

**CHAPTER 16:04**  
**PUBLIC SERVICE ACT**

*Act 21/1995, 16/2001, 17/2002 (s. 46).*

**(The Public Service Act [Chapter 16:04] will be amended by the Judicial Service Act [Chapter 7:18] when it comes into operation)**

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**AN ACT to make further provision for the Public Service Commission and its functions; to provide for the constitution and administration of the Public Service and the conditions of service of its members; and to provide for matters connected with or incidental to the foregoing.**

[Date of commencement: 15th March, 1996.]

WHEREAS sections 73, 74 and 75 of the Constitution provide as follows:

*“73. (1) There shall be a Public Service for the administration of the country.*

*(2) An Act of Parliament shall make provision for the organization, administration and discipline of the Public Service, including the appointment of persons to posts or grades in the Public Service, their removal from office or reduction in grade, their punishment for misconduct and the fixing of their conditions of service.*

*74. (1) There shall be a Public Service Commission which shall consist of a chairman and not less than two and not more than seven other members appointed, subject to the provisions of subsection (2), by the President.*

*(2) The persons to be appointed under subsection (1) shall be chosen for their ability and experience in administration or their professional qualifications or their suitability otherwise for appointment, and the chairman and at least one other member shall be persons who have held a post or posts of a senior grade in the Public Service for periods which in the aggregate amount to at least five years.*

*75. The functions of the Public Service Commission shall be to tender such advice and do such other things in relation to the Public Service as are provided for by this Constitution or by or under an Act of Parliament.”;*

AND WHEREAS section 109 of the Constitution, in so far as it applies to the Public Service Commission, provides as follows:

*“109. (1) Save as is provided in this Constitution or an Act of Parliament, a Commission shall not, in the exercise of its functions, be subject to the direction or control of any person or authority.*

*(2) An Act of Parliament may make provision for the powers and functions of a Commission and, without prejudice to the generality of the foregoing, may make provision for the disqualifications, tenure of office and remuneration of the members thereof, and may authorize the delegation of any power or function, other than the power to make appointments to, or to make recommendations or tender advice in respect of, any office established by this Constitution.*

*(4) Any decision of a Commission shall require the concurrence of a majority of all the members thereof.*

*(5) The salary payable to a member of a Commission shall not be reduced during his tenure of office.*

*(6) No law shall—*

*(a) increase or permit an increase in—*

*(i) the fixed salary or salary scale applicable to any post, grade or rank in the Public Service.;*

*(ii) the bonuses or allowances payable to, or privileges or benefits that may be granted to, members of [the Public Service];*

*(iii) the rate of pensions, gratuities or other benefits payable to or in respect of such members; (iv) the rate of leave that may be granted to or accrued by such members; or*

*(v) the number or level of posts; or*

*(b) provide for a general decrease or permit a general decrease in the hours of work to be performed by such members; unless the Minister for the time being responsible for finance, having regard to the financial implications, whether direct or indirect, has agreed thereto.*

*(7) No law shall provide for or permit a reduction in the fixed salary or salary scale applicable to any member of the Public Service except when such member has been found guilty of misconduct or has consented to such reduction.*

*(9) If there is any alteration in the posts or grades into which the Public Service is divided, the Commission may, by order in the Gazette, specify some other rank, post or grade as being equivalent to that referred to in section 105(3), and the reference shall thereafter be construed as including a reference to the post or grade for the time being so specified.*

*(10) A person shall not be eligible for appointment as a member of a Commission if he is a member of Parliament or any local authority.*

*(11) In this section—*

*“Commission” means the Public Service Commission...”*

AND WHEREAS it is desirable to make further provision for the Public Service and the Public Service Commission:

I

PRELIMINARY

**1 Short title**

This Act may be cited as the Public Service Act [*Chapter 16:04*].

