



Legislation updated to: 25 December 2009

PUBLIC SERVICE ACT, 1994^{1*}

(Proclamation 103 published in *Government Gazette* 15791 of 3 June 1994)

[DATE OF COMMENCEMENT: 3 JUNE 1994]

as amended by

Proclamation 105 of 1994
Proclamation 134 of 1994
Proclamation R171 of 1994
Proclamation R175 of 1994
Intelligence Services Act 38 of 1994
Public Service Amendment Act 13 of 1996
Public Service Second Amendment Act 67 of 1996
Public Service Laws Amendment Act 47 of 1997
Public Service Laws Amendment Act 86 of 1998
Public Service Amendment Act 5 of 1999
Institution of Legal Proceedings against certain Organs of State Act 40 of 2002
Intelligence Services Act 65 of 2002
General Intelligence Laws Amendment Act 52 of 2003
Public Service Amendment Act 30 of 2007

Regulations under this Act

ADMINISTRATION AND OPERATIONS - GOVERNMENT COMPONENT: NATIONAL INTELLIGENCE AGENCY (GN 912 in GG 32576 of 17 September 2009)

ADMINISTRATION AND OPERATIONS - GOVERNMENT COMPONENT: SOUTH AFRICAN SECRET SERVICE (GN 913 in GG 32576 of 17 September 2009)

ADMINISTRATION AND OPERATIONS - GOVERNMENT COMPONENT: INTELLIGENCE ACADEMY (GN 914 in GG 32576 of 17 September 2009)

ADMINISTRATION AND OPERATIONS - GOVERNMENT COMPONENT: COMSEC (GN 915 in GG 32576 of 17 September 2009)

ADMINISTRATION AND OPERATIONS OF THE GOVERNMENT PRINTING WORKS (GN R968 in GG 32616 of 9 October 2009)

DELEGATION OF AUTHORITY AND RESPONSIBILITIES IN TERMS OF THE PUBLIC SERVICE REGULATIONS (GN R1075 in GG 20460 of 6 September 1999)

NOTICE IN TERMS OF THE PUBLIC SERVICE REGULATIONS, 2001: REPLACEMENT OF Z1 FORM (APPLICATION FOR LEAVE) (GN R1250 in GG 28356 of 30 December 2005)

NOTICE IN TERMS OF THE PUBLIC SERVICE REGULATIONS: DISCONTINUATION OF OFFICIAL FORMS IN RELATION TO HUMAN RESOURCE MANAGEMENT AND RELATED PRACTICES IN THE PUBLIC SERVICE (GN R1046 in GG 22768 of 26 October 2001)

PUBLIC SERVICE REGULATIONS (GN R1 in GG 21951 of 5 January 2001)

WITHDRAWAL OF PUBLIC SERVICE STAFF CODE AND OTHER PRESCRIPTS RELATING TO THE
PUBLIC SERVICE (GN 847 in GG 20271 of 1 July 1999)

[NB: The Act was amended by the deletion of the expressions 'officer or' and 'officers and', wherever they occurred; and by the substitution for the expressions 'executing authority' and 'executing authorities', wherever they occurred, of the expressions 'executive authority' and 'executive authorities', respectively, by s. 41 of Act 30 of 2007.]

ACT

To provide for the organisation and administration of the public service of the Republic, the regulation of the conditions of employment, terms of office, discipline, retirement and discharge of members of the public service, and matters connected therewith.

ARRANGEMENT OF SECTIONS

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INTERPRETATION AND APPLICATION OF ACT

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- 2 Application of Act

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11 Appointments and filling of posts

12 Appointment of heads of department and career incidents

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12A Appointment of persons on grounds of policy considerations

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[Chapter VI repealed by s. 10 of Act 86 of 1998.]

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[Ss. 18 to 23 inclusive repealed by s. 10 of Act 86 of 1998.]

24

[S. 24 substituted by s. 21 of Act 47 of 1997 and repealed by s. 10 of Act 86 of 1998.]

25

[S. 25 repealed by s. 10 of Act 86 of 1998.]

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[S. 26 substituted by s. 23 of Act 47 of 1997 and repealed by s. 10 of Act 86 of 1998.]

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[Schedule 4 renumbered by s. 15 of Act 86 of 1998.]

CHAPTER I
INTERPRETATION AND APPLICATION OF ACT (ss 1-2)

1 Definitions

In this Act, unless the context otherwise indicates-

'accounting officer' means an accounting officer as defined in section 1 of the Public Finance Management Act;

'calendar month' means a period extending from a day in one month to a day preceding the day corresponding numerically to that day in the following month, both days inclusive;

'collective agreement' means a collective agreement referred to in section 5 (4);

'Commission' means the Public Service Commission established by section 196 (1) of the Constitution;

'Commission Act' means the Public Service Commission Act, 1997 (Act 46 of 1997);

'Constitution' means the Constitution of the Republic of South Africa, 1996;

'days' means any days other than Saturdays, Sundays or public holidays as defined in the Public Holidays Act, 1994 (Act 36 of 1994);

'department' means a national department, a national government component, the Office of a Premier, a provincial department or a provincial government component;

'educator' means an educator as defined in section 1 of the Employment of Educators Act, 1998 (Act 76 of 1998);

'electronic government' means the use of information and communication technologies in the public service to improve its internal functioning and to render services to the public;

'employee' means a person contemplated in section 8, but excludes a person appointed in terms of section 12A;

'employment practice' includes-

- (a) recruitment procedures, advertising and selection criteria;
- (b) appointment and the appointment process;
- (c) job and occupational classification and grading;

- (d) remuneration and other conditions of service;
- (e) job assignments;
- (f) the working environment;
- (g) work facilities;
- (h) training and development;
- (i) employee performance management systems and practices;
- (j) transfer and secondment;
- (k) discipline;
- (l) management of poor performance and ill health;
- (m) termination of employment;

'establishment' means the posts which have been created for the normal and regular requirements of a department;

'executive authority', in relation to-

- (a) the Presidency or a national government component within the President's portfolio, means the President;
- (b) a national department or national government component within a Cabinet portfolio, means the Minister responsible for such portfolio;
- (c) the Office of the Commission, means the Chairperson of the Commission;
- (d) the Office of a Premier or a provincial government component within a Premier's portfolio, means the Premier of that province; and
- (e) a provincial department or a provincial government component within an Executive Council portfolio, means the member of the Executive Council responsible for such portfolio;

'functionary' means any person upon whom a power is conferred or a duty is imposed by this Act;

'government component' means a national government component or a provincial government component;

'gratification' means gratification as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004);

'head of department', 'head of a department' or 'head of the department' means the incumbent of a post mentioned in Column 2 of Schedule 1, 2 or 3 and includes any employee acting in such post;

'Labour Relations Act' means the Labour Relations Act, 1995 (Act 66 of 1995);

'member of the Intelligence Services' means a member of-

- (a) the National Intelligence Agency appointed, or deemed to have been appointed, in terms of the Intelligence Services Act, 2002 (Act 65 of 2002);
- (b) the South African National Academy of Intelligence appointed, or deemed to have been appointed, in terms of that Act; or
- (c) the South African Secret Service appointed, or deemed to have been appointed, in terms of that Act;

'member of the services' means a member of-

- (a) the Regular Force of the South African National Defence Force appointed, or deemed to have been appointed, in terms of the Defence Act, 2002 (Act 42 of 2002);

- (b) the South African Police Service appointed, or deemed to have been appointed, in terms of the South African Police Service Act, 1995 (Act 68 of 1995); or
- (c) the Department of Correctional Services appointed, or deemed to have been appointed, in terms of the Correctional Services Act, 1998 (Act 111 of 1998);

'Minister'^{2*} means the Minister for the Public Service and Administration;

'month' means a period extending from the first to the last day, both days inclusive, of any one of the 12 months of a year;

'national department' means a national department referred to in section 7 (2);

'national government component' means a national government component referred to in section 7 (2);

'Office of a Premier' means the Office of a Premier referred to in section 7 (2);

'organ of state' means an organ of state as defined in section 239 of the Constitution;

'post' means a post on the establishment for which financial provision exists;

'prescribed' means prescribed by regulation;

'principal department', in relation to a national or provincial government component, means the department listed in column 3 in Part A or B of Schedule 3;

'provincial department' means a provincial department referred to in section 7 (2);

'provincial government component' means a provincial government component referred to in section 7 (2);

'Public Finance Management Act' means the Public Finance Management Act, 1999 (Act 1 of 1999);

'public service' means the public service contemplated in section 8;

'regulation' means a regulation made in terms of section 41;

'revenue' means the National Revenue Fund established by section 213 (1) of the Constitution or, in relation to any province, the relevant Provincial Revenue Fund established by section 226 (1) of the Constitution, as the case may be;

'salary level' means a set of salaries;

'salary scale' means a set of salary levels from a minimum to a maximum;

'this Act' includes the regulations, determinations, deemed determinations contemplated in section 5 (6) and directives made in terms of this Act.

[S. 1 amended by Proc 105 of 11 June 1994, by Proc R171 of 18 November 1994, by s. 32 (1) of Act 38 of 1994, by s. 1 of Act 47 of 1997, by s. 1 of Act 86 of 1998, by s. 40 (1) of Act 65 of 2002 and by s. 25 (1) of Act 52 of 2003 and substituted by s. 1 of Act 30 of 2007.]

2 Application of Act

(1) Except in so far as this section provides otherwise and except where it is inconsistent with the context or clearly inappropriate, the provisions of this Act shall apply to or in respect of employees whether they are employed within or outside the Republic, and in respect of persons who were employed in the public service or who are to be employed in the public service.

(2) Where members of the services, educators or members of the Intelligence Services are not excluded from the provisions of this Act, those provisions shall, subject to subsection (2A), apply only in so far as they are not contrary to the laws governing their employment.

[Sub-s. (2) substituted by s. 2 (a) of Act 30 of 2007.]

(2A) (a) Subject to the Labour Relations Act and any collective agreement, the determination of any conditions of service for-

- (i) employees in general or a particular category in terms of this Act; and
- (ii) educators or members of the services in general or for a particular category in terms of the laws governing their employment,

shall be made with the concurrence of a committee of Ministers.

(b) For the purposes of paragraph (a)-

- (i) **'conditions of service'** means annual salary adjustments, salary scales or levels, performance bonuses, pay incentives or pension benefits; and
- (ii) the committee of Ministers shall consist of the Minister, the Minister of Finance and the Ministers responsible for the educators and the members of the services and such other Ministers as the Cabinet may designate (if any), and shall function the same as a committee of the Cabinet.

[Sub-s. (2A) inserted by s. 2 (b) of Act 30 of 2007.]

(2B) The provisions of this Act regarding the conditions of service and other employment practices of a head of department only apply to a head of department appointed in terms of the Constitution to the extent that the subject-matter of such provisions are not provided for in any other law governing his or her employment or his or her contract of employment.

[Sub-s. (2B) inserted by s. 2 (b) of Act 30 of 2007.]

(3)

[Sub-s. (3) amended by s. 32 (1) of Act 38 of 1994, substituted by s. 40 (1) of Act 65 of 2002 and by s. 25 (1) of Act 52 of 2003 and deleted by s. 2 (c) of Act 30 of 2007.]

(4)

[Sub-s. (4) deleted by s. 2 (a) of Act 47 of 1997.]

(5)

[Sub-s. (5) amended by s. 2 (b) of Act 47 of 1997 and deleted by s. 2 (c) of Act 30 of 2007.]

(6)

[Sub-s. (6) deleted by s. 2 (c) of Act 47 of 1997.]

CHAPTER II

ADMINISTRATION OF THE PUBLIC SERVICE, INCLUDING THE SOUTH AFRICAN MANAGEMENT AND DEVELOPMENT INSTITUTE AND THE TRAINING FUND (ss 3-6)

[Chapter II substituted by s. 3 of Act 47 of 1997.]

3 Functions of Minister and executive authorities^{3*}

(1) The Minister is responsible for establishing norms and standards relating to-

- (a) the functions of the public service;
- (b) the organisational structures and establishments of departments and other organisational and governance arrangements in the public service;
- (c) the conditions of service and other employment practices for employees;
- (d) labour relations in the public service;
- (e) health and wellness of employees;
- (f) information management in the public service;
- (g) electronic government;
- (h) integrity, ethics, conduct and anti-corruption in the public service; and
- (i) transformation, reform, innovation and any other matter to improve the effectiveness and efficiency of the public service and its service delivery to the public.

(2) The Minister shall give effect to subsection (1) by making regulations, determinations and directives, and by performing any other acts provided for in this Act.

(3) (a) The Minister may, by regulation, establish one or more bodies consisting of prescribed employees or other persons or both such employees and persons to serve as a consultative body for, or an advisory body to, the Minister on any matter referred to in subsection (1).

(b) Provision for representation on any such body by organised labour and other stakeholders shall, where appropriate, be prescribed.

(c) The functions and procedures of such body, the remuneration (if any) of its members and any matter necessary to be regulated for its effective or efficient functioning may be prescribed.

