingly permits or requires any female employee to perform any work under her contract of employment within six weeks immediately after her confinement shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

(9) Where a female employee works for another employer during any period of absence from work in accordance with the terms of this section, she shall forfeit her entitlement to maternity allowance.

114. Payment of maternity allowance

(1) Subject to the other provisions of this section, the employer shall pay maternity allowance in three instalments as follows-

(a) the first, for the period of absence up to and including the day of confinement, shall be paid within 48 hours immediately after the employee delivers to her employer the certificate required by section 113(3);

(b) the second, for the period of absence of six weeks immediately after the day of confinement, shall be paid on the return of the employee to work or, where that period has been extended pursuant to section 113(4), on the day she would otherwise have been due to return to work; and

Employment Act

(c) the third, where there has been an extension of the period of absence pursuant to section 113(4), for the additional period of absence of two weeks, shall be paid within 48 hours immediately after the employee delivers to her employer the certificate thereby required.

(2) Where a female employee absents herself from work on being permitted to do so pursuant to section 113(2) and dies from any cause-

(a) before or on the day of her confinement, the employer shall, on the death being confirmed, forthwith pay maternity allowance, as provided by section 30, for the period of absence up to and including the day immediately preceding her death:

Provided that no employer shall be required by this paragraph to pay maternity allowance in respect of any period longer than 42 days; or

(b) after the day of her confinement, the employer shall, on death being confirmed, forthwith pay, as provided by section 30-

(i) maternity allowance for the period of absence up to and including the day of confinement unless the first instalment of maternity allowance has already been paid pursuant to subsection (1)(a); and

(ii) maternity allowance or the balance of maternity allowance unpaid for the period of absence immediately after the day of confinement up to and including the day immediately preceding her death:

Provided that the employer shall not be required by this subparagraph to pay maternity allowance in respect of any period longer than 42 days unless there has been an extension of the period of absence pursuant to section 113(4) in which case he shall not be required by this subparagraph to pay maternity allowance in respect of any period longer than 56 days.

(3) The employer shall pay maternity allowance for the whole period of absence from work in pursuance of section 113(2) or (4) including rest days and paid public holidays by virtue of section 99.

(4) Any employer who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

115. Right to maternity allowance unaffected by notice of termination of contract of employment

(1) No notice of intention to terminate her contract of employment given without good cause to a female employee within a period of three months immediately before her confinement shall affect the employer's obligations under this Part in respect of the payment to her of maternity allowance in relation to that confinement.

(2) If any question arises as to whether, for the purposes of subsection (1), any notice of intention to terminate a contract of employment was or was not given for good cause, either the employer or employee concerned may refer the question to the Commissioner for a ruling which, subject to subsection (3), shall be binding.

(3) Where either the employer or employee in question is aggrieved by a ruling of the Commissioner under subsection (2), he may appeal against the Commissioner's ruling to the Minister.

(4) Every appeal under this section shall be in writing and shall be delivered to the Minister not later than 30 days immediately after the day on which the ruling complained of was communicated to the appellant.

(5) The Minister shall consider every appeal made to him under this section and shall either dismiss the appeal or allow the appeal, in which last case the Minister shall reverse the Commissioner's ruling.

116. Prohibition of serving notice of termination of contract of employment during maternity leave

Employment Act

(1) Where a female employee is absent from work in pursuance of section 113(2) or (4) or remains absent from work for a longer period as a result of an illness which a medical officer or a registered nurse and midwife has certified in writing to arise in his opinion out of the employee's pregnancy or confinement and to render her unfit to return to work, no employer shall give her notice during the period of her absence of intention to terminate her contract of employment and any such notice given to a female employee before the period of any absence from work in pursuance of section 113(2) or (4) which expires during that period or during such longer period as is hereinbefore described shall be null and void:

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

(2) Any employer who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

117. Female employee entitled to only one maternity allowance

Where a female employee has more than one employer, she shall not, in respect of the same confinement, be entitled to maternity allowance from more than one of those employers and, where a female employee having more than one employer is entitled to maternity allowance, the allowance shall be paid by the employer with whom she has been longest in continuous employment.

118. Female employee to be permitted to nurse child

(1) Where a female employee wishes to suckle her child or otherwise feed him herself, the employer shall permit her to do so for half-an-hour twice a day during the hours of work for six months immediately after her return to work, pursuant to the provisions of this Part, following her confinement and shall pay her her basic pay in respect of each such period as if it were ordinary working time:

Provided that the two half-an-hour feeding periods may be aggregated and taken as one continuous hour, at the option of the employee and in agreement with the employer.