**2 Interpretation**

In this Act—

“appropriate Minister”, in relation to—

- (a) a Ministry, department or other division of the Public Service, means the Minister responsible for that Ministry, department or division;
- (b) a member or former member of the Public Service or a person who is about to become a member of the Public Service, means the Minister responsible for the Ministry, department or other division of the Public Service in which the person is or was or is to be employed, as the case may be;

“approved service” means—

- (a) the service of a government, statutory body, local authority or institution approved by the Minister, after consultation with the Commission, for the purposes of this Act; or
- (b) a uniformed force, or
- (c) the service of Parliament;

“Commission” means the Public Service Commission constituted in terms of section 74 of the Constitution;

“commissioner” means a member of the Commission, including the chairman;

“head of Ministry”, in relation to a member of the Public Service, means the Secretary of the Ministry in which he is employed or the occupier of any other office or post which the Commission, with the concurrence of the appropriate Minister, directs shall constitute his head of Ministry;

“Labour Court” means the Labour Court constituted in terms of the Labour Act [*Chapter 28:01*];

[Definition substituted by section 46 of Act 17 of 2002]

“local authority” means a municipality, town, local board or rural district council or any similar body established by or in terms of any enactment;

“member”, in relation to—

- (a) the Public Service, means a person employed in the Public Service, including a head of Ministry and a person employed under contract in terms of section *twenty-one*;
- (b) a statutory body, means a person who is appointed to a council, board or other authority which is the statutory body or which is responsible for the administration of the affairs of the statutory body;”.

[Definition substituted by section 2 of Act 16 of 2001]

“Minister” means the Minister of Public Service, Labour and Social Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“pension benefit” means any pension, commutation of a pension, gratuity or other similar allowance or benefit or any refund of pension contributions, including any interest payable thereon, for a person in respect of his service as a commissioner or member of the Public Service or in respect of any ill-health or injury arising out of and in the course of his official duties as a commissioner or member of the Public Service or for a dependant or personal representative of such person in respect of such service, ill-health or injury or on the death of such person;

“Public Service” means the Public Service referred to in subsection (1) of section 73 of the Constitution;

“recognized association or organisation” means an association or organisation declared to be a recognized association or recognized organisation, as the case may be, in terms of subsection (1) of section *twentyfour*;

“service commissioner” means a commissioner who, immediately before the date of his appointment to the Commission, was a member of the Public Service;

“service regulations” means regulations made in terms of section *thirty-one* regulating conditions of service of members of the Public Service;

“uniformed force” means the Police Force, any branch of the Defence Forces or the Prison Service.

PART II

PUBLIC SERVICE COMMISSION

**3 Term of office of commissioners**

(1) Subject to this Part, a commissioner shall hold office for such period, not exceeding three years, as the President may fix on his appointment.

(2) On the expiry of a commissioner’s term of office, the President may re-appoint him for a further period, not exceeding three years.

#### **4 Resignation of commissioners**

(1) A commissioner may resign his office at any time by giving the President, through the Minister, such notice of his intention to resign as may be fixed in his conditions of service in terms of section *five* or, if no such period has been fixed, after the expiry of thirty days from the date he gives such notice or after the expiry of such other period of notice as he and the President may agree.

(2) A commissioner shall be deemed to have resigned his office as commissioner and his office shall become vacant if—

(a) he becomes a member of Parliament; or

(b) he becomes a member of a local authority or accepts employment as an employee of a local authority.

(3) A service commissioner, other than the chairman of the Commission, who resigns in terms of subsection (1) may, at the discretion of the Commission, be re-appointed to an office or post in the Public Service carrying pensionable emoluments that are not less than those received by him as a commissioner.

#### **5 Conditions of service of commissioners**

(1) Subject to this Part, the conditions of service of commissioners, including their salaries, allowances and pension benefits, shall be fixed by the President either at the time of their appointment or, subject to subsection (5) of section 109 of and Schedule 6 to the Constitution, at any time thereafter.

(2) When fixing conditions of service of a commissioner in terms of subsection (1), the President may direct that any enactment relating to the conditions of service of members of the Public Service shall apply to the conditions of service of the commissioner, subject to such modifications, exceptions or conditions as the President may specify, and thereupon the enactment concerned shall so apply to the conditions of service of the commissioner concerned.

#### **6 Commissioners not to engage in other occupation or business**

(1) During his term of office a commissioner shall not without the written consent of the President, engage in any other occupation, service or employment for remuneration:

Provided that this subsection shall not apply in respect of service in any public office to which the commissioner is appointed by the President.

(2) During intervals between meetings of the Commission, every commissioner appointed on a full-time basis shall devote himself to the duties imposed upon him by the Commission.