(4) The Minister may-

- (a) for the purposes of section 7 (5), advise the President regarding the establishment or abolition of any department, the designation of any such department and the head thereof or the amendment of such designation;
- (b) after consultation with the relevant executive authority or executive authorities, as the case may be, make determinations regarding-
 - (i) the allocation of any function to, or the abolition of any function of, any national department or national government component; or
 - (ii) the transfer of any function from one national department or national government component to another or from a national department to a national government component or any other body or from a national government component to a national department or any other body or from any other body to a national department or national government component;
- (c) in consultation with the Premier of the province concerned, make determinations regarding-
 - (i) the allocation of any function to, or the abolition of any function of, the Office of the Premier, provincial department or provincial government component; or
 - (ii) the transfer of any function from-

- (aa) the Office of the Premier, provincial department or provincial government component of a province to the Office of the Premier, provincial department or provincial government component of another province;
- (bb) the Office of the Premier, provincial department or provincial government component to a national department or any body established by or under any law, other than a provincial law; or
- (cc) a national department or such other body to the Office of the Premier, provincial department or provincial government component.

(5) (a) Subject to the Labour Relations Act and any collective agreement, the Minister may make determinations regarding any conditions of service of employees generally or categories of employees, including determinations regarding a salary scale for all employees or salary scales for particular categories of employees and allowances for particular categories of employees.

(b) A determination involving expenditure from revenue shall be made in consultation with the Minister of Finance.

(6) (a) If so requested by the President or an executive authority, the Minister may advise, or assist in such manner or on such conditions as the Minister may determine, the President or the relevant executive authority as to any matter relating to-

- (i) the public service;
- (ii) any staffing arrangements or employment practice regarding any organ of state; or
- (iii) the remuneration or other conditions of appointment of the office-bearers of any board, institution or body.

(b) For the purposes of paragraph (a), the Minister, or any person authorised in writing by the Minister, has access to such official documents and may obtain such information from the chairperson or head of the relevant board, institution or body as may be necessary to advise or assist the President or the relevant executive authority.

(7) An executive authority has all those powers and duties necessary for-

- (a) the internal organisation of the department concerned, including its organisational structure and establishment, the transfer of functions within that department, human resources planning, the creation and abolition of posts and provision for the employment of persons additional to the fixed establishment; and
- (b) the recruitment, appointment, performance management, transfer, dismissal and other career incidents of employees of that department, including any other matter which relates to such employees in their individual capacities,

and such powers and duties shall be exercised or performed by the executive authority in accordance with this Act.

(8) (a) The relevant executive authority may, subject to paragraphs (b) and (c), perform any act in connection with any matter which relates to or arises from the employment or the conditions of service of a person formerly employed in the public service whilst he or she was so employed in the department concerned.

(b) An executive authority may only so perform an act if he or she would at the relevant time have been competent in terms of this Act or any other law to perform any such act in respect of a serving employee.

(c) No such act shall be to the detriment of the person concerned, and the relevant executive authority shall not perform any such act in respect of any such person after the expiry of a period of three years after he or she ceased to be so employed.

(d) On request of the relevant executive authority and on good cause shown, the Minister may in respect of a particular person extend the period of three years with such period as the Minister considers appropriate.

[S. 3 amended by Proc R175 of 2 December 1994, substituted by s. 3 of Act 47 of 1997, amended by s. 2 of Act 86 of 1998 and by s. 1 of Act 5 of 1999 and substituted by s. 3 of Act 30 of 2007.]

3A Functions of Premiers

The Premier of a province may, in the province concerned-

- (a) subject to section 7 (5) to (7)-
 - (i) establish or abolish any provincial department, designate such department and the head thereof or amend any such designation;
 - (ii) after consultation with the Minister and the Minister of Finance establish or abolish any provincial government component or establish an existing body as a provincial government component, designate such component and the head thereof and designate the Office of the Premier or a provincial department as its principal provincial department or amend any such designation; and
- (b) make determinations regarding the allocation of any function to, or the abolition of any function of, any department or government component in the province concerned or the transfer of any function from such department or component to another department or component in the province or from such office, department or component to any body established by or under any law of the provincial legislature or from any such body to such office, department or component.

[S. 3A inserted by s. 3 of Act 86 of 1998 and substituted by s. 4 of Act 30 of 2007.]

3B

[S. 3B inserted by s. 1 of Act 5 of 1999 and repealed by s. 5 of Act 30 of 2007.]

4 Training institution

(1) There shall be a training institution listed as a national department in Schedule 1.

(2) The management and administration of such institution shall be under the control of the Minister.

(3) Such institution-

- (a) shall provide such training or cause such training to be provided or conduct such examinations or tests or cause such examinations or tests to be conducted as the Head of the institute may with the approval of the Minister decide or as may be prescribed as a qualification for the appointment or transfer of persons in or to the public service;

- (b) may issue diplomas or certificates or cause diplomas or certificates to be issued to persons who have passed such examinations.

[S. 4 amended by Proc 134 of 12 August 1994 and substituted by s. 3 of Act 47 of 1997 and by s. 6 of Act 30 of 2007.]

5 Implementation or limitation of actions affecting public service or its members

(1) For the purposes of this section the term '**act**' means the making of any regulation, the making of any determination, the issuing of any directive or the taking of any decision.

[Sub-s. (1) substituted by s. 7 (a) of Act 30 of 2007.]

(2) A determination or directive, or any withdrawal or amendment thereof, made or issued by the Minister in terms of this Act shall take effect on the date of the written communication conveying the making of the determination, the issuing of the directive or the withdrawal or amendment thereof, unless expressly stated otherwise in that communication, determination or directive.

[Sub-s. (2) substituted by s. 7 (a) of Act 30 of 2007.]

(3) Any act by the Minister in terms of this Act which relates to all employees, a category of employees or a particular employee may be effected retrospectively if-

- (a) circumstances exist which justify such retrospective effect; and
- (b) the act is not to the detriment of the employee or employees concerned.

[Sub-s. (3) substituted by s. 7 (a) of Act 30 of 2007.]

(4) Any act by any functionary in terms of this Act may not be contrary to the provisions of-

- (a) any collective agreement contemplated in item 15 (i) of Schedule 7 to the Labour Relations Act; or
- (b) any collective agreement concluded by a bargaining council established in terms of the said Act for the public service as a whole or for a particular sector in the public service.

[Sub-s. (4) substituted by s. 7 (a) of Act 30 of 2007.]

(5) Notwithstanding subsection (4), but subject to the Labour Relations Act-

- (a)

[Para. (a) deleted by s. 7 (c) of Act 30 of 2007.]

- (b) the last offer made by the State as employer in a bargaining council referred to in the said subsection (4) on a specific matter may, if a deadlock in negotiations is reached, be implemented by acting in terms of the provisions of this Act or any other law, provided any such act does not have the effect of reducing existing remuneration or other service benefits, except in accordance with section 34.

[Sub-s. (5) amended by s. 7 (b) of Act 30 of 2007.]

(6) (a) Any provision of a collective agreement contemplated in subsection (4), concluded on or after the commencement of the Public Service Amendment Act, 2007, shall, in respect of conditions of service of employees appointed in terms of

this Act, be deemed to be a determination made by the Minister in terms of section 3 (5).

(b) The Minister may, for the proper implementation of the collective agreement, elucidate or supplement such determination by means of a directive, provided that the directive is not in conflict with or does not derogate from the terms of the agreement.

[Sub-s. (6) added by s. 7 (d) of Act 30 of 2007.]

(7) (a) A functionary shall correct any action or omission purportedly made in terms of this Act by that functionary, if the action or omission was based on an error of fact or law or fraud and it is in the public interest to correct the action or omission.

(b) The relevant executive authority shall in the prescribed manner keep record of and report to the Minister any correction by a functionary of a department within the portfolio of that executive authority.

[Sub-s. (7) added by s. 7 (d) of Act 30 of 2007.]

(8) (a) The Commission may investigate compliance with this Act and may issue directions contemplated in section 196 (4) (d) of the Constitution in order to ensure compliance with this Act and in order to provide advice to promote sound public administration.

(b) If the Commission issues a direction contemplated in paragraph (a), the relevant executive authority or head of department, as the case may be, shall implement the direction as soon as possible after receipt of the written communication conveying the direction but, in any event, within 60 days after the date of such receipt.

[Sub-s. (8) added by s. 7 (d) of Act 30 of 2007.]

[S. 5 amended by Proc 105 of 11 June 1994 and substituted by s. 3 of Act 47 of 1997.]

6 Access to documents and information by Minister

(1) The Minister, or any person authorised in writing by the Minister, has access to such official documents or may obtain such information from executive authorities and employees in the public service as may be necessary for the performance of his or her functions under this Act or any other law.

(2) Any employee who wilfully or in a grossly negligent manner fails to furnish documents or information as contemplated in subsection (1) or section 3 (6) (b), shall be guilty of an offence and shall be liable on conviction to a fine or to imprisonment not exceeding 12 months.

[S. 6 substituted by s. 3 of Act 47 of 1997 and by s. 8 of Act 30 of 2007.]

CHAPTER III ORGANISATION AND STAFF (ss 7-8)

7 Public service, departments and heads of departments

(1) The public service established by section 197 (1) of the Constitution shall be structured and organised as provided for in this Act.

[Sub-s. (1) substituted by s. 4 (a) of Act 47 of 1997.]

(2) For the purposes of the administration of the public service there shall be-

- (a) national departments and Offices of the Premier mentioned in column 1 of Schedule 1;
- (b) provincial departments mentioned in column 1 of Schedule 2;
- (c) national government components mentioned in column 1 of Part A of Schedule 3; and
- (d) provincial government components mentioned in column 1 of Part B of Schedule 3.

[Sub-s. (2) substituted by s. 4 (a) of Act 86 of 1998 and by s. 9 (a) of Act 30 of 2007.]

(3) (a) Each department shall have a head who shall be the incumbent of the post on the establishment bearing the designation mentioned in column 2 of Schedule 1, 2 or 3 opposite the name of the relevant department or component, or the employee who is acting in that post.

[Para. (a) substituted by s. 9 (b) of Act 30 of 2007.]

(b) Subject to the provisions of paragraphs (c) and (d), a head of department shall be responsible for the efficient management and administration of his or her department, including the effective utilisation and training of staff, the maintenance of discipline, the promotion of sound labour relations and the proper use and care of State property, and he or she shall perform the functions that may be prescribed.

(c) In addition to any power or duty entrusted or assigned by or under this Act or any other law to the head of the Office of a Premier, the said head shall-

- (i) be the Secretary to the Executive Council of the province concerned;
- (ii) subject to sections 85 (2) (c) and 125 (2) (e) of the Constitution, be responsible for intergovernmental relations on an administrative level between the relevant province and other provinces as well as national departments and national government components and for the intra-governmental co-operation between the relevant Office of the Premier and the various provincial departments and provincial government components, including the co-ordination of their actions and legislation; and
- (iii) subject to paragraph (d), be responsible for the giving of strategic direction on any matter referred to in section 3 (1).

[Para. (c) substituted by s. 9 (c) of Act 30 of 2007.]

(d) The head of the Office of a Premier shall in respect of a provincial department of the relevant province exercise no power or perform no duty which is entrusted or assigned by or under this Act or any other law to the head of the provincial department.

[Para. (d) substituted by s. 9 (c) of Act 30 of 2007.]

(e)

[Para. (e) deleted by s. 9 (d) of Act 30 of 2007.]

[Sub-s. (3) substituted by s. 4 (b) of Act 86 of 1998.]

(4)

[Sub-s. (4) substituted by s. 4 (c) of Act 86 of 1998 and deleted by s. 9 (e) of Act 30 of 2007.]

(5) Subject to section 7A and the principles contained in section 195 of the Constitution, the President may by proclamation in the *Gazette*-

- (a) on the advice of the Minister amend Schedule 1 so as to establish or abolish any national department, designate such department and the head thereof or amend any such designation; or
- (b) at the request of the Premier of a province amend Schedule 2 so as to reflect the establishment, abolition, designation or amendment in respect of any provincial department contemplated in section 3A (a) (i);
- (c) at the request of the relevant executive authority and on the advice of the Minister and the Minister of Finance amend Part A of Schedule 3 so as to establish or abolish any national government component or establish an existing body as such a component or designate any such component and the head and principal department thereof or amend any such designation; or
- (d) at the request of the Premier of a province amend Part B of Schedule 3 so as to reflect the establishment, abolition, designation or amendment in respect of a provincial government component contemplated in section 3A (a) (ii).

[Sub-s. (5) substituted by s. 4 (b) of Act 47 of 1997, by s. 4 (d) of Act 86 of 1998 and by s. 9 (f) of Act 30 of 2007.]

(6) The President shall give effect to any request referred to in subsection (5) (b) or (d) if the President is satisfied that it is consistent with the provisions of the Constitution, this Act and any other applicable law.

[Sub-s. (6) added by s. 9 (f) of Act 30 of 2007.]

(7) Only the head of a national department and the Office of a Premier may bear the designation of 'Director-General'.

[Sub-s. (7) added by s. 9 (f) of Act 30 of 2007.]

