

POLICE SERVICE BILL 1997

REPORT BY THE ATTORNEY-GENERAL

**On a Bill presented to
His Majesty for Assent**

The Police Service Bill 1997 was passed by the National Assembly with six amendments on the Fourth day of December, 1997, and after being sent to the Senate on the Fourth day of December, 1997, was returned to the National Assembly on the Twenty-Third day of January, 1998, after the expiry of a period of 30 days, without endorsement by the Clerk of the Senate, and pursuant to section 80(3) of the Constitution of Lesotho is presented to His Majesty for assent.

The main object of the Bill is to make provision for the organisation, administration and discipline of the police force and for connected purposes.

In my opinion, His Majesty may properly assent to this Bill.

DATED:

**L.F. MAEMA
ATTORNEY-GENERAL**

POLICE SERVICE BILL 1997

PARLIAMENT OF LESOTHO

POLICE SERVICE BILL 1997

EXPLANATORY MEMORANDUM

(Circulated by authority of the Rt. Honourable Minister
of Home Affairs Mr B.P. MOSISILI)

OUTLINE

The purpose of this Bill is to make provision for the organisation, administrator and discipline of the Lesotho Mounted Police Service.

PART I

Part I provides for the short title and commencement of the Bill.

PART II

Part II provides for the organisation of the Lesotho Mounted Police Service. Clause 3 and 4 establish a Police Authority with a duty to maintain a police force for Lesotho, to be called the Lesotho Mounted Police Service and for the general functions of that force. Clauses 5 to 8 provide for the appointment of the Commissioner of Police, Deputy Commissioner and other the members of the Police Service. Clause 10 provides for members of the Police Service to be attested as Police Officers. Clause 11 provides for resignation from the police Service. Clause 12 provides for delegation of the Commissioner's functions. Clause 13 provides for the Commissioner to have command of the Police Service. Clauses 14 to 20 relate to the accountability of the Police Service, including provision for the policing plan, the development plan, annual reports and inquiries. Clause 21 provides for an Inspector of Police. Clause 22 establishes a Police authority to deal with complaints about member of the Police service. Clause 23 provides for the Commissioner to make arrangements Complaints or obtaining the views of the public about policing.

PART III

Part III provides for the powers and duties of police officers and the Commissioner. Clause 24 sets out the general duties. Clauses 25 to 29 set out some specific duties. Clause 30 provides a saving for powers and duties conferred by oilier legislation. Clauses 31 and 32 provide power for the Commissioner to remove certain police officers and save for pension rights. Clause 33 empowers the Commissioner to appoint civilians to support the Police Service.

PART IV

Part IV makes provision for the nuances of the Police Service. Clauses 34 and 35 establish the Police Finance Council. Clauses 36 and 37 make provision for the payment and use of the police grant. Clause 38 makes provision for the creation of the police fund. Clauses 39 to 41 impose duties on the Police Finance Council in

respect of the proper use of and accountability for the police fund. Clause 42 provides for surcharge of members of the Police Finance Council for unlawful use of the police fund.

PART V

Part V makes provision for disciplinary proceedings in the Police Service. Clause 43 applies this Part. Clauses 44 to 49 provide for a disciplinary hearing, punishment and procedure at the hearing. Clause 50 provides for an appeal to the Police Appeal tribunal in certain cases. Clauses 51 and 52 establish and provide for the procedure at the Police Appeal tribunal. Clause 53 provides for interdiction. Clauses 54 and 55 provide for the prosecution of other offences and for those committed outside Lesotho.

PART VI

Part VI makes provision in relation to the criminal offences. Clause 56 provides for offences of mutiny, desertion, etc. Clause 57 provides for the offence of causing disaffection amongst police officers. Clause 58 provides for other offences in relation to the police.

PART VII

Part VII provides for police assistants and police volunteers Clauses 59 and 60 provide for appointment etc. Clauses 61-63 provide for powers, attestation and equipment; and clause 64 provides for resignation. Clause 65 provides for compensation for death and injury.

PART VIII

Part VIII deals with miscellaneous provisions in relation to the police. Clause 66 prohibits membership of political parties and trade unions by members of the Police Service. Clauses 67 to 69 provide for the Police Negotiating council. Clause 70 provides For the Training Advisory Board. Clauses 71 to 73 provide for the Police Service to assist other bodies. Clauses 74 and 75 restrict assignment of property and attachment of pay. Clause 76 provides for the Commissioner to be liable for the wrongful acts of police officers under his command. Clause 77 makes provision for limitation of actions. Clause 78 provides for the Police Rewards and Fines Fund. Clauses 79 provides for the handling of lost property and clause 80 make provision for apportionment of the proceeds of sales. Clauses 81 to 83 makes provision for fees and charges for certain police services. Clause 84 enables the Police Authority to make regulations with regard to members of the Police Service. Clause 85 repeals The Police Order 1971 and makes savings, transitional and consequential provisions.

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POLICE SERVICE BILL 1997

A BILL for

An Act to make provision for the organisation, administration and discipline of the police force and for connected purposes.

[Date of Assent:].

[Date of commencement: see section 1].

Enacted by the Parliament of Lesotho.

PART I - PRELIMINARY

Short title and commencement.

This Act may be cited as the Police Service Act 1997 and shall come into force on such date as the Minister may by notice in the Gazette appoint and different dates may be appointed for different provisions.

Interpretation.

2. In this Act, unless the context otherwise requires:

“*army*” shall have the same meaning as in the internal Security (Arms and Ammunition) Act 1966;

“*Commissioner*” means the Commissioner of Police appointed under section 5;

“*the Constitution*” means the Constitution of Lesotho;

“*cadet officer*” means a police officer appointed by virtue of special qualifications or skills;

“*disciplinary hearing*” means a hearing under section 44 or 45;

“*disciplinary proceedings*” means proceedings under Part V of this Act;

“*district*” has the meaning given to it by the Criminal Procedure and Evidence Act, 1981;

“*financial year*” means the year beginning on the 1st April and ending on 31st March the following year;

“*member of the Police Service*” means a person attested as a police officer under section 10;

“*merit*” means ability, qualifications, knowledge, skill and aptitude;

“*Minister*” means the Minister of Home Affairs;

“*offence against discipline*” means an offence designated as such in regulations made under section 84;

“*police officer*” means a person appointed under section 7;

“*the Police Service*” means the Lesotho Mounted Police Service;

“*regulations*” means regulations made by the Minister under this Act;

“*section*” means a section of this Act;

“*senior officer*” means an officer of a rank designated as such in regulations made under section 84;

“*subordinate court*” has the meaning given to it by the Subordinate Courts Order 1988

PART II - ORGANISATION

Maintenance of the Police Service

Establishment and functions of Police Authority.

