

PUBLIC SERVICE ACT, 1994(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

also amended by

Intelligence Services Act 65 of 2002
[with effect from a date to be proclaimed - see PENDLEX]

Regulations under this Act

DELEGATION OF AUTHORITY AND RESPONSIBILITIES IN TERMS OF THE PUBLIC SERVICE
REGULATIONS

NOTICE IN TERMS OF THE PUBLIC SERVICE REGULATIONS, 2001: REPLACEMENT OF Z1 FORM
(APPLICATION FOR LEAVE)

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

PUBLIC SERVICE REGULATIONS, 2001

WITHDRAWAL OF PUBLIC SERVICE STAFF CODE AND OTHER PRESCRIPTS RELATING TO THE
PUBLIC SERVICE

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.

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

1 Interpretation

[NB: The definition of '**Academy**' has been inserted by s. 40 (1) of the Intelligence Services Act 65 of 2002, a provision which will be put into operation by proclamation. See PENDLEX.]

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

'Agency' means the Agency as defined in section 1 of the Intelligence Services Act, 1994.

[Definition of 'Agency' inserted by s. 32 (1) of Act 38 of 1994.]

'agreement'

[Definition of 'agreement' substituted by Proclamation 105 of 11 June 1994 and deleted by s. 1 (a) of Act 47 of 1997.]

'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;

'central level'

[Definition of 'central level' substituted by Proclamation 105 of 11 June 1994 and deleted by s. 1 (a) of Act 47 of 1997.]

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

[Definition of 'Commission' substituted by s. 1 (b) of Act 47 of 1997.]

'Commission Act' means the Public Service Commission Act, 1997;

[Definition of 'Commission Act' substituted by s. 1 (c) of Act 47 of 1997.]

'Constitution' means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

[Definition of 'Constitution' substituted by s. 1 (d) of Act 47 of 1997.]

'Council'

[Definition of 'Council' substituted by Proclamation 105 of 11 June 1994 and deleted by s. 1 (e) of Act 47 of 1997.]

'department' means a national department, a provincial administration or a provincial department;

[Definition of 'department' substituted by s. 1 (a) of Act 86 of 1998.]

'educator' means a teacher or other person performing education functions at a state educational institution;

'employee' means a person contemplated in section 8 (1) (c);

'employer'

[Definition of 'employer' substituted by Proclamation 105 of 11 June 1994 and deleted by s. 1 (e) of Act 47 of 1997.]

'executing authority', in relation to-

- (a) the Office of the President, means the President acting on his or her own;
- (b) the Office of the Deputy President, means the Deputy President;
- (c) a department or organisational component within a Cabinet portfolio, means the Minister responsible for such portfolio;
- (d) the Office of the Commission, means the Chairperson of the Commission;
- (e) the Office of a Premier of a province, means the Premier of that province acting on his or her own; and

[Para. (e) substituted by s. 1 (b) of Act 86 of 1998.]

- (f) a provincial department within an Executive Council portfolio, means the member of such Executive Council responsible for such portfolio;

[Para. (f) substituted by s. 1 (b) of Act 86 of 1998.]

[Definition of 'executing authority' substituted by s. 1 (f) of Act 47 of 1997.]

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

'head of department', 'head of a department' or 'head of the department' means the incumbent of a post mentioned in the second column of Schedule 1 or 2, and includes any officer acting in such post;

[Definition of 'head of department' substituted by s. 1 (c) of Act 86 of 1998.]

'information technology' means all aspects of technology which are used to manage and support the efficient gathering and utilisation of information as a strategic resource;

'Minister' means the Minister for the Public Service and Administration;

[Definition of 'Minister' inserted by s. 1 (g) of Act 47 of 1997.]

'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);

[Definition of 'national department' substituted by s. 1 (d) of Act 86 of 1998.]

'officer' means a person who has been appointed permanently, notwithstanding that such appointment may be on probation, to a post contemplated in section 8 (1) (a), and includes a person contemplated in section 8 (1) (b) or 8 (3) (c);

'prescribed' means prescribed by or under this Act;

'provincial administration' means a provincial administration referred to in section 7 (2), but does not include a provincial department in so far as this Act deals with any matter in respect of which a power or duty is entrusted or assigned by or under this Act or any other law to the head of the provincial department or the relevant executing authority;

[Definition of 'provincial administration' substituted by s. 1 (e) of Act 86 of 1998.]

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

[Definition of 'provincial department' inserted by s. 1 (f) of Act 86 of 1998.]

'provincial service commission'

[Definition of 'provincial service commission' deleted by s. 1 (h) of Act 47 of 1997.]

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

'regulation' means a regulation made or deemed to have been made under this Act;

'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;

[Definition of 'revenue' substituted by s. 1 (i) of Act 47 of 1997 and by s. 1 (g) of Act 86 of 1998.]

'salary range' means a minimum and maximum salary limit linked to a specific level of work;

'scale', in relation to salary, includes salary at a fixed rate;

'Service' means the Service as defined in section 1 of the Intelligence Services Act, 1994;

[Definition of 'Service' inserted by s. 32 (1) of Act 38 of 1994.]

'state educational institution' means an institution (including an office controlling such institution), other than a university or technikon, which is wholly or partially funded by the State and in regard to which the remuneration and service conditions of educators are determined by law;

'the National Intelligence Services'

[Definition of 'the National Intelligence Services' deleted by s. 32 (1) of Act 38 of 1994.]

'the services' means-

- (a) the Permanent Force of the National Defence Force;
- (b) the South African Police Service; and
- (c) the Department of Correctional Services;

'this Act' includes the regulations and Public Service Staff Code mentioned in sections 41 and 42, respectively;

'transfer' includes a change-over to a regraded or renamed post, or from one grade to a higher grade connected to the same post, or from one rank to a higher rank;

'Treasury' means-

- (a) the Minister of Finance or a duly authorised officer in the Department of State Expenditure; or
- (b) the member of an Executive Council of a province responsible for the treasury function in that province, or a duly authorised officer in a provincial administration,

[Para. (b) substituted by s. 1 (h) of Act 86 of 1998.]

as the case may be.

(2) Any reference in this Act to a reduction in a scale of salary or salary, in relation to an officer, shall be construed as including a reference to the application of a scale of salary which is lower than the scale previously applied as regards the maximum

of the scale, or to a salary which is lower in comparison with a salary which would have applied at any time prior to that reduction, as the case may be, and a reference in that connection to a reduction in grade or to a grade being lower than another grade shall be construed correspondingly.

(3) Where it is uncertain who the executing authority or head of department is for the purposes of any act under this Act in respect of an officer or employee, the Minister shall indicate the authority or head to be regarded as the executing authority or head of department in the case concerned.

[Sub-s. (3) added by Proclamation R171 of 18 November 1994 and substituted by s. 1 (j) of Act 47 of 1997.]

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 officers and 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 persons employed in the services or state educational institutions are not excluded from the provisions of this Act, those provisions shall apply only in so far as they are not contrary to the laws governing their employment.

(3) Where persons employed in the Agency or the Service are not excluded from the provisions of this Act, those provisions shall apply only in so far as they are not contrary to the laws governing their service, and those provisions shall not be construed as derogating from the powers or duties conferred or imposed upon the Agency or the Service.

[Sub-s. (3) amended by s. 32 (1) of Act 38 of 1994.]