7A Government components

(1) An executive authority may only request the establishment of a government component in terms of section 7 (5) (c) or (d) if the prescribed feasibility study is conducted and its findings recommend the establishment of such component.

(2) Subject to subsection (3), the head of a government component, established in terms of section 7 (5) (c) or (d), may have any one or more of the following powers or duties or both such powers and duties:

- (a) Powers conferred, or duties imposed, by national or provincial legislation;
- (b) powers or duties assigned in terms of subsection (5) or other legislation;
- (c) powers or duties delegated in terms of subsection (6) or other legislation; and
- (d) functions allocated or transferred in terms of section 3 (4) (b) or (c).

(3) No power, duty or function regarding the realisation of a right contemplated in section 26, 27, 28 or 29 of the Constitution and other prescribed powers, duties and functions, may be assigned or delegated, allocated or transferred

in terms of subsection (2) (b), (c) or (d).

(4) For each government component, the relevant executive authority, after consultation with the Minister and the Minister of Finance, and by notice in the *Gazette*-

- (a) shall list-
 - (i) the relevant provisions of legislation which confer powers, and impose duties, on the head of the component; and
 - (ii) a reference to each notice regarding assigned powers and duties of the head of the component contemplated in subsection (5);
- (b) may list the delegated powers and duties of the head of the component contemplated in subsection (6);
- (c) shall, subject to applicable legislation, determine the reporting requirements to the head of the principal department to enable that head to advise the relevant executive authority on the oversight of the component on policy implementation, performance, integrated planning, budgeting and service delivery (insofar as applicable);
- (d) may include any administrative or operational matter relating to the component, including the sharing of internal services with the principal department;
- (e) may establish an advisory board without executive functions for the component and determine the board's composition, appointment procedure and remuneration and all matters required for its effective and efficient functioning; and
- (f) may include any other matter necessary for the effective and efficient functioning of the component.

(5) (a) Notwithstanding anything to the contrary in any other law, but subject to subsection (3), the executive authority of a government component may assign to the head of that component any power conferred, or duty imposed, on-

- (i) that executive authority (except the making of regulations) by national legislation; or
- (ii) any official of the principal department of that component by national legislation.

(b) Such assignment is subject to-

- (i) if the executive authority is not the Minister responsible for the administration of the national legislation in question (in this section referred to as 'the responsible Minister'), consultation with that Minister;
- (ii) the approval of Parliament of the intended notice as contemplated in this subsection; and
- (iii) publication by notice in the *Gazette*.

(c) The notice shall stipulate-

- (i) the powers and duties to be assigned in terms thereof;
- (ii) the effective date of the assignment; and
- (iii) the conditions that the executive authority considers appropriate.

(d) The responsible Minister shall table the notice in Parliament for approval.

(e) Parliament may reject the notice within 90 days after it has been tabled, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 45 days after the commencement of its next ensuing ordinary

session.

(f) If Parliament rejects such notice, the responsible Minister may table an amended notice in Parliament.

(g) If the responsible Minister tables an amended notice and Parliament-

(i) approves the amended notice, the responsible Minister must publish that notice in terms of paragraph (b) (iii) within 30 days of the Parliament's approval; or

(ii) rejects the amended notice within 90 days after it has been tabled, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 45 days after the commencement of its next ensuing ordinary session, paragraph (f) and this paragraph apply.

(h) If Parliament does not reject a notice as contemplated in paragraph (e) or (g) (ii)-

(i) such notice shall be deemed to have been approved by Parliament; and

(ii) the responsible Minister must publish the notice in terms of paragraph (b) (iii) within 30 days after the periods referred to in paragraph (e) or (g) (ii), as the case may be.

(i) A notice may at any time in like manner be amended or withdrawn.

(j) Any assignment in terms of this subsection shall divest the person whom was vested with the assigned power or duty.

(6) Notwithstanding anything to the contrary in any other law, the executive authority of a government component or the head of the principal department of that component may, except a power or duty to make regulations-

(a) delegate to the head of the component any power conferred on that executive authority or head of the principal department by this Act or any other national legislation; or

(b) authorise the head of the component to perform any duty imposed on the executive authority or head of the principal department by this Act or any other national legislation.

(7) The head of a government component may-

(a) delegate to an employee of the component any power assigned or delegated to that head in terms of subsection (5) or (6) (a); or

(b) authorise an employee of the component to perform any duty assigned to that head in terms of subsection (5) or any duty that that head is authorised to perform in terms of subsection (6) (b).

(8) Any delegation of a power or authorisation to perform a duty in terms of subsection (6) or (7)-

(a) shall be subject to the conditions the person who made the delegation or granted the authorisation considers appropriate;

(b) shall be in writing;

(c) does not prevent the person who made the delegation or granted the authorisation from exercising that power or performing that duty himself or herself; and

(d) may at any time be withdrawn in writing by that person.

(9) Nothing in this Act prevents the assignment or delegation of powers or duties to the head of a provincial government component in accordance with provincial legislation of the province in question.

[S. 7A inserted by s. 10 of Act 30 of 2007.]

7B Specialised service delivery unit within department

- (1) (a) An executive authority of-
- (i) a national department may, in consultation with the Minister;
 - (ii) the Office of the Premier may, after consultation with the Minister; or
 - (iii) a provincial department may, in consultation with the Premier and after consultation with the Minister,

establish or abolish a special service delivery institution within that department or Office and designate any such unit and the head thereof, or amend any such designation.

(b) The Minister shall by notice in the *Gazette* give effect to such establishment, abolition, designation or amendment.

(2) An executive authority may only request the establishment of a unit if the prescribed feasibility study is conducted and the outcome thereof recommends its establishment.

(3) The head of a unit may have any one or more of the following powers or duties or both such powers and duties:

- (a) Powers conferred, or duties imposed, by national or provincial legislation;
- (b) powers or duties assigned in terms of subsection (5) or other legislation;
- (c) powers or duties delegated in terms of subsection (6) or other legislation; and
- (d) functions allocated or transferred in terms of section 3 (4) (b) or (c).

(4) The relevant executive authority shall approve a protocol for each unit which-

- (a) shall list-
 - (i) the relevant provisions of legislation which confer powers, and impose duties, on the head of the unit; and
 - (ii) a reference to each notice regarding assigned powers and duties of the head of the unit, contemplated in subsection (5);
- (b) may list the delegated powers and duties of the head of the unit contemplated in subsection (6), (7) or (10);
- (c) shall, subject to applicable legislation determine the reporting requirements to the head of the department, including, but not limited, to enabling that head to advise the relevant executive authority on the oversight of the unit on policy implementation, performance, integrated planning, budgeting and service delivery (insofar as applicable);
- (d) may include any administrative or operational matter relating to the unit, including the sharing of internal services of the department;
- (e) may establish an advisory board without executive functions for the unit and determine the board's composition, appointment procedure and remuneration and all matters required for its effective and efficient functioning; and
- (f) may include any other matter necessary for the effective and efficient functioning of the unit.

(5) Notwithstanding anything to the contrary in any other law, section 7A (5) applies with the changes required by the context to the assignment by the executive

authority of a department to the head of the unit of any power conferred, or duty imposed, on-

- (a) that executive authority (except the making of regulations) by national legislation; or
- (b) any official of the department by national legislation.

(6) Notwithstanding anything to the contrary in any other law, the executive authority or the head of a department may, except a power or duty to make regulations-

- (a) delegate to the head of a unit in the department any power conferred on that executive authority or head of the department by national legislation (other than this Act and the Public Finance Management Act); or
- (b) authorise the head of the unit to perform any duty imposed on the executive authority or head of the department by national legislation (other than this Act and the Public Finance Management Act).

(7) Notwithstanding section 42A, the executive authority or the head of a department may, in respect of a unit-

- (a) delegate a power conferred on the executive authority or the head by this Act in respect of a unit, only to the head of that unit; or
- (b) only authorise the head of that unit to perform a duty imposed on the executive authority or the head of the department by this Act.

(8) The head of a unit may-

- (a) delegate to an employee of the unit any power assigned or delegated to that head in terms of subsection (5), (6) (a) or (7) (a); or
- (b) authorise an employee of the unit to perform any duty assigned to that head in terms of subsection (5) or any duty that that head is authorised to perform in terms of subsection (6) (b) or (7) (b).

(9) Any delegation of a power or authorisation to perform a duty in terms of subsection (6), (7) or (8)-

- (a) shall be subject to the conditions the person who made the delegation or granted the authorisation considers appropriate;
- (b) shall be in writing;
- (c) does not prevent the person who made the delegation or granted the authorisation from exercising that power or performing that duty himself or herself; and
- (d) may at any time be withdrawn in writing by that person.

(10) (a) Subject to the approval of the relevant Treasury, as defined in section 1 of the Public Finance Management Act, the accounting officer of a department shall-

- (i) delegate all powers conferred by that Act and any regulations and instructions made or issued thereunder, on that accounting officer in respect of a unit in that department to the head of that unit;
- (ii) authorise the head of a unit to perform all duties imposed by that Act and any regulations and instructions made or issued thereunder, on that accounting officer in respect of the unit in that department.

(b) Any such delegation or authorisation shall be subject to section 44 (2) and (3) of the Public Finance Management Act, except that the delegation or authorisation may only be revoked under such circumstances as determined by treasury regulations or instructions made or issued in terms of section 76 of the

Public Finance Management Act, read with this section.

(c) The head of the unit may, subject to section 44 (2) and (3) of the Public Finance Management Act-

- (i) delegate any power, delegated to the head in terms of paragraph (a), to an employee in the unit;
- (ii) instruct an employee in the unit to perform a duty that the head is authorised to perform in terms paragraph (a).

(d) Accountability for the compulsory delegations and authorisations contemplated in paragraph (a) shall be as determined by treasury regulations or instructions made or issued in terms of section 76 of the Public Finance Management Act, read with this section.

(11) Nothing in this Act prevents the assignment or delegation of powers or duties to the head of a unit in the Office of a Premier or a provincial department in accordance with provincial legislation of the province in question.

[S. 7B inserted by s. 10 of Act 30 of 2007.]

8 Composition of public service

(1) The public service shall consist of persons who are employed-

- (a) in posts on the establishment of departments; and
- (b) additional to the establishment of departments.

(2) Subject to the prescribed conditions, any person referred to in subsection (1) may be employed permanently or temporarily and in a full-time or part-time capacity.

(3) For the purpose of this Act, in relation to employment-

- (a) the word 'permanently' or 'permanent', in respect of an employee, means an employee to whom a retirement age referred to in section 16 applies; and
- (b) the word 'temporarily' or 'temporary', in respect of an employee, means not permanently employed.

[S. 8 amended by s. 32 (1) of Act 38 of 1994, by s. 5 of Act 47 of 1997, by s. 40 (1) of Act 65 of 2002 and by s. 25 (1) of Act 52 of 2003 and substituted by s. 11 of Act 30 of 2007.]

CHAPTER IV EMPLOYMENT IN PUBLIC SERVICE (ss 9-15)

[Heading substituted by s. 12 of Act 30 of 2007.]

8A Mechanisms for obtaining services of persons

Services of persons may be obtained in terms of this Act by means of-

- (a) appointments in terms of section 9, including appointments of heads of department in terms of section 12;
- (b) appointments in terms of section 12A on grounds of policy considerations; or
- (c) deployments in the form of-
 - (i) transfers in terms of section 14, including transfers of heads of department in terms of section 12 (3);
 - (ii) secondments in terms of section 15; and

- (iii) assignments in terms of section 32.

[S. 8A inserted by s. 13 of Act 30 of 2007.]

9 Appointments in public service

An executive authority may appoint any person in his or her department in accordance with this Act and in such manner and on such conditions as may be prescribed.

[S. 9 substituted by s. 6 of Act 47 of 1997 and by s. 14 of Act 30 of 2007.]

10 Qualifications for appointment

No person shall be appointed permanently, whether on probation or not, to any post on the establishment in a department unless he or she-

- (a) is a South African citizen or permanent resident; and
 - (b) is a fit and proper person.
- (2)

[Sub-s. (2) deleted by s. 15 (b) of Act 30 of 2007.]

[S. 10, previously sub-s. (1), amended by s. 7 of Act 47 of 1997 and substituted by s. 15 (a) of Act 30 of 2007.]

11 Appointments and filling of posts

(1) In the making of appointments and the filling of posts in the public service due regard shall be had to equality and the other democratic values and principles enshrined in the Constitution.

(2) In the making of any appointment in terms of section 9 in the public service-

- (a) all persons who applied and qualify for the appointment concerned shall be considered; and
- (b) the evaluation of persons shall be based on training, skills, competence, knowledge and the need to redress, in accordance with the Employment Equity Act, 1998 (Act 55 of 1998), the imbalances of the past to achieve a public service broadly representative of the South African people, including representation according to race, gender and disability.

[Sub-s. (2) substituted by s. 16 (a) of Act 30 of 2007.]

- (3)

[Sub-s. (3) deleted by s. 16 (b) of Act 30 of 2007.]

[S. 11 substituted by s. 8 of Act 47 of 1997.]