3. (1) There shall be a Police Authority for Lesotho, which shall be the Minister.
- (2) The Police Authority shall appoint a Director of Police and sufficient other staff to enable him to carry out his functions under this Act.
- (3) Appointments under subsection (2) shall be made under the Public Service Act 1995.
- (4) The Police Authority shall maintain an efficient and effective police service for Lesotho.
- (5) The Police Authority shall exercise his powers under this Act in such manner and to such extent as appears to him to be best calculated to promote the efficiency and effectiveness of the police service.

General functions of police force.

4. The police force maintained under section 3 shall be called the Lesotho Mounted Police Service, and it shall be deployed in and throughout Lesotho to uphold the law; to preserve the peace; protect life and property, to detect and prevent crime, to apprehend offenders; bring offenders to justice; and for associated purposes.

Members of the Police Service

Appointment and removal of Commissioner

5. (1) The King, acting on the advice of the Prime Minister; shall appoint a Commissioner of Police.
- (2) The Commissioner shall be appointed on such terms and conditions as the King, acting on the advice of the Prime Minister, may prescribe.
- (3) The King, acting on the advice of the Prime Minister, may require the Commissioner to retire in the interests of efficiency or effectiveness.
- (4) Before requiring the Commissioner to retire under subsection (3), the Prime Minister shall give the Commissioner the opportunity to make representations and shall consider any representations that he makes.

Appointment of Deputy Commissioner

6. The Police Authority shall, after consultation with the Commissioner, appoint a Deputy Commissioner who may exercise the full powers and duties of the Commissioner during any period of temporary absence or incapacity by the Commissioner.

Other members of the Police Service.

7. In addition to the Commissioner and the Deputy Commissioner, the Police Service shall comprise such other police officers as may be appointed under this Act: not exceeding such total strength as may be prescribed by the Police Authority.

Appointment and promotions

8. (1) There shall be a Police Appointment and Promotion Board which shall be responsible for the appointment and promotion of senior officers; cadet officers, and such classes of civilians appointed under section 33 as the Commissioner may designate.

(2) The members of the Board constituted under subsection (1) shall be the Commissioner, who shall be the chairman; a person nominated by the Police Authority and a person nominated by the Minister responsible for the Public Service.

(3) The Commissioner shall, subject to regulations made under this Act be responsible for the appointment, and promotion of police officers, other than cadet officers, to any rank below that of senior officer.

(4) Any person appointed as a member of the Police Service shall serve a probationary period of two years, or such longer period as the Commissioner may direct, before his appointment is made permanent.

(5) The Commissioner may appoint a police officer to act in a rank senior to his substantive rank, and where the period of such acting appointment exceeds 28 days such officer shall, during such acting appointment, receive salary at the scale applicable to the senior rank at such incremental level as the Commissioner may determine.

Absence of Commissioner and Deputy Commissioner.

9. During any absence, incapacity or vacancy in the office of Commissioner and Deputy Commissioner, a senior officer authorised by the Police Authority may exercise all the powers and duties of the Commissioner.

Attestation.

10. (1) Every member of the Police Service shall on appointment be attested as a police officer by making a declaration before the Commissioner in the form set out in Schedule I.

(2) Every person shall, before making the declaration required by subsection(1), answer truly all questions put to him as to his previous service, career and employment and as to whether he has at any time been convicted of any offence punishable by the laws of Lesotho or the laws of any other country.

Resignation from the Police Service.

II. A member of the Police Service may resign upon giving one month's notice in writing to the Commissioner and, on the expiration of his notice, or sooner if the Commissioner so directs, he shall cease to be a police officer.

Delegation

12. Any power conferred on the Commissioner by this Act, or any regulations made under this Act, may be exercised by any other member of the Police Service or any civilian appointed under section 33, to the extent that he has been authorised to exercise that power by the Commissioner, or by this Act or regulations made under this Act.

Accountability

General functions of the Commissioner.

13. (1) The Police Service shall, subject to the provisions of this Act and the general direction of the Police Authority, be under the command of the Commissioner and no member of the Police Service shall be subject to the command of any other person or authority.

(2) The Commissioner may issue such Standing Orders for the general control and administration of the Police Service as he may deem necessary.

(3) In discharging his functions under this Act the Commissioner shall have regard to the policing plan issued under section 16.

Provision of information to the Police Authority.

14. The Commissioner shall keep the Police Authority fully informed concerning matters of policy relating to the Police Service and shall furnish the Police Authority with such information as he may reasonably require in respect of any matter relating to the Police Service.

Objectives for policing.

15. Before the beginning of each financial year the Police Authority shall, after consultation with the Commissioner, determine objectives for the policing of Lesotho for that year.

Policing plan.

16. (1) Before the beginning of each financial year the Police Authority shall issue a plan setting out the proposed arrangements for the policing of Lesotho during that year ('the policing plan').

(2) The policing plan shall include a statement of the Police Authority's priorities for the year, of the financial resources expected to be available and of the proposed allocation of those resources, and shall give particulars of:

- (a) any objectives determined by the Police Authority under section 15;
- (b) how those objectives will be met;
- (c) how the success in meeting those objectives is to be measured.

(3) A draft of the policing plan shall be prepared by the Commissioner, after consultation with the public in accordance with arrangements made under section 23, and submitted by him to the Police Authority for consideration.

(4) Before issuing the policing plan the Police Authority shall assemble and consult such persons as appear to him to be representative of the public and shall take into account any representations they may make.