(2) Any employer who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

119. When employer not liable for medical expenses

Except in any personal capacity, no employer shall be liable to pay the medical expenses or any part of such expenses incurred by a female employee during or attributable to her pregnancy or confinement.

PART XIII: EMPLOYMENT OF THE INFIRM AND HANDICAPPED (S 120)

120. Regulations in relation to employment of infirm or handicapped persons

Where he considers it necessary or expedient in the interests of Botswana to do so, the Minister may make regulations in relation to the employment of persons affected by infirmity or physical handicap and, without prejudice to the generality of the foregoing, such regulations may regulate the conditions under which such persons are employed for the purpose of safeguarding their interests

PART: XIV LABOUR HEALTH AREAS SS 121-128

121. Application of Part XIV to labour health areas

(1) The Minister may, by order published in the Gazette, declare any area of Botswana to be a labour health area for the purposes of this Act.

(2) The Minister may, by the same order made under subsection (1) or any subsequent order published in the Gazette, apply any of the provisions of this Part to a labour health area and no such provision shall have effect unless so applied.

Employment Act

122. Housing

(1) Subject to the other provisions of this section, every employer shall-

(a) cause his employees to be housed in such manner as may be prescribed; and

(b) provide for his employees and members of their families living with them such sanitary arrangements both at the place of employment and the place where they are housed of such scale and description as may be prescribed.

(2) Subsections (1)(a) and (so far as it relates to the provision of sanitary arrangements at the place where employees are housed) (b) shall apply only in the case of employees who are housed at such distance from their homes or normal places of residence that it would be impracticable for them to return thereto at the end of the day's work or to obtain suitable alternative accommodation.

(3) Any employer who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

123. Feeding of employees

(1) During the period of employment of any employee attested on a written contract of employment under Part IV, the employer shall, unless exempted therefrom by the Commissioner in writing, at his own expense, supply the employee and, in the case of an employee employed for a period of employment of more than two years who has been allowed by the employer to have his family with him, members of his family living with him with daily rations of sound and wholesome food in accordance with such description and scale as may be prescribed:

Provided that the employer shall not be required to supply rations in respect of any day on which the employee is absent from work unless the employee is necessarily absent for reasons of sickness or injury.

(2) Notwithstanding subsection (1), in fixing the rate of wages payable under a contract of employment, due allowance may be made for the value of any rations to be supplied in accordance with that subsection.

(3) In any contract of employment, other than a contract of employment subject to Part IV, the employer shall not be required to provide a free issue of rations.

(4) Where the Commissioner is satisfied that in any specified area or at any particular place of employment foodstuffs of adequate variety and quantity and of reasonable price are not available for purchase by employees, he may by order in writing require all or any employers in that area or the particular employer concerned to supply, at their or his own expense, as the case may be, rations on the prescribed scale:

Provided that the Commissioner may, by such an order, permit an employer to impose a charge for such rations to such extent as the Commissioner shall specify.

(5) Notwithstanding subsection (3), the employer shall, at his own expense, always supply those of his employees, who are receiving medical treatment of such a nature at the place of employment as to preclude them from engaging in their duties, with daily rations of sound and wholesome food in accordance with such description and scale as may be prescribed.

(6) Any employer may, at the request of an employee, supply him with such items of the prescribed ration scale as the employee may desire, in which case a sum not exceeding the value of the rations so supplied may be deducted from the cash wages fixed by the contract of employment.

(7) Any employer who contravenes this section or fails to comply with a requirement made of him under this section shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

124. Supply of water

(1) Every employer shall, at his own expense, provide for his employees and members of their families living with them and resident on land which the employer is entitled to occupy or of which he makes use an adequate and easily accessible supply of wholesome water for drinking, washing and other domestic purposes to the satisfaction of the appropriate authority and shall take

Employment Act

all such measures as are necessary and practicable and as the appropriate authority may, by notice in writing served on the employer, require to be taken to maintain the supply and protect it from pollution.

(2) Any employer who, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(c); and in any proceedings for an offence under this subsection the court shall presume the absence of a reasonable excuse on the part of the person charged unless the contrary is proved.

125. Provision of medicine and medical treatment

(1) Every employer shall, at his own expense, provide for his employees and members of their families living with them medical aid in accordance with such scale as may be prescribed:

Provided that, in so far as the provision of such medical aid for the members of the employee's family is concerned, this obligation shall extend only to cases where the employee and his family are resident on land which the employer is entitled to occupy or of which the employee makes use with the knowledge and consent of the employer.

(2) Any employer who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(c):

Provided that an employer shall not be liable under this section where any illness or incapacity is occasioned by the neglect or fault of the employee or the members of his family or where the employee or the members of his family refuse or fail to make use of the medical aid provided by the employer.

