

REPUBLIC OF SOUTH AFRICA

**PUBLIC SERVICE LAWS
AMENDMENT BILL**

(As introduced)

(MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION)

[B 32—97]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
STAATSDIENSWETGEWING**

(Soos ingedien)

(MINISTER VIR DIE STAATSDIENS EN ADMINISTRASIE)

[W 32—97]

ISBN 0 621 27175 6

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Public Service Act, 1994, so as to further define, to substitute or to delete certain expressions; to further regulate the application of the said Act; to provide for the readjustment of the functions of the Public Service Commission and the circumscription of the functions of the Minister for the Public Service and Administration and an executing authority; to make other provision in connection with the management, administration and functions of the South African Management and Development Institute and the administration of the Training Fund; to make further provision in connection with the implementation or limitation of actions affecting the public service or its members; to enable the said Minister to have access to certain documents and information; to make further provision in connection with the power of the President to amend Schedules 1 and 2 to the said Act; to make other provision in connection with the inclusion of posts in, or the exclusion of posts from, the A or B division; to make further provision in connection with appointments, promotions and transfers; to make further provision in connection with the discharge of officers; to further regulate inefficiency and misconduct; to further regulate the receipt of unauthorised remuneration; to make other provision in connection with the reduction of salaries of officers; to make further provision in connection with grievances of officers and employees; to empower the said Minister to make regulations; and to empower the said Minister to assign certain functions to officers or employees of his or her Department; and to repeal or to amend other laws relating to the public service so as to remove obsolete provisions or to effect certain consequential amendments arising from the readjustment of the functions of the said Commission; and to provide for incidental matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994, section 27 of Act promulgated under Proclamation 105 of 1994 and section 1 of Proclamation R.171 of 1994

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1. Section 1 of the Public Service Act, 1994 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the deletion in subsection (1) of the definitions of “agreement” and “central level”;
- (b) by the substitution in the said subsection (1) for the definition of “Commission” of the following definition:
- “(iv) ‘Commission’ means the Public Service Commission established by section [209] 196(1) of the Constitution **[and, in relation to any power or function conferred upon, assigned to or imposed upon the Commission by this Act, the Commission Act or any other law, includes any member or members of the Commission or any officer or officers to whom the exercise of such power or the performance of such function has been delegated by the Commission in terms of section 210(1)(d) of the Constitution or section 5(2) of the Commission Act];** (xi)”;
- (c) by the substitution in the said subsection (1) for the definition of “Commission Act” of the following definition:
- “(v) ‘Commission Act’ means the Public Service Commission Act, **[1984 (Act No. 65 of 1984), as adapted by Chapter 13 and section 238(3) and (6) of the Constitution] 1997;** (xii)”;
- (d) by the substitution in the said subsection (1) for the definition of “Constitution” of the following definition:
- “(vi) ‘Constitution’ means the Constitution of the Republic of South Africa, **[1993 (Act No. 200 of 1993)] 1996 (Act No. 108 of 1996);** (vi)”;
- (e) by the deletion in the said subsection (1) of the definitions of “Council” and “employer”;
- (f) by the substitution in the said subsection (1) for the definition of “executing authority” of the following definition:
- “(xii) ‘executing authority’, in relation to—
- (a) the Office of the President, means the President acting on his or her own;
- (b) the Office of **[any Executive]** ~~the~~ Deputy President, means the **[relevant Executive]** Deputy President;
- (c) a department or organisational component within a Cabinet portfolio **[referred to in section 88 of the Constitution]**, means the Minister responsible for such portfolio;
- (d) the Office of the Commission, means the Chairperson of the Commission;
- [(d)] (e) the Office of a Premier of a province, means the Premier of that province acting on his or her own; and
- [(e)] (f) a provincial department or office within an Executive Council portfolio **[referred to in section 149 of the Constitution]**, means the member of such Executive Council responsible for such portfolio; (xxviii)”;
- (g) by the insertion in the said subsection (1) after the definition of “information technology” of the following definition:
- “(xvA) ‘Minister’ means the Minister for the Public Service and Administration; (xiiiA)”;
- (h) by the deletion in the said subsection (1) of the definition of “provincial service commission”;
- (i) by the substitution in the said subsection (1) for the definition of “revenue” of the following definition:
- “(xxiv) ‘revenue’ means the National Revenue Fund established by section **[185(1)] 213(1)** of the Constitution or, in relation to an officer or employee of a provincial administration, the relevant Provincial Revenue Fund **[contemplated in]** established by section [159(1)] 226(1) of the Constitution, as the case may be; (viii)”;
- (j) by the substitution for subsection (3) of the following subsection:
- “(3) Where it is uncertain who the executing authority or head of department is for the purposes of **[a recommendation, direction or other]** any act under this Act in respect of an officer or employee **[referred to in section 43(2)(b)]**, the **[Commission]** Minister shall

indicate the authority or head to be regarded as the executing authority or head of department in the case concerned.”.