(5) A copy of the policing plan shall, within 15 days of being issued by the Police Authority, be laid before Parliament.

Development plan.

17. (1) The Commissioner shall compile and keep under review a Development Plan, which shall set out the strategic needs of the Police Service over a period of live years and propose reforms to achieve those needs.

(2) When compiling or reviewing the Development Plan the Commissioner shall have regard to the policing plan and the views of the Police Authority.

Annual report.

18. (1) As soon as possible after the end of each financial year, the Commissioner shall prepare a report relating to the policing of Lesotho for that year.

(2) A report prepared tinder subsection (1) shall include a MI assessment of the extent to which the policing plan issued under section 16 has been carried out.

(3) The (.2ommissioner shall send the report to the Police Authority who shall arrange for it to be published in such manner as appears to it to be appropriate.

(4) Within 15 days of being sent to the Police Authority the Police Authority shall arrange for a copy of the report Lobe laid before Parliament.

Reports by Commissioner to the Police Authority.

19. (1) The Police Authority may require the Commissioner to submit him a report on such matters as may be specified in the requirement being matters connected with the policing of Lesotho.

(2) A requirement under subsection (1) may specify whether the report should be given orally or in writing.

Inquiries.

20. (1) The Police Authority may cause all inquiry to be held into any matter connected with the policing of Lesotho

(2) The Police Authority shall appoint a person to chair the inquiry, on such terms and conditions as he may prescribe.

Inspector of Police

21. (1) The King, acting on the advice of the Prime Minister, shall appoint an Inspector or Police, on such terms and conditions as he may prescribe,

(2) Subsections (2) to (12) (except subsections (9) and (10)) of section 136 of the Constitution shall apply to the Inspector of Police as they apply to a member of the Public Service Commission.

(3) The Inspector of Police shall, each year, inspect and report on the efficiency and effectiveness of the Police Service and the extent to which the policing plan for that year has been carried out.

(4) The Inspector of Police shall carry out such other functions for the purpose of furthering the efficiency and effectiveness of the police as the Police Authority may from time to time direct.

(5) The Inspector of Police shall have sufficient staff to enable him to effectively carry out its functions, and those staff shall be persons appointed or employed under the Public Service Act, 1995.

Police Complaints Authority.

22. (1) There shall be a Police Complaints Authority comprising a chairman and at least three other members.

(2) The members of the Police Complaints Authority shall be appointed by the Police Authority on such terms and conditions as he may prescribe.

(3) The Police Complaints Authority shall have responsibility for investigating and reporting to the Police Authority on any complaint referred to it by the Police Authority or the Commissioner, which is a complaint from a member of the public about the conduct of a member of the Police Service.

(4) The Police Complaints Authority shall have sufficient staff to enable it effectively to carry out its functions, and those staff shall be persons appointed or employed under the Public Services Act, 1995.

(5) Subject to subsection (6), the Police Complaints Authority shall have the power to summon persons before it to give evidence or to produce documents and any person who fails to comply with such a summons shall be liable to a fine of M500.

(6) No summons shall be issued under subsection (5) where the Commissioner, having consulted the Police Authority, certifies that disclosure of the

information sought would be against the public interest or would jeopardise the safety of any person.

Arrangements for obtaining the views of the public on policing.

23. (1) The Commissioner shall make arrangements for obtaining the views of the public about matters concerning the policing of Lesotho and their co-operation with the police in the prevention of crime.

(2) The Commissioner shall submit to the Police Authority for approval the arrangements made under this section and if it appears to the Police Authority that the arrangements are not adequate he may require the Commissioner to make new arrangements and submit them to it for approval.

(3) Nothing in this section shall be deemed to abrogate the custom whereby consultation takes the form of a Pitso.

PART III - POWERS AND DUTIES

Police Officers

General duties of police officers.

24. (1) It shall be the duty of every person attested as a police officer to serve the people of Lesotho in that office, diligently, impartially and, with due regard to the Constitution to:

- (a) preserve the peace and maintain law and order;
- (b) prevent all offences against persons or property;
- (c) detect offences, apprehend offenders and bring them to justice

and, while he holds that office, to the best of his skill and knowledge, discharge all the duties of that office faithfully according to the law.

(2) The Police Authority may authorise the Commissioner to issue to police officers such arms as he may prescribe and a police officer shall for the performance of his duties be entitled to carry any arms so issued.

Duty to comply with lawful orders.

25. It shall be the duty of a police officer to comply with any lawful order of the Commissioner or any other competent officer.

Powers and duties in respect of fire.

26. It shall be the duty of a police officer to prevent any injury to persons or loss or damage to property by fire. In the event of a fire any police officer may:

- (a) enter any building, vehicle or other property without the consent of the owner;
 - (b) close any street or direct the removal of any person or property from any area;
 - (c) do all such things as maybe necessary for the purposes of extinguishing or controlling any fire.
- (3) A police officer may call upon any person to assist in the extinguishing or control of a fire or to give assistance at the scene of a fire.
- (4) No action shall lie in any court of law against any police officer, or any person acting under the instruction of any police officer, for the recovery of any loss or damage caused in exercising the powers under subsection (1) unless it is proved that such loss or damage was caused mala fides.

Duty of confidentiality.

27. Except as provided by this Act, or in the performance of his duties, the exercise of his functions, or when lawfully required to do so by a competent court, no police officer shall disclose to any person any information acquired by him in the course of his duties.

Private employment.

26. No police officer shall, without the consent of the Commissioner, engage in any employment or business whatsoever other than in accordance with his duties under this Act.

Power to serve summons, etc.

29. Every police officer shall be authorised to serve or execute any summons, warrant or process directed to him, and any such summons, warrant or process may be served or executed by any other police officer as if it had been directed to him.

Saving for other powers and duties.

30. In addition to the provisions of this Act, every police officer shall have all the powers, and be subject to all the duties, which are conferred upon his office by any other law or enactment.

Commissioner of Police

Power of Commissioner to remove police officers.