#### **7 Commissioners to cease to be members of Public Service**

A commissioner who, immediately before his appointment, was a member of the Public Service shall cease to be a member of the Public Service with effect from the date of his appointment as a commissioner. PART III

#### FUNCTIONS, PROCEDURE AND STAFF OF PUBLIC SERVICE COMMISSION

#### **8 Functions of Commission**

(1) Subject to this Act and any other enactment, the functions of the Commission shall be—

(a) to appoint persons to the Public Service, whether as permanent members or on contract or otherwise, to assign and promote them to offices, posts and grades in the Public Service and to fix their conditions of service;

(b) to appoint persons from approved services to offices, posts and grades in the Public Service;

(c) to conduct examinations for candidates for entry to and promotion within the Public Service;

(d) to inquire into and deal with complaints made by members of the Public Service;

(e) subject to Part V, to exercise disciplinary powers in relation to members of the Public Service;

(f) to exercise any other functions that may be imposed or conferred upon the Commission in terms of this Act or any other enactment.

(2) The Commission shall so exercise its functions under this Act as to ensure the well-being and good administration of the Public Service and its maintenance in a high state of efficiency.

(3) Except as is otherwise provided in this Act, the Commission shall not be subject to the direction or control of any person or authority in the exercise of its functions under the Act.

#### **9 Procedure of Commission**

Subject to the Constitution and this Act, the Commission shall meet for the discharge of its business and adjourn, close and otherwise regulate its meetings and proceedings as it thinks fit.

#### **10 Secretary and staff of Commission**

(1) The Commission, in consultation with the Minister, shall appoint a secretary and such other staff as may be necessary for the proper exercise of the Commission's functions.

(2) The offices of the secretary of the Commission and other members of staff referred to in subsection (1) shall be public offices but not form part of the Public Service.

[Subsection substituted by section 3 of Act 16 of 2001]

(3) Subject to this section and the directions of the Commission, the control and supervision of the staff of the Commission shall be exercised by the secretary of the Commission.

[Subsection substituted by section 3 of Act 16 of 2001]

(4) The Commission, with the concurrence of the Minister, may make regulations providing for the conditions of service of the secretary of the Commission and the staff of the Commission.

[Section inserted by section 3 of Act 16 of 2001]

## 11 Directions to Commission

(1) The President may give general directions of policy to the Commission, and the Commission shall take all necessary steps to comply with them.

(2) If the Commission has failed to carry out any duty imposed upon it by or under the Constitution, this Act or any other law, the Minister may direct the Commission to take such action as he considers necessary to rectify the matter within such time as he may specify:

Provided that before doing so, the Minister shall give the Commission an opportunity to make any representations it may wish to make in the matter.

(3) If the Commission fails to take action in accordance with a direction in terms of subsection (2) within the time specified by the Minister, the Minister may take appropriate action on behalf of the Commission to rectify the matter.

(4) The Commission shall report to Parliament the nature and substance of every direction given to it in terms of subsection (1) or (2), together with any comments the Commission may wish to make thereon, either by means of a special report submitted in terms of section *twelve* or in its annual report submitted in terms of that section.

## 12 Reports of Commission

(1) The Commission—

(a) shall, as soon as possible after the 31st December in each year, submit to the Minister an annual report upon matters dealt with by the Commission during the previous year, save such matters as the Commission may consider inexpedient to publish; and

(b) may at any time submit to the Minister a special report on any matter upon which the Commission considers it desirable to report.

(2) The Minister shall lay before Parliament on one of the fourteen days on which Parliament next sits after the report is received by him—

(a) the annual report submitted to him in terms of paragraph (a) of subsection (1); and

(b) any special report submitted to him in terms of paragraph (b) of subsection (1) which the Commission requests be laid before Parliament.

## 13 Validity of decisions and acts of Commission

(1) No decision or act of the Commission or act done under the authority of the Commission shall be invalid solely because there were one or more vacancies on the Commission when the decision was taken or the act was done or authorized.

(2) If any decision or other act of the Commission is rendered invalid through a procedural irregularity, the Commission may at a duly convened meeting ratify the decision or action, and any decision or action so ratified shall be valid in all respects with effect from the date of its ratification.