Amendment of section 2 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994

2. Section 2 of the principal Act is hereby amended by the deletion of subsections (4) and (6). 5

Substitution of Chapter II of Act promulgated under Proclamation 103 of 1994

3. The following Chapter is hereby substituted for Chapter II of the principal Act:

“CHAPTER II

ADMINISTRATION OF THE PUBLIC SERVICE, INCLUDING THE SOUTH AFRICAN MANAGEMENT AND DEVELOPMENT INSTITUTE AND THE TRAINING FUND 10

Functions of Minister and executing authority

- 3. (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. 15
- (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— 20
- (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; 25
 - (iii) the salaries and other conditions of service of officers and employees;
 - (iv) labour relations in the public service;
 - (v) information and information technology in the public service; 30
 - (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 give effect to any such policy. 35
- (3) The Minister may—
- (a) advise the President regarding the establishment or abolition of any department, including the designation of any department or head of department, in order to enable the President to amend Schedule 1 or 2;
 - (b) make determinations regarding 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; 40
 - (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; 45
 - (d) make regulations under section 41(1);
 - (e) issue directives which are not inconsistent with this Act to elucidate or supplement any regulation. 50
- (4) (a) If so requested by the President or an executing authority, the

Minister may advise the President or the relevant executing authority on 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; 5
- (iii) the remuneration or other conditions of appointment of the office-bearers of any such board, institution or body; or 10
- (iv) the staffing, employment or other personnel practices of any such board, institution or body.

(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 the President or the relevant executing authority. 15

(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; 20
- (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; 25
- (c) regarding the recruitment, appointment, evaluation, 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, 30

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. 30

(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. 35

(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. 40

South African Management and Development Institute and Training Fund

4. (1) The management and administration of the South African Management and Development Institute shall be under the control of the Minister. 45

(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; 50
- (b) may issue diplomas or certificates or cause diplomas or certificates to be issued to persons who have passed such examinations. 55

(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. 5
- (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. 10
- (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. 15
- (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; 20
 - (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. 25
- (c) The records and annual financial statements shall be audited annually by the Auditor-General.

Implementation or limitation of actions affecting public service or its members 30

- 5. (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; 35
 - (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; 40
 - (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. 45
- (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. 50
- (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 No. 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. 55 60

- (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.

Access to documents and information by Minister

6. 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.

Amendment of section 7 of Act promulgated under Proclamation 103 of 1994

4. Section 7 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) The public service established by section **[212 (1)]** 197(1) of the Constitution shall be structured and organised as provided for in this Act.”; and
- (b) by the substitution for subsection (5) of the following subsection:
- “(5) The President may **[after the Commission has made a recommendation]** on the advice of the Minister on the establishment or abolition of any department, including the designation of any department or head of department, amend Schedule 1 or 2 by proclamation in the *Gazette*, **[and]** which amendment, if **[he or she]** the President deems it necessary, may be effected retrospectively to the date of the **[recommendation of the Commission]** advice of the Minister.”.

Amendment of section 8 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994

5. Section 8 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection:
- “(2) The **[A and B divisions shall consist of such posts as the Commission may direct to be included therein]** Minister may make determinations regarding the posts to be included in the A and the B division, respectively.”; and
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) (a) The **[Commission may direct]** 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 **[direction]** 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 **[Government Service Pensions Act, 1973 (Act No. 57 of 1973)]** 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 **[direction]** determination whereby such exclusion was effected came into force.”. 5

Substitution of section 9 of Act promulgated under Proclamation 103 of 1994

6. The following section is hereby substituted for section 9 of the principal Act:

“Powers of executing authority

9. (1) **[Without derogating from the functions of the Commission in terms of this Act, the]** The appointment of any person or the promotion or transfer of any officer or employee in the employ of a **[national]** department **[or provincial administration]** shall be made by the relevant executing authority or by an officer or officers to whom **[such]** the said authority has delegated his or her power of appointment, promotion or transfer. 10
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(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 **[including conditions regarding the knowledge of official and other languages]** as may be prescribed **[or, in so far as they are not prescribed, as may be directed by the Commission]**.”. 20
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Amendment of section 10 of Act promulgated under Proclamation 103 of 1994

7. Section 10 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph: 25

“(c) in so far as his or her condition of health is concerned, complies with such requirements as may be **[directed by the Commission under section 3(4)(b)]** prescribed.”.

Amendment of section 11 of Act promulgated under Proclamation 103 of 1994

8. Section 11 of the principal Act is hereby amended— 30

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

“(b) only the qualifications, level of training, merit, efficiency and suitability of the persons who qualify for the appointment, promotion or transfer in question, the need to redress the imbalances of the past to achieve broad representation and such conditions as may be **[determined or]** prescribed **[or as may be directed or recommended by the Commission]** for the making of the appointment or the filling of the post, shall be taken into account.”; and 35
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(b) by the substitution for subsection (2) of the following subsection:

“(2) For the filling of any post in the A division, the **[Commission]** relevant executing authority shall, subject to the provisions of subsection (1), **[recommend]** consider either— 45
(a) the transfer or promotion of an officer; or
(b) if the post cannot satisfactorily be filled by such a transfer or promotion, the appointment of a person who is not an officer.”.

Amendment of section 12 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994 and section 2 of Act 13 of 1996

9. Section 12 of the principal Act is hereby amended— 50

- (a) by the substitution in paragraph (a) of subsection (1) for the words following upon subparagraph (iii) of the following words:
- “shall, in the case of a person referred to in subparagraph (i) or (ii), occupy that office in a full-time capacity for a period of five years, or such shorter period as the relevant executing authority may **[subject to the provisions of subsection (3)]** approve, from the date of his or her appointment, promotion or transfer and, in the case of a person referred to in subparagraph (iii), occupy that office for the unexpired portion of the term for which he or she was appointed as head of department in terms of the relevant repealed law;”;
- (b) by the deletion of subsection (3).