12 Appointment of heads of department and career incidents

(1) Notwithstanding anything to the contrary contained in this Act, but subject to this section and sections 2 (2B) and 32 (2) (b) (i), the appointment and other career incidents of the heads of department and government component shall be dealt with, in the case of-

- (a) a head of a national department or national government component,

by the President; and

- (b) a head of the Office of a Premier, provincial department or provincial government component, by the relevant Premier.

(2) (a) A person shall be appointed to the post of head of department in terms of section 9 for such term, not exceeding five years, as the relevant executive authority may approve.

(b) The head of department shall conclude the prescribed contract within the prescribed period.

(c) The relevant executive authority may at the expiry of the term of office of a head of department or at the expiry of an extended term of office extend the term for a period of not more than five years at a time.

(3) (a) The President may transfer the head of a national department or national government component before or at the expiry of his or her term, or extended term, to perform functions in a similar or any other capacity in a national department or national government component in a post of equal, higher or lower grading, or additional to the establishment, as the President considers appropriate.

(b) The Premier of a province may transfer the head of the Office of the Premier, a provincial department or a provincial government component before or at the expiry of his or her term, or extended term, to perform functions in a similar or any other capacity in the Office of the Premier, a provincial department or a provincial government component of the relevant province in a post of equal, higher or lower grading or additional to the establishment, as the Premier considers appropriate.

(c) The President may, in consultation with the Premier or Premiers concerned, transfer before or at the expiry of his or her term, or extended term-

- (i) the head of a national department to perform functions in a similar or any other capacity in the Office of a Premier, a provincial department or a provincial government component; or
- (ii) the head of the Office of a Premier, a provincial department or a provincial government component, to perform functions in a similar or any other capacity in the Office of a Premier, a provincial department or provincial government component of another province or in a national department or national government component,

in a post of equal, higher or lower grading or additional to the establishment, as the President, in consultation with the Premier or Premiers, considers appropriate.

(d) A transfer in terms of this subsection may only occur if-

- (i) the relevant head of department consents to the transfer; or
- (ii) after due consideration of any representations by the head, the transfer is in the public interest.

(e) Any person appointed as head of department or government component who is transferred in terms of this subsection-

- (i) during his or her term of office or extended term-
 - (aa) shall for the unexpired portion of that term not suffer any reduction in salary and change of other conditions of service, unless he or she consents thereto; and
 - (bb) to a higher post shall not by reason only of that transfer be entitled to the higher salary applicable to the higher post; and
- (ii) at the expiry of his or her term of office, or extended term, shall receive the salary and conditions of service attached to the capacity in which he or she is so transferred.

(4) If it is in the public interest and it is allowed by a determination made in

terms of section 3 (5), an executive authority may, on the conditions provided for in such determination, grant a special service benefit to head of the relevant department before or at the expiry of his or her term of office or an extended term, or at the time of retirement or dismissal from the public service.

[S. 12 amended by s. 5 of Act 86 of 1998, by s. 32 (1) of Act 38 of 1994 and by s. 2 of Act 13 of 1996 and substituted by s. 9 of Act 47 of 1997 and by s. 17 of Act 30 of 2007.]

12A Appointment of persons on grounds of policy considerations

(1) Subject to this section, such executive authorities as the Cabinet may determine may appoint one or more persons under a contract, whether in a full-time or part-time capacity-

- (a) to advise the executive authority on the exercise or performance of the executive authority's powers and duties;
- (b) to advise the executive authority on the development of policy that will promote the relevant department's objectives; or
- (c) to perform such other tasks as may be appropriate in respect of the exercise or performance of the executive authority's powers and duties.

[Sub-s. (1) amended by s. 18 of Act 30 of 2007.]

(2) The maximum number of persons that may be appointed by an executive authority under this section and the upper limits of the remuneration and other conditions of service of such persons shall be determined by the Cabinet in the national sphere of government.

(3) The special contract contemplated in subsection (1) shall include any term and condition agreed upon between the relevant executive authority and the person concerned, including-

- (a) the contractual period, which period shall not exceed the term of office of the executive authority;
- (b) the particular duties for which the person concerned is appointed; and
- (c) the remuneration and other conditions of service of the person concerned.

[S. 12A inserted by s. 6 of Act 86 of 1998.]

13 Appointment, transfer and promotion on probation

(1) The appointment of a person and the transfer or promotion of an officer in the A or B division shall be made on probation-

- (a) unless, in the case of an appointment, the person having the power to approve such an appointment, directs otherwise; or
- (b) if, in the case of a promotion or a transfer, the person having the power to approve such a transfer or promotion, so directs.

(2) (a) Subject to the provisions of paragraphs (b) and (c), the period of probation shall not be less than 12 calendar months.

(b) If an officer who is serving on probation is transferred or promoted to another post, a lesser period of service on probation may be directed in the new post which, together with the period of probation served in the former post, shall total at least 12 calendar months.

(c) The period of probation of an officer shall be extended by the number of days leave taken by him or her during the period of probation or any extension thereof.

(3) If the head of the office, branch, subdepartment, institution or department certifies that, during the period of probation or extended period of probation, the officer concerned has been diligent and his or her conduct has been uniformly satisfactory and that he or she is in all respects suitable for the post which he or she holds, and if the officer has complied with all the conditions to which his or her appointment, transfer or promotion was subject, the person having the power to make the appointment, transfer or promotion concerned, may confirm that appointment, transfer or promotion, but if the probationary appointment, transfer or promotion is not so confirmed, the person having the power to make the appointment, transfer or promotion concerned may extend the period of probation or act in accordance with the provisions of subsection (5).

(4)

(5) Notwithstanding anything to the contrary contained in subsection (2) or in any collective agreement contemplated in section 18 (b) of the Public Service Laws Amendment Act, 1998, but subject to the provisions of subsection (6), an officer who is serving on probation may be discharged from the public service by the person having the power of discharge, whether during or at or after the expiry of the period of probation-

- (a) by the giving of one month's written notice to such officer; or
- (b) forthwith, but subject to the provisions of the Labour Relations Act, 1995 (Act 66 of 1995), if his or her conduct or performance is unsatisfactory.

[Sub-s. (5) amended by s. 7 of Act 86 of 1998.]

(6) Notwithstanding anything to the contrary contained in sections 14 and 34, a person whose transfer or promotion on probation is not confirmed and who immediately prior to that transfer or promotion on probation was an officer, other than an officer on probation, shall be transferred to the post formerly held by him or her, or to a post of equivalent grading, and shall receive such salary as he or she would have received in the said former post if he or she had not been transferred or promoted on probation.

[S. 13 substituted by s. 10 of Act 47 of 1997.]

[NB: S. 13 has been substituted by s. 19 of the Public Service Amendment Act 30 of 2007, a provision which will be put into operation by proclamation. See PENDLEX.]

14 Transfers within public service

(1) Subject to the provisions of this Act, every employee may, when the public interest so requires, be transferred from the post or position occupied by him or her to any other post or position in the same or any other department, irrespective of whether such a post or position is in another division, or is of a lower or higher grade, or is within or outside the Republic.

(2) (a) The transfer of an employee from one post or position to another post or position may, subject to the provisions of paragraph (b), be made on the authority of the person having the power of transfer.

[Para. (a) substituted by s. 11 (a) of Act 47 of 1997.]

(b) In the case of a transfer from one department to another department the approval of the persons who in respect of each of those departments have the power

to transfer, shall first be obtained.

(c)

[Para. (c) amended by s. 32 (1) of Act 38 of 1994 and deleted by s. 11 (b) of Act 47 of 1997.]

(d)

[Para. (d) deleted by s. 11 (b) of Act 47 of 1997.]

(3) An officer-

(a) shall not upon transfer suffer any reduction in his or her salary or scale of salary without his or her consent, except in accordance with the provisions of section 38 and any collective agreement contemplated in section 18(b) of the Public Service Laws Amendment Act, 1998;

[Para. (a) substituted by s. 8 of Act 86 of 1998.]

(b)

[Para. (b) deleted by s. 11 (c) of Act 47 of 1997.]

(c) who has been transferred to or who is employed in a post which is graded higher than his or her own grade, or which is regraded or converted to a post of a higher grade than his or her own grade, shall not by reason only of that transfer or employment be entitled to the higher scale of salary applicable to the post;

(d)

[Para. (d) deleted by s. 11 (c) of Act 47 of 1997.]

(e) holding a post in the A or B division shall not without his or her consent be transferred to a post in any branch of the services or in the Agency or the Service.

[Para. (e) amended by s. 32 (1) of Act 38 of 1994.]

(4) A member of any of the three branches of the services shall not without his or her consent be transferred to a post in any other of those branches or to a post in the A or B division, and a member of the Agency or the Service shall not, subject to the provisions of any law regulating the service of such a member, without his or her consent be transferred to a post in such a division.

[Sub-s. (4) amended by s. 32 (1) of Act 38 of 1994.]

[NB: S. 14 has been substituted by s. 20 of the Public Service Amendment Act 30 of 2007, a provision which will be put into operation by proclamation. See PENDLEX.]

14A Change in employment capacity

An employee of a department who is appointed in terms of section 9 in another capacity in the same or another department, or transferred in terms of section 12 (3) or 14, shall be deemed to continue employment in the public service without any break in service.

[S. 14A inserted by s. 21 of Act 30 of 2007.]

15 Transfer and secondment of officials

(1) A person holding a pensionable appointment in a department under any

law other than this Act or in any institution or body established by or under any law and which obtains its funds directly in whole or in part from revenue, may be transferred to, and appointed in, a post in the A or B division.

(2) A person in the service of a department under any law other than this Act, or in the service of another government, or of any council, institution or body established by or under any law, or of any other body or person, may be employed by another department or a department, as the case may be, for a particular service or for a stated period and on such terms and conditions, other than conditions laid down by or under any pensions law, as may be agreed upon by the employer of the person concerned and the relevant executive authority and approved by the Treasury.

(3) (a) An employee may with his or her consent and on such conditions, in addition to those prescribed by or under any law, as may be determined by the relevant executive authority after consultation with the Treasury, be placed at the disposal of another government, or of any council, institution or body established by or under any law, or of any other body or person, for a particular service or for a stated period.

(b) Such an employee remains subject to the laws applicable to employees in the public service while so placed at such disposal.

(4) (a) A person (in this paragraph referred to as the official) in the service of a department under any law other than this Act, or in the service of another government, or of any council, institution or body established by or under any law, or of any other body or person, may be employed by another department or a department, as the case may be, for a stated period and on such terms and conditions, other than conditions laid down by or under any pensions law, as may be agreed upon by the employer of the official and the relevant executive authority and approved by the Treasury, and in such a case, on such conditions, in addition to those prescribed by or under any law, as may be determined by the said authority after consultation with the Treasury, an employee may with his or her consent and in terms of such an agreement be placed at the disposal of the employer of the official for the same period on an exchange basis.

(b) Such an employee remains subject to the laws applicable to employees in the public service while so placed at such disposal.

[S. 15 substituted by s. 12 of Act 47 of 1997.]

[NB: S. 15 has been substituted by s. 22 of the Public Service Amendment Act 30 of 2007, a provision which will be put into operation by proclamation. See PENDLEX.]

CHAPTER V TERMINATION OF SERVICE (ss 16-17)

16 Retirement and retention of services

(1) (a) Subject to the provisions of this section, an officer, other than a member of the services or an educator or a member of the Agency or the Service, shall have the right to retire from the public service, and shall be so retired, on the date when he or she attains the age of 65 years: Provided that a person who is an employee on the day immediately before the commencement of the Public Service Amendment Act, 1996, has the right to retire on reaching the retirement age or prescribed retirement date provided for in any other law applicable to him or her on that day.

[Para. (a) amended by s. 32 (1) of Act 38 of 1994 and substituted by s. 3 of Act 13 of 1996.]

(b) If such an officer attains the said age after the first day of a month, he or she shall be deemed to have attained it on the first day of the following month.

(2) (a) Notwithstanding the provisions of subsection (1), an employee, other than a member of the services or an educator or a member of the Agency or the Service, employed with effect from a date prior to 1 October 1993 in terms of a law repealed by this Act, shall have the right to retire from the public service at or at any time after the retirement age applicable to him or her as at 1 October 1993, and that retirement age shall not be changed without his or her consent.

[Para. (a) amended by s. 32 (1) of Act 38 of 1994 and substituted by s. 13 (a) of Act 47 of 1997.]

(b) An officer who has the right to an earlier retirement age in terms of paragraph (a), and who wishes to be so retired, shall give written notification to his or her head of department of his or her wish to be so retired, and he or she shall-

- (i) if that notification is given at least three calendar months prior to the date on which he or she attains the retirement age applicable to him or her in terms of paragraph (a), be so retired on the date on which he or she attains that age or, if he or she attains it after the first day of a month, on the first day of the following month; or
- (ii) if that notification is not given at least three calendar months prior to the date on which he or she attains the said age, be so retired on the first day of such month as the executive authority may approve, which day may not be before the date on which he or she attains the said age and not be later than the first day of the fourth month after the month in which the notification is received.

[Sub-para (ii) substituted by s. 23 (a) of Act 30 of 2007.]