## PART IV

### THE PUBLIC SERVICE

## 14 Constitution of Public Service

Subject to section 113 of the Constitution, the Public Service shall consist of all persons in the service of the State, other than—

(a) judges of the Supreme Court or the High Court or persons appointed to preside over any special court in terms of section 92 of the Constitution; or

(b) members of any Commission established by the Constitution; or

(c) members of any body corporate established directly by or under an Act for special purposes specified in that Act; or

(d) members of the Defence Forces, the Police Force or the Prison Service; or

(e) members of any organization established in the President's Office for the protection of national security; or

(f) persons employed by the trustee of the District Development Fund in terms of the District Development Fund Act [*Chapter 29:06*]

(g) the Director of State Lotteries and other officers and employees appointed in terms of sections 11 and 12 of the State Lotteries Act [*Chapter 17:07*]; or

(h) any other person whose office or post is declared, by or in terms of this or any other Act, not to form part of the Public Service.

[Paragraph amended by section 3 of Act 16 of 2001]

## **15 Responsibility for administration of Public Service and divisions thereof** Subject

to section *eleven*—

- (a) the number of offices, posts and grades in the Public Service or any Ministry, department or other division thereof shall be fixed by the Commission in consultation with the appropriate Minister and the head of his Ministry and with the concurrence of the Minister responsible for finance;
- (b) the appointment of members of the Public Service and their assignment or promotion to offices, posts and grades within the Public Service shall be effected by the Commission in consultation with the heads of Ministry concerned;
- (c) the transfer and secondment of members of the Public Service to an approved service, or of persons from an approved service to the Public Service, shall be effected by the Commission in consultation with the heads of Ministry concerned and with the concurrence of the Minister responsible for finance;
- (d) the transfer of members of the Public Service from one Ministry, department or other division of the Public Service to another such Ministry, department or division shall be effected by the Commission in consultation with the heads of Ministry concerned;
- (e) subject to subsection (3) of section 31D of the Constitution, the supervision of members of the Public Service employed in any Ministry, department or other division of the Public Service shall be the responsibility of the head of the Ministry concerned, subject to the general direction and control of the appropriate Minister.

## **16 Classification of members of Public Service**

Members of the Public Service shall be classified in such manner as may be prescribed in service regulations.

## **16A Removal of heads of Ministry from Public Service**

The power to discipline or suspend a head of Ministry, or to dismiss, discharge or otherwise remove a head of Ministry from the Public Service shall vest in the Commission with the concurrence of the President.

[Section inserted by section 5 of Act 16 of 2001 and amended by section 46 of Act 17 of 2002]

## **17 Members of Public Service to be appointed and removed only in accordance with Act** Except as may be provided in any other Act—

- (a) all appointments of members of the Public Service shall be made in accordance with this Act; and
- (b) no member of the Public Service shall be required to resign or retire, or be dismissed, discharged or otherwise removed from the Public Service, except in accordance with this Act

## **18 Appointments and promotions**

When considering candidates for appointment to or promotion within the Public Service, the Commission shall—

- (a) have regard to the merit principle, that is, the principle that preference should be given to the person who, in the Commission's opinion, is the most efficient and suitable for appointment to the office, post or grade concerned; and
- (b) ensure that there is no discrimination on the ground of race, tribe, place of origin, political opinions, colour, creed, gender or physical disability.

## **19 Conditions of service of members of Public Service**

(1) Subject to the Constitution, this Act and the Labour Act [*Chapter 28:01*], the conditions of service applicable to members of the Public Service, including their remuneration, benefits, leave of absence, hours of work and discipline, shall be determined by the Commission in consultation with the Minister:

Provided that, to the extent that such conditions may result in an increase in expenditure chargeable on the Consolidated Revenue Fund, the concurrence of the Minister responsible for finance shall be obtained.

[Subsection amended by section 46 of Act 17 of 2002]

(2) Conditions of service may be fixed in terms of subsection (1) by means of service regulations, notices, circulars or in such other manner as the Commission considers will best bring the conditions to the attention of members of the Public Service affected by them:

Provided that, in the event of any conflict between service regulations and the contents of any such notice or circular, the service regulations shall prevail to the extent of the conflict.

(3) Subject to section 109 of and Schedule 6 to the Constitution, the Commission may in terms of subsection (1) alter the conditions of service of existing members of the Public Service.

(4) Conditions of service fixed in terms of subsection (1) may provide that, before a member of the Public Service is permitted to undergo a course of training or study, whether such course is undertaken within his Ministry or department or elsewhere, he shall enter into an agreement with the State whereby he undertakes that—

- (a) he will serve the State for a period specified in the agreement following the completion of all or any part of such course; and
- (b) should he be discharged from or leave the Public Service at any time during the course or before the expiry of the period specified in paragraph (a), he will repay to the State such amount as may be provided for in the agreement;

and any amount referred to in paragraph (b) shall be a debt due by him to the State and may be sued for or otherwise recovered from him by the appropriate Minister.