Substitution of section 13 of Act promulgated under Proclamation 103 of 1994

10. The following section is hereby substituted for section 13 of the principal Act:

“Appointment, transfer and promotion on probation

- 13.** (1) The appointment of a person and the transfer **[and]** or promotion of an officer in the A or B division shall be made on probation—
- (a) unless, in the case of an appointment **[in—**
- (i) the A division, the Commission recommends otherwise; or**
- (ii) the B division]**, the person having the power to approve such an appointment, directs otherwise; or
- (b) if, in the case of a promotion or a transfer **[in—**
- (i) the A division, the Commission so recommends; or**
- (ii) the B division]**, 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) **[of this subsection and the provisions of subsection (4)]**, the period of probation **[so recommended or directed]** 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 **[recommended or]** 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 **[is]** 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[—
- (a) **the head of department shall, in the case of an officer serving in the A division, report the reasons for the non-confirmation to the Commission, which shall, subject to the provisions of subsection (6), make such recommendation regarding the matter as it may deem fit;**
- (b) , the person having the power to make the appointment, transfer or promotion concerned may **[in the case of an officer serving in the B division]** extend the period of probation or act in accordance with the provisions of subsection (5).
- [(4) If the appointment or promotion of an officer is made on probation and the only condition of such an appointment or promotion is that the officer shall comply with the training requirements directed by the Commission, such appointment shall, notwithstanding the provisions of subsection (2), or such promotion shall, notwithstanding**

provisions to the contrary in this Act, be deemed to have been confirmed with effect from the day immediately succeeding the date upon which that officer complied with those requirements.]

(5) [(a)] Notwithstanding anything to the contrary contained in subsection (2) or in Chapter VI, but subject to the provisions of [paragraph (b) and] subsection (6), an officer who is serving on probation may be discharged, [either] whether during or at or after the expiry of the period of probation—

[(i) (a)] by the giving of one month’s written notice to such officer; or [(ii) (b)] forthwith, if his or her conduct or performance is unsatisfactory.

[(b) Before an officer serving in the A division is so discharged, the Commission shall first make a recommendation.]

(6) [(a)] Notwithstanding anything to the contrary contained in sections 14 and 34, [but subject to the provisions of paragraph (b)] 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.

[(b) In the case of the transfer of an officer serving in the A division, the Commission shall first make a recommendation.]”.

Amendment of section 14 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994

11. Section 14 of the principal Act is hereby amended—

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

“(a) The transfer of an officer or employee from one post or position to another post or position may, subject to [paragraphs (b), (c) and (d) of this subsection and subsection (3)(d)] the provisions of paragraph (b), be made on the authority of the person having the power [to] of transfer.”;

(b) by the deletion of paragraphs (c) and (d) of the said subsection (2); and

(c) by the deletion of paragraphs (b) and (d) of subsection (3).

Substitution of section 15 of Act promulgated under Proclamation 103 of 1994

12. The following section is hereby substituted for section 15 of the principal Act:

“Transfer and secondment of officials

15. (1) A person holding a pensionable appointment in a department under any law other than this Act or [an] in any institution or body established by [an Act of Parliament] or under any law and which obtains its funds directly in whole or in part from [the National Revenue Fund] revenue, may [on the recommendation of the Commission] 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 [a] any council, institution or body established by or under any law, or of any other body or person, may [on the recommendation of the Commission] 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 [recommended by the Commission after consultation with] 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 the recommendation of the Commission]** and on such conditions, in addition to those prescribed by or under any law, as may be **[recommended]** determined by the **[Commission]** relevant executing authority after consultation with the Treasury, be placed at the disposal of another government, or of **[a]** 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. 5

(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. 10

(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 **[a]** any council, institution or body established by or under any law, or of any other body or person, may **[on the recommendation of the Commission]** 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 **[recommended by the Commission after consultation with]** agreed upon by the employer of the official and the relevant executing authority and approved by the Treasury, and in such a case, **[on the recommendation of the Commission and]** on such conditions, in addition to those **[laid down]** prescribed by or under any law, as may be **[recommended]** determined by the **[Commission]** said authority after consultation with the Treasury, an officer or employee may with his or her consent and in terms of such an agreement **[between the department in which he or she is employed and the employer of the official]** be placed at the disposal of the employer of the official for the same period on an exchange basis. 15 20 25

(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.”. 30

Amendment of section 16 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994, section 3 of Act 13 of 1996 and section 1 of Act 67 of 1996 35

13. Section 16 of the principal Act is hereby amended—

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

“(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, **[who is in employment]** employed with effect from a date prior to 1 October 1993 in terms of a law repealed by this Act, shall **[in accordance with section 212(7)(b) of the Constitution]** 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.”; 40 45

(b) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(a) Subject to the provisions of this section and section 12(2)(a) **[and section 14]**, 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)(a) or (b), or of any extended term contemplated in section 12(1)(c), as the case may be.”; 50

(c) by the substitution for subsection (4) of the following subsection: 55

“(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 recommendation of the Commission and]** the approval of the relevant executing authority, be retired from the public service.”; 60