31. (1) Notwithstanding the provisions of Part V, the Commissioner may, at any time, after giving the police officer concerned an opportunity to make representations:
- (a) terminate the appointment of an officer on probation if the Commissioner considers that he is unlikely to become an efficient and effective member of the police service;
 - (b) dismiss an officer who gains admission into the Service following a false statement in reply to any question pursuant to section 10(2);
 - (c) retire an officer on reduction of establishment;
 - (d) retire an officer if a board of Government medical officers appointed by the chief medical officer certifies that he is mentally or physically unfit for service and that such unfitness is likely to be permanent;
 - (e) dismiss an officer who contravenes section 66;
 - (f) dismiss an officer who is convicted of an offence, other than an offence against discipline;
 - (g) retire, in the public interest, an officer who is incompetent or inefficient and whom the Commissioner considers is unlikely to meet the standards to be expected of a police officer; and

(h) dismiss an officer who is absent from duty without prior permission for a continuous period of more than twenty-one days and

(i) dismiss an officer who subverts good order discipline or lawful authority and tends to bring the Police Service into disrepute

(2) Where the police officer concerned is to be dismissed under paragraph (i) or is a senior officer the Commissioner shall consult the Police Authority before exercising his powers under subsection (1).

Saving of pension rights.

32. Unless the Police Authority otherwise directs, nothing in section 31 shall affect any right a police officer may have to payment of a pension or gratuity.

Civilians.

3.3. (1) The Commissioner may appoint such civilians to support the Police Service as he deems necessary.

(2) The terms and conditions of appointment of civilians shall be determined by the Commissioner, after consultation with the Police Authority and the Minister responsible for the Public Service.

(3) All salary, remuneration, allowances, etc. payable in respect of persons appointed under this section shall be paid from the police fund.

(4) Notwithstanding, subsections (1) to (3), persons appointed under this section shall be deemed to be public officers within meaning of section 154 of the Constitution.

(5) Sections 12, 25, 27, 28 and 66 and Part V of this Act (subject to such modification as the Police Authority may prescribe) shall apply to civilians appointed under subsection (1) as they apply to police officers.

(6) The appointments made under subsection (1) as they shall include a Finance Director, who shall be a qualified accountant, or have at least five years experience of financial administration, and who shall have responsibility for the financial affairs of the Police Service.

PART IV - FINANCE

Establishment of Police Finance Council.

34. (1) There shall be a Police Finance Council ('the Council'), which shall:
- (a) be a body corporate, with perpetual succession and a seal,
 - (b) be capable of holding, purchasing and otherwise acquiring and disposing of any property, movable or immovable, for the purpose of carrying out its functions and discharging its duties under this Act; and
 - (c) have the power to do and suffer all such other acts and things as a body corporate may lawfully do and suffer.
- (2) The Council shall consist of five members of whom:
- (a) one shall be the Commissioner of Police;
 - (b) one shall be appointed by the Police Authority;
 - (c) one shall be the Finance Director, appointed under section 33;
 - (d) one shall be appointed by the Minister of Finance;
 - (e) one shall be appointed by the Minister responsible for the Public Service.
- (3) A member of the Council appointed under paragraph (b), (d) and (e) of subsection (2) shall, unless his appointment is terminated earlier by the appointing person or body, hold office for a period of three years, and shall be eligible for re-appointment.
- (4) A member of the Council shall not be remunerated for the services rendered but the Police Authority may, in relation to a member appointed under paragraph (b), (d) or (e) of subsection (2), if he is not a public officer, authorise the payment from the police fund of any expenses necessary incurred in the discharge of his duties.

Proceedings of Council.

35. (1) The quorum of a meeting of the Council shall be three members.
- (2) The Commissioner shall be the chairman and shall, in the case of equality of voting, have a casting vote,
- (3) Subject to subsection (4), the Council shall regulate its own procedures.
- (4) The Police Authority may direct the Council to consider and report to him on such matters as may be specified in the direction, and the Council shall comply with any such direction.

Police grant.

36. (1) The Government of Lesotho shall, each year, make a grant for police purposes (“the police grant”) to the Council.
- (2) The police grant shall be paid at such time, or in instalments of such amounts as at such times, as the Police Authority may determine. Use of police grant.

Use of Police Bill

37. On receipt of the police grant the Council shall be responsible for ensuring that it is expended on the maintenance of the Police Service in accordance with the provisions of this Act and any directions of the Police Authority.

Police fund.

38. (1) The police grant shall be paid into an account or accounts (which subject to the approval of the Police Authority may include Investment accounts) at the Bank of Lesotho in the name of the Lesotho Mounted Police Service, (hereinafter referred to as the “police fund”), and said account or accounts shall only be drawn upon by such persons and in such manner as the Police Authority may direct on the recommendation of the Commissioner.
- (2) In addition to the police grant the police fund shall comprise:
- (a) any donations to the Police Service which have been accepted by the Council; and
 - (b) such sums of money as may accrue to the Police Service in the performance of its functions,

(3) The Council shall cause to be kept proper accounts and proper records of the transactions and affairs of the police fund and shall do all things necessary to ensure that all payments out of the police fund are correctly made and properly authorised and that adequate control is maintained over the use of the police fund.

(4) Any monies drawn from the police fund shall be expended only for police purposes and in accordance with the provisions of this Act,

Council to account for proper use of police grant.

39. The Council shall account to the Police Authority for the efficient, economic and proper use of the police grant and in securing the economic and efficient utilization of the resources and assets provided for the maintenance of the Police Service.

Audit.

40. (1) The Auditor-General shall inspect and audit the accounts and records of the police fund and shall draw to the attention of the Council to any irregularities disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify him doing so.

(2) The Auditor-General shall, at least once in each year, report to the Police Authority the result of the inspection and audit carried out under subsection (1).

(3) The Auditor-General, or an officer authorised by him, may at all reasonable times:

- (a) inspect the accounts, records, documents and papers of the Council;
- (b) make copies of, or take extracts from, any such documents or papers; and
- (c) require any person to furnish such information in the possession of that person, or which, he has access to, as may be considered necessary for the purposes of this section.