126. Care of employees on journeys

(1) Every employer shall provide for his employee when on a journey arising out of his employment such articles of equipment relating to his comfort and wellbeing as seating, bedding, cooking utensils and so on as are reasonably necessary having regard to the length, duration and rigours of the journey.

(2) Any employer who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(a).

127. Return of employees to place of origin or engagement

(1) Where an employee has no right of repatriation under section 32 or 65, not having been brought to the place of employment by the employer or by any person acting on the employer's behalf, the employer shall, at the termination of the contract of employment, pay the expenses of repatriating the employee by reasonable means to the place of origin or the place of engagement, whichever is nearer to the place of employment, if the employee so desires:

Provided that an employer shall not incur liability under this section in respect of any employee who has not completed a period of employment of at least three months' duration unless the Commissioner so directs.

(2) The Commissioner may exempt the employer from his liability to pay the expenses of repatriation under subsection (1) if the contract of employment has been terminated otherwise than by reason of the inability of the employee to fulfil the contract of employment owing to sickness or accident and the Commissioner is satisfied-

(a) that in fixing the rate of wages proper allowance has been made for the payment of repatriation expenses by the employee; and

(b) that suitable arrangements have been made by means of a system of deposited wages or otherwise to ensure that the employee has the funds necessary for the payment of those expenses.

(3) The expenses of repatriation shall include-

(a) the cost of travelling and subsistence expenses or rations to the place of origin or the place of engagement, whichever is nearer to the place of employment; and

(b) subsistence expenses during the period, if any, between the date of termination of the contract of employment and the date of repatriation.

Employment Act

(4) Any employer who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

128. Regulations in relation to labour health areas

Regulations may be made for the better carrying into effect of the purposes and provisions of this Part and, without prejudice to the generality of the foregoing, such regulations may provide-

(a) for the feeding of employees in cases where food is to be supplied by an employer under or at the termination of any contract of employment and prescribe the description and scale of rations to be supplied;

(b) for all matters relating to the supply of water by employers to employees;

(c) for and prescribe the description and scale of medicines, medical attention, accommodation, equipment, staff and treatment to be provided by employers to employees;

(d) for all matters relating to the return of employees from the place of employment to the place of origin or the place of engagement, whichever is nearer to the place of employment; and

(e) for the disinfection, disinfestation and rat-proofing of buildings.

PART:XV DETERMINATION OF MINIMUM WAGES SS 131142

129. Certain public contracts to contain declaratory clause in relation to contracts of employment Every contract-

(a) to which a public authority is a party; or

(b) which is entered into with the assistance of the Government, whether by way of grant, loan, subsidy, guarantee or similar assistance, or with the sanction of the Government,

and which provides for the employment of persons by one of the parties thereto (other than by the Government or a department of the Government) shall include an express declaration to the effect that every contract of employment entered into pursuant to the contract shall be subject to this Act.

130. Sanctions available to Government in respect of contracts of employment made pursuant to certain public contracts

Where an employer who has entered into a contract of employment pursuant to a contract such as is referred to in section 129 to which the Government or a department of the Government is a party contravenes this Act or a term or condition of the contract of employment to the prejudice of the rights of the employee under this Act or the contract of employment, the Government or the department of the Government concerned may withhold from the employer payments due from it under or in connection with the contract or decline to enter into further contracts with the employer until the contravention is remedied.

PART:XVI DETERMINATION OF MINIMUM WAGES

131. Establishment of Minimum Wages Advisory Board

(1) There is hereby established a board to be known as the Minimum Wages Advisory Board (in this Part referred to as "the Board").

(2) The provisions of the Third Schedule shall have effect in respect of the Board.

(3) The Minister may, by order published in the Gazette, amend the Third Schedule.

132. Duty of Minister to seek advice of Board before fixing minimum wage

(1) Where the Minister considers it necessary or expedient to fix the minimum wage for any category of employees in any trade, section of trade, industry or section of industry specified in the

Employment Act

Fourth Schedule, he shall refer the matter to the Board and the Board shall investigate the wages in the trade, section of trade, industry or section of industry in question and make recommendations to him as to the minimum wage which should, in the Board's opinion, be payable to employees belonging to the relevant category.

(2) Nothing in this Part shall require the Minister to accept any recommendation of the Board.

PART: XVIII LABOUR ADVISORY BOARD SS 143144

133. Duties of Board

(1) When considering any matter or question referred to it by the Minister under section 132 or 137, the Board shall take into account any statements which the employers, registered employers' organizations, employees or registered employees' organizations concerned may wish to make to the Board and shall, where it is reasonably practicable to do so, make arrangements for such employers, registered employers' organizations, employees or registered employees' organizations to be heard by the Board.