[NB: Sub-s. (3) has been substituted by s. 40 (1) of the Intelligence Services Act 65 of 2002, a provision which will be put into operation by proclamation. See PENDLEX.]

(4)

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

(5) (a) All posts established in terms of a law repealed by this Act and existing immediately before the commencement of this Act, and all authorisations for employment of persons additional to such posts issued in terms of such a law and in force immediately before such commencement, shall save where clearly inappropriate, be deemed to have been established or issued under this Act.

(b) All persons who immediately before the commencement of this Act were, by virtue of a law repealed by this Act, officers or employees in an institution referred to in section 236 (1) of the Interim Constitution, shall remain in employment and shall from such commencement be deemed, without break in service, to be officers or employees, as the case may be, and the provisions of this Act shall apply to or in respect of those officers or employees.

[Para. (b) substituted by s. 2 (b) of Act 47 of 1997.]

(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 executing authority

(1) (a) The Minister may exercise the powers and shall perform the duties entrusted to the Minister by or under this Act or any other law.

(b) Where it is a requirement of this Act or of any other law that any executing authority or other person shall act in consultation with the Minister, the Minister may express his or her concurrence with the act in question or refuse to express it.

(2) (a) For the purposes of this subsection, any policy may relate to any of or all the following matters, namely-

- (i) the functions of, and organisational arrangements in, the public service;
- (ii) employment and other personnel practices, including the promotion of broad representivity as well as human resource management and training, in the public service;
- (iii) the salaries and other conditions of service of officers and employees;
- (iv) labour relations in the public service;
- (v) information management and information technology in the public service;
- (vi) public service transformation and reform.

(b) The Minister shall accept responsibility for-

- (i) any policy which relates to a matter referred to in paragraph (a); and
- (ii) the provision of a framework of norms and standards with a view to giving effect to any

such policy.

(3) The Minister may-

- (a) advise the President regarding the establishment or abolition of any department or organisational component in the national sphere of government, or the designation of any such department or organisational component or the head thereof, in order to enable the President to amend Schedule 1 or 3;

[Para. (a) substituted by s. 2 (a) of Act 86 of 1998.]

- (b)^{i*} after consultation with the relevant executing authority or executing authorities, as the case may be, make determinations regarding the allocation of any function to, or the abolition of any function of, any department or the transfer of any function from one department to another or from a department to any other body or from any other body to a department: Provided that the provisions of this paragraph shall not be construed so as to empower the Minister-
 - (i) to allocate any function to, or to abolish any function of, any provincial administration or provincial department except in consultation with the Premier of the province concerned; or
 - (ii) to transfer any function from one provincial administration or provincial department to another or from a provincial administration or provincial department to any body established by or under any provincial law or from any such body to a provincial administration or provincial department;

[Para. (b) substituted by s. 2 (b) of Act 86 of 1998.]

- (c) subject to the provisions of this Act, make determinations regarding the conditions of service of officers and employees generally, including the scales of salaries, wages or allowances of all the various classes, ranks and grades of officers and employees as well as salary ranges in respect of particular classes, ranks and grades of officers and employees;
- (d) make regulations under section 41 (1);
- (e) issue directives which are not inconsistent with this Act to elucidate or supplement any regulation.

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

- (i) the public service;
- (ii) the employment, remuneration or other conditions of service of persons employed in a department in terms of any law other than this Act or of functionaries employed by any board, institution or body established by or under any law and which obtains its funds, either wholly or in part, from revenue;
- (iii) the remuneration or other conditions of appointment of the office-bearers of any such

board, institution or body; or

- (iv) the staffing, employment or other personnel practices of any such board, institution or body.

[Para. (a) amended by s. 2 (c) of Act 86 of 1998.]

(b) For the purposes of paragraph (a), the Minister has access to such official documents or may obtain such information from the chief executive officer of the relevant board, institution or body as may be necessary to advise or assist the President or the relevant executing authority.

[Para. (b) substituted by s. 2 (d) of Act 86 of 1998.]

(5) Subject to the provisions of this Act, an executing authority shall have those powers and duties-

- (a) regarding the internal organisation of the office or department concerned, including the organisational structure and the transfer of functions within that office or department;
- (b) regarding the post establishment of that office or department, including the creation, grading and abolition of posts and the provision for the employment of persons additional to the fixed establishment where the class of work is of a temporary nature;
- (c) regarding the recruitment, appointment, performance management, promotion, transfer, discharge and other career incidents of officers and employees of that office or department, including any other matter which relates to such officers and employees in their individual capacities,

which are entrusted to the executing authority by or under this Act, and such powers and duties shall be exercised or performed by the executing authority in accordance with the provisions of this Act.

(6) (a) The relevant executing authority may perform any act in connection with any matter which relates to or arises from the employment or the conditions of service of a former officer or employee whilst he or she was an officer or employee, provided that executing authority 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 officer or employee.

(b) No such act shall be to the detriment of a former officer or employee, and the relevant executing authority shall not perform any such act in respect of any former officer or employee after the expiry of a period of two years after he or she ceased to be an officer or employee.

[S. 3 amended by Proclamation R175 of 2 December 1994, substituted by s. 3 of Act 47 of 1997 and amended by s. 1 of Act 5 of 1999.]

3A Functions of Premiers

The Premier of a province may-

- (a) subject to the provisions of section 7 (5), establish or abolish any department of the provincial administration concerned;
- (b) make determinations regarding the allocation of any function to, or the abolition of any function of, any office or department of the provincial administration concerned or the transfer of any function from one such office or department to another or from such office or department to any body established by or under any law of the provincial legislature or from any such body to such office or department.

[S. 3A inserted by s. 3 of Act 86 of 1998.]

3B Handling of appointment and other career incidents of heads of department

(1) Notwithstanding anything to the contrary contained in this Act, the appointment and other career incidents of the heads of department shall be dealt with by, in the case of-

- (a) a head of a national department or organisational component, the President; and
- (b) a head of a provincial administration, department or office, the relevant Premier.

(2) Any person appointed as head of department may before or at the expiry of his or her term of office, or extended term of office, be deployed with his or her consent by the relevant executing authority referred to in paragraph (a) or (b) of subsection (1) in the case of-

- (a) a head of a national department or organisational component, to perform functions in a similar or any other capacity in any national department or organisational component in a post or against a post of equal, higher or lower grading, or additional to the establishment, as the executing authority deems fit; and
- (b) a head of a provincial administration, department or office, to perform functions in a similar or any other capacity in the administration, department or office of the relevant province in a post or against a post of equal, higher or lower grading or additional to the establishment, as the executing authority deems fit.

(3) Any person appointed as head of department who thereafter is deployed in accordance with subsection (2), shall-

- (a) for the unexpired portion of his or her term of office, or extended term of office, be appointed at the same salary and conditions of service; and
- (b) at the expiry of his or her term of office, or extended term of office, be appointed at the salary and conditions of service attaching to the post or capacity in which he or she is appointed.

(4) The executing authority referred to in paragraph (a) or (b) of subsection (1) may delegate or assign any power or duty to appoint the head referred to in that paragraph, as well as any power or duty regarding the other career incidents of that head, in the case of-

- (a) the President, to the Deputy President or a Minister; or
- (b) the Premier of a province, to a Member of the relevant Executive Council.