(5) Without derogation from the generality of subsection (1), conditions of service fixed in terms of that subsection may provide for the dismissal or discharge of a member of the Public Service— (a) owing to—

- (i) the abolition of his office or post; or
- (ii) a reduction in, or an adjustment of the organization of, a Ministry, department or other division of the Public Service;

or

(b) if the removal will facilitate improvements in the Ministry, department or other division of the Public Service in which he is serving whereby greater efficiency or economy can be effected.

(6) Conditions of service fixed in terms of subsection (1) may provide that, in addition to any other penalty that may be imposed upon them, members of the Public Service who have been found guilty of misconduct or who have been convicted of an offence may be ordered to pay compensation to the State, a statutory body, a local authority or any other person or fund in an amount determined under the regulations, not exceeding the amount of any damage to or loss of property arising out of or occasioned by such misconduct or offence.

(7) Upon the making of an order referred to in subsection (6), the amount specified therein shall become a debt due by the member of the Public Service concerned to the State or to the statutory body, local authority, person or fund in whose favour the order was made, as the case may be, and may be sued for or otherwise recovered from the member concerned by the appropriate Minister or that statutory body, local authority, person or fund, as the case may be.

## **20 Consultations re conditions of service of members of Public Service**

(1) The Commission shall engage in regular consultations with recognized associations and organisations in regard to the conditions of service of members of the Public Service who are represented by the recognized associations or organisations concerned.

(2) Notwithstanding subsection (1), conditions of service fixed or determined under this Act shall not be invalid solely on the ground that—

- (a) they were not the subject of prior consultation in terms of subsection (1); or
- (b) they were not agreed to by all the parties to any prior consultation in terms of subsection (1).

## **21 Persons under contract**

(1) The Commission, or the appropriate Minister with the concurrence of the Commission, may engage a person under contract, on such conditions as may be fixed or prescribed by the Commission:

Provided that, if the effect of any such conditions would be to increase the fixed salary or salary scale applicable to any post or grade, the Commission shall obtain the concurrence of the Minister responsible for finance.

(2) There may be incorporated in the conditions referred to in subsection (1) such provisions of any enactment relating to conditions of service of members of the Public Service as may be considered necessary or desirable in the light of the nature of the contract.

(3) Upon the expiry of the period of a contract entered into in terms of subsection (1), the person under contract shall cease to be a member of the Public Service unless the contract is renewed or he is appointed to the Public Service in some other capacity.

## **22 Rights of members of Public Service and other persons to remuneration and pension benefits**

Subject to this Act and any other law, a person shall have an enforceable right against the State for payment of any salary, allowance or other remuneration or any pension benefit payable to him in terms of this Act.

## **23 Member of Public Service seeking election to local authority**

(1) Upon application by a member of the Public Service who wishes to become a candidate for election to a local authority, the Commission may, by written notice to the member concerned— (a) grant him permission to seek election to the local authority; and

(b) subject to subsection (4), declare that he has ceased to be a member of the Public Service with effect from the date on which the Commission grants permission in terms of paragraph (a).

(2) Subject to subsection (3), where the Commission has made a declaration in terms of paragraph (b) of subsection (1), the member concerned shall cease to be a member of the Public Service with effect from the date specified in the declaration and shall be deemed—

- (a) to have resigned from the Public Service; or
- (b) if he has reached pensionable age, to have retired from the Public Service; on that date.

(3) If a person who has ceased to be a member of the Public Service in terms of subsection (2)—

- (a) fails to secure or abandons his candidature or fails to be elected to the local authority concerned; and
- (b) within thirty days after the election, applies in writing to the Commission for reinstatement in the Public Service; the Commission may re-appoint him, subject to such terms and conditions as the Commission may fix, to an office or post in the Public Service with effect from the date on which he ceased to be a member in terms of subsection

(2):

Provided that the member shall be deemed to have been on unpaid leave of absence during the period between his ceasing to be a member in terms of subsection (2) and the date on which he assumes duty after reappointment in terms of this subsection.