(d) by the substitution for paragraph (a) of subsection (5) of the following paragraph:

“(a) An executing authority may, at the request of an officer occupying

- the office of head of department **[and, if the officer is not a member of the services or an educator or a member of the Agency or the Service, subject to a recommendation of the Commission]**, allow him or her to retire from the public service before the expiry of the term contemplated in section 12(1)(a) or (b), or any extended term contemplated in section 12(1)(c), and notwithstanding the absence of any reason for discharge in terms of section 17(2), if a reason exists which such authority deems sufficient.”;
- (e) by the substitution for paragraph (a) of subsection (6) of the following paragraph:
- “(a) An executing authority may, at the request of an officer, **[and subject to a recommendation of the Commission]** 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), **[allow him or her to retire from the public service before reaching the age of 55 years]** if in the opinion of such authority a sufficient reason exists therefor and the retirement will be to the advantage of the State.”; and
- (f) by the substitution for subsection (7) of the following subsection:
- “(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 retire or]** to be retired in terms of subsection (1), he or she may, with his or her consent **[be so retained from time to time, on the recommendation of the Commission]** 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 **[by resolution]** of Parliament granted by resolution, exceed in the aggregate two years.”.

Amendment of section 17 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994

14. Section 17 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) Subject to **[paragraphs (b) and (c) of this subsection, subsection (6) of this section and section 19(11) of the Public Service Labour Relations Act, 1993 (Act No. 102 of 1993)]** 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 No. 66 of 1995).”;
- (b) by the deletion of paragraph (c) of the said subsection (1);
- (c) by the substitution for paragraph (i) of subsection (2) of the following paragraph:
- “(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 **[or the Commission Act]** do not apply.”;
- (d) by the deletion of paragraph (c) of subsection (3);
- (e) by the deletion of subsection (4);
- (f) by the substitution for paragraph (b) of subsection (5) of the following paragraph:
- “(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 **[Commission]** relevant executing authority may, on good cause shown and notwithstanding anything to the contrary contained in any law, **[recommend that, subject to the approval of the relevant executing authority, he or she be reinstated]** approve the reinstatement of that officer in the public service in his or her former or any other post or position **[on such conditions as the Commission may recommend]**, 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 **[Commission may recommend]** said authority may determine.”;
- (g) by the deletion of subsection (6).

Substitution of section 18 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994

15. The following section is hereby substituted for section 18 of the principal Act:

“Inefficient officers

18. (1) If a head of department reports to an executing authority that an officer, other than a member of the services or an educator or a member of the Agency or the Service, in the department concerned is, in the opinion of the head of department, unfit for his or her duties or incapable of carrying them out efficiently, the said authority may appoint an officer to inquire into the relevant allegations. 5

(2) The officer who is to conduct the inquiry shall, in consultation with the head of department, determine the time and place of the inquiry, and the head of department shall give the officer concerned reasonable notice in writing of the said time and place and furnish him or her with a statement in writing setting out the grounds on which he or she is alleged to be unfit for his or her duties or incapable of carrying them out efficiently. 10

(3) The head of the department may authorise any person—

(a) to attend the inquiry;

(b) to adduce evidence and arguments in support of the allegations contemplated in subsection (2); and 15

(c) to cross-examine any person who has given evidence in rebuttal of the said allegations. 20

(4) The provisions of section 23(1), (2)(b) and (3) shall apply *mutatis mutandis* to the inquiry, and for that purpose a reference in section 23(1) and (3) to the presiding officer shall be construed as a reference also to an officer appointed under subsection (1) and a reference in section 23(1) and (2)(b) to the investigating officer shall be construed as a reference also to a person authorised under subsection (3). 25

(5) At the inquiry the officer concerned shall have the right to be present, to be assisted or represented by another person, to give evidence and, either personally or through a representative— 30

(a) to be heard;

(b) to call witnesses;

(c) to cross-examine any person called as a witness in support of the allegations contemplated in subsection (2); and 35

(d) to have access to documents produced in evidence.

(6) The officer conducting the inquiry shall keep a record of the proceedings at the inquiry and of all evidence given thereat.

(7) At the conclusion of the inquiry the officer conducting the inquiry shall— 40

(a) find whether or not the officer concerned is unfit for his or her duties or incapable of carrying them out efficiently;

(b) inform that officer of his or her finding; and

(c) report to the head of department on the result of the inquiry. 45

(8) (a) If the officer conducting the inquiry has found that the officer concerned is unfit for his or her duties or incapable of carrying them out efficiently, the latter officer may, within 14 days after the day on which he or she was informed of that finding, submit to the head of department representations in writing regarding the steps which may be taken under paragraph (b). 50

(b) After having considered the documents relating to the inquiry and any representations submitted to him or her, the head of department may—

(i) take no further steps in the matter;

(ii) transfer the officer concerned to another post for which he or she is suitable or direct that he or she be employed additional to the fixed establishment; 55