(4) Any person who obstructs the Auditor-General, or a person authorised by him, in the execution of his duties, or fails to furnish such information

as he is required to under this section, is guilty of an offence and shall be liable to imprisonment for a term not exceeding 12 months or to a fine of M5000, or to both.

Additional duties of Council.

41. (1) In addition to the provisions of sections 37 to 39, the duties of the Council shall be

- (a) to prepare an annual budget for the Police Service and to submit it to the Police Authority for approval;
- (b) to adjust the annual budget in response to notification of the police grant for that year and any comments made by the Police Authority;
- (c) to ensure that there are satisfactory procedures in place in the Police Service for accounting for the expenditure of police grant in accordance with section 39;
- (d) to ensure that proper accounts are kept by the Police Service and to require that such accounts are submitted to it each month, or at such other intervals as it may determine, for approval.

(2) The Council shall have such powers, in relation to the Police Service, including the power to require persons to furnish it with information, as the Auditor-General has under section 40.

Surcharge.

42. Where the police fund suffers any loss or depletion as a result of failure by the Council, or any member of the Council, to comply with or act consistent with any provisions of this Act or any other law, the Minister of Finance may cause or authorise a surcharge of that person unless he shows that he acted in accordance with the advice of the Attorney-General.

PART V - DISCIPLINE

Application of this Part.

43. Where a police officer is charged with an offence against discipline the procedures set out in this Part shall apply.

Procedure in cases of alleged misconduct of senior officers

44. (1) Subject, to subsection (2), where the police officer charged is a senior officer there shall be a hearing before a Board comprising three police officers, appointed by the Commissioner, who shall be of a rank at least one above that of the officer concerned and shall not normally be deployed within the same district in which the officer charged is deployed.

(2) Where the senior officer charged is of a rank designated by the Commissioner for the purposes of this section, the hearing of the case shall be determined by a Board comprising three members appointed by the Police Authority, of whom:

- (a) one shall be a senior officer at least one rank above that of the officer charged;
- (b) one shall be legally qualified and chosen from a list of persons nominated by the Attorney General;
- (c) one shall be a person of status at least equivalent to that of the officer charged.

(3) The member of the Board appointed under paragraph (b) of subsection (2) shall be the chairman,

(4) An appeal against the decision of the Board appointed under subsection (2) shall lie to a subordinate court.

Procedure in cases of alleged misconduct of subordinate officers

45. Where the officer charged is not a senior officer there shall be a hearing before a senior officer, not normally deployed within the same district in which the officer charged is deployed, appointed by the Commissioner.

Provided that where it appears to the senior officer that by reason of the gravity of the offence or for any other reason, the matter would be dealt with more properly by a Board, the senior officer may defer his hearing of the case and report

the facts to the Commissioner who may direct the senior officer to hear the case or may emit it to a hearing before a Board constituted in accordance with section 44(1),

Punishment by the Board.

46. (1) Subject to any provision in regulations made under section 84(2)(e). a Board appointed under section 44 shall, on conviction, recommend to the Commissioner, one or more of the following punishments:

- (a) reprimand
- (b) severe reprimand;
- (c) fire, not exceeding 21 days pay;
- (d) reduction In rank; and
- (e) dismissal.

Or receipt of the recommendation of the Board the Commissioner may accept, vary or reject the recommendation mid shall inform the police officer concerned of his decision and of any punishment he imposes.

Punishment by a senior officer.

47. Subject to any provision in regulations made under section 84(2)(c), a senior officer conducting a hearing under section 45 shall, on conviction, recommend one or more of the Following punishments:

- (a) reprimand;
- (b) severe reprimand
- (c) fine, rot exceeding 21 days pay;
- (d) extra duties in addition to normal duties;
- (e) dismissal.

On receipt of the recommendation of the senior officer the Commissioner may accept, vary or reject the recommendation and shall inform the police officer concerned of his decision and or any punishment he imposes.

Stoppage of pay.

48. Any fine imposed on a police officer as a result of disciplinary proceedings may be recovered by stoppage from pay of that officer. Procedure at disciplinary bearing.

49. (1) Any Senior officer or Board conducting a disciplinary bearing may summon any person to attend as a witness at that hearing and may take that person's evidence on oath or affirmation.

(2) Any person who fails to comply with a summons issued under subsection(1), or who complies but refuses to give evidence or produce any document he is required to produce, is guilty of an offence and shall be liable to be dealt with by a subordinate court as if he were a witness summoned to appear at a criminal trial heroic that court.

(3) A witness except a member of the Police Service or a public officer, shall be allowed such expenses as would be allowed to a witness attending a subordinate court.

(4) The Commissioner may prescribe rules of procedure for disciplinary hearings and such rules shall prescribe that all hearings shall be in private.

(5) At any disciplinary hearing held pursuant to this Act the officer accused shall be entitled, at his own cost to be represented by a legal practitioner admitted to practice in Lesotho, or by a officer approved by the Commissioner.

Appeal to Police Appeals Tribunal.

50. (1) Any member of the Police Service, other than one who falls within section 44(2), who is convicted and sentenced in disciplinary proceedings under this Act may appeal to the Police Appeals Tribunal against the conviction and punishments, and thereupon the Police Appeals Tribunal may:

- (a) confirm the conviction and punishments; or
- (b) make such finding or impose such punishments as, in their opinion, should have been made or imposed at the hearing of such member.

(2) The Police Appeals Tribunal may dismiss an appeal, allow it in whole or in part, but shall not substitute for the conviction or punishment a convection or punishment fort different offence from that for which the officer was dismissed or reduced in rank, whether or not that officer was charged with that different offence,

Constitution of the Police Appeals Tribunal

51. (1) Where the appellant is a subordinate officer, other than one who is appealing against reduction in rank or dismissal, the Police Appeals Tribunal shall consist of two or more officers appointed by the Commissioner with due regard to impartiality.

(2) Where the appellant is a senior officer, other than one who falls within section 44(2), or is a subordinate officer appealing against reduction in rank or dismissal, the Police Appeals Tribunal shall consist of three members appointed by the Police Authority, of whom:

- (a) one shall be a senior officer at least one rank above that of the appellant;
- (b) one shall be legally qualified and chosen from a list of persons nominated by the Attorney General;
- (c) one shall be a person of status at least equivalent to that of the appellant.