(c) (i) In the case of an officer who occupies the office of head of department, he or she shall give notification of his or her wish to be retired from the public service at least six calendar months prior to the date on which he or she attains the said age, and if he or she has so given notification, the provisions of paragraph (b) (i) apply *mutatis mutandis*.

(ii) If such an officer has not so given notification at least six calendar months prior to the date on which he or she attains the said age, he or she shall be so retired on the first day of the seventh month following the month in which that notification is received.

(2A) (a) Notwithstanding the provisions of subsections (1) and (2) (a), an officer, other than a member of the services or an educator or a member of the Agency or the Service, shall have the right to retire from the public service on the date on which he or she attains the age of 55 years, or on any date after that date.

(b) The provisions of subsection (2) (b) shall apply with the necessary changes to an officer who wishes to retire in terms of paragraph (a).

[Sub-s. (2A) inserted by s. 1 (a) of Act 67 of 1996.]

(3) (a) Subject to this section and the terms and conditions of a contract contemplated in section 12 (2), an officer who occupies the office of head of department has the right to retire from the public service and he or she shall be so retired at the expiry of the term contemplated in that section, or of any extended term contemplated therein, as the case may be.

(b) If an employee so retires or is retired in terms of paragraph (a), he or she shall be deemed to have been dismissed from the public service in terms of section 17 (2) (b).

[Sub-s. (3) amended by s. 13 (b) of Act 47 of 1997 and by s. 9 (a) of Act 86 of 1998 and substituted by s. 23 (b) of Act 30 of 2007.]

(4) An officer, other than a member of the services or an educator or a member of the Agency or the Service who has reached the age of 60 years may, subject in every case to the approval of the relevant executive authority, be retired from the public service.

[Sub-s. (4) amended by s. 32 (1) of Act 38 of 1994 and substituted by s. 13 (c) of Act 47 of 1997.]

(5) (a) Subject to the terms and conditions of a contract contemplated in section 12 (2), an executive authority may, at the request of an employee occupying the office of head of department, allow him or her to retire from the public service before the expiry of the term contemplated in section 12 (2), or any extended term contemplated therein, and notwithstanding the absence of any reason for dismissal in terms of section 17 (2) or the contract concluded with the employee, as the case may be, if sufficient reason exists for the retirement.

[Para. (a) amended by s. 32 (1) of Act 38 of 1994 and substituted by s. 13 (d) of Act 47 of 1997, by s. 9 (b) of Act 86 of 1998 and by s. 23 (c) of Act 30 of 2007.]

(b) If an officer is allowed to retire from the public service in terms of paragraph (a), he or she shall, notwithstanding anything to the contrary contained in subsection (4), be deemed to have retired in terms of that subsection, and he or she shall be entitled to such pension as he or she would have been entitled to if he or she had retired from the public service in terms of that subsection.

(6) (a) An executive authority may, at the request of an employee, allow him or her to retire from the public service before reaching the age of 60 years, notwithstanding the absence of any reason for dismissal in terms of section 17 (2), if sufficient reason exists for the retirement.

(b) If an employee is allowed to so retire, he or she shall, notwithstanding anything to the contrary contained in subsection (4), be deemed to have retired in terms of that subsection, and he or she shall be entitled to such pension as he or she would have been entitled to if he or she had retired from the public service in terms of that subsection.

[Sub-s. (6) amended by s. 1 (b) of Act 67 of 1996 and by s. 13 (e) of Act 47 of 1997 and substituted by s. 23 (d) of Act 30 of 2007.]

(7) If it is in the public interest to retain an officer, other than a member of the services or an educator or a member of the Agency or the Service, in his or her post beyond the age at which he or she is required to be retired in terms of subsection (1), he or she may, with his or her consent and with the approval of the relevant executive authority, be so retained from time to time for further periods which shall not, except with the approval of Parliament granted by resolution, exceed in the aggregate two years.

[Sub-s. (7) amended by s. 32 (1) of Act 38 of 1994 and substituted by s. 13 (f) of Act 47 of 1997.]

16A Failure to comply with Act

(1) An executive authority shall-

- (a) immediately take appropriate disciplinary steps against a head of department who does not comply with a provision of this Act or a regulation, determination or directive made thereunder;

- (b) immediately report to the Minister the particulars of such non-compliance; and
 - (c) as soon as possible report to the Minister the particulars of the disciplinary steps taken.
- (2) A head of a department shall-
- (a) immediately take appropriate disciplinary steps against an employee of the department who does not comply with a provision of this Act or a regulation, determination or directive made thereunder;
 - (b) immediately report to the Director-General: Public Service and Administration the particulars of such non-compliance; and
 - (c) as soon as possible report to that Director-General the particulars of the disciplinary steps taken.

(3) The Minister may report to the Cabinet or, through the relevant Premier, to the Executive Council of the relevant province any non-compliance by an executive authority with a provision of this Act or a regulation, determination or directive made thereunder.

(4) The Minister shall at least annually submit to the relevant committees of Parliament dealing with matters relating to the public service and, through the relevant Premier, to any similar committee of the relevant provincial legislature, every non-compliance with a provision of this Act or a regulation, determination or directive made thereunder-

- (a) reported in terms of subsection (1) or (2); or
- (b) confirmed in an investigation in terms of section 5 (8).

[S. 16A inserted by s. 24 of Act 30 of 2007.]

16B Discipline

(1) Subject to subsection (2), when a chairperson of a disciplinary hearing pronounces a sanction in respect of an employee found guilty of misconduct, the following persons shall give effect to the sanction:

- (a) In the case of a head of department, the relevant executive authority; and
- (b) in the case of any other employee, the relevant head of department.

(2) Where an employee may lodge an internal appeal provided for in a collective agreement or in a determination in terms of section 3 (5), a sanction referred to in subsection (1) may only be given effect to-

- (a) if an internal appeal is lodged, after the appeal authority has confirmed the sanction pronounced by the chairperson of a disciplinary hearing; or
- (b) if no internal appeal is lodged, after the expiry of the period within which the appeal must have been lodged.

(3) The Minister shall by regulation make provision for-

- (a) a power for chairpersons of disciplinary hearings to summon employees and other persons as witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and other objects; and
- (b) travel, subsistence and other costs and other fees for witnesses at disciplinary hearings.

(4) If an employee of a department (in this subsection referred to as 'the new

department'), is alleged to have committed misconduct in a department by whom he or she was employed previously (in paragraph (b) referred to as 'the former department'), the head of the new department-

- (a) may institute or continue disciplinary steps against that employee; and
- (b) shall institute or continue such steps if so requested-
 - (i) by the former executive authority if the relevant employee is a head of department; or
 - (ii) by the head of the former department, in the case of any other employee.

(5) In order to give effect to subsection (4), the two relevant departments shall co-operate, which may include exchanging documents and furnishing such written and oral evidence as may be necessary.

(6) If notice of a disciplinary hearing was given to an employee, the relevant executive authority shall not agree to a period of notice of resignation which is shorter than the prescribed period of notice of resignation applicable to that employee.

[S. 16B inserted by s. 24 of Act 30 of 2007.]

17 Termination of employment

(1) (a) Subject to paragraph (b), the power to dismiss an employee shall vest in the relevant executive authority and shall be exercised in accordance with the Labour Relations Act.

(b) The power to dismiss an employee on account of misconduct in terms of subsection (2) (d) shall be exercised as provided for in section 16B (1).

(2) An employee of a department, other than a member of the services, an educator or a member of the Intelligence Services, may be dismissed on account of-

- (a) incapacity due to ill health or injury;
- (b) operational requirements of the department as provided for in the Labour Relations Act;
- (c) incapacity due to poor work performance; or
- (d) misconduct.

(3) (a) (i) An employee, other than a member of the services or an educator or a member of the Intelligence Services, who absents himself or herself from his or her official duties without permission of his or her head of department, office or institution for a period exceeding one calendar month, shall be deemed to have been dismissed from the public service on account of misconduct with effect from the date immediately succeeding his or her last day of attendance at his or her place of duty.

(ii) If such an employee assumes other employment, he or she shall be deemed to have been dismissed as aforesaid irrespective of whether the said period has expired or not.

(b) If an employee who is deemed to have been so dismissed, reports for duty at any time after the expiry of the period referred to in paragraph (a), the relevant executive authority may, on good cause shown and notwithstanding anything to the contrary contained in any law, approve the reinstatement of that employee in the public service in his or her former or any other post or position, and in such a case the period of his or her absence from official duty shall be deemed to be absence on vacation leave without pay or leave on such other conditions as the said authority may determine.

(4) (a) A person-

(i) dismissed in terms of subsection (2) (d) for misconduct, including misconduct relating to the offering or receipt of any undue gratification or the facilitation of such offering or receipt; or

(ii) deemed to be dismissed in terms of subsection (3),

may only be re-employed by any department after the expiration of a prescribed period.

(b) Different periods may be so prescribed for different categories of misconduct.

(c) Notwithstanding the condition contained in paragraph (a) that an employee may only be re-employed in any department after the expiration of a prescribed period, the Minister may prescribe acts of misconduct in respect of which no period need expire before a person is again employed in a department.

(d) Subject to paragraph (a), a decision whether or not to re-employ a person dismissed in terms of subsection (2) (d) shall be taken with due regard to the nature of the misconduct concerned.

[S. 17 amended by s. 32 (1) of Act 38 of 1994 and by s. 14 of Act 47 of 1997 and substituted by s. 25 of Act 30 of 2007.]

CHAPTER VI

[Chapter VI repealed by s. 10 of Act 86 of 1998.]

18

[S. 18 amended by s. 32 (1) of Act 38 of 1994, substituted by s. 15 of Act 47 of 1997 and repealed by s. 10 of Act 86 of 1998.]

19

[S. 19 substituted by s. 16 of Act 47 of 1997 and repealed by s. 10 of Act 86 of 1998.]

[NB: Notwithstanding the repeal of Chapter VI of the principal Act by this Act, the provisions relating to inefficiency and misconduct shall have the effect and status of a collective agreement which is binding on the State, the parties to the Public Service Co-ordinating Bargaining Council and all employees in the public service affected thereby, and for the purposes of the said provisions, section 19 of the principal Act shall be deemed to have been amended-

(a) by the substitution for subsection (1) of the following subsection:

'(1) If an executive authority has reason to believe that a head of department is unfit for his or her duties or incapable of carrying them out efficiently, the said authority may, unless the terms and conditions of a contract contemplated in section 12 (2) provide otherwise, appoint a person or persons to inquire into the relevant allegations.'; and

(b) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

'(b) a reference in section 18 (9) (a) and (10) to (12) to the executive authority shall be construed as a reference to the President or, in the case of a provincial office or department, the relevant Premier; and'.

20

[S. 20 amended by s. 32 (1) of Act 38 of 1994 and by s. 17 of Act 47 of 1997 and repealed by s. 10 of Act 86 of 1998.]

21

[S. 21 amended by s. 32 (1) of Act 38 of 1994, substituted by s. 18 of Act 47 of 1997 and repealed by s. 10 of Act 86 of 1998.]

22

[S. 22 substituted by s. 19 of Act 47 of 1997 and repealed by s. 10 of Act 86 of 1998.]

23

[S. 23 amended by s. 20 of Act 47 of 1997 and repealed by s. 10 of Act 86 of 1998.]

24

[S. 24 substituted by s. 21 of Act 47 of 1997 and repealed by s. 10 of Act 86 of 1998.]

25

[S. 25 amended by s. 22 of Act 47 of 1997 and repealed by s. 10 of Act 86 of 1998.]

26

[S. 26 substituted by s. 23 of Act 47 of 1997 and repealed by s. 10 of Act 86 of 1998.]

27

[S. 27 substituted by s. 24 of Act 47 of 1998 and repealed by s. 10 of Act 86 of 1998.]

[NB: Notwithstanding the repeal of Chapter VI of the principal Act by this Act, the provisions relating to inefficiency and misconduct shall have the effect and status of a collective agreement which is binding on the State, the parties to the Public Service Co-ordinating Bargaining Council and all employees in the public service affected thereby, and for the purposes of the said provisions, section 27 of the principal Act shall be deemed to have been amended-

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

'(a) When a head of department is accused of misconduct, the relevant executive authority may, unless the terms and conditions of a contract contemplated in section 12 (2) provide otherwise, appoint a person to investigate the matter and report to him or her thereon, whereupon the said authority may charge that head of department with misconduct.'; and

(b) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

- '(b) a reference in section 26 to the executive authority shall be construed as a reference to the President or, in the case of a provincial office or department, the relevant Premier;'.]

CHAPTER VII

OBLIGATIONS, RIGHTS AND PRIVILEGES OF EMPLOYEES (ss 28-36)

28 Rights and obligations

An employee shall fulfil the obligations imposed upon him by this Act or any other law, and he or she shall have the rights and may be granted the privileges which are prescribed by or under this Act or any other law.

29 Saving regarding rights and obligations

No provision of this Act shall be construed as abrogating or derogating from any existing, accruing or contingent right, liability or obligation of any person flowing from any other law.