- (iii) reduce his or her salary or grade or both his or her salary and his or her grade to such extent as the head of department may determine;
 - (iv) take the steps contemplated in subparagraph (ii) as well as the steps contemplated in subparagraph (iii); or
 - (v) discharge him or her from the public service with effect from such date as the head of department may determine. 5
- (c) The head of department shall as soon as possible inform the officer concerned in writing of the decision taken by the head of department under subparagraph (b) and of that officer's right of appeal in terms of subsection (9). 10
- (9) (a) The officer concerned shall have the right to appeal to the relevant executing authority against the finding that he or she is unfit for his or her duties or incapable of carrying them out efficiently or against the decision of the head of department, or against that finding as well as that decision, within 21 days after the day on which he or she was informed of that decision. 15
- (b) If the officer concerned notes an appeal in terms of paragraph (a), the decision of the head of department shall not be implemented before the disposal of the appeal.
- (10) After having considered the documents relating to the appeal, the executing authority may— 20
- (a) in the case of an appeal against the finding that the officer concerned is unfit for his or her duties or incapable of carrying them out efficiently—
 - (i) dismiss the appeal and confirm that finding; or 25
 - (ii) uphold the appeal wholly or in part and set aside or vary that finding;
 - (b) in the case of an appeal against the decision of the head of department—
 - (i) dismiss the appeal and confirm that decision; or 30
 - (ii) uphold the appeal wholly or in part and set aside or vary that decision, or substitute for that decision such other decision as the head of department, in the opinion of the executing authority, ought to have taken.
- (11) The executing authority shall cause the officer who noted an appeal and the head of department to be informed in writing of its decision on the appeal. 35
- (12) The procedure at any inquiry, the documents to be submitted to the head of department or the executing authority, the manner in which and the time within which such documents shall be submitted and the procedure at any appeal shall be as prescribed.”. 40

Substitution of section 19 of Act promulgated under Proclamation 103 of 1994

16. The following section is hereby substituted for section 19 of the principal Act:

“Inefficient heads of department

- 19.** (1) If **[in the opinion of]** an executing authority **[there are reasonable grounds for believing]** has reason to believe that a head of department is unfit for his or her duties or incapable of carrying them out efficiently, **[such authority shall report to the President or, in the case of a provincial administration, the Premier of the province, accordingly, and the President or Premier]** the said authority may appoint a person or persons to inquire into the relevant allegations. 45 50
- (2) The provisions of section 18(2) to **[(6)] (12)** shall apply *mutatis mutandis* to an inquiry **[in terms of]** referred to in subsection (1) **[of this section]**, and for that purpose—
- (a) a reference in section 18**[(5) and (6) to the relevant executing authority shall be construed as a reference to the President or the relevant Premier, as the case may be]** (2), (3) and (7) to (12) to the head of department shall be construed as a reference to the relevant executing authority; 55

- (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 administration, the relevant Premier; and
- (c) a reference in section 18(2), (4), (6), (7) and (8)(a) to the officer conducting the inquiry shall be construed as a reference also to a person or persons appointed under the said subsection (1).”

Amendment of section 20 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994

17. Section 20 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (e) of the following paragraph:
- “(e) undertakes, without permission of a relevant executing authority **[(granted on the recommendation of the Commission in the case of an officer in the A division)]**, any private agency or private work in any matter connected with the performance of his or her official functions or the carrying out of his or her official duties;”;
- and
- (b) by the substitution for paragraph (n) of the following paragraph:
- “(n) **[accepts]** without permission of a relevant executing authority **[(granted on the recommendation of the Commission in the case of an officer in the A division)]**, **accepts** or demands in respect of the carrying out of or the failure to carry out his or her duties any commission, fee or pecuniary or other reward (not being the emoluments payable to him or her in respect of his or her duties), or fails to report to his or her head of department or, if he or she is a head of department, to such authority, the offer of such a commission, fee or reward;”

Substitution of section 21 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994

18. The following section is hereby substituted for section 21 of the principal Act:

“Investigation of charge of misconduct

21. (1) When—
- (a) an officer, other than a head of department or a member of the services or an educator or a member of the Agency or the Service, is accused of misconduct, the head of department concerned or an officer in the department concerned authorised by the head of department may; or
- (b) the Public Protector **[or a provincial public protector contemplated in sections 110 and 114]** referred to in section 181(1)(a) of the Constitution **[respectively]** has reasonable grounds to suspect that an officer contemplated in paragraph (a) is guilty of misconduct and he or she has referred the matter to the head of department concerned, **[the]** that head of department or such an authorised officer shall, appoint **[an officer]** a person (hereinafter referred to as an investigating officer) within 21 days after receipt of such accusation or referral to investigate the matter and obtain evidence in order to determine whether there are grounds for a charge of misconduct against the officer concerned.
- (2) **[After the conclusion of the investigation the]** The investigating officer shall inform the head of department within 30 days after his or her appointment, or within such further period as the head of department may on good cause shown allow, whether in his or her opinion the officer concerned should be charged or not, and if so, what in his or her opinion the contents of the charge in question should be.
- [(3) The provisions of subsections (1) and (2) shall not apply to a case contemplated in section 19(11) of the Public Service Labour Relations Act, 1993 (Act No. 102 of 1993).]”**

Substitution of section 22 of Act promulgated under Proclamation 103 of 1994

19. The following section is hereby substituted for section 22 of the principal Act:

“Steps after investigation by investigating officer

22. (1) [A] The head of department may in writing under his or her hand charge an officer referred to in section 21 with misconduct, if he or she is of the opinion that sufficient grounds for a charge of misconduct against him or her have been found during the investigation: Provided that the head of department shall exercise the power to charge the officer with misconduct within 21 days after receipt of the information contemplated in section 21(2). 5 10