(3) The member of the Tribunal appointed under paragraph (b) of subsection (2) shall be the chairman.

(4) Where an appeal has been lodged under this section, the execution of the punishment imposed in respect of the conviction which is the subject of the appeal, shall be suspended pending the decision of the Police Appeals Tribunal on the appeal.

Procedure at Police Appeals Tribunal.

52. Except as otherwise provided by this Act, the Police Appeal Tribunal shall determine its own procedure.

Interdiction.

53. (1) A member of the Police Service may be interdicted at any time by the Commissioner pending the resolution of any disciplinary or criminal proceedings against him, but he shall not by reason of such interdiction cease to be a member of the Police Service.

Provided that during the period of his interdiction he shall not be entitled to any pay or allowances but the Commissioner may, at his discretion, order payment of the whole or part of his pay and allowances.

(2) If the disciplinary proceedings are resolved in his favour the member of the Police Service shall be entitled to reimbursement of the whole of his pay and allowances for the period of his interdiction less any sums already paid.

(3) During any period of interdiction a police officer shall cease to have the powers, privileges and benefits of his office but he shall be subject to the same duties, discipline and authority as if he had not been interdicted.

Prosecution of offences.

54. Nothing in this Act shall prevent any person from being prosecuted for an offence other than under the powers contained in this Act and, where a police officer has been acquitted of a criminal charge, such acquittal shall not operate as a bar to disciplinary proceedings arising out of the same facts being brought under this Act if such facts also disclose an offence against discipline.

Offences committed outside Lesotho

55. If a member of the Police Service does or omits to do any act outside Lesotho, which, if done or omitted in Lesotho, would have constituted a criminal or a disciplinary offence under this Act, it shall be deemed for the purposes of this Act, that such act was done or omitted in Lesotho.

PART VI - OFFENCES

Mutiny, desertion, etc.

56. (1) Any police officer who:

- (a.) takes part in a mutiny;
- (b) incites another police officer to take part in a mutiny

shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding ten years,

(2) Any police officer who-

- (a) being present at any mutiny or sedition amongst the Police Service does not endeavour by all possible means to suppress such mutiny or sedition;

- (b) knowing of any intended mutiny or sedition amongst the Police Service does not give information thereof without delay to a senior officer;
- (c) deserts, or permits others to desert

A shall he guilty of an offence and shall he liable to imprisonment for a term~ 9 not exceeding five years.

(3) In this section “mutiny” means two or more police officers, with or without other persons. whose aim is-

- (a) to overthrow or resist lawful authority in the Police Service;
or
- (b) to disobey such authority in circumstances that are subversive of discipline or with the object of avoiding any duty or service.

Causing disaffection.

57. Any person who causes, or attempts to cause, or does any act calculated to cause disaffection amongst the members of the Police Service or induces or attempts to induce, or does any act calculated to induce, any member of the Police Service to withhold his services, shall be guilty of all offence and shall be liable to imprisonment for a term not exceeding five years or to a fine of M5,000, or to both.

General offences in relation to the police.

58 Any person who-

- (a) by false representation, obtains, or attempts to obtain admission to the Police Service.
- (b) having been dismissed from the Police Service receives, by concealing that fact, any pay, allowance or gratuity;
- (c) impersonates a police officer, or makes any statement or does any act calculated falsely to suggest that he is a police officer;
- (d) supplies any police officer while on duty with intoxicating liquor;
- (e) resists or obstructs a police officer in the execution of his duty;
- (f) assaults a police officer in the execution of his duty;
- (g) without reasonable excuse, refuses a call by any police officer to assist in the extinguishing or control of a fire or to give assistance at the scene of fire;

- (h) not being a police officer, wears or has in his possession any article of police uniform, unless he proves that he obtained possession of that article lawfully and has possession of it for a lawful purpose;
- (i) not being a police officer, has in his possession any item of police equipment or property, unless he proves that he obtained possession of that equipment or property lawfully and has possession of it for a lawful purpose;

shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding M1000, or to both.

PAR I VII - POLICE ASSISTANTS AND POLICE VOLUNTEERS

Police Assistants.

59. (1) Whenever there are not in any area or locality sufficient members of the Police Service available to perform police duties or whenever any grave disturbance of the peace has taken place, or in any public emergency, or where any such disturbance may reasonably be anticipated, or where it is in the public interest, the Police Authority may, on the application of the Commissioner, authorise him to appoint, in such form as may be prescribed, any person willing to act as a police assistant for a temporary period.

(2) A police assistant shall be paid such remuneration as the Commissioner may prescribe.

(3) A police assistant shall cease to occupy that office when his period of temporary appointment lapses.

(4) The Commissioner may by notice in writing, suspend or terminate the appointment of a police assistant.

Police volunteers

60. (1) The Commissioner may appoint fit and proper persons to the Police Volunteers Service, in such manner as may be prescribed by the Police Authority and may terminate such appointment at any time and without notice or need to give reason therefor;

(2) Police volunteers shall be required to carry out such police duties on a part-time basis as the Commissioner may direct, and for such time and in such manner as he may deem fit and necessary:

Provided that in time of war or emergency the Prime Minister may direct [hat some oral I such police volunteers shall render full-time service for such period as the Prime Minister may deem necessary.

(3) Police volunteers shall be compensated for their expenses and may be paid a gratuity as the Commissioner may from time to time direct.

Powers of police assistants and police volunteers.

61. (1) Persons appointed under this Part shall carry out such functions as the Commissioner may direct.

(2) Subject to any restrictions prescribed by the Commissioner, a person appointed under this Part shall, in the exercise of his functions, have the same powers, privileges and protections; be liable to the same duties; amenable to the same punishments and subordinate to the same authorities as a police officer.

(3) Parts III, V and VI and sections 66(1) and 76 shall apply to persons appointed under this Part, as they apply to police officers.

(4) Any existing police power conferred upon any volunteer, other than conferred in this part, shall cease to have effect.