30 Other remunerative work by employees

(1) No employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the relevant department, except with the written permission of the executive authority of the department.

(2) For the purposes of subsection (1) the executive authority shall at least take into account whether or not the outside work could reasonably be expected to interfere with or impede the effective or efficient performance of the employee's functions in the department or constitute a contravention of the code of conduct contemplated in section 41 (1) (b) (v).

(3) (a) The executive authority shall decide whether or not to grant permission, contemplated in subsection (1), within 30 days after the receipt of the request from the employee in question.

(b) If the executive authority fails to make a decision within the 30 day period, it would be deemed that such permission was given.

[S. 30 amended by s. 25 of Act 47 of 1997 and substituted by s. 26 of Act 30 of 2007.]

31 Unauthorized remuneration

(1) (a) (i) If any remuneration, allowance or other reward (other than remuneration contemplated in section 38 (1) or (3)), is received by an employee in connection with the performance of his or her work in the public service otherwise than in accordance with this Act or a determination by or directive of the Minister, or is received contrary to section 30, that employee shall, subject to subparagraph (iii), pay into revenue-

(aa) an amount equal to the amount of any such remuneration, allowance or reward; or

(bb) if it does not consist of money, the value thereof as determined by the head of the department in which he or she was employed, at the time of the receipt thereof.

(ii) If the employee fails to so pay into revenue the amount or value, the said head of department shall recover it from him or her by way of legal proceedings and pay it into revenue.

(iii) The employee concerned may appeal against the determination of the head of department to the relevant executive authority.

(iv) The accounting officer of the relevant department may approve that the employee concerned retains the whole or a portion of the said remuneration, allowance or reward.

[Para. (a) substituted by s. 26 (a) of Act 47 of 1997 and by s. 27 (a) of Act 30 of 2007.]

(b) If-

- (i) in the opinion of the head of department mentioned in paragraph (a) an employee has received any remuneration, allowance or other reward contemplated in that paragraph; and
- (ii) it is still in his or her possession or under his or her control or in the possession or under the control of any other person on his or her behalf, or, if it is money, has been deposited in any bank as defined in section 1 (1) of the Banks Act, 1990 (Act 94 of 1990), or a mutual bank as defined in section 1 (1) of the Mutual Banks Act, 1993 (Act 124 of 1993), in his or her name or in the name of any other person on his or her behalf,

that head of department may in writing require that employee or that other person or that financial institution not to dispose thereof, or, if it is money, not to dispose of a corresponding sum of money, as the case may be, pending the outcome of any legal steps for the recovery of that remuneration, allowance or reward or the value thereof.

[Para. (b) substituted by s. 27 (a) of Act 30 of 2007.]

(c) A person of the financial institution contemplated in paragraph (b) who or which fails to comply with a requirement in terms of that paragraph, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

(d) The provisions of this section shall also apply to an officer who is a head of department, and in such a case a reference to a head of department shall be construed as a reference to the Treasury.

(2) (a) Subject to paragraph (b), any salary, allowance, fee, bonus or honorarium which may be payable in respect of the services of an employee placed temporarily at the disposal of an organ of state, another government or body contemplated in section 15 (3) shall be paid into revenue.

[Para. (a) substituted by s. 27 (b) of Act 30 of 2007.]

(b) In circumstances regarded by the relevant executive authority as exceptional, the said authority may approve of paying out of revenue an amount equal to that salary, allowance, fee, bonus or honorarium, or a portion thereof, to the employee concerned.

[Sub-s. (2) substituted by s. 26 (b) of Act 47 of 1997.]

(3) For the purposes of subsection (1) (a) (i)-

- (a) **'this Act'** includes any law repealed by this Act;
- (b) **'determination of the Minister'** includes any recommendation of the Public Service Commission established by section 209 (1) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), or of any commission for administration, public service commission or other like institution established by or under, or which functioned in accordance with, any such law; and
- (c) **'section 30 (b)'** includes any corresponding provision of any such

law.

[Sub-s. (3) added by s. 26 (c) of Act 47 of 1997.]

32 Direction to perform other functions or to act in another post

(1) Subject to such conditions as may be prescribed, an executive authority or the head of a department may direct an employee under his or her control temporarily to perform any functions other than those ordinarily assigned to the employee or appropriate to his or her grade or post.

(2) (a) An employee may be directed in writing to act in a post subject to such conditions as may be prescribed.

(b) Such acting appointment shall be made-

- (i) in the case of the post of head of department, by the relevant executive authority;
- (ii) in the case of any other post, by the employee occupying the post, unless otherwise determined by the head of department.

(3) The performance evaluation of the relevant employee shall take place with due regard to a direction in terms of subsection (1) or (2).

[S. 32 substituted by s. 28 of Act 30 of 2007.]

33 Cession of emoluments

No employee shall without written approval of the accounting officer, as defined in section 1 of the Public Finance Management Act, of the department or office in which he or she is employed, cede the right to the whole or any part of any salary or allowance payable to him or her.

[S. 33 substituted by s. 29 of Act 30 of 2007.]

34 Non-reduction of salaries

The salary of an employee shall not be reduced without his or her consent except in terms of section 38, an Act of Parliament or a collective agreement.

[S. 34 substituted by s. 27 of Act 47 of 1997, by s. 11 of Act 86 of 1998 and by s. 30 of Act 30 of 2007.]

35 Grievances of employees

(1) For the purposes of asserting his or her right to have his or her complaint or grievance concerning an official act or omission investigated and considered by the Commission, an employee may lodge that complaint or grievance with the relevant executive authority under the prescribed circumstances, on the prescribed conditions and in the prescribed manner, and if that complaint or grievance is not resolved to the satisfaction of such an employee, that executive authority shall submit the complaint or grievance to the Commission in the prescribed manner and at the prescribed time or within the prescribed period.

(2) After the Commission has investigated and considered any such complaint or grievance, the Commission may recommend that the relevant executive authority acts in terms of a particular provision or particular provisions of this Act or any other law if, having regard to the circumstances of the case, the Commission considers it appropriate to make such a recommendation.

(3) For the purposes of subsection (1), the powers conferred upon the Commission by section 11 of the Commission Act shall be deemed to include the

power to make rules which are not inconsistent with the provisions of this section as to the investigation of complaints or grievances concerning official acts or omissions, and '**prescribed**' means prescribed by the Commission by rule under the Commission Act.

[S. 35 substituted by s. 28 of Act 47 of 1997.]

[NB: S. 35 has been substituted by s. 31 of the Public Service Amendment Act 30 of 2007, a provision which will be put into operation by proclamation. See PENDLEX.]

36 Employees as candidates for, and becoming members of, legislatures

(1) An employee may be a candidate for election as a member of the National Assembly, a provincial legislature or a Municipal Council, subject to the code of conduct contemplated in section 41 (1) (b) (v) and any other prescribed limits and conditions.

(2) An employee elected as a member of the National Assembly or a provincial legislature or a full-time member of a Municipal Council shall be deemed to have resigned from the public service with effect from the date immediately before the date he or she assumes office as such member.

(3) An employee appointed as a permanent delegate of the National Council of Provinces shall be deemed to have resigned from the public service with effect from the date immediately before the date he or she assumes office as such delegate.

(4) An employee elected as a member of a Municipal Council-

- (a) may only remain an employee in the public service if he or she serves as a part-time member of the Council; and
- (b) shall comply with section 30 (1).

[S. 36 substituted by s. 32 of Act 30 of 2007.]

CHAPTER VIII MISCELLANEOUS (ss 37-44)

37 Remuneration of employees

(1) Employees shall be paid the salaries and allowances in accordance with the salary scale and salary level determined by the Minister in terms of section 3 (5).

(2) An executive authority may, only if it is allowed by regulation and to the extent prescribed-

- (a) grant employees or classes of employees of the relevant department on appointment or transfer salaries higher than the minimum amounts of the appropriate salary levels of the applicable salary scales;
- (b) grant employees or classes of employees of the relevant department special advancement in salaries within the salary level of the salary scale applicable to them; and
- (c) grant an employee of the relevant department special advancement in salary within the salary level of the salary scale applicable to him or her or grant him or her a salary in accordance with a higher salary level or any other reward, if he or she has exceptional ability or special qualifications or has rendered meritorious service and it is in the public interest.

[S. 37 amended by s. 29 of Act 47 of 1997 and substituted by s. 33 of Act 30 of 2007.]

38 Wrongly granted remuneration

(1) (a) If an incorrect salary, salary level, salary scale or reward is awarded to an employee, the relevant executive authority shall correct it with effect from the date on which it commenced.

(b) Paragraph (a) shall apply notwithstanding the fact that the employee concerned was unaware that an error had been made in the case where the correction amounts to a reduction of his or her salary.

[Sub-s. (1) substituted by s. 34 (a) of Act 30 of 2007.]

(2) If an employee contemplated in subsection (1) has in respect of his or her salary, including any portion of any allowance or other remuneration or any other benefit calculated on his or her basic salary or salary scale or awarded to him or her by reason of his or her basic salary-

- (a) been underpaid, an amount equal to the amount of the underpayment shall be paid to him or her, and that other benefit which he or she did not receive, shall be awarded to him or her as from a current date; or
- (b) been overpaid or received any such other benefit not due to him or her-
 - (i) an amount equal to the amount of the overpayment shall be recovered from him or her by way of the deduction from his or her salary of such instalments as the relevant accounting officer may determine if he or she is in the service of the State, or, if he or she is not so in service, by way of deduction from any moneys owing to him or her by the State, or by way of legal proceedings, or partly in the former manner and partly in the latter manner;

[Sub-para. (i) substituted by s. 34 (c) of Act 30 of 2007.]

- (ii) that other benefit shall be discontinued or withdrawn as from a current date, but the employee concerned shall have the right to be compensated by the State for any patrimonial loss which he or she has suffered or will suffer as a result of that discontinuation or withdrawal.

[Sub-s. (2) amended by s. 34 (b) of Act 30 of 2007.]

(3) The accounting officer of the relevant department may remit the amount of an overpayment to be recovered in terms of subsection (2) (b) in whole or in part.

[Sub-s. (3) substituted by s. 34 (d) of Act 30 of 2007.]

39

[S. 39 repealed by s. 2 (1) of Act 40 of 2002.]

40 Limitation of liability

Whenever any person is conveyed in or makes use of any vehicle, aircraft or vessel which is the property of the State, the State or a person in the service of the State shall not be liable to such person or his or her spouse, parent, child or other dependant for any loss or damage resulting from any bodily injury, loss of life or loss

of or damage to property caused by or arising out of or in any way connected with the conveyance in or the use of such vehicle, aircraft or vessel, unless such person is so conveyed or makes use thereof in, or in the interest of, the performance of the functions of the State: Provided that the provisions of this section shall not affect the liability of a person in the service of the State who wilfully causes the said loss or damage.

41 Regulations

(1) Subject to the Labour Relations Act and any collective agreement, the Minister may make regulations regarding-

- (a) any matter required or permitted by this Act to be prescribed;
- (b) any matter referred to in section 3 (1), including, but not limited to-
 - (i) the allocation, transfer and abolition of functions in terms of section 3 (4) and the staff performing such functions;
 - (ii) employment additional to the establishment and restrictions on the employment of persons, other than permanently or for fixed periods or specific tasks, in the public service as a whole;
 - (iii) the appointment of unpaid voluntary workers who are not employees and their functions;
 - (iv) the co-ordination of work in a department or between two or more departments;
 - (v) a code of conduct for employees;
 - (vi) the disclosure of financial interests by all employees or particular categories of employees and the monitoring of such interests; and
 - (vii) the position of employees not absorbed into a post upon its re-grading;
- (c) the reporting on and assessment of compliance with this Act and the review for appropriateness and effectiveness of any regulations, determinations and directives made under this Act;
- (d) the designation or establishment of one or more authorities vested with the power to authorise a deviation from any regulation under justifiable circumstances, including the power to authorise such deviation with retrospective effect for purposes of ensuring equality; and
- (e) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) Different regulations may be made to suit the varying requirements of particular departments or divisions of departments, of particular categories of employees or of particular kinds of employment in the public service.

(3) The Minister may issue directives which are not inconsistent with this Act to elucidate or supplement any regulation.

[S. 41 amended by s. 30 of Act 47 of 1997 and substituted by s. 35 of Act 30 of 2007.]

42 Public Service Staff Code

(1) Subject to the provisions of section 5 (4)-

- (a) any standing determination of a general nature made by the Minister; and
- (b) any directive by the Minister to elucidate or supplement any regulation,

and which is not inconsistent with this Act may be included in a code to be called the Public Service Staff Code.

[Sub-s. (1) substituted by s. 31 of Act 47 of 1997.]

(2) The provisions of section 41 (2) shall apply *mutatis mutandis* in respect of the Public Service Staff Code.

(3) The provisions of the Public Service Staff Code shall be binding upon any department, employee in so far as they apply to that department or employee.

[NB: S. 42 has been substituted by s. 36 of the Public Service Amendment Act 30 of 2007, a provision which will be put into operation by proclamation. See PENDLEX.]