(2) In formulating its recommendations to the Minister, the Board shall take into account-

(a) the needs of the employees concerned and their families, taking into consideration the general level of wages in Botswana, the cost of living, any social security benefits and the relative living standards of other social groups;

(b) the desirability of eliminating discrimination between the sexes in respect of wages for equal work;

(c) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment; and

(d) all other relevant matters.

134. Powers of Board

(1) For the purpose of carrying out its functions under this Part, the Board may-

(a) require any employer to provide details of the actual wages paid by him to any or all of his employees during the 12 months immediately preceding the day on which the requirement is made or such shorter period as the Board may specify and to furnish evidence sufficient to satisfy the Board of the truth of the information; and

(b) specify a period of not less than 21 days immediately after the day on which such a requirement is made within which the employer shall comply with the requirement.

(2) Any employer who fails to provide or furnish any information or evidence required of him under subsection (1)(a) or who fails to provide any information so required within the relevant period specified under subsection (1)(b) shall be guilty of an offence and liable to the penalties prescribed by section 151(a).

135. Power of Minister to fix minimum wages

Having considered the recommendations of the Board, the Minister may, by order published in the Gazette, fix the minimum wage for employees of the relevant category in the trade, section of trade, industry or section of industry in question specified in the Fourth Schedule and designate the date on which the minimum wage shall come into operation.

136. Amendment of Fourth Schedule

The Minister may, by order published in the Gazette, amend the Fourth Schedule.

137. Power of Minister to adjust minimum wage

Employment Act

(1) Where the Minister considers it necessary or expedient to adjust or abolish the minimum wage in respect of any category of employees in any trade, section of trade, industry or section of industry specified in the Fourth Schedule by reason of changes in the cost of living as notified from time to time by the Government's Central Statistics Office or by reason of any other relevant changes, he shall refer the question of the adjustment or abolition to the Board and the Board shall investigate the question and make recommendations to him.

(2) Before referring any question of the adjustment or abolition of a minimum wage to the Board in accordance with subsection (1), the Minister shall, by notice published in the Gazette, declare his intention of so doing.

(3) Every notice such as is referred to in subsection (2) shall be published in the Gazette not less than 30 days immediately before the first meeting of the Board in respect of the question to which the notice relates.

(4) Having considered the recommendations of the Board, the Minister may, by order published in the Gazette, abolish the minimum wage in question or adjust it in such manner as he considers appropriate in all the circumstances and designate the date on which the new minimum wage shall come into operation.

138. Effect and enforcement of minimum wages order

(1) Where any contract of employment provides for the payment of a wage less than the minimum wage to an employee to whom a minimum wages order applies, the contract shall have effect as if the minimum wage were substituted therefor.

(2) Where an employer fails to pay an employee to whom a minimum wages order applies not less than the minimum wage at such times and in accordance with such conditions as may be specified in the order, he shall be guilty of an offence and liable to the penalties prescribed by section 151(d).

(3) Where proceedings are instituted against an employer in the court of a Magistrate Grade I or over in respect of an offence under subsection (2) and the employer is convicted thereof, the court may-

(a) permit evidence to be led of like offences committed by the employer during the period of two years immediately before the date of the offence of which he stands convicted; and

(b) order him to pay to the employee such sum as is found by the court to represent the difference between the amount he ought to have paid the employee by way of wages in accordance with the relevant minimum wages order during the period of two years referred to in paragraph (a) and the amount in fact paid by way of wages during that period:

Provided that this subsection shall not apply unless-

(i) the employer concerned has been given notice in writing, not less than 14 days immediately before any application is made to the court to exercise the powers conferred by this subsection, of the intention to make the application; or

(ii) the court has informed the employer concerned, not less than 14 days immediately before it commences to exercise the powers conferred by this subsection, of its intention to exercise those powers.

(4) Nothing in this section shall-

(a) derogate from any right of an employee to recover wages due to him by court proceedings; or

(b) prevent any contract of employment to which an employee to whom a minimum wages order applies is a party providing for the payment of a wage greater than the minimum wage or prevent any employer paying more than the minimum wage to such an employee.

139. Power of Commissioner to exempt infirm or handicapped person from minimum wages order

Employment Act

(1) Any person affected by infirmity or physical handicap to whom a minimum wages order applies or would apply in the event of his employment or the employer or prospective employer of any such person may apply in writing to the Commissioner for a permit authorizing the employment of that person for less than the minimum wage.

(2) Where an application is made under subsection (1) and the Commissioner is satisfied that the person concerned is affected by infirmity or physical handicap which renders him incapable of earning the minimum wage, he may grant the permit and shall specify therein the wage to be paid and the full name of the person concerned, subject to such conditions as the Commissioner may also specify therein.