[S. 3B inserted by s. 1 of Act 5 of 1999.]

4 South African Management and Development Institute and Training Fund

(1) The management and administration of the South African Management and Development Institute shall be under the control of the Minister.

(2) The Institute-

- (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: South African Management and Development Institute may with the approval of the Minister decide or as may be prescribed as a qualification for the appointment, promotion 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.

(3) Notwithstanding the substitution of section 3 (5) (a) (iii) by the Public Service Laws Amendment Act, 1997, the Training Fund established under the said section shall continue to exist, and the Fund shall consist of-

- (a) all moneys which immediately prior to the commencement of the said Act were moneys of the Fund;
- (b) such moneys as may from time to time be appropriated by Parliament with a view to promoting training under this Act;
- (c) any other moneys accruing to the Fund in terms of this Act or from any other source.

(4) (a) The Fund shall be administered by the Head, who shall be the accounting officer charged with the responsibility of accounting for moneys received by, and disbursements made from, the Fund.

(b) Moneys in the Fund shall be utilised to promote training under this Act, but moneys or other property donated or bequeathed to the Fund shall be utilised in accordance with the conditions of the donation or bequest concerned.

(c) Moneys in the Fund not required for immediate use may be invested with the Public Investment Commissioners or in such other manner as the Minister may with the concurrence of the Minister of Finance approve.

(5) (a) The financial year of the Fund shall terminate on the last day in March in each year.

(b) The Head shall-

- (i) cause records to be kept of moneys received by, and disbursements made from, the Fund and of its assets, liabilities and financial transactions;
- (ii) as soon as may be practicable after the end of each financial year, cause annual financial statements to be prepared reflecting, with appropriate details, moneys received by, and disbursements made from, the Fund during, and its assets and liabilities at the end of, that financial year.

(c) The records and annual financial statements shall be audited annually by the Auditor-General.

[S. 4 amended by Proclamation 134 of 12 August 1994 and substituted by s. 3 of Act 47 of 1997.]

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

(1) For the purposes of this Act or any other law-

- (a) a concurrence or determination of the Minister shall be deemed to have been expressed or made on the date of the communication in writing conveying such concurrence or determination;
- (b) where any executing authority or other person is required to act in consultation with the Minister, such act shall be deemed to be implemented by the relevant executing authority or person on the date of the communication in writing conveying to the affected person or body that the executing authority or person is acting in consultation with the Minister;
- (c) where the Minister is competent to make a determination, such determination shall be deemed to be implemented on the date on which such determination is made, unless expressly stated otherwise in the communication in writing conveying such determination.

(2) Subject to the provisions of subsection (3), any determination of the Minister may be withdrawn or varied or further varied by the Minister at any time within a period of six calendar months from the date upon which it was made by the Minister or varied the previous time.

(3) A determination by the Minister involving expenditure from revenue shall not be implemented unless the Treasury approves the expenditure.

(4) Every act of the Minister, any executing authority or any other person, irrespective of whether such act consists of the making of any regulation or other

enactment, the making of any determination or the taking of any decision, which relates to any matter which constitutes the subject matter of any collective agreement contemplated in item 15 (i) of Schedule 7 to the Labour Relations Act, 1995 (Act 66 of 1995), or of 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, shall be performed only in accordance with any such collective agreement.

(5) Notwithstanding the provisions of subsection (4)-

- (a) any executing authority or other person may act in respect of a particular officer or employee in accordance with the provisions of this Act or any other law: Provided that where any such act constitutes any deviation from a collective agreement referred to in the said subsection (4), it shall not derogate from or annul such a collective agreement or the collective bargaining relationship, or reduce the remuneration or other service benefits of the particular officer or employee, or deprive that officer or employee of his or her remuneration or other service benefits, except in accordance with section 34; or
- (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.

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

6 Access to documents and information by Minister

The Minister has access to such official documents or may obtain such information from heads of departments or from officers or employees in the service of those departments as may be necessary for the performance of his or her functions under this Act or any other law.

[S. 6 substituted by s. 3 of Act 47 of 1997.]

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 national departments and provincial administrations mentioned in the first column of Schedule 1, provincial departments mentioned in the first column of Schedule 2 and the organisational components mentioned in the first column of Schedule 3.

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

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

(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 a provincial administration, the said head shall-

- (i) be the Secretary to the Executive Council of the province concerned;
- (ii) subject to the provisions of sections 85 (2) (c) and 125 (2) (e) of the Constitution, be responsible for intergovernmental relations between the relevant provincial administration and other provincial administrations as well as national departments and for the intragovernmental co-operation between the relevant provincial administration and its various provincial departments, including the co-ordination of their actions and legislation; and
- (iii) subject to the provisions of paragraph (d), be responsible for the giving of strategic direction on any matter referred to in section 3 (2) (a).

(d) The head of a provincial administration shall in respect of a provincial department 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.

(e) The incumbent of a post mentioned in the second column of Schedule 2 shall not by virtue only of such incumbency be entitled to the rank, status or salary scale and accompanying benefits of the incumbent of a post mentioned in the second column of Schedule 1.

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

(4) (a) An organisational component mentioned in the first column of Schedule 3 and the officer who is the incumbent of the post bearing the designation mentioned in the second column of the said Schedule 3 opposite the name of the relevant organisational component, or the officer who is acting in that post, shall for the purposes of this Act be deemed to be a department and a head of department, respectively.

(b) The incumbent of a post contemplated in this subsection shall not by virtue only of such incumbency be entitled to the rank, status or salary scale and accompanying benefits of the incumbent of a post mentioned in the second column of Schedule 1.

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

(5) (a) The President may-

- (i) on the advice of the Minister on the establishment or abolition of any department or organisational component in the national sphere of government, or the designation of any such department or organisational component or the head thereof, amend Schedule 1 or 3 by proclamation in the *Gazette*; or
- (ii) at the request of the Premier of a province for the establishment or abolition of any department of the provincial administration concerned, or the designation of any such department or the head thereof, amend Schedule 2 by proclamation in the *Gazette*,

which amendment, if the President considers it necessary, may be effected retrospectively to the date of the said advice or request, as the case may be.

(b) The President shall give effect to any request referred to in paragraph (a) (ii) if the President is satisfied that it is consistent with the provisions of the Constitution or this Act.

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

8 Composition of public service

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

- (a) hold posts on the fixed establishment-
 - (i) classified in the A division and the B division;
 - (ii) in the services;
 - (iii) in the Agency or the Service; and

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

[NB: Sub-para. (iii) has been substituted by s. 40 (1) of the Intelligence Services Act 65 of 2002, a provision which will be put into operation by proclamation. See PENDLEX.]

- (iv) in state educational institutions;
- (b) (i) having ceased to hold posts on the fixed establishment contemplated in paragraph (a), and not having retired or having been discharged, are employed additional to the fixed establishment or who are deemed to continue to hold posts under the circumstances contemplated in subsection (3) (c);
- (ii) are appointed permanently additional to the fixed establishment;
- (c) (i) hold posts on the fixed establishment other than posts referred to in paragraph (a);

- (ii) are employed temporarily or under a special contract in a department, whether in a full-time or part-time capacity, additional to the fixed establishment or in vacant posts on the fixed establishment.

(2) The Minister may make determinations regarding the posts to be included in the A and the B division, respectively.