(4) Where a member of the Public Service is the subject of a declaration in terms of subsection (5) of section 41 of the Urban Councils Act [*Chapter 29:15*] or subsection (4) of section 29 of the Rural District Councils Act [*Chapter 29:13*], to the effect that his membership of the Public Service does not disqualify him for election to a local authority, the Commission may permit him to seek election to the local authority in terms of subsection (1) without declaring that he has ceased to be a member of the Public Service, and in that event subsections (2) and (3) shall not apply to him.

### **23A Member of Public Service seeking election to Parliament**

(1) Any member of the Public Service who wishes to seek election to Parliament shall be deemed to have resigned from the Public Service with effect from the date of acceptance of his nomination by the nomination court.

(2) A person referred to in subsection (1) who abandons his candidature or fails to be elected to Parliament may apply to the Commission for re-appointment after a period of three months from the date of the election concerned.

[Section inserted by section 6 of Act 16 of 2001]

### **24 Recognized associations and organizations**

(1) The Minister may, by written notice to the association or organisation concerned, declare any association or organisation representing all or any members of the Public Service to be a recognized association or a recognized organisation, as the case may be, for the purposes of this Act.

(2) The Minister may at any time, by written notice to the recognized association or organisation concerned, revoke any declaration made in terms of subsection (1).

(3) Without derogation from section *twenty*—

(a) the Minister and the Commission may consult with a recognized association or organisation on such matters affecting the efficiency, well-being or good administration of the Public Service or the interests of members of the recognized association or organisation, as the Minister or the Commission, as the case may be, thinks appropriate; and

(b) a recognized association or organisation may make representations to the Minister and the Commission concerning the conditions of service of the members of the Public Service represented by the association or organisation, and the Minister or the Commission, as the case may be, shall pay due regard to any such representations when exercising any function in terms of this Act.

(4) Any member of the Public Service who is eligible to do so may join a recognized association or organisation and, subject to this Act, participate in its lawful activities.

(5) A member of the Public Service who fails or refuses to join a recognized association or organisation shall not, on account of such failure, be debarred from or prejudiced in respect of any appointment, promotion or advancement within the Public Service.

## **PART V**

### **DISCIPLINE OF MEMBERS OF THE PUBLIC SERVICE**

### **25 Investigation and adjudication of misconduct cases**

(1) Any case involving misconduct or suspected misconduct on the part of a member of the Public Service shall be investigated, adjudicated upon and, where appropriate, punished by such person or authority as may be prescribed in service regulations.

(2) The procedure to be followed in the investigation and adjudication of misconduct cases referred to in subsection (1), and the punishments that may be imposed upon members of the Public Service found guilty of misconduct, shall be as prescribed in service regulations or, in the absence of such prescription, as fixed by the Commission.

### **26 Appeals to Labour Court**

(1) Any member or former member who is aggrieved by—

(a) any verdict reached; or

(b) any penalty imposed upon him; may appeal against the verdict or penalty to the Labour Court.

(2) The provisions of the Labour Act [*Chapter 28:01*] shall apply, *mutatis mutandis*, to an appeal under subsection (1) in all respects as if the appeal were against a verdict or penalty reached or imposed, as the case may be, under an employment code of conduct registered in terms of section 101 of that Act.

[Section substituted by section 46 of Act 17 of 2002]

## **PART VI**

### **GENERAL**



## 27 Delegation of functions

(1) In the interests of ensuring the greatest degree of devolution of decision-making functions consistent with good administration, the Commission shall—

- (a) ensure that the functions vested in it by or under this Act are delegated to the staff of the Commission or persons in the Public Service, whether such persons are employed in the Ministry for which the Minister is responsible or otherwise; and

[Paragraph substituted by section 8 of Act 16 of 2001]

- (b) take whatever steps are necessary to encourage the greatest possible delegation of decision-making functions within all Ministries, departments and other divisions of the Public Service.

(2) A delegation of a function by the Commission in terms of paragraph (a) of subsection (1)—

- (a) may be made absolutely or subject to conditions; and
- (b) may be amended or revoked at any time; and
- (c) shall not preclude the Commission from exercising the function so delegated.

(3) A person to whom the Commission has delegated a function in terms of paragraph (a) of subsection (1) may, with the consent of the Commission, further delegate the function, either absolutely or subject to conditions, to any member of the Public Service who is under his control or authority.

(4) Where the Commission has delegated a function in terms of paragraph (a) of subsection (1) to any person, any conditions or limitations applicable to the exercise of that function by the Commission shall apply, *mutatis mutandis*, to the exercise of the function by the person to whom it has been delegated.