42A Delegation

- (1) (a) The Minister may-
 - (i) delegate to the Director-General: Public Service and Administration any power conferred on the Minister by this Act, except the power to make regulations; or
 - (ii) authorise that Director-General to perform any duty imposed on the Minister by this Act.
- (b) The Director-General: Public Service and Administration may-
 - (i) delegate to any employee of his or her department any power delegated to him or her in terms of paragraph (a); or
 - (ii) authorise that employee to perform any duty he or she is authorised to perform in terms of paragraph (a).
- (2) (a) Subject to subsection (3) (b), the Premier of a province may-
 - (i) delegate to the head of the Office of a Premier in the province any power conferred on the Premier by this Act; or
 - (ii) authorise that head to perform any duty imposed on the Premier by this Act.
- (b) The head of the Office of a Premier may-
 - (i) delegate to any employee in that Office any power delegated to him or her in terms of paragraph (a); or
 - (ii) authorise that employee to perform any duty he or she is authorised to perform in terms of paragraph (a).
- (3) The executive authority referred to in section 12 (1) may, in the case of-
 - (a) the President, delegate to the Deputy President or a Minister any power conferred on the President by section 12; or
 - (b) the Premier of a province, authorise a Member of the relevant Executive Council to perform any duty imposed on the Premier by section 12.
- (4) Subject to subsection (3), an executive authority may-
 - (a) delegate to the head of a department any power conferred on the executive authority by this Act; or
 - (b) authorise that head to perform any duty imposed on the executive authority by this Act.
- (5) The head of a department or any other functionary may-
 - (a) delegate to any employee of the department any power-

- (i) conferred on that head by this Act; or
- (ii) delegated to that head in terms of subsection (4); or
- (b) authorise that employee to perform any duty-
 - (i) imposed on that head by this Act; or
 - (ii) that that head is authorised to perform in terms of subsection (4).

(6) Any person to whom a power has been delegated or who has been authorised to perform a duty under this section shall exercise that power or perform that duty subject to the conditions the person who made the delegation or granted the authorisation considers appropriate.

(7) Any delegation of a power or authorisation to perform a duty in terms of this section-

- (a) shall be in writing;
- (b) does not prevent the person who made the delegation or granted the authorisation from exercising that power or performing that duty himself or herself; and
- (c) may at any time be withdrawn in writing by that person.

[S. 42A inserted by s. 32 of Act 47 of 1997 and substituted by s. 37 of Act 30 of 2007.]

43 Repeal of laws and savings

(1) Subject to the provisions of subsection (2), the laws mentioned in Schedule 4 are hereby repealed to the extent indicated in the third column of that Schedule.

[Sub-s. (1) substituted by s. 12 of Act 86 of 1998.]

(2) Anything done under any law repealed by subsection (1) and which could be done under a provision of this Act, shall be deemed to have been done under that provision.

[Sub-s. (2) substituted by s. 33 (a) of Act 47 of 1997.]

(3) to (5) inclusive

[Sub-ss. (3) to (5) inclusive deleted by s. 33 (b) of Act 47 of 1997.]

44 Short title

This Act shall be called the Public Service Act, 1994.

Schedule 1 NATIONAL DEPARTMENTS AND OFFICES OF PREMIER AND HEADS THEREOF

(Section 7 (2) and (3))

[Schedule 1 amended by Proc 106 of 17 June 1994, by s. 32 (1) of Act 38 of 1994, by Proc 24 of 13 April 1995, by Proc 49 of 5 May 1995, by Proc R63 of 23 June 1995, by Proc 78 of 25 August 1995, by Proc R104 of 1 December 1995, by Proc 14 of 1 April 1996, by Proc 44 of 8 August 1996, by Proc 51 of 6 September 1996, by Proc 63 of 25 October 1996, by Proc 32 of 18 April 1997, by s. 34 (1) of Act 34 of 1997, by Proc 7 of 13 February 1998 and by s. 6 of Act 10 of 1998, substituted by s. 13 of

Act 86 of 1998, amended by Proc 82 of 30 July 1999, by Proc 104 of 8 October 1999, by Proc 117 of 19 November 1999, by Proc 118 of 19 November 1999, by Proc 17 of 31 March 2000, by Proc 25 of 2 May 2000, by Proc 37 of 7 July 2000, by Proc 39 of 14 July 2000, by Proc 71 of 1 December 2000, by Proc 62 of 26 July 2002 and by Proc R14 of 28 February 2003, substituted by s. 38 of Act 30 of 2007, amended by Proc R27 of 11 July 2008, substituted by Proc 48 of 7 July 2009 and amended by Proc 59 of 11 September 2009, by Proc R82 of 1 December 2009 and by Proc 92 of 28 December 2009.]

Column 1	Column 2
NATIONAL DEPARTMENTS	HEADS OF NATIONAL DEPARTMENTS
Department of Agriculture	Director-General: Agriculture
Department of Agriculture, Forestry and Fisheries	Director-General: Agriculture, Forestry and Fisheries
Department of Arts and Culture	Director-General: Arts and Culture
Department of Basic Education	Director-General: Basic Education
Department of Communications	Director-General: Communications
Department of Cooperative Governance	Director-General: Cooperative Governance
Department of Correctional Services	Commissioner: Correctional Services
Department of Defence	Secretary for Defence
Department of Education	Director-General: Education
Department of Energy	Director-General: Energy
Department of Environmental Affairs	Director-General: Environmental Affairs
Department of Environmental Affairs and Tourism	Director-General: Environmental Affairs and Tourism
Department of Health	Director-General: Health
Department of Higher Education and Training	Director-General: Higher Education and Training
Department of Home Affairs	Director-General: Home Affairs
Department of Human Settlements	Director-General: Human Settlements
Department of International Relations and Cooperation	Director-General: International Relations and Cooperation
Department of Justice and Constitutional Development	Director-General: Justice and Constitutional Development
Department of Labour	Director-General: Labour
Department of Military Veterans	Director-General: Military Veterans
Department of Mineral Resources	Director-General: Mineral Resources Resources

Department of Minerals and Energy	Director-General: Minerals and Energy
Department of Police	National Commissioner: South African Police Service
Department of Public Enterprises	Director-General: Public Enterprises
Department of Public Service and Administration	Director-General: Public Service and Administration
Department of Public Works	Director-General: Public Works
Department of Rural Development and Land Reform	Director-General: Rural Development and Land Reform
Department of Science and Technology	Director-General: Science and Technology
Department of Social Development	Director-General: Social Development
Department of Tourism	Director-General: Tourism
Department of Trade and Industry	Director-General: Trade and Industry
Department of Traditional Affairs	Director-General: Traditional Affairs
Department of Transport	Director-General: Transport
Department of Water Affairs	Director-General: Water Affairs
Department of Water Affairs and Forestry	Director-General: Water Affairs and Forestry
Department of Women, Children and People with Disabilities	Director-General: Women, Children and People with Disabilities
Economic Development Department	Director-General: Economic Development
Government Communication and Information System	Director-General: Government Communication and Information System
Independent Complaints Directorate	Executive Director: Independent Complaints Directorate
National Treasury	Director-General: National Treasury
Office of the Public Service Commission	Director-General: Office of the Public Service Commission
Public Administration Leadership and Management Academy	Director-General: Public Administration Leadership and Management Academy
South African National Academy of Intelligence	Chief Executive Officer: South African National Academy of Intelligence
Sport and Recreation South Africa	Director-General: Sport and Recreation South Africa
State Security Agency	Director-General: State Security Agency
Statistics South Africa	Statistician-General: Statistics South Africa
The Presidency	Director-General: The Presidency

OFFICES OF PREMIER	HEADS OF OFFICES OF PREMIER
Office of the Premier: Eastern Cape	Director-General: Office of the Premier of Eastern Cape
Office of the Premier: Free State	Director-General: Office of the Premier of Free State
Office of the Premier: Gauteng	Director-General: Office of the Premier of Gauteng
Office of the Premier: KwaZulu-Natal	Director-General: Office of the Premier of KwaZulu-Natal
Office of the Premier: Limpopo	Director-General: Office of the Premier of Limpopo
Office of the Premier: Mpumalanga	Director-General: Office of the Premier of Mpumalanga
Office of the Premier: Northern Cape	Director-General: Office of the Premier of Northern Cape
Office of the Premier: North West	Director-General: Office of the Premier of North West
Office of the Premier: Western Cape	Director-General: Office of the Premier of Western Cape

Schedule 2 **PROVINCIAL DEPARTMENTS AND HEADS THEREOF**

(Section 7 (2) and (3))

[Schedule 2 amended by Proc 6 of 9 February 1996, by Proc 14 of 1 April 1996, by Proc 51 of 6 September 1996, by Proc 13 of 31 January 1997, by Proc 21 of 28 February 1997, by Procs 6 and 7 of 13 February 1998, by Proc 62 of 12 June 1998 and by Proc 82 of 27 August 1998, substituted by s. 14 of Act 86 of 1998 and amended by Proc 105 of 8 October 1999, by Proc 119 of 19 November 1999 (as corrected by GenN 288 of 21 January 2000), by Proc 32 of 15 June 2000, by Proc 5 of 26 January 2001, by Proc R38 of 27 July 2001, by Proc R41 of 24 August 2001, by Proc R44 of 14 September 2001, by Proc R55 of 9 November 2001, by Proc R711 of 20 May 2002, by Proc R49 of 14 June 2002, by Proc R79 of 15 November 2002, by Proc R4 of 7 February 2003, by Proc R64 of 19 September 2003, by Proc 34 of 25 June 2004 (as corrected by GN 1371 of 26 November 2004), by Proc R42 of 20 August 2004, by Proc R48 of 15 October 2004, by Proc R50 of 5 November 2004, by Proc R64 of 31 December 2004, by Proc R7 of 11 February 2005, by Proc R33 of 15 July 2005, by Proc R64 of 28 October 2005, by Proc 18 of 28 April 2006, by Proc R26 of 14 July 2006 and by Proc R11 of 18 May 2007, substituted by s. 39 of Act 30 of 2007 and amended by Procs R9, R10 and R14 of 1 April 2008, by Proc 32 of 15 August 2008, by Proc 40 of 3 July 2009, by Proc 57 of 4 September 2009, by Proc 64 of 18 September 2009 and by Proc 73 of 20 November 2009.]

Column 1	Column 2
Eastern Cape	
Department of Agriculture	Head: Agriculture
Department of Economic Affairs, Environment and Tourism	Head: Economic Affairs, Environment and Tourism
Department of Education	Head: Education
Department of Health	Head: Health

Department of Housing	Head: Housing
Department of Local Government and Traditional Affairs	Head: Local Government and Traditional Affairs
Department of Public Works	Head: Public Works
Department of Roads and Transport	Head: Roads and Transport
Department of Safety and Liaison	Head: Safety and Liaison
Department of Social Development	Head: Social Development
Department of Sport, Recreation, Arts and Culture	Head: Sport, Recreation, Arts and Culture
Provincial Treasury	Head: Provincial Treasury

Column 1	Column 2
Free State	
Department of Agriculture	Head: Agriculture
Department of Co-operative Governance and Traditional Affairs	Head: Co-operative Governance and Traditional Affairs
Department of Economic Development, Tourism Development, Tourism and Environmental Affairs	Head: Economic Development, Tourism and Environmental Affairs
Department of Education	Head: Education
Department of Health	Head: Health
Department of Human Settlements	Head: Human Settlements
Department of Police, Roads and Transport	Head: Police, Roads and Transport
Department of Public Works and Rural Development	Head: Public Works and Rural Development
Department of Social Development	Head: Social Development
Department of Sport, Arts, Culture and Recreation	Head: Sport, Arts, Culture and Recreation
Free State Provincial Treasury	Head: Free State Provincial Treasury

Column 1	Column 2
Gauteng	
Department of Agriculture and Rural Development	Head: Agriculture and Rural Development
Department of Community Safety	Head: Community Safety
Department of Economic Development	Head: Economic Development
Department of Education	Head: Education
Department of Finance	Head: Finance
Department of Health and Social Development	Head: Health and Social Development
Department of Infrastructure Development	Head: Infrastructure Development
Department of Local Government and Human Settlements	Head: Local Government and Human Settlements
Department of Roads and Transport	Head: Roads and Transport
Department of Sport, Arts, Culture and Recreation	Head: Sport, Arts, Culture and Recreation

Recreation

Column 1	Column 2
KwaZulu-Natal	
Department of Agriculture, Environmental Affairs and Rural Development	Head: Agriculture, Environmental Affairs and Rural Development
Department of Arts and Culture	Head: Arts and Culture
Department of Community Safety and Liaison	Head: Community Safety and Liaison
Department of Co-operative Governance and Traditional Affairs	Head: Co-operative Governance and Traditional Affairs
Department of Economic Development and Tourism	Head: Economic Development and Tourism
Department of Education	Head: Education
Department of Finance	Head: Finance
Department of Health	Head: Health
Department of Human Settlements	Head: Human Settlements
Department of Public Works	Head: Public Works
Department of Royal Household	Head: Royal Household
Department of Social Development	Head: Social Development
Department of Sport and Recreation	Head: Sport and Recreation
Department of Transport	Head: Transport