Attestation of police assistants and police volunteers

62. Every person appointed under section 59 and 60 shall be attested by making a declaration before the senior police officer in the district, in the form set out in Schedule 2.

Equipment, etc. for use by police assistants and police volunteers

63. (1) The Commissioner may, from the police fund, provide such uniform, equipment and other accoutrements for the use of persons appointed under this Part, as he considers necessary for the exercise of their functions.

(2) Within fourteen days of resignation or termination of his appointment, a person appointed under this Part shall return any police uniform, equipment or accoutrements which have been issued to him.

Resignation of police assistants and police volunteers.

64. A person appointed under this Part may resign from his office by giving notice in writing to the Commissioner.

Compensation for death and injury of police assistants and volunteers

65. (1) If a person appointed under this Part, is killed or injured in the execution of his duty he or, if he is dead, his dependants, shall be entitled to compensation as if he were a police officer.

(2) Subsection (1) shall not apply if the person appointed under this Part, is entitled to compensation from the revenue of Lesotho.

PART VIII - MISCELLANEOUS

Prohibition on membership of political parties and trade unions.

66. (1) A police officer shall not be a member of, or affiliated to, any political party, or any organisation, club, association or group of a political nature.

(2) Subject to subsection (3), a police officer shall not be a member of:

(a) any trade union (whether registered, incorporated or not), or any body associated or affiliated to a trade union;

(b) any body or association the object of which, or one of the objects of which, is to control or influence the conditions of service or employment of any trade or profession;

(c) any body or association the object of which, or one of the objects of which, is to control or influence the conditions of service of police officers.

(3) Nothing in this section applies to membership of any body approved by the Police Authority for the purposes of this Act to represent police officers.

(4) The Police Authority may prescribe rules for the conduct and proceedings of a body approved by him under subsection (3).

Establishment of Police Negotiating Council.

67. (1) The Police Authority shall establish a body to be called the Police Negotiating Council.

(2) The Police Negotiating Council shall consist of an equal number of members appointed by the Police Authority and members appointed by any association representing police officers approved by the Police Authority under section 66.

(3) The Police Authority may prescribe rules-

- (a) for the organisation, procedure and conduct of business of the Police Negotiating Council;
- (b) for the terms of appointment of members of the Police Negotiating Council.

Objects of the Police Negotiating Council.

68. The objects of the Police Negotiating Council shall be to consider questions relating to the terms and conditions of service of members of the Police Service and to establish procedures for dealing with any grievances of members of the Police Service.

Consultation with the Police Negotiating Council.

69. Before making regulations under section 84 the Police Authority shall consult the Police Negotiating Council and shall take into account any representations it may make.

Establishment and functions of the Training Advisory Board.

70. (1) There shall be a Training Advisory Board which shall comprise:

- (a) two persons appointed by the Commissioner;
- (b) two persons appointed by an association representing police officers approved under section 66(3); and
- (c) one person appointed by the Police Authority.

(2) The function of the Training Advisory Board shall be to advise the Commissioner on all aspects of training for the Police Service including:

- (a) the establishment and maintenance of training schools for police officers;
- (b) the training to be undertaken by police officers;
- (c) how training can be most efficiently and effectively provided.

(3) No member of the Training Advisory Board shall be entitled to remuneration for services rendered

Assistance to Defence Force.

71. (1) The Commissioner may, at the request of the Commander of the Defence Force, and with the approval of the Police Authority, authorise the use of any member or members of the Police Service in support of, or to give assistance to, the Defence Force in the discharge of its functions,

(2) Where a police officer is provided under subsection (I) he shall be under the command of the Commander of the Defence Force and subject to the provisions of the Defence Force Act 1995.

Collaboration arrangements.

72. If it appears to the Commissioner that any police functions can be more efficiently or effectively discharged by members of the Police Service acting jointly with some other body or bodies, either within or outside Lesotho, he may, with the consent of the Police Authority, enter into arrangements for the joint discharge of those functions.

Aid to police forces outside Lesotho.

73. (1) The Commissioner may, on the application of the chief officer of a police Force outside Lesotho, and with the consent of the Police authority, provide police officers or other assistance for the purpose of enabling that other force to discharge its functions.

(2) Where a police officer is provided under subsection (I) he shall:

- (a) he under the command, direction and control of the chief officer of that force;
- (b) have in any place the like powers and privileges as a member of that other force has in that place;
- (c) not forfeit any benefits or privileges in the Police Service while he is attached to the other Force.

Attachment of property.

74. No article whatsoever which has been supplied to any police officer, police assistant or police volunteer for the execution of his duty shall be seized or attached under any writ of execution nor shall the same pass under any order made for the sequestration of the estate of any such officer.

Assignment of pay.

75. No police officer or police assistant shall, without the consent of the Commissioner, assign the whole or any part of any pay, gratuity or allowances payable under this Act,

Liability for wrongful acts or police officers.

76. (1) The Commissioner shall be liable in civil proceedings in respect of the wrongful acts of police officers under his command in the performance or

purported performance of their functions, and accordingly may be joined in proceedings in respect of such wrongdoing.

(2) Where any damages or costs are awarded against the Commissioner in any proceedings brought against him by virtue of this section then, unless the Police Authority directs that those costs or damages be paid in whole or in part from the Consolidated Fund, they may be paid from the police fund.

Limitation of actions

77. Any civil action against the Crown or persons acting in pursuance of this Act or the regulations made thereunder, in respect of anything done or omitted to be done in pursuance thereof, shall be commenced within six months next after the cause of action arises, and notice in writing of any civil action and of the substance thereof shall be given to the defendant at least two months before the commencement of the said action.

Provided that the court may, for good cause shown, proof of which shall lie upon the applicant, extend the said period of six months.

Police Rewards and Fines Fund.

78. (1) All fines imposed in disciplinary proceedings and the proceeds of sale of unclaimed property shall be placed to the credit of an account to be known as the Police Rewards and Fines Fund.