[Sub-s. (2) substituted by s. 5 (a) of Act 47 of 1997.]

(3) (a) The Minister may make a determination that any post included in one division shall be removed from that division and be included in the other division, or that any post included in the A or B division shall be excluded from both those divisions.

(b) A determination under this subsection shall not deprive any officer of any leave or other prescribed privilege or right which arose from the occupancy by him or her of a post in one of the said divisions.

(c) Any officer whose post has been excluded from both the divisions aforementioned shall, for the purposes of this Act and the applicable pension law, be deemed to continue to hold a post in the division in which his or her post was included immediately before the determination whereby such exclusion was effected came into force.

[Sub-s. (3) substituted by s. 5 (b) of Act 47 of 1997.]

CHAPTER IV **APPOINTMENT, PROMOTION AND TRANSFER (ss 9-15)**

9 Powers of executing authority

(1) The appointment of any person or the promotion or transfer of any officer or employee in the employ of a department shall be made by the relevant executing authority or by an officer or officers to whom the said authority has delegated his or her power of appointment, promotion or transfer.

(2) Subject to the provisions of this Chapter, appointments and promotions in, and transfers in or to, the public service shall be made in such manner and on such conditions as may be prescribed.

[S. 9 substituted by s. 6 of Act 47 of 1997.]

10 Qualifications for appointment

(1) No person shall be appointed permanently or be transferred and appointed permanently under section 15 (1), whether on probation or not, to any post in the A or B division unless he or she-

- (a) is a South African citizen;

- (b) is of good character; and
- (c) in so far as his or her condition of health is concerned, complies with such requirements as may be prescribed.

[Para. (c) substituted by s. 7 of Act 47 of 1997.]

(2) Notwithstanding the provisions of subsection (1) (c), a person may be appointed on probation, but his or her appointment shall not be confirmed unless he or she complies with the requirements contemplated in that paragraph.

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 or the filling of any post in the public service-

- (a) all persons who qualify for the appointment, transfer or promotion concerned shall be considered; and
- (b) the evaluation of persons shall be based on training, skills, competence, knowledge and the need to redress 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.

(3) Notwithstanding the provisions of subsection (2), the relevant executing authority may, subject to the prescribed conditions, approve the appointment, transfer or promotion of persons to promote the basic values and principles referred to in section 195 (1) of the Constitution.

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

12 Appointment of heads of department

(1) Any person who immediately prior to the commencement of the Public Service Laws Amendment Act, 1997-

- (a) was appointed in the office of head of department or to any post mentioned in the second column of Schedule 2 or 3, or was promoted or transferred to that office or post; or

[Para. (a) substituted by s. 5 (a) of Act 86 of 1998.]

- (b) was promoted or transferred from the office of head of department referred to in paragraph (a) to another office of head of department,

shall occupy, subject to the provisions of Chapter V and any collective agreement contemplated in section 18 (b) of the Public Service Laws Amendment Act, 1998-

- (i) in the case of a person referred to in paragraph (a)-
 - (aa) that office for a period of five years as from the date of his or her appointment, promotion or transfer, or the shorter period approved by the relevant executing authority, and if the term of office was extended at the expiry thereof, for the extended period approved by that executing authority;
 - (bb) that post for a period of five years as from the date of commencement of the Public Service Laws Amendment Act, 1997;

[Para. (i) substituted by s. 5 (c) of Act 86 of 1998.]

- (ii) in the case of a person referred to in paragraph (b), the latter office for the remainder of the term of office which applies to him or her in terms of paragraph (i) in respect of the former office, and if the term of office was extended at the expiry thereof, for the extended period approved by the relevant executing authority.

[Sub-s. (1) amended by s. 5 (b) of Act 86 of 1998.]

(2) As from the date of commencement of the Public Service Laws Amendment Act, 1997-

- (a) a person shall be appointed in the office of head of department in the prescribed manner, on the prescribed conditions and in terms of the prescribed contract between the relevant executing authority and such a person for a period of five years from the date of his or her appointment, or such shorter period as that executing authority may approve;
- (b) the term of office as head of department of such a person may be extended at the expiry thereof in accordance with the terms and conditions of the contract or a further contract, as the case may be, concluded between that executing authority and such a person for a period or successive periods of not less than twelve months and not more than five years, as that executing authority may approve;
- (c) the term of office as head of department of any person referred to in subsection (1), or any extended term thereof, may be extended at the expiry of the term of office or extended term, as the case may be, in the prescribed manner for a period of not less than twelve months and not more than five years, as the relevant executing authority may approve, provided the said person concludes the prescribed contract with that executing authority, whereupon any further extension of his or her term of office shall, subject to the provisions of paragraph (b), take place in accordance with the terms and conditions of that contract or a further contract, as the case may be.

(3) Notwithstanding the provisions of subsection (1), any person referred to in that subsection may at any time after the commencement of the Public Service Laws Amendment Act, 1997, conclude a contract contemplated in subsection (2) with the relevant executing authority.

[Sub-s. (3) inserted by s. 5 (d) of Act 86 of 1998.]

(4) Notwithstanding the provisions of subsection (2), a contract contemplated in that subsection may include any term and condition agreed upon between the relevant executing authority and the person concerned as to-

- (a) any particular duties of the head of department;
- (b) the specific performance criteria for evaluating the performance of the head of department;
- (c) the grounds upon, and the procedures according to which, the services of the head of department may be terminated before the expiry of his or her term of office or extended term of office, as the case may be; and
- (d) any other matter which may be prescribed.

[Sub-s. (4), formerly sub-s. (3), renumbered by s. 5 (d) of Act 86 of 1998.]

[S. 12 amended by s. 32 (1) of Act 38 of 1994 and by s. 2 (a) and (b) of Act 13 of 1996 and substituted by s. 9 of Act 47 of 1997.]

12A Appointment of persons on grounds of policy considerations

(1) Subject to the provisions of this section, an executing authority may appoint one or more persons under a special contract, whether in a full-time or part-time capacity-

- (a) to advise the executing authority on the exercise or performance of the executing authority's powers and duties;
- (b) to advise the executing 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 executing authority's powers and duties.

(2) The maximum number of persons that may be appointed by an executing 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 executing authority and the person concerned, including-

- (a) the contractual period, which period shall not exceed the term of office of the executing 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.]

14 Transfers within public service

(1) Subject to the provisions of this Act, every officer or 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 officer or 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.]

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 executing authority and approved by the Treasury.

(3) (a) An officer or 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 executing 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 officer or employee remains subject to the laws applicable to officers and 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 executing 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 officer or 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 officer or employee remains subject to the laws applicable to officers and employees in the public service while so placed at such disposal.

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

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 officer or 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 the fourth month after the month in which the notification is received.

(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 the provisions of 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 section 12 (1) or (2), or of any extended term contemplated therein, as the case may be.

[Para. (a) substituted by s. 13 (b) of Act 47 of 1997 and by s. 9 (a) of Act 86 of 1998.]

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

(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 executing 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 executing authority may, at the request of an officer 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 (1) or (2), or any extended term contemplated therein, and notwithstanding the absence of any reason for discharge in terms of section 17 (2) or the contract concluded with the officer, as the case may be, if a reason exists which the said authority deems sufficient.