(2) If the head of department is of the opinion that an investigation [**in terms of**] contemplated in paragraph (a) of section 21(1) is not necessary, he or she may in writing under his or her hand charge the officer concerned with misconduct and appoint [**an officer**] a person to exercise the powers of an investigating officer in terms of section 23: Provided that the head of department shall exercise the power to charge that officer with misconduct within 21 days after receipt of the accusation contemplated in paragraph (a) of the said section 21(1). 15

(3) A head of department may delegate the powers conferred upon him or her by subsections (1) and (2) to an officer in his or her department [**in so far as they pertain to an officer in the B division**]. 20

(4) A charge contemplated in subsection (1) or (2) shall contain or shall be accompanied by a direction calling upon the officer charged to send or deliver [**within a reasonable period specified in the direction to a person likewise specified**] a written admission or denial of the charge and— 25

(a) if he or she so desires, [**a written**] an explanation in writing regarding the misconduct with which he or she is charged; 30
(b) if he or she admits the charge and so desires, representations in writing regarding the steps which may be taken under section 24(2), to the person specified in the direction within a reasonable period likewise specified.

(5) If the officer charged admits [**that he or she is guilty of**] the charge, he or she shall be deemed to [**have been found**] be guilty of the misconduct [**as charged**] with which he or she has been charged.

(6) If the officer charged in terms of subsection (1) or (2)— 35

(a) denies the charge; or

(b) fails to comply with the direction contemplated in subsection (4), the head of department or the officer to whom the head of department has delegated this power shall appoint a person (in this section and sections 23, 24 and 26 referred to as the presiding officer) to [**hear the charge**] preside at the hearing, which hearing shall commence within 30 days after the appointment of the presiding officer or within such further period as the presiding officer may, on good cause shown, allow. 40

(7) [**An**] Subject to such conditions as may be prescribed, an officer may at any time before or after he or she has been charged under this section be suspended from duty [**on such conditions as may be prescribed**]. 45

(8) The manner in which an officer is to be charged with misconduct, the qualifications to be possessed by a presiding officer and the circumstances under which, the conditions on which, the manner in which, and the time when, an officer may be suspended from duty shall be as prescribed.”. 50

Amendment of section 23 of Act promulgated under Proclamation 103 of 1994

20. Section 23 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (b) of subsection (4) of the following paragraph:
 “(b) notwithstanding a denial or failure by him or her referred to in section 22(6), to admit **[at any time that he or she is guilty of]** the charge at any time, whereupon he or she shall be deemed to be guilty of the misconduct **[as charged]** with which he or she has been charged;”;
- (b) by the substitution for subsection (5) of the following subsection:
 “(5) **[After]** At the conclusion of the hearing the presiding officer shall—
 (a) **[make a finding on the charge, mentioning]** find whether the officer charged is guilty or not guilty of the misconduct with which he or she has been charged; and
 (b) **[in the case of a finding of guilty]** if the officer charged admits the charge in terms of subsection (4)(b) or the presiding officer finds that he or she is guilty of the misconduct with which he or she has been charged—
 (i) afford that officer, either personally or through his or her representative, the opportunity to address him or her on any aggravating or mitigating circumstances and any steps which may be taken under section 24(2);
 (ii) note any aggravating **[and]** or mitigating circumstances he or she may find and make a recommendation regarding **[action in terms of section 24(2)] any such steps.**”; and
- (c) by the addition of the following subsection:
 “(6) The proceedings at any hearing shall be as prescribed.”.

Substitution of section 24 of Act promulgated under Proclamation 103 of 1994

21. The following section is hereby substituted for section 24 of the principal Act:

“Steps after hearing

24. (1) **[At]** After the conclusion of the hearing the presiding officer shall **[notify]** as soon as possible report to the head of department concerned **[of his or her finding and recommendation contemplated in section 23(5)]** on the result of the hearing.
- (2) (a) If the presiding officer has found that the officer charged is **[found]** guilty of the misconduct **[as charged by the presiding officer]** with which he or she has been charged, or if **[he or she]** the officer charged admits **[that he or she is guilty of]** the charge, the head of department **[shall, with due observance of the finding and recommendation of the presiding officer in terms of section 23(5)]** may, after having considered, in the case of a hearing, the documents relating to the hearing or, in any other case, any explanation or representations submitted to him or her—
 (i) caution or reprimand the officer charged;
 (ii) impose upon him or her a fine not exceeding R6 000;
 (iii) transfer him or her to another post for which he or she is suitable or direct that he or she be employed additional to the fixed establishment;
 (iv) reduce his or her salary or grade or both his or her salary and his or her grade to **[the]** such extent **[recommended]** as the head of department may determine;
 (v) discharge him or her, or direct him or her to resign, from the public service with effect from **[a]** such date **[to be determined by]** as the head of department may determine; or
 (vi) postpone **[his or her decision]** the taking of any steps under subparagraphs (i) to (v) for a period not exceeding 12 calendar months.
- (b) Except where a head of department **[acts under]** takes the steps contemplated in paragraph (a)(v) or (vi), he or she may take **[decisions]** steps under more than one of the subparagraphs of paragraph (a).
- (3) A head of department shall **[notify the officer charged]** as soon as possible inform the officer charged in writing of the **[finding of the**

presiding officer under section 23(5) and of his or her] decision taken by the head of department under subsection (2) and of [the] that officer's right of appeal in terms of section 26.