(5) Where a person has been or is about to be appointed to the Public Service or promoted within the Public Service pursuant to a power delegated by the Commission in terms of paragraph (a) of subsection (1), and the Commission considers that—

- (a) the person does not have the qualifications or ability necessary to carry out the duties of the position he occupies or would occupy, as the case may be; or
- (b) his appointment or promotion has contravened or would contravene, as the case may be, any condition under which the power was delegated; the Commission shall revoke the appointment or promotion or direct that the appointment or promotion shall not be made, as the case may be, and may take such other action in the matter as the Commission thinks necessary: Provided that—
  - (i) before taking any action in terms of this subsection, the Commission shall give the person whose appointment or promotion is in issue and the person who appointed or promoted him or proposed to appoint or promote him, an adequate opportunity to make representations in the matter;
  - (ii) where a person has been appointed or promoted and the Commission is satisfied that the appointment or promotion was not effected as a result of any fraud or wilful misrepresentation on his part, the Commission need not revoke the appointment or promotion, as the case may be.

(6) This section shall not be construed as limiting any power which the Commission or any other person may have under any other law to delegate functions to another person.

## 28 Pension benefits to be paid from Consolidated Revenue Fund

All pension benefits payable in terms of this Act shall be paid from the Consolidated Revenue Fund, which is hereby appropriated to the purpose.

## 29 Remuneration and pension benefits not to be ceded, pledged or attached

(1) Except as may be provided by or in terms of this Act or any other enactment, no member of the Public Service shall cede the whole or any part of his salary, allowances or other remuneration without the written consent of the Commission or his head of Ministry, and any purported such cession without such consent shall be void.

(2) Except as may be provided by or in terms of this Act or any other enactment, no pension benefit payable in terms of this Act or right to such a pension benefit shall—

- (a) be capable of being assigned or ceded or otherwise transferred or of being pledged or hypothecated; or
- (b) be liable to be attached or subjected to any form of execution under a judgment or order of a court;

and any purported such assignment, cession, transfer, hypothecation, attachment or execution shall be void.

## 30 Insolvency of pensioner

If the estate of a person who is in receipt of any pension in terms of this Act is sequestrated or assigned, the pension shall not form part of the assets in his insolvent or assigned estate.

## 31 Service regulations

(1) Subject to this Act, the Commission, with the concurrence of the Minister, may make regulations providing for the conditions of service of members of the Public Service.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the appointment, classification, qualifications, salaries, allowances and other remuneration and benefits of members of the Public Service, and their promotion, functions, hours of work and leave of absence;
- (b) the pension benefits payable to members of the Public Service and to other persons in respect of their service with the State or with any other person or authority, the contributions payable in respect of such

pension benefits and the circumstances in which such pension benefits may be reduced, suspended or withdrawn;

- (c) the conduct of training and development courses for members of the Public Service and the attendance of such members thereat;
- (d) the use by members of the Public Service of vehicles, equipment and other property of the State, their indemnification in respect of such use and additionally, or alternatively, the recovery from them of compensation and penalties in respect of damage or loss caused by such use;
- (e) the manner in which members of the Public Service may make representations in regard to matters affecting their conditions of service and general welfare;
- (f) the manner in which grievances of members of the Public Service may be expressed, investigated and redressed;
- (g) the terms and conditions of contracts entered into in terms of section *twenty-one*;
- (h) the circumstances in which heads of Ministry may assent to cessions of salary, allowances or other remuneration in terms of section *twenty-nine*;
- (i) the discipline of members of the Public Service, and the penalties that may be imposed upon them and other measures that may be taken against them for misconduct or if they are inefficient or unsuitable or incapable of performing their duties or if they are convicted of criminal offences;
- (j) the suspension, retirement, resignation, discharge, abandonment of employment and other termination of service of members of the Public Service;
- (k) the transfer, secondment and appointment of—
  - (i) members of the Public Service to positions in an approved service; and
  - (ii) persons in an approved service to offices, posts or grades in a Ministry, department or other division of the Public Service;and the terms and conditions upon which such transfers, secondments and appointments may be made;
- (l) the conduct of investigations, inspections and examinations for the purposes of this Act;
- (m) any other matter which is referred to in section *nineteen* or which, in the opinion of the Commission, it is necessary or convenient to prescribe in order to ensure the well-being and good administration of the Public Service and its maintenance in a high state of efficiency.