Column 1	Column 2
Limpopo	
Department of Agriculture	Head: Agriculture
Department of Economic Development, Environment and Tourism	Head: Economic Development, Environment and Tourism
Department of Education	Head: Education
Department of Health and Social Development	Head: Health and Social Development
Department of Local Government and Housing	Head: Local Government and Housing
Department of Public Works	Head: Public Works
Department of Roads and Transport	Head: Roads and Transport
Department of Safety, Security and Liaison	Head: Safety, Security and Liaison
Department of Sport, Arts and Culture	Head: Sport, Arts and Culture
Provincial Treasury	Head: Provincial Treasury

Column 1	Column 2
Mpumalanga	

Department of Agriculture, Rural Development and Land Administration	Head: Agriculture, Rural Development and Land Administration
Department of Co-operative Governance and Traditional Affairs	Head: Co-operative Governance and Traditional Affairs
Department of Culture, Sport and Recreation	Head: Culture, Sport and Recreation
Department of Economic Development, Environment and Tourism	Head: Economic Development, Environment and Tourism
Department of Education	Head: Education
Department of Finance	Head: Finance
Department of Health	Head: Health
Department of Human Settlements	Head: Human Settlements
Department of Public Works, Roads and Transport	Head: Public Works, Roads and Transport
Department for Safety, Security and Liaison	Head: Safety, Security and Liaison
Department of Social Development	Head: Social Development

Column 1	Column 2
Northern Cape	
Department of Agriculture, Land Reform and Rural Development	Head: Agriculture, Land Reform and Rural Development
Department of Co-operative Governance, Human Settlements and Traditional Affairs	Head: Co-operative Governance, Human Settlements and Traditional Affairs
Department of Economic Development and Tourism	Head: Economic Development and Tourism
Department of Education	Head: Education
Department of Environment and Nature Conservation	Head: Environment and Nature Conservation
Department of Health	Head: Health
Department [of] Roads and Public Works	Head: Roads and Public Works
Department of Social Development	Head: Social Development
Department of Sport, Arts and Culture	Head: Sport, Arts and Culture
Department of Transport, Safety and Liaison	Head: Transport, Safety and Liaison
Provincial Treasury	Head: Provincial Treasury

Column 1	Column 2
North West	
Department of Agriculture, Conservation, Environment and Rural Development	Head: Agriculture, Conservation, Environment and Rural Development
Department of Economic Development and Tourism	Head: Economic Development and Tourism
Department of Education	Head: Education
Department of Health and Social Development	Head: Health and Social Development
Department of Human Settlements	Head: Human Settlements
Department of Local Government and Traditional Affairs	Head: Local Government and Traditional Affairs

Department of Public Safety	Head: Public Safety
Department of Public Works, Roads and Transport	Head: Public Works, Roads and Transport
Department of Sport, Arts and Culture	Head: Sport, Arts and Culture
Provincial Treasury	Head: Provincial Treasury

Column 1	Column 2
Western Cape	
Department of Agriculture	Head: Agriculture
Department of Community Safety	Head: Community Safety
Department of Cultural Affairs and Sport	Head: Cultural Affairs and Sport
Department of Economic Development and Tourism	Head: Economic Development and Tourism
Department of Education	Head: Education
Department of Environmental Affairs and Development Planning	Head: Environmental Affairs and Development Planning
Department of Finance	Head: Finance
Department of Health	Head: Health
Department of Housing	Head: Housing
Department of Local Government	Head: Local Government
Department of Social Development	Head: Social Development
Department of Transport and Public Works	Head: Transport and Public Works

Schedule 3

(Section 7 (4))

[Schedule 3 inserted by s. 15 of Act 86 of 1998, amended by Proc 82 of 30 July 1999, by Proc 117 of 19 November 1999, by Proc 17 of 31 March 2000, by Proc 71 of 1 December 2000, by Proc R14 of 28 February 2003, by Proc R33 of 17 April 2003 and by Proc R39 of 22 September 2006, substituted by s. 40 of Act 30 of 2007 and amended by Procs 58 and 59 of 11 September 2009.]

PART A NATIONAL GOVERNMENT COMPONENTS AND HEADS THEREOF

(Section 7 (2) and (3))

Column 1 Name of national government component	Column 2 Designation of head of national government component	Column 3 Principal national department
Centre of Public Service Innovation	Executive Director: Centre of Public Service Innovation	Department of Public Service and Administration
COMSEC	Head: COMSEC	State Security Agency
Government Printing Works	Chief Executive Officer: Government Printing Works	Department of Home Affairs
Intelligence Academy	Head: Intelligence Academy	State Security Agency
National Intelligence Agency	Head: National Intelligence Agency	State Security Agency
South African Secret Service	Head: South African Secret Service	State Security Agency

PART B
PROVINCIAL GOVERNMENT COMPONENTS AND HEADS THEREOF

(Section 7 (2) and (3))

Column 1 Name of provincial government component	Column 2 Designation of head of provincial government component	Column 3 Principal Office of the Premier or provincial department
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Schedule 4
LAWS REPEALED BY SECTION 43 (1)

[Schedule 4, previously Schedule 3, renumbered by s. 15 of Act 86 of 1998.]

Number and year of law	Short title	Extent of repeal
Act 2 of 1972 (Lebowa)	Lebowa Public Service Act, 1972	The repeal of the whole
Act 4 of 1972 (Bophuthatswana)	Bophuthatswana Public Service Act, 1972	The repeal of the whole
Act 5 of 1972 (Gazankulu)	Gazankulu Public Service Act, 1972	The repeal of the whole
Act 5 of 1973 (QwaQwa)	QwaQwa Public Service Act, 1973	The repeal of the whole
Act 5 of 1973 (KaNgwane)	KaNgwane Public Service Act, 1973	The repeal of the whole
Act 43 of 1978 (Transkei)	Transkei Public Service Act, 1978	The repeal of the whole
Act 2 of 1981 (Ciskei)	Ciskei Public, Service Act, 1981	The repeal of the whole
Act 3 of 1981 (KwaNdebele)	KwaNdebele Public Service Act, 1981	The repeal of the whole
Act 111 of 1984	Public Service Act, 1984	The repeal of the whole
Act 67 of 1985	Public Service Laws Amendment Act, 1985	The repeal of sections 2 and 3
Act 7 of 1986 (Venda)	Venda Public Service Commission Act, 1986	The repeal of the whole
Act 8 of 1986 (Venda)	Venda Public Service Act, 1986	The repeal of the whole
Act 22 of 1986	Public Service Amendment Act, 1986	The repeal of the whole
Act 4 of 1989 (KaNgwane)	KaNgwane Public Service Commission Act, 1989	The repeal of the whole
Act 5 of 1990 (KwaZulu)	KwaZulu Public Service Act, 1990	The repeal of the whole
Act 6 of 1990 (KwaZulu)	KwaZulu Public Service Commission Act, 1990	The repeal of the whole
Act 120 of 1990	Public Service Laws Amendment Act, 1990	The repeal of sections 2, 3 and 4
Act 57 of 1991	Public Service Amendment Act, 1991	The repeal of the whole
Act 47 of 1993	Public Service Acts Amendment Act, 1993	The repeal of section 2 to 10
Act 102 of 1993	Public Service Labour Relations Act, 1993	The repeal of section 27 and the Schedule
Act 179 of 1993	Public Service Amendment Act, 1993	The repeal of the whole

**PENDLEX: Public Service Act, 1994 (Proclamation 103 of 1994)
after amendment by the Public Service Amendment Act 30 of
2007**

Section 13 - Appointment on probation

(1) If so required by regulation, an executive authority shall appoint an employee on probation for such period as may be prescribed for the relevant category of employees.

(2) After the completion of a probationary period contemplated in subsection (1) an executive authority shall confirm the probationary appointment if the employee concerned has-

- (a) performed at least satisfactorily during the period; and
- (b) complied with all the conditions to which his or her appointment was subject.

(3) If the probationary appointment is not confirmed in terms of subsection (2), the executive authority may extend the period of probation or dismiss the employee in accordance with the Labour Relations Act.

Section 14 - Transfers within public service

(1) Subject to subsections (2), (3) and (4), any employee of a department may be transferred-

- (a) within the department, by its executive authority;
- (b) to another department by the executive authorities of the two relevant departments.

(2) Such transfer shall be made in such manner and on such conditions as may be prescribed.

(3) An employee may be transferred under subsection (1) only if-

- (a) the employee requests the transfer or consents to the transfer; or
- (b) in the absence of such request or consent, after due consideration of any representations by the employee, the transfer is in the public interest.

(4) Before employees may be transferred in terms of subsection (3) (b) as a result of a determination regarding an allocation, abolition or transfer of a function, contemplated in section 3 (4) (b) or (c) or 3A (b), consultation shall take place in the applicable bargaining council established in terms of the Labour Relations Act for the public service as a whole or for a particular sector in the public service.

(5) (a) The transfer of an employee in terms of subsection (1) who is on probation shall remain subject to probation as prescribed.

(b) Any regulation so prescribed shall take due regard of the respective functions before and after the transfer to avoid detriment to the employee concerned.

(6) An employee who has been transferred to a post with-

- (a) a lower salary than his or her salary before the transfer shall not upon such transfer suffer any reduction in salary, except if he or she requested the transfer or he or she consented to the reduction; or
- (b) a higher salary than his or her salary before the transfer shall not by reason only of that transfer be entitled to the higher salary.

Section 15 - Transfer and secondment from and to public service

(1) Any person who was employed by an organ of state immediately before he or she is appointed in terms of section 9 shall be deemed to be transferred to the public service in respect of such conditions of service and to such extent as the Minister may determine in terms of section 3 (5).

(2) If it is in the public interest and if the prescribed conditions (if any) have

been complied with, the executive authority of a department may, with the approval of the employer concerned, approve the secondment of a person in the service of an organ of state, another government or any other body to the department-

- (a) for a particular service or period not exceeding the prescribed period (if any); and
- (b) on the prescribed conditions (if any) and such other conditions as agreed between the relevant functionary of the body concerned and the executive authority.

(3) (a) The executive authority of a department may second an employee of the department to another department, any other organ of state, another government or any other body-

- (i) for a particular service or period not exceeding the prescribed period (if any); and
- (ii) on the prescribed conditions (if any) and such other conditions as agreed upon between the executive authority and the relevant functionary of the body concerned.

(b) The secondment of an employee of a department may occur only if-

- (i) the employee requests, or consents to, the secondment; or
- (ii) in the absence of such request or consent, after due consideration of any representations by the employee, the secondment is in the public interest.

(c) While on secondment, an employee remains subject to this Act and any other laws applicable to employees in the public service, except to the extent otherwise agreed upon, as provided for in paragraph (a) (ii).

Section 35 - Grievances of employees

(1) For the purposes of asserting the right to have a grievance concerning an official act or omission investigated and considered by the Commission-

- (a) an employee may lodge that grievance with the relevant executive authority under the prescribed circumstances, on the prescribed conditions and in the prescribed manner; and
- (b) if that grievance is not resolved to the satisfaction of the employee, that executive authority shall submit the grievance to the Commission in the prescribed manner and within the prescribed period.

(2) After the Commission has investigated and considered any such grievance, the Commission may recommend that the relevant executive authority acts in terms of a particular provision or particular provisions of this Act or any other law if, having regard to the circumstances of the case, the Commission considers it appropriate to make such a recommendation.

(3) A head of department may lodge any such grievance with-

- (a) the relevant executive authority in terms of subsection (1); or
- (b) directly with the Commission under the prescribed circumstances, on the prescribed conditions and in the prescribed manner.

(4) (a) An employee may only refer a dispute to the relevant bargaining council in the public service or the Commission for Conciliation, Mediation and Arbitration, or institute court proceedings, in respect of a right referred to in subsection (1) if-

- (i) he or she has lodged a grievance in terms of that subsection; and
- (ii) the department does not resolve the grievance to his or her satisfaction within the period prescribed in the rules, contemplated in subsection (5) or the period for referring such dispute or instituting

such court proceedings, whichever period is the shorter.

(b) Paragraph (a) shall not apply to a head of department who has lodged a grievance directly with the Commission in terms of subsection (3) (b).

(5) For the purposes of subsections (1) and (3) (b), the powers conferred upon the Commission by section 11 of the Commission Act shall be deemed to include the power to make rules which are not inconsistent with the provisions of this section as to the investigation of grievances concerning official acts or omissions, and '**prescribed**' means prescribed by the Commission by rule under the Commission Act.

Section 42 - Public service handbooks

The Minister shall cause appropriate determinations and directives made or issued in terms of this Act to be included in one or more handbooks to be used by the public service.

¹Rule concerning conflicting legislation: The provisions of this Act prevail to the extent that there is any conflict with Chapter 2 of the National Credit Act 34 of 2005 with effect from 1 June 2006. See Schedule 1 (s. 172 (1)) to the National Credit Act 34 of 2005.

²See Proc 86 in GG 32780 of 11 December 2009

³**See Proc 86 in GG 32780 of 11 December 2009**

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