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

(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 executing authority may, at the request of an officer, allow him or her to retire from the public service before reaching the age of 55 years, notwithstanding the absence of any reason for discharge in terms of section 17 (2), if in the opinion of such authority a sufficient reason exists therefor and the retirement will be to the advantage of the State.

[Para. (a) substituted by s. 1 (b) of Act 67 of 1996 and by s. 13 (e) of Act 47 of 1997.]

(b) The provisions of subsection (5) (b) shall *mutatis mutandis* apply to any officer who is allowed to retire from the public service in terms of paragraph (a).

(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 executing 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.]

17 Discharge of officers

(1) (a) Subject to the provisions of paragraph (b), the power to discharge an officer or employee shall vest in the relevant executing authority, who may delegate that power to an officer, and the said power shall be exercised with due observance of the applicable provisions of the Labour Relations Act, 1995 (Act 66 of 1995).

[Para. (a) substituted by s. 14 (a) of Act 47 of 1997.]

(b) Notwithstanding paragraph (a), the power to discharge an officer, excluding a head of department, in terms of subsection (2) (e), shall be vested in the head of department.

(c)

[Para. (c) deleted by s. 14 (b) of Act 47 of 1997.]

(2) Every officer, other than a member of the services or an educator or a member of the Agency or the Service, may be discharged from the public service-

- (a) on account of continued ill-health;
- (b) owing to the abolition of his or her post or any reduction in or reorganisation or readjustment of departments or offices;
- (c) if, for reasons other than his or her own unfitness or incapacity, his or her discharge will promote efficiency or economy in the department or office in which he or she is employed, or will otherwise be in the interest of the public service;
- (d) on account of unfitness for his or her duties or incapacity to carry them out efficiently;
- (e) on account of misconduct;
- (f) if, in the case of an officer appointed on probation, his or her appointment is not confirmed;
- (g) on account of misrepresentation of his or her position in relation to a condition for permanent appointment;
- (h) if his or her continued employment constitutes a security risk for the State; and
- (i) if the President or a Premier appoints him or her in the public interest under any law to an office to which the provisions of this Act do not apply.

[Para. (i) substituted by s. 14 (c) of Act 47 of 1997.]

[Sub-s. (2) amended by s. 32 (1) of Act 38 of 1994.]

(3) (a) If an officer is discharged under subsection (2) (g), he or she shall be deemed to have been discharged under subsection (2) (e).

(b) If an officer is discharged under subsection (2) (h), he or she shall be deemed to have been discharged under subsection (2) (d).

(c)

[Para. (c) deleted by s. 14 (d) of Act 47 of 1997.]

(4)

[Sub-s. (4) deleted by s. 14 (e) of Act 47 of 1997.]

(5) (a) (i) An officer, other than a member of the services or an educator or a member of the Agency or the Service, 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 discharged 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.

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

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

(b) If an officer who is deemed to have been so discharged, reports for duty at any time after the expiry of the period referred to in paragraph (a), the relevant executing authority may, on good cause shown and notwithstanding anything to the contrary contained in any law, approve the reinstatement of that officer 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.

[Para. (b) substituted by s. 14 (f) of Act 47 of 1997.]

(6)

[Sub-s. (6) deleted by s. 14 (g) of Act 47 of 1997.]

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 Coordinating 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 executing 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 executing 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 Coordinating 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 executing 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 executing 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 OFFICERS AND EMPLOYEES (ss 28-36)

28 Rights and obligations

An officer or 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 work by officers and employees

Unless it is otherwise provided for in his or her conditions of employment-

- (a) every officer and employee shall place the whole of his or her time at the disposal of the State;
- (b) no officer or employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the public service, without permission granted by the relevant executing authority or an officer authorised by the said authority; and

[Para. (b) substituted by s. 25 of Act 47 of 1997.]

- (c) no officer or employee may claim any additional remuneration in respect of any official duty or work which he or she performs voluntarily or is required by a competent authority to perform.

31 Unauthorized remuneration

(1) (a) (i) If any remuneration, allowance or other reward is received by an officer or employee in connection with the performance of his or her work in the public service otherwise than in accordance with the provisions of this Act or a determination of the Minister, or is received contrary to the provisions of section 30 (b), that officer or employee shall, subject to the provisions of subparagraph (iii), pay into revenue an amount equal to the amount of any such remuneration, allowance or reward or, where it does not consist of money, the value thereof as determined by the head of the department in which he or she was employed, or in which he or she is regarded to have been employed by virtue of the provisions of section 1 (3), at the time of the receipt thereof, and if he or she does not do so, it shall be recovered from him or her by the said head by way of legal proceedings or in such other manner as the Treasury may approve, and be paid into revenue.

(ii) The officer or employee concerned may appeal against the determination of the head of department to the relevant executing authority, who may make such decision as he or she may think fit.

(iii) The relevant executing authority may approve of the officer or employee concerned retaining the whole or a portion of the said remuneration, allowance or reward.

[Para. (a) substituted by s. 26 (a) of Act 47 of 1997.]

(b) If in the opinion of the head of department mentioned in paragraph (a) an officer or employee has received any remuneration, allowance or other reward contemplated in that paragraph, and 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 deposit-taking financial institution 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 officer or 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.

(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 the provisions of paragraph (b), any salary, allowance, fee, bonus or honorarium which may be payable in respect of the services of an officer or employee placed temporarily at the disposal of any other government, or of any council, institution, body or person contemplated in section 15 (3) or (4), shall be paid into revenue.

(b) In circumstances regarded by the relevant executing 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 officer or 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 Assignment of other functions to officers and employees

An executing authority or the head of a department, branch, office or institution may direct any officer or employee under his or her control temporarily to perform duties other than those ordinarily assigned to such an officer or employee or appropriate to the grade, designation or classification of his or her post, and he or she shall comply with such a direction.

33 Cession of emoluments

No officer or employee shall without written approval of the accounting officer, as defined in section 1 of the Exchequer Act, 1975 (Act 66 of 1975), 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.

34 Reduction of salaries

The salary or scale of salary of an officer shall not be reduced without his or her consent except in terms of the provisions of section 13 (6) or 38 or of any collective agreement contemplated in section 18 (b) of the Public Service Laws Amendment Act, 1998, or of an Act of Parliament.

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

35 Grievances of officers and 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 officer or employee may lodge that complaint or grievance with the relevant executing 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 officer or employee, that executing 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 executing 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.]

36 Political rights of officers and employees

Subject to the provisions of section 20 (*g*), an officer or employee may-

- (a) be a member and serve on the management of a lawful political party;
- (b) attend a public political meeting, but may not preside or speak at such a meeting; and
- (c) not draw up or publish any writing or deliver a public speech to promote or prejudice the interests of any political party.

CHAPTER VIII MISCELLANEOUS (ss 37-44)

37 Remuneration of officers and employees

(1) Subject to the provisions of section 5, officers and employees shall be paid the salaries, wages and allowances in accordance with the scales determined by the Minister for their ranks and grades in terms of section 3 (3) (*c*).

[Sub-s. (1) substituted by s. 29 (a) of Act 47 of 1997.]