(3) Notwithstanding the other provisions of this Part, while a permit granted under this section remains in force, the wage specified therein shall, if the conditions also specified therein, if any, are complied with, be deemed, for the purposes of this Part, to be the minimum wage payable to the person whose name is specified therein.

(4) Where any applicant for a permit under this section is aggrieved by any decision of the Commissioner to refuse to grant the permit or as to the wage or any condition specified therein, he may appeal against the Commissioner's decision to the Minister.

(5) Every appeal under this section shall be in writing and shall be delivered to the Minister not later than 30 days immediately after the day on which the decision complained of was communicated to the applicant.

(6) The Minister shall consider every appeal made to him under this section and shall-

(a) in the case of an appeal against a decision to refuse to grant a permit, either dismiss the appeal or allow the appeal, in which last case the Commissioner shall forthwith grant a permit to the applicant;

(b) in the case of an appeal against a decision as to the wage specified in the permit, either dismiss the appeal or allow the appeal, either wholly or in part, and vary the wage specified in the permit accordingly; or

(c) in the case of an appeal against a decision as to any condition specified in the permit, either dismiss the appeal or allow the appeal, either wholly or in part, and rescind the condition or vary its terms accordingly.

(7) Where an employer notifies the Commissioner in writing that he is employing or proposing to employ any person for the wage specified in a document held by that person and purporting to be a valid permit granted in respect of that person under this section, that document shall be deemed, for the purposes of this Part, to be a valid permit granted in respect of that person under this section, notwithstanding that it is not, until notice to the contrary is given to the employer by the Commissioner:

Provided that this subsection shall not apply where the employer is already employing the person concerned unless he notifies the Commissioner as herein provided within 14 days immediately after the employment commenced.

140. Duty of employer to keep certain records for enforcement of this Part

(1) Every employer of employees to whom a minimum wages order applies shall keep, in Setswana or English, such records as may be prescribed for the enforcement of this Part and shall retain them for at least five years immediately after the date of the last entry therein.

(2) Any employer who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

141. Duty of employer to exhibit certain notices in connection with minimum wages order

(1) Every employer shall exhibit in such manner as may be prescribed-

(a) a copy of any notice published by the Minister in the Gazette under section 132(2) or 137(2) in relation to any matter of fixing a minimum wage which may affect his employees or any of them or in relation to any question of adjusting or abolishing a minimum wage which affects his employees or any of them; and

Employment Act

(b) a copy of any order published by the Minister in the Gazette under section 135 or 137(4) fixing, adjusting or abolishing a minimum wage which affects his employees or any of them,

within 30 days immediately after the day on which such notice or order was published in the Gazette and shall take every other reasonable step to ensure that those employees who may be or are affected thereby, particularly those who are illiterate or unable to read English, are informed of and understand the contents thereof.

(2) Any employer who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 151(b).

142. Regulations in relation to this Part

Regulations may be made for the better carrying into effect of the purposes and provisions of this Part.

PART: XVIII REMEDIES, JURISDICTION, PROCEDURE AND PENALTIES SS 145-151

145. Failure to pay wages, etc. or detaining employee's property

Any employer who-

(a) fails to pay wages or other remuneration due to an employee, unless he has reasonable and probable cause for thinking that the same are not due; or

(b) before or after the termination of a contract of employment, upon demand being made and without lawful cause, refuses to deliver or permit to be taken away property belonging to the employee lawfully remaining or being upon the employer's land or in the employer's possession without reasonable and probable cause for believing the property to be lawfully detained,

shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

146. Entering or leaving employment with fraudulent intent

(1) Any person who obtains any advance of wages or benefits in kind by entering into a contract of employment with intent to defraud his employer shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

(2) If any person, having obtained any advance of wages or benefits in kind by entering into a contract of employment, fails to take up employment under the contract with the employer or to return such advance, he shall be deemed to be guilty of the offence created by subsection (1) unless the contrary is proved.

(3) Any employee who owes money to his employer in respect of wages or benefits in kind received in advance and who leaves his employment with intent not to return thereto under circumstances from which it appears that he intended to defraud his employer shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

147. Penalty for keeping and harbouring employees

Any person who directly or indirectly, either by himself or by an agent-

(a) induces or attempts to induce an employee to leave his employment under circumstances which amount or would amount to a breach of his contract of employment or of this Act;

(b) knowingly engages or employs an employee who has unlawfully left his employment; or

(c) without the permission of the employer, enters upon the premises of the employer with intent to induce or attempt to induce an employee to leave his employment with that employer, whether before or after the completion of the employee's contract of employment with that employer,

shall be guilty of an offence and liable to the penalties prescribed by section 151(a).