(2) No payments shall be made from the Police Rewards and Fines Fund except with the authority of the Commissioner,

(3) The Commissioner may at his discretion authorise payments from the Police Rewards and Fines Fund for any of the following purposes-

- (a) assistance to the spouses or families of deceased police officers, or to any such officers discharged from the Police Service as medically unfit for service;
- (b) payments to police officers as rewards for meritorious acts or service in the execution of duty, if such payments are not made from the revenue of Lesotho;
- (c) the procuring of any comforts or conveniences and advantages to members of the Police Service which are not chargeable on the general revenue;
- (d) the granting of loans in special circumstances to police officers, repayable by instalments from their pay;
- (e) the providing of prizes for competitions limited to members of the Police Service, or for Police Service competitions.

(4) The Commissioner shall cause to be kept proper accounts and proper records of the transactions and affairs of the Police Rewards and Fines Fund and shall do all things necessary to ensure that all payments out of the Police Rewards and Fines Fund are correctly made and properly authorised and that adequate control is maintained over the use of the Police Rewards and Fines Fund.

(5) Section 40 shall apply to the Police Rewards and Fines Fund as it applies to the Police Fund.

79. (1) Where any lost property has come into the possession of a member of the Service he shall, as soon as practicable, deliver it to a police officer in charge of a police station.

(2) If any lost property has not been claimed within six months of being found, the police officer in charge of the police station shall report the matter to the Commissioner.

(3) On receipt of a report under subsection (2), the Commissioner may apply to the Magistrate of the district where the property was found for an order that the said property be sold by public auction and the proceeds paid into the Police Rewards and Fines Fund or, if the property is of a dangerous, worthless or otherwise unsaleable nature, for an order that the property be destroyed; and the Magistrate, if satisfied that the property has not been lawfully claimed within six months of being found, may so order.

(4) Notwithstanding the other provisions of this section, where a police officer in charge of a police station is of the opinion that the immediate sale of any perishable lost property would be for the benefit of the owner he may at any time direct that it be sold at public auction and the proceeds paid to the Police Rewards and Fines Fund: Provided that if a lawful claim to the ownership of the property is made within six months of the date of sale the proceeds of sale shall be paid to that person.

Apportionment of proceeds of sale.

80. So much of the proceeds of sale of any lost property as the Commissioner may direct, if no claim to it has been made within six months of the sale, may be apportioned to the finder.

Hire of police officers for private functions.

81. Members of the Police Service may, at the discretion of the Commissioner, be hired to attend and keep order or provide security at private functions or premises at fees to be determined by the Commissioner and the fees in respect of the hire of police officers for private functions shall be paid into the police fund.

Hire of Police Band.

82. (1) At the discretion of the Commissioner, the Police Band may be hired to play at private functions or premises at charges to be determined by the Commissioner.

(2) The fees in respect of the hire of the Police Band shall be placed to the credit of an account to be called the Band Uniform and Equipment Fund, and payments from this fund shall be made, on the authority of the Commissioner, to purchase Band uniforms and instruments; for the repair of Band uniforms, and instruments, and for the payment of extra duty allowances to Band personnel playing at private functions or premises.

Supply of copies of police reports, etc.

83. (1) The Commissioner may authorise the supply of copies of police reports, statements, sketches, plans, photographs, etc. to attorneys, insurance companies or other persons or bodies, at fees to be set from time to time by the Commissioner,

(2) Any fees received under subsection (1) shall be paid into the police fund.

Regulations

84. (1) The Police Authority may, after consultation with the Commissioner and, in respect of matters concerning pay, allowances, leave entitlement, pensions and compensation for death or injury on duty, the Minister responsible for the Public Service and the Minister of finance, make regulations relating to the government, administration and conditions of service of the Police Service.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision with respect to all or any of the following matters:

- (a) the ranks to be held by police officers;
- (b) the qualifications for appointment and promotion of police officers;
- (c) the definitions of offences against discipline and the penalties therefor
- (d) pay, allowances and leave entitlement of police officers;
- (e) pensions and compensation for death or injury while on duty;
- (f) the issue, use and return of police uniform, equipment and accoutrements.

Provided that Regulations in relation to appointments and promotions shall provide that all such appointments and promotions shall be on the basis of merit.

Repeals, savings, transitional and consequential provisions.

85. (1) The Police Order 1971 is hereby repealed.
- (2) Notwithstanding subsection (1):
- (a) any police officer appointed under that Order who was a member of the Lesotho Mounted Police Force in existence immediately before the coming into operation of this Act shall, on and after that date, continue to be a member of the Police Service established under this Act, as if he had been appointed under the provisions of this Act.
 - (b) anything done, or purported to be done, under any provisions of the enactment repealed by subsection(1) shall be of full force and effect as if done under a corresponding provision of this Act.
 - (c) all regulations made under the enactment repealed by subsection (1) shall, so far as they are consistent with this Act, be deemed to have been made and shall continue in force, as if made under this Act.
- (3) Any reference in any law to “Royal Lesotho Mounted Police” or “Lesotho Mounted Police Force” shall be construed as a reference to the “Lesotho Mounted Police Service”.

SCHEDULE 1

Section 10

FORM OF DECLARATION FOR POLICE OFFICERS

.....of.....do solemnly and sincerely declare that I will well and truly serve the people of Lesotho in the office to which I have

been appointed, without favour or affection, malice or ill will: and that I will to the best of my power and with due regard to the Constitution, cause the peace to be kept and preserved, maintain law and order, prevent all offences against the person and property, detect offences, apprehend offenders and bring them to justice: and that while I continue to hold that office I will to the best of my skill and knowledge discharge all the duties of that office faithfully according to law.

Signature.....Declared before me
at.....this.....day of Witness.....
(Commissioner of Police)

SCHEDULE 2

Section 62

FORM OF DECLARATION FOR POLICE ASSISTANTS AND POLICE VOLUNTEERS

I.....of.....do solemnly and sincerely declare that on the appointment to the office of.....for.....I will well and truly serve the people of Lesotho, and comply with the directions of.....And I shall use the powers of my office to discharge the duties bestowed upon me faithfully and according to the law.

Signature.....Declared before me at.....this.... day
Of Witness.....(Senior officer of District)