(2) Subject to such conditions as may be prescribed-

- (a) officers or employees or classes of officers or employees may on appointment, transfer or promotion be paid higher salaries or wages than the minimum amounts of the appropriate scales;
- (b) officers or employees or classes of officers or employees may be granted special advancement in salaries within the scales applicable to them;
- (c) the salary or wage of an officer or employee of exceptional ability or possessing special qualifications or who has rendered meritorious service, and, if it is in the interest of the public service, of any officer or employee, may be specially advanced within the scale applicable to him or her or may be paid a salary or wage in accordance with a higher scale or may be granted any other fitting reward; and
- (d) any special service benefit may be granted to a head of department or class of heads of department before or at the expiry of a term contemplated in section 12 (1) (a) or (b), or any extended term contemplated in section 12 (1) (c), or at the time of retirement or discharge from the public service.

[Sub-s. (2) amended by s. 29 (b) of Act 47 of 1997.]

38 Wrongly granted remuneration

(1) If an incorrect salary or scale of salary on appointment, transfer or promotion, or an incorrect advancement of salary within the limits of the scale of salary applicable to his or her grading, was awarded or granted to an officer or employee, or was awarded or granted at the correct notch or scale but at a time when or in circumstances under which it should not have been awarded or granted to him or her, the head of the department in which that officer or employee is employed, shall correct his or her salary or scale of salary with effect from the date on which the incorrect salary, scale of salary or salary advancement commenced, notwithstanding the provisions of section 14 (3) (a) and notwithstanding the fact that the officer or employee concerned was unaware that an error had been made in the case where the correction amounts to a reduction of his or her scale of salary or salary.

(2) If an officer or 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 scale of salary 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 head of department, with the approval of the Treasury, 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;

- (ii) that other benefit shall be discontinued or withdrawn as from a current date, but the officer or 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.

(3) With the approval of the Treasury the amount of an overpayment to be recovered in terms of subsection (2) (b) may be remitted in whole or in part.

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) The Minister may make regulations-

(a) regarding-

- (i) the functions of departments, the transfer of functions from one department to another or from a department to any other body or from any other body to a department;
- (ii) the establishment or abolition of subdepartments, branches, offices or institutions;
- (iii) the control, organisation, rationalisation, restructuring or readjustment of departments, subdepartments, branches, offices or institutions;

(b) regarding-

- (i) the creation, number, grading, regrading, designation, redesignation, conversion, deployment or abolition of posts on the fixed establishment;

- (ii) the number of persons to be employed temporarily or under a special contract, whether in a full-time or a part-time capacity-
 - (aa) against posts on the fixed establishment which are not permanently filled;
 - (bb) additional to the fixed establishment, whether by reason of the absence of the incumbent of any post, or when it is necessary to provide staff for the performance of a class of work for which staff is not ordinarily employed on a permanent basis, or when it is necessary for any other reason to increase temporarily the staff of any department;
- (c) regarding-
 - (i) the employment of persons and the transfer, promotion and continued employment of officers and employees, including the continued employment of officers in or against posts graded higher or lower than their own grade, or additional to the fixed establishment;
 - (ii) the circumstances under which medical examination shall be required for the purposes of any provision of this Act, and the form of medical reports and certificates;
 - (iii) the particular classes of officers and employees who may be required to provide security, and the amount and form thereof;
- (d) regarding-
 - (i) the duties, powers, conduct, discipline, hours of attendance and leave of absence of officers and employees and their other conditions of service, including the occupation of official quarters;
 - (ii) the management of matters regarding conduct, including a code of conduct with which officers and employees shall comply: Provided that such a code shall only be approved by the Minister on the advice of the Commission;
 - (iii) the general security in departments and the security requirements with which officers and employees shall comply;
 - (iv) the conditions on which and the circumstances under which remuneration for overtime duty, and travelling, subsistence, climatic, local and other allowances shall be paid to officers and employees;
 - (v) journeys on official duty and the transport privileges of officers and employees;
 - (vi) medical aid to officers and employees;
 - (vii) the health and safety of officers and employees in the workplace;
- (e) in order to promote efficient, economic and effective use of resources and to improve the management and functioning of departments, subdepartments, branches, offices and institutions, regarding-
 - (i) organisation, procedure and methods;

- (ii) supervision;
 - (iii) the simplification of work and the elimination of unnecessary work;
 - (iv) the management of information and the utilisation of information technology;
 - (v) the co-ordination of work;
 - (vi) the limitation of the number of officers and employees of departments, subdepartments, branches, offices and institutions, and the utilisation of the services of officers and employees to the best advantage;
 - (vii) the training of officers and employees;
 - (viii) work facilities;
 - (ix) sound labour relations;
 - (x) any other matter which the Minister may consider essential;
- (f) regarding the keeping of records of the functions and organisation of departments, of officers and employees and of post establishments;
- (g) regarding any matter required or permitted to be prescribed by regulation under this Act;
- (h) regarding the designation or establishment of an authority or more than one authority and the power of such an authority to authorise a departure from the provisions of a regulation in respect of an officer or employee or class of officers or employees under stated circumstances;
- (i) in general, regarding any matter which the Minister may consider necessary or expedient to prescribe or to regulate in order to achieve the objects of this Act.

[Sub-s. (1) substituted by s. 30 (a) of Act 47 of 1997.]

(2) Different regulations may be made in respect of the A and B divisions, or to suit the varying requirements of particular departments or branches of departments, or of particular classes of officers or employees, or of particular kinds of employment in the public service.

(3) (a) A regulation made under this Act shall be in force unless and until Parliament, by resolution, disapproves of the regulation, in which event the regulation shall lapse with effect from a date to be specified in the resolution.

(b) The lapsing of a regulation in terms of this subsection shall not affect the validity of anything done under the regulation prior to the date mentioned in the resolution.

(c) The provisions of this subsection shall not affect the power of the Minister to make a new regulation regarding the subject matter dealt with by a regulation that has lapsed in terms of paragraph (a).

[Para. (c) substituted by s. 30 (b) of Act 47 of 1997.]

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, officer or employee in so far as they apply to that department, officer or employee.

42A Assignment of functions by Minister

(1) The Minister may-

- (a) delegate to the Director-General: Public Service and Administration or any officer or employee of the Department concerned any power conferred upon the Minister by or under this Act or any other law, excluding the power referred to in section 41 (1), on such conditions as the Minister may determine; or
- (b) authorise the said Director-General, officer or employee to perform any duty assigned to the Minister by or under this Act or any other law.

(2) Any delegation under subsection (1) (a) shall not prevent the exercise of the relevant power by the Minister himself or herself.

[S. 42A inserted by s. 32 of Act 47 of 1997.]

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 DEPARTMENTS AND HEADS OF DEPARTMENT

(Section 7 (2) and (3))

[Schedule 1 amended by Proclamation 106 of 17 June 1994, by s. 32 (1) of Act 38 of 1994, by Proclamation 24 of 13 April 1995, by Proclamation 49 of 5 May 1995, by Proclamation R63 of 23 June 1995, by Proclamation 78 of 25 August 1995, by Proclamation R104 of 1 December 1995, by Proclamation 14 of 1 April 1996, by Proclamation 44 of 8 August 1996, by Proclamation 51 of 6 September 1996, by Proclamation 63 of 25 October 1996, by Proclamation 32 of 18 April 1997, by s. 34 (1) of Act 34 of 1997, by Proclamation 7 of 13 February 1998 and by s. 6 of Act 10 of 1998, substituted by s. 13 of Act 86 of 1998 and amended by Proclamation 82 of 30 July 1999, by Proclamation 104 of 8 October 1999, by Proclamation 117 of 19 November 1999, by Proclamation 118 of 19 November 1999, by Proclamation 17 of 31 March 2000, by Proclamation 25 of 2 May 2000, by Proclamation 37 of 7 July 2000, by Proclamation 39 of 14 July 2000, by Proclamation 71 of 1 December 2000 and by Proclamation 62 of 26 July 2002.]