148. False pretences

Employment Act

Any person who, with a view to obtaining employment under this Act, makes a statement orally or in writing which is to his knowledge false shall be guilty of an offence and liable to the penalties prescribed by section 151(a).

149. Furnishing false information

Any person who furnishes any information required of him by or under this Act knowing that the information is false in a material particular shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

150. Making false entries in records

Any person who makes or causes to be made any entry in a record required to be kept by or under this Act which he knows to be false in a material particular shall be guilty of an offence and liable to the penalties prescribed by section 151(c).

151. Penalties for offences under Act

Any person convicted of an offence under this Act, in respect of which it is provided that he shall be liable to the penalties-

(a) prescribed by this paragraph, shall be liable to a fine not exceeding P500 or in default of payment to imprisonment for a term not exceeding one month;

(b) prescribed by this paragraph, shall be liable to a fine not exceeding P1 000 or to imprisonment for a term not exceeding six months or to both;

(c) prescribed by this paragraph, shall be liable to a fine not exceeding P1 500 or to imprisonment for a term not exceeding 12 months or to both;

(d) prescribed by this paragraph, shall be liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding 18 months or to both.

PART:XIX SUPPLEMENTARY SS 152154

152. Saving of proceedings under other laws

Nothing in this Act shall prevent any employer or employee from being proceeded against according to law for any offence punishable under any other law:

Provided that no person shall be punished twice for the same offence.

153. Rendering of annual reports to National Assembly

In respect of each year commencing on 1st January, the Minister shall, within one year immediately after the end of the year, lay before the National Assembly a report on the work of the department of the Government for the time being principally concerned with the regulation of employment.

154. Power of Minister to make regulations

The Minister may make regulations for any matter required to be made by regulations or to be prescribed under this Act or for the better carrying into effect of the purposes and provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may-

(a) provide for the payment of compensation by employers to employees for injury arising out of and in the course of their employment where such provision is not made by some other law and for the recovery of such compensation;

(b) require employers to report any accident involving the death of or injury to an employee where employers are not required to do so by some other law;

(c) prescribe the circumstances and conditions under which persons may be employed on a short-term, fixed-term, part-time, temporary or casual basis;

Employment Act

- (d) require the maintenance of registers and records;
- (e) prescribe forms and the manner in which they or any other documents shall be produced or displayed;
- (f) regulate the method of collecting statistics by the department of the Government for the time being principally concerned with the regulation of employment, either in co-operation with or independently of any other department of the Government, and prescribe the staff to be employed, the duties to be performed and the publications to be issued in connection therewith; and
- (g) exempt from any obligation imposed by or under this Act to furnish information or particulars, either wholly or to the prescribed extent, any employer or employers belonging to any class or description of employers specified in the regulations.

Employment Act

**FIRST SCHEDULE
PERSONS TO WHOM PROPERTY OF DECEASED
OR MISSING EMPLOYEE MAY BE DELIVERED**

(s. 30)

1. The Commissioner
2. Any District Officer
3. Any labour officer

Employment Act
SECOND SCHEDULE
PAID PUBLIC HOLIDAYS

(s. 99)

1. New Year's Day
2. Good Friday
3. Easter Monday
4. 1st May
5. President's Day
6. Day following President's Day
7. Botswana Day
8. Christmas Day

Employment Act
THIRD SCHEDULE
MINIMUM WAGES ADVISORY BOARD

(s. 131)

1. (1) The Board shall consist of eight or 12 substantive members appointed by the Minister of whom-

- (a) two or three, as the case may be, shall be independent persons;
- (b) two or three, as the case may be, shall represent the Government;
- (c) two or three, as the case may be, shall represent employers; and
- (d) two or three, as the case may be, shall represent employees.

(2) In respect of each substantive member of the Board, the Minister shall appoint an alternate member who may act as a member of the Board in the event of the substantive member in question failing, for any reason, to attend a meeting of the Board.

(3) ...

(4) No person shall be appointed to be an independent substantive or alternate member of the Board unless the Minister is satisfied that he possesses the necessary qualifications to discharge his duties as an independent member properly and has no interest in any trade, section of trade, industry or section of industry specified in the Fourth Schedule of such a nature as to call in question his impartiality.

(5) Every substantive or alternate member of the Board representing employers shall be appointed from among persons nominated by such registered organizations as appear to the Minister to represent employers in any trade, section of trade, industry or section of industry specified in the Fourth Schedule and have been invited by the Minister to make nominations for membership of the Board.

(6) Every substantive or alternate member of the Board representing employees shall be appointed from among persons nominated by such registered organizations as appear to the Minister to represent employees in any trade, section of trade, industry or section of industry specified in the Fourth Schedule and have been invited by the Minister to make nominations for membership of the Board.