(4) The documents to be submitted to a head of department and the manner in which and the time within which such documents shall be submitted shall be as prescribed.” 5

Amendment of section 25 of Act promulgated under Proclamation 103 of 1994

22. Section 25 of the principal Act is hereby amended by the substitution in subsection (4) for the words following upon paragraph (b) of the following words:

“before the proceedings or steps with regard to the charge of misconduct have been finalised in accordance with section 24 or, in the case of an appeal, in accordance with section 26, he or she shall be deemed to **[have been]** be discharged on account of misconduct.”. 10

Substitution of section 26 of Act promulgated under Proclamation 103 of 1994

23. The following section is hereby substituted for section 26 of the principal Act: 15

“Appeal against finding of presiding officer and decision of head of department

26. (1) An officer charged with misconduct shall have the right to appeal to the relevant executing authority against the finding of the presiding officer that he or she is guilty of the misconduct with which he or she has been charged or against the decision of the head of department under section 24(2), or against that finding as well as that decision, within 21 days after the day on which he or she was informed of that decision in accordance with section 24(3). 20

(2) If the officer charged notes an appeal in terms of subsection (1), the decision of the head of department shall not be implemented before the disposal of the appeal. 25

(3) After having considered the documents relating to the appeal, the executing authority may—

(a) in the case of an appeal against the finding that the officer charged is guilty of the misconduct with which he or she has been charged— 30

- (i) dismiss the appeal and confirm that finding; or
- (ii) uphold the appeal wholly or in part and set aside or vary that finding;

(b) in the case of an appeal against the decision of the head of department— 35

- (i) dismiss the appeal and confirm that decision; or
- (ii) uphold the appeal wholly or in part and set aside or vary that decision, or substitute for that decision such other decision as the head of department, in the opinion of the executing authority, ought to have taken. 40

(4) The executing authority shall cause the officer who noted an appeal and the head of department to be informed in writing of its decision on the appeal.

(5) The documents to be submitted to the executing authority, the manner in which and the time within which such documents shall be submitted and the procedure at any appeal shall be as prescribed.”. 45

Substitution of section 27 of Act promulgated under Proclamation 103 of 1994

24. The following section is hereby substituted for section 27 of the principal Act:

“Misconduct of heads of department” 50

27. (1) (a) When a head of department is accused of misconduct, the relevant executing authority may appoint a person to investigate the matter and report to him or her thereon, **[and such authority may thereupon**

report the matter to the President or, in the case of a provincial administration, to the Premier of the province, who may direct the said] whereupon the said authority [to] may charge [the] that head of department [concerned] with [that] misconduct.

(b) If a hearing becomes necessary in terms of section 22(6), read with subsection (2) [of this section], the [President or Premier] relevant executing authority may appoint a person to [conduct the hearing] preside at the hearing.

(2) The provisions of sections 21(2), 22(1) and (4) to (8) and 23 to 26 shall apply *mutatis mutandis* to any proceedings or steps following upon an investigation [and a direction under] referred to in paragraph (a) of subsection (1)[(a) of this section], and for that purpose—

(a) a reference in sections 21(2), 22(1) and (6), 24, 25(3) and 26[(2)] to the head of department shall be construed as a reference to the relevant executing authority [and];

(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 administration, the relevant Premier;

(c) a reference in sections [22(6) and 24(2)(a)(v) to the head of department shall be construed as a reference to the President or the relevant Premier, as the case may be] 21(2) and 23(1) and (2) to the investigating officer shall be construed also to a person appointed under paragraph (a) of the said subsection (1); and

(d) a reference in sections 22(6) and (8), 23(1), (3) and (5), 24(1) and (2) and 26 to the presiding officer [conducting the hearing] shall be construed as a reference also to [the] a person appointed under paragraph (b) of the said subsection (1) [of this section].”

Amendment of section 30 of Act promulgated under Proclamation 103 of 1994

25. Section 30 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(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 [on the recommendation of the Commission] by the relevant executing authority or an officer authorised by [such] the said authority; and”

Amendment of section 31 of Act promulgated under Proclamation 103 of 1994

26. Section 31 of the principal Act is hereby amended—

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

“(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 [recommendation of the Commission] 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 [other] 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 [that] 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 [such a] the determination [by] of the head of department to the relevant executing authority, who may make such [order] decision as he or she may think fit.

(iii) The [Commission] relevant executing authority may [recommend that] approve of the officer or employee concerned [may retain]

retaining the whole or a portion of the said remuneration, allowance or reward.”;

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

“(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 [a] any council, institution, body or person contemplated in section 15(3) or (4), shall be paid into revenue. 5

(b) In circumstances regarded by the [Commission] the relevant executing authority as exceptional, [it] the said authority may [recomm- 10
mend the payment] approve of paying out of revenue [to the officer or employee concerned of] an amount equal to that salary, allowance, fee, bonus or honorarium, or a portion thereof, to the officer or employee concerned.”; and

(c) by the addition of the following subsection: 15

“(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 No. 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 20

(c) ‘section 30(b)’ includes any corresponding provision of any such law.”. 25

Substitution of section 34 of Act promulgated under Proclamation 103 of 1994

27. The following section is hereby substituted for section 34 of the principal Act:

“Reduction of salaries

34. [Subject to the provisions of section 236(5) of the Constitution, the] The salary or scale of salary of an officer shall not be reduced without his or her consent except in terms of [— 30

(a) the provisions of section [4] 13(6) or 38 or of Chapter VI [of this Act, section 236 (6) of the Constitution] or of an Act of Parliament [; or 35

(b) a programme of rationalisation referred to in section 237 of the Constitution].”.