Column 1	Column 2
Department of Agriculture	Director-General: Agriculture
Department of Arts and Culture	Director-General: Arts and Culture
Department of Communications	Director-General: Communications
Department of Correctional Services	Commissioner: Correctional Services
Department of Defence	Secretary for Defence
Department of Education	Director-General: Education
Department of Environmental Affairs and Tourism	Director-General: Environmental Affairs and Tourism
Department of Foreign Affairs	Director-General: Foreign Affairs
Department of Government Communications and Information System	Director-General: Government Communications and Information System
Department of Health	Director-General: Health
Department of Home Affairs	Director-General: Home Affairs

Department of Housing	Director-General: Housing
Department of Justice	Director-General: Justice
Department of Labour	Director-General: Labour
Department of Land Affairs	Director-General: Land Affairs
Department of Minerals and Energy	Director-General: Minerals and Energy
Department of Provincial and Local Government	Director-General: Provincial and Local Government
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 Safety and Security	National Commissioner: South African Police Service
Department of Science and Technology	Director-General: Science and Technology
Department of Social Development	Director-General: Social Development
Department of Trade and Industry	Director-General: Trade and Industry
Department of Transport	Director-General: Transport
Department of Water Affairs and Forestry	Director-General: Water Affairs and Forestry
National Intelligence Agency	Director-General: National Intelligence Agency
National Treasury	Director-General: National Treasury
Office of the Public Service Commission	Director-General: Office of the Public Service Commission
Presidency	Director-General: Presidency
Provincial Administration: Eastern Cape	Director-General: Office of the Premier of Eastern Cape
Provincial Administration: Free State	Director-General: Office of the Premier of Free State
Provincial Administration: Gauteng	Director-General: Office of the Premier of Gauteng
Provincial Administration: KwaZulu-Natal	Director-General: Office of the Premier of KwaZulu-Natal
Provincial Administration: Mpumalanga	Director-General: Office of the Premier of Mpumalanga
Provincial Administration: Northern Cape	Director-General: Office of the Premier of Northern Cape
Provincial Administration: Northern Province	Director-General: Office of the Premier of Northern Province
Provincial Administration: North West	Director-General: Office of the Premier of North West
Provincial Administration: Western Cape	Director-General: Office of the Premier of Western Cape
South African Management and Development	Director-General: South African Management and

Institute	Development Institute
South African Secret Service	Director-General: South African Secret Service
Statistics South Africa	Statistician-General: Statistics South Africa

Schedule 2
PROVINCIAL DEPARTMENTS AND HEADS OF PROVINCIAL DEPARTMENTS

(Section 7 (2) and (3))

[Schedule 2 amended by Proclamation 6 of 9 February 1996, by Proclamation 14 of 1 April 1996, by Proclamation 51 of 6 September 1996, by Proclamation 13 of 31 January 1997, by Proclamation 21 of 28 February 1997, by Proclamations 6 and 7 of 13 February 1998, by Proclamation 62 of 12 June 1998 and by Proclamation 82 of 27 August 1998, substituted by s. 14 of Act 86 of 1998 and amended by Proclamation 105 of 8 October 1999, by Proclamation 119 of 19 November 1999 (as corrected by General Notice 288 of 21 January 2000), by Proclamation 32 of 15 June 2000, by Proclamation 5 of 26 January 2001, by Proclamation R38 of 27 July 2001, by Proclamation R41 of 24 August 2001, by Proclamation R44 of 14 September 2001, by Proclamation R55 of 9 November 2001, by Proclamation R711 of 20 May 2002, by Proclamation R49 of 14 June 2002 and by Proclamation R79 of 15 November 2002.]

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, Local Government and Traditional Affairs	Head: Housing, Local Government and Traditional Affairs
Department of Roads and Public Works	Head: Roads and Public Works
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
Department of Transport	Head: Transport
Provincial Treasury	Head: Provincial Treasury
Free State	
Department of Agriculture	Head: Agriculture
Department of Education	Head: Education
Department of Health	Head: Health
Department of Local Government and Housing	Head: Local Government and Housing
Department of Public Works, Roads and Transport	Head: Public Works, Roads and Transport
Department of Public Safety, Security and Liaison	Head: Public Safety, Security and Liaison
Department of Social Development	Head: Social Development