(3) To the extent that regulations made in terms of subsection (1) may result in an increase in expenditure chargeable on the Consolidated Revenue Fund, the Commission shall obtain the concurrence of the Minister responsible for finance before they are enacted.

(4) Regulations made in terms of subsection (1) shall have effect for the purposes of the Labour Act [*Chapter 28:01*] as if they a collective bargaining agreement registered in terms of section 79 of that Act.

[Subsection inserted by section 46 of Act 17 of 2002]

## **32 Regulatory powers of Minister**

Subject to this Act, the Minister, with the concurrence of the Commission, may make regulations for—

- (a) the furnishing of statistics and information for the purposes of this Act by Ministries, departments and other divisions of the Public Service;
- (b) the functions and privileges of recognized associations and organisations;
- (c) any other matter, other than a matter referred to in section *thirty-one*, which by this Act is required or permitted to be prescribed or which, in the Minister's opinion, is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **32A Engagement by privatised organisations of certain employees of the State**

(1) In this section and section *thirty-two B*—

“date of formation”, in relation to a successor organisation, means the date specified by or under the enactment governing the formation of the successor organisation as the date of formation of the successor organisation;

“scheme of commercialisation or privatisation” means a scheme or arrangement whereby a function performed by a department or branch of the Government is transferred or taken on by a successor organisation, and assets employed by that department or branch of the Government in the performance of that function are transferred to the successor organisation;

“successor organisation” means a body corporate or fund to which assets pertaining to any department or branch of the Government have been transferred pursuant to a scheme of commercialisation or privatisation.

(2) Except as otherwise provided in the enactment governing the formation of the successor organisation concerned, this section shall apply to the engagement by every successor organisation on the date of its formation of members of the Public Service.

(3) Members of the Public Service who were employed in the department or branch of the Government which is transferred to or taken on by a successor organisation and are engaged by the organisation on the date of its formation shall be entitled to continue contributing towards a pension in terms of the Public

Service (Pensions) Regulations, 1992 (Statutory Instrument 124 of 1992), or any other enactment, subject to such terms and conditions as the Public Service Commission may fix with the approval of the Minister and the successor organisation's governing body.

- (4) Terms and conditions fixed in terms of subsection (3) may provide for—
- (a) payments by the company to the Consolidated Revenue Fund to compensate the State, wholly or partially, for pensions and other benefits paid or payable to or in respect of members of the Public Service engaged by the successor organization; and
  - (b) the application, non-application or modification of the provisions of the Public Service (Pensions) Regulations, 1992 (Statutory Instrument 124 of 1992), in regard to members of the Public Service engaged by the successor organisation.

[Section inserted by section 9 of Act 16 of 2001]

### **32B Restriction on right of privatised organisations to engage certain former employees of the State**

- (1) Notwithstanding any other law, a person who—
- (a) while a member of the Public Service, was afforded an opportunity of engagement on reasonable terms by a successor organisation and declined to avail himself of the opportunity; and
  - (b) subsequently left the Public Service and, as a consequence, became entitled to pension benefits in respect of the termination of his service;

shall not be engaged in any capacity by that successor organisation for a period of ten years from the date on which he left the Public Service, unless the Public Service Commission consents to his engagement.

(3) Without limiting the generality of subsection (2), terms of engagement shall be regarded as reasonable for the purposes of paragraph (a) of that subsection if on balance they are at least as favourable to the person to whom they are offered as the terms and conditions of his employment in the Public Service.

[Section inserted by section 9 of Act 16 of 2001]

### **33 Savings**

- (1) Any regulations which were made or deemed to have been made by the Commission before the 15th March, 1996, and which were in force immediately before that date shall, to the extent that they relate to the Public Service, be deemed to have been made by the Commission or the Minister in terms of section *thirty-one* or *thirty-two*, as the case may be.

(2) Anything which was lawfully made, done or commenced before the 15th March, 1996, by or on the authority of the commission in relation to the Public Service and which, immediately before that date, had or was capable of acquiring legal effect shall, on and after that date, continue to have or be capable of acquiring, as the case may be, the same effect as if it had been made, done or commenced by or on the authority of the Commission, the Minister or an appropriate Minister or other authority in terms of the appropriate provision of this Act.