Substitution of section 35 of Act promulgated under Proclamation 103 of 1994

28. The following section is hereby substituted for section 35 of the principal Act:

“Grievances of officers and employees

35. (1) If an officer or employee has a complaint or a grievance concerning an official act or omission, he or she has the right to lodge the complaint or grievance with the Commission in such manner, if any, as may be prescribed under the Commission Act. 40

(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.”. 45

Amendment of section 37 of Act promulgated under Proclamation 103 of 1994

29. Section 37 of the principal Act is hereby amended— 50

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

“(1) Subject to the provisions of section 5, officers and employees shall be paid the salaries, wages and allowances in accordance with the

- scales **[recommended by the Commission]** determined by the Minister for their ranks and grades in terms of section 3(3)~~[(g)](c)~~.”; and
 (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“**[On the recommendation of the Commission, but subject to the provisions of section 5]** Subject to such conditions as may be prescribed—”.

Amendment of section 41 of Act promulgated under Proclamation 103 of 1994

30. Section 41 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 10

“(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; 15
 - (ii) the establishment or abolition of subdepartments, branches, offices or institutions;
 - (iii) the control, organisation or readjustment of departments, subdepartments, branches, offices or institutions; 20
- (b) regarding— 20
- (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— 25
 - (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; 30
- (c) regarding— 35
- (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; 40
 - (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; 45
- (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; 50
 - (ii) 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; 55
 - (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; 60

- (v) journeys on official duty and the transport privileges of officers and employees;
- (vi) medical aid to officers and employees;
- (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— 5
- (i) organisation, procedure and methods;
- (ii) supervision;
- (iii) the simplification of work and the elimination of unnecessary work; 10
- (iv) the utilisation of information and 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; 15
- (vii) the training of officers and employees;
- (viii) work facilities;
- (ix) sound labour relations; 20
- (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; 25
- (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; 30
- (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.”; and
- (b) by the substitution for paragraph (c) of subsection (3) of the following paragraph: 35
- “(c) The provisions of this subsection shall not affect the power of the **[President] Minister** to make a new regulation regarding the subject matter dealt with by a regulation that has lapsed in terms of paragraph (a).”.
- 40

Amendment of section 42 of Act promulgated under Proclamation 103 of 1994

31. Section 42 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Subject to the provisions of section 5(4)— 45
- (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.”.

Insertion of section 42A in Act promulgated under Proclamation 103 of 1994

32. The following section is hereby inserted after section 42 of the principal Act: 50

“Assignment of functions by Minister

- 42A.** (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 55

- (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.”.

Amendment of section 43 of Act promulgated under Proclamation 103 of 1994 5

33. Section 43 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
 “(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.”; and 10
- (b) by the deletion of subsections (3), (4) and (5).

Savings

34. (1) Notwithstanding the amendment of the principal Act by this Act—

- (a) anything done by the Public Service Commission established by section 209(1) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), under the principal Act and which could be done by the Minister for the Public Service and Administration under a provision of the principal Act, as amended by this Act, shall be deemed to have been so done by the said Minister; 15
- (b) any inquiry into inefficiency and any proceedings in respect of a charge of misconduct or a complaint or grievance instituted or commenced under the principal Act, shall be continued and concluded as if the principal Act had not been amended by this Act, and for that purpose, a reference— 20
- (i) in the provisions relating to inefficiency or misconduct, to the Commission shall be construed as a reference to the said Minister; 25
- (ii) in the provisions relating to a complaint or grievance, to the Commission shall be construed as a reference to the Public Service Commission established by section 196(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).
- (2) If a provincial legislature has, in a law referred to in section 14(1) of the Public Service Commission Act, 1997, incorporated the principal Act by reference and amended or adapted it in order to entrust powers and duties to the relevant provincial service commission, then, notwithstanding the repeal of any such law by the said section 14(1)— 30
- (a) anything done by that provincial service commission under the principal Act, as incorporated and amended or adapted by the provincial legislature, and which could be done by the Minister for the Public Service and Administration under a provision of the principal Act, as amended by this Act, shall be deemed to have been so done by the said Minister; 35
- (b) any inquiry into inefficiency and any proceedings in respect of a charge of misconduct or a complaint or grievance instituted or commenced under the principal Act, as incorporated and amended or adapted by the provincial legislature, shall be continued and disposed of as if any such law had not been repealed by the said section 14(1), and for that purpose, a reference— 40
- (i) in the provisions relating to inefficiency or misconduct, to that provincial service commission shall be construed as a reference to the said Minister; 45
- (ii) in the provisions relating to a complaint or grievance, to that provincial service commission shall be construed as a reference to the Public Service Commission referred to in subsection (1)(b)(ii).

Repeal or amendment of laws, and savings 50

35. (1) The laws mentioned in the Schedule are hereby repealed or amended to the extent indicated in the third column thereof.

(2) Notwithstanding the