**Department of Sport, Arts, Culture,
Science and Technology**

Department of Tourism, Environmental and
Economic Affairs

Free State Provincial Treasury

Gauteng

**Department of Agriculture,
Conservation, Environment and Land
Affairs**

**Department of Development Planning
and Local Government**

Department of Education

**Department of Finance and Economic
Affairs**

Department of Health

Department of Housing

**Department of Public Transport, Roads
and Works**

Department of Safety and Liaison

**Department of Social Services and
Population Development**

**Department of Sport, Recreation, Arts
and Culture**

Gauteng Shared Services Centre

KwaZulu-Natal

Department of Agriculture

**Department of Economic Development
and Tourism**

Department of Education and Culture

Department of Finance

Department of Health

Department of Housing

Department of the Royal Household

Department of Safety and Security

**Department of Traditional and Local
Government Affairs**

Department of Transport

**Department of Welfare and Population
Development**

Department of Works

Mpumalanga

**Department of Agriculture,
Conservation and Environment**

Department of Education

**Department of Finance and Economic
Affairs**

Department of Health

**Head: Sport, Arts, Culture, Science and
Technology**

Head: Tourism, Environmental and Economic
Affairs

Head: Free State Provincial Treasury

**Head: Agriculture, Conservation,
Environment and Land Affairs**

**Head: Development Planning and Local
Government**

Head: Education

Head: Finance and Economic Affairs

Head: Health

Head: Housing

**Head: Public Transport, Roads and
Works**

Head: Safety and Liaison

**Head: Social Services and Population
Development**

**Head: Sport, Recreation, Arts and
Culture**

Head: Gauteng Shared Services Centre

Head: Agriculture

**Head: Economic Development and
Tourism**

Head: Education and Culture

Head: Finance

Head: Health

Head: Housing

Head: Royal Household

Head: Safety and Security

**Head: Traditional and Local
Government Affairs**

Head: Transport

**Head: Welfare and Population
Development**

Head: Works

**Head: Agriculture, Conservation and
Environment**

Head: Education

Head: Finance and Economic Affairs

Head: Health

Department of Housing and Land Administration	Head: Housing and Land Administration
Department of Local Government and Traffic Control and Traffic Safety	Head: Local Government and Traffic Control and Traffic Safety
Department of Public Works, Roads and Transport	Head: Public Works, Roads and Transport
Department of Safety and Security	Head: Safety and Security
Department of Social Services, Population and Development	Head: Social Services, Population and Development
Department of Sport, Recreation, Arts and Culture	Head: Sport, Recreation, Arts and Culture
Northern Cape	
Department of Agriculture, Land Reform, Environment and Conservation	Head: Agriculture, Land Reform, Environment and Conservation
Department of Economic Affairs and Tourism	Head: Economic Affairs and Tourism
Department of Education	Head: Education
Department of Finance	Head: Finance
Department of Health	Head: Health
Department of Housing and Local Government	Head: Housing and Local Government
Department of Provincial Safety and Liaison	Head: Provincial Safety and Liaison
Department of Social Services and Population Development	Head: Social Services and Population Development
Department of Sport, Arts and Culture	Head: Sport, Arts and Culture
Department of Transport, Roads and Public Works	Head: Transport, Roads and Public Works
Northern Province	
Department of Agriculture	Head: Agriculture
Department of Education	Head: Education
Department of Finance and Economic Development	Head: Finance and Economic Development
Department of Health and Welfare	Head: Health and Welfare
Department of Local Government and Housing	Head: Local Government and Housing
Department of Public Works	Head: Public Works
Department of Safety, Security and Liaison	Head: Safety, Security and Liaison
Department of Sport, Arts and Culture	Head: Sport, Arts and Culture
Department of Transport	Head: Transport
North West	
Department of Agriculture, Conservation and Environment	Head: Agriculture, Conservation and Environment
Department of Developmental Local Government and Housing	Head: Developmental Local Government and Housing
Department of Economic Development	Head: Economic Development and

and Tourism	Tourism
Department of Education	Head: Education
Department of Finance	Head: Finance
Department of Health	Head: Health
Department of Roads and Public Works	Head: Roads and Public Works
Department of Safety and Liaison	Head: Safety and Liaison
Department of Social Services, Arts, Culture and Sport	Head: Social Services, Arts, Culture and Sport
Department of Transport	Head: Transport
Western Cape	
Department of Community Safety	Head: Community Safety
Department of Economic Development, Tourism and Agriculture	Head: Economic Development, Tourism and Agriculture
Department of Education	Head: Education
Department of Environmental and Cultural Affairs and Sport	Head: Environmental and Cultural Affairs and Sport
Department of Finance	Head: Finance
Department of Health	Head: Health
Department of Planning, Local Government and Housing	Head: Planning, Local Government and Housing
Department of Social Services	Head: Social Services
Department of Transport and Public Works	Head: Transport and Public Works

Schedule 3
ORGANISATIONAL COMPONENTS AND HEADS THEREOF

(Section 7 (4))

[Schedule 3 inserted by s. 15 of Act 86 of 1998 and amended by Proclamation 82 of 30 July 1999, by Proclamation 117 of 19 November 1999, by Proclamation 17 of 31 March 2000 and by Proclamation 71 of 1 December 2000.]

Column 1	Column 2
Independent Complaints Directorate	Executive Director: Independent Complaints Directorate
Sport and Recreation South Africa	Head: Sport and Recreation South Africa

Schedule 4
LAWS REPEALED BY SECTION 43 (1)

[Schedule 4, formerly 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 (Proc 103 of 1994) after amendment by the Intelligence Services Act 65 of 2002

Section 1 - definition

'Academy' means the South African National Academy of Intelligence as defined in section 1 of the Intelligence Services Act, 2002;

Section 2 (3)

Where persons employed in the Intelligence Services or the Academy are not excluded from the provisions of this Act, those provisions shall apply only in so far as they are not contrary to the laws governing their service, and those provisions shall not be construed as derogating from the powers or duties conferred or imposed upon the Intelligence Services or the Academy.

Section 8 (1) (a) (iii)

in the Intelligence Services or the Academy; and

PUBLIC SERVICE AMENDMENT ACT 13 OF 1996

[ASSENTED TO 10 APRIL 1996]

[DATE OF COMMENCEMENT: 12 APRIL 1996]

(Afrikaans text signed by the President)

ACT

To provide for the removal of unjust differentiation between 'officers' and 'employees' as defined in the Public Service Act, 1994; to amend the Public Service Act, 1994, so as to further regulate the appointment of heads of department; to protect the existing retirement age of serving employees notwithstanding the removal of such differentiation; and to provide for matters connected therewith.

1 Removal of differentiation between officer and employee

(1) From the date of commencement of this Act (hereinafter referred to as the commencement date), unless clearly inappropriate-

- (a) every person who is an 'employee' as defined in section 1 (1) of the Public Service Act, 1994 (Proclamation 103 of 1994), immediately before the commencement date, by virtue of his or her relationship with the State as employer, shall be deemed to be an 'officer' as so defined, and the provisions of the Public Service Act, 1994, shall for all purposes apply to such person as if he or she were an 'officer' as so defined;
- (b) any post which immediately before the commencement date is included in the B division of the public service in terms of section 8 of the Public Service Act, 1994, shall be deemed to have been so included in the A division of that service; and
- (c) the provisions of the Public Service Act, 1994, which immediately before the commencement date applied to employees and to posts in the B division, shall cease to apply to such persons or posts,

and to that extent the Public Service Act, 1994, shall be deemed to have been amended.

(2) For the purposes of subsection (1) any reference to the Public Service Act, 1994, however expressed, shall be construed so as to include a reference to the regulations and the Public Service Staff Code contemplated in sections 41 and 42 of the Public Service Act, 1994, respectively.

2 Amends section 12 (1) of the Public Service Act, 1994 (Proclamation 103 of 1994), as follows: paragraph (a) substitutes paragraph (a); and paragraph (b) adds paragraph (d).

3 Amends section 16 (1) of the Public Service Act, 1994 (Proclamation 103 of 1994) by substituting paragraph (a).

4 Short title

This Act shall be called the Public Service Amendment Act, 1996.

PUBLIC SERVICE SECOND AMENDMENT ACT 67 OF 1996

[ASSENTED TO 30 OCTOBER 1996]

[DATE OF COMMENCEMENT: 1 MAY 1997]

(Afrikaans text signed by the President)

ACT

To amend the Public Service Act, 1994, in order to grant to certain officers in the public service the right to retire on or after the date on which they reach the age of 55 years; and to provide for matters connected therewith.

1 Amends section 16 of the Public Service Act, 1994, (Proclamation 103 of 1994) as follows: paragraph (a) inserts subsection (2A); and paragraph (b) substitutes subsection (6) (a).

2 Short title and commencement

This Act shall be called the Public Service Second Amendment Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

PUBLIC SERVICE AMENDMENT ACT 5 OF 1999

[ASSENTED TO 14 APRIL 1999]

[DATE OF COMMENCEMENT: 1 JULY 1999]

(English text signed by the President)

ACT

To amend the Public Service Act, 1994, so as to regulate anew the handling of the appointment and other career incidents of heads of departments; and to provide for incidental matters.

1 Inserts section 3B in the Public Service Act, 1994 (Proclamation 103 of 1994).

2 Short title and commencement

This Act is called the Public Service Amendment Act, 1999, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

ⁱ S. 3(3)(b) was declared by the Constitutional Court to be inconsistent with the Constitution and invalid to the extent that it empowers the Minister, without the consent of the Premier concerned, to make determinations regarding the transfer of functions of a provincial administration or a provincial department to a national department or any body not established by or under a provincial law, or the transfer of functions to a provincial

administration or a provincial department from a national department or any such body. -
GN R589 in GG 21266 of 15 June 2000