(7) Every substantive or alternate member of the Board, other than a substantive or alternate member representing the Government, shall hold office for three years but shall be eligible for reappointment at the expiry of his term of office:

Provided that the Minister may revoke the appointment of any such member at any time and shall revoke the appointment of such member as soon as he considers it reasonable to do so after being requested to do so by the organization which nominated that member.

(8) Every substantive or alternate member of the Board representing the Government shall hold office at the Minister's pleasure.

(9) Any substantive or alternate member of the Board, other than a substantive or alternate member representing the Government may, by notice in writing addressed to the Minister, resign from the Board at any time.

Employment Act

(10) In the event of a vacancy in the substantive or alternate membership of the Board, whether due to the revocation of the appointment or to resignation or otherwise, the Minister shall forthwith take steps to appoint a new substantive or alternate member, as the case may be, in accordance with this Schedule.

2. (1) The Minister shall appoint a Chairman and Deputy Chairman of the Board from among the independent substantive members thereof.

(2) The Chairman or, in his absence, the Deputy Chairman of the Board shall preside at every meeting of the Board.

(3) The Chairman or Deputy Chairman of the Board shall, when presiding at a meeting of the Board, have both an original and a casting vote.

3. The presence of-

(a) the Chairman or Deputy Chairman of the Board;

(b) one substantive or alternate member representing the Government;

(c) two members representing employers, either of whom may be a substantive or alternate member; and

(d) two members representing employees, either of whom may be a substantive or alternate member,

shall constitute a quorum of the Board.

4. The Minister may appoint a Secretary of the Board and such other officers of the Board as he may think fit.

5. The Board may receive expert advice from such persons as it may think qualified to give that advice; but such advice shall be received equally from persons with interests associated with employers and from persons with interests associated with employees or from persons unanimously agreed by the members of the Board representing employers and the members of the Board representing employees to be impartial persons.

6. Where the Board is investigating or is about to investigate the wages in or the question of the adjustment or abolition of a minimum wage in respect of any trade, section of trade, industry or section of industry and the Minister is of the opinion that a significant number of female employees is engaged therein, the Minister shall-

(a) give the Board such directions as will, in his opinion, ensure that the female employees concerned are given every reasonable opportunity to make their views known to the Board, either by means of written statements or of their being heard by the Board or by both such means; and

(b) notwithstanding paragraph 1(1), appoint an independent female person (if one such is not already a substantive member of the Board) to be an extraordinary member of the Board who shall be entitled to take part in any proceedings of the Board in connection with the investigation of the wages or the question of the adjustment or abolition of the minimum wage concerned in place of the independent member of the Board who is neither the Chairman nor the Deputy Chairman of the Board; but she shall not take part in any other proceedings of the Board.

7. There shall be paid to members of the Board and to persons from whom expert advice is received such travelling and other allowances as the Minister may determine:

Employment Act

Provided that this paragraph shall not apply in the case of public officers.

8. Subject to this Act, the Board shall regulate its own procedure.

Employment Act
FOURTH SCHEDULE
TRADES, SECTIONS OF TRADES, INDUSTRIES AND SECTIONS
OF INDUSTRIES IN WHICH MINISTER MAY FIX
MINIMUM WAGE

(ss. 132, 135, 136, 137)

1. Building, construction, exploration or quarrying industry or any section thereof.
2. Garage or motor trade, road transport industry or any section thereof.
3. Hotel, catering or entertainment trade or any section thereof.
4. Manufacturing, service or repair trade or any section thereof.
5. Wholesale or retail distributive trade or any section thereof.
6. Watchmen employed in the above industries and trades or any section thereof.
7. Domestic service sector.
8. Agricultural sector.
9. Security Guards employed by security companies.

Employment Act
FIFTH SCHEDULE
LABOUR ADVISORY BOARD

(s. 143)

1. (1) The Board shall consist of 12 members appointed by the Minister of whom-

(a) three shall be independent persons who shall not represent either employers or employees;

(b) three shall represent the Government;

(c) three shall represent employers in Botswana; and

(d) three shall represent the trade union movement in Botswana.

(2) Before appointing a person to be a member of the Board to represent employers, the Minister shall consult the Botswana Confederation of Commerce, Industry and Manpower so long as the Confederation remains, in the opinion of the Minister, the organization most representative of employers in Botswana.

(3) Where the Minister proposes to consult the Board in respect of any proposed Bill or subsidiary legislation, any organization of employers specially representative of particular interests of employers in Botswana which is of the opinion that all or any members of the Board representing employers will not adequately represent those particular interests in connection with the proposed Bill or subsidiary legislation may apply to the Minister to appoint up to three persons nominated by the organization of employers to be extraordinary members of the Board.

(4) The Minister shall consider every application made under subparagraph (3) and shall either reject the application or grant it, either wholly or in part, and, notwithstanding paragraph 1(1), appoint one or more or all of the persons nominated to be extraordinary members of the Board, in which last case he shall, in respect of each such appointment, specify the existing member of the Board representing employers whom the extraordinary member shall be entitled to replace for the limited purpose prescribed by subparagraph (5).

(5) Every extraordinary member of the Board appointed under subparagraph (4) shall be entitled to take part in any proceedings of the Board in connection with the proposed Bill or subsidiary legislation in relation to which he was appointed in place of the existing member specified by the Minister in his case; but he shall not take part in any other proceedings of the Board.

(6) Before appointing a person to be a member of the Board to represent the trade union movement in Botswana, the Minister shall consult the Botswana Federation of Trade Unions so long as the Federation remains, in the opinion of the Minister, the organization most representative of employees in Botswana.

(7) Where the Minister proposes to consult the Board in respect of any proposed Bill or subsidiary legislation, any registered trade union specially representative of particular interests of employees in Botswana which is of the opinion that all or any members of the Board representing the trade union movement in Botswana will not adequately represent those particular interests in connection with the proposed Bill or subsidiary legislation may apply to the Minister to appoint up to three persons nominated by the trade union to be extraordinary members of the Board.

(8) The Minister shall consider every application made under subparagraph (7) and shall either reject the application or grant it, either wholly or in part, and, notwithstanding paragraph 1(1), appoint one or more or all of the persons nominated to be extraordinary members of the Board, in

Employment Act

which last case he shall, in respect of each such appointment, specify the existing member of the Board representing the trade union movement in Botswana whom the extraordinary member shall be entitled to replace for the limited purpose prescribed by subparagraph (9).

(9) Every extraordinary member of the Board appointed under subparagraph (8) shall be entitled to take part in any proceedings of the Board in connection with the proposed Bill or subsidiary legislation in relation to which he was appointed in place of the existing member specified by the Minister in his case; but he shall not take part in any other proceedings of the Board.

(10) Subject to subparagraphs (5) and (9), every member of the Board, other than a member representing the Government, shall hold office for three years but shall be eligible for reappointment on the expiry of his term of office:

Provided that the Minister may revoke the appointment of any such member at any time.

(11) Every member of the Board representing the Government shall hold office at the Minister's pleasure.

(12) Any member of the Board, other than a member representing the Government, may, by notice in writing addressed to the Minister, resign from the Board at any time.

(13) In the event of a vacancy in the membership of the Board, whether due to the revocation of the appointment or resignation or otherwise, the Minister shall forthwith take steps to appoint a new member in accordance with this Schedule.

(14) No member of the Board shall be represented by a substitute or alternate:

Provided that where the absence of one member results in a failure to constitute a quorum of the Board, the Minister may, without consultation and notwithstanding paragraph 1(1), forthwith appoint a person representing the same interest as the absent member to be a member of the Board in place of that member so long as his presence is required at that or any subsequent meeting to constitute a quorum of the Board.

2. (1) The Minister shall appoint a Chairman and Deputy Chairman of the Board from among the independent members thereof.

(2) The Chairman or, in his absence, the Deputy Chairman of the Board shall preside at every meeting of the Board.

(3) Subject to paragraph 6(2), the presence of-

- (a) the Chairman or Deputy Chairman of the Board;
- (b) one member representing the Government;
- (c) two members representing employers in Botswana; and
- (d) two members representing the trade union movement in Botswana,

shall constitute a quorum of the Board.

4. The Minister may appoint a Secretary of the Board and such other officers of the Board as he may think fit.

Employment Act

5. The Board may receive expert advice from such persons as it may think qualified to give that advice; but such advice shall be received equally from persons with interests associated with employers and from persons with interests associated with employees or from persons unanimously agreed by the members of the Board representing employers in Botswana and the members of the Board representing the trade union movement in Botswana to be impartial persons.

6. (1) The Commissioner, or such other senior public officer directly subordinate to the Commissioner as the Minister may nominate to act on behalf of the Commissioner, shall be technical adviser to the Board.

(2) No meeting of the Board shall take place unless the Commissioner or the other public officer referred to in subparagraph (1) is present or the Board has the permission in writing of the Commissioner to meet in the absence of both of them.

7. There shall be paid to members of the Board and to persons from whom expert advice is received such travelling and other allowances as the Minister may determine:

Provided that this paragraph shall not apply in the case of public officers.

8. Subject to this act, the board shall regulate its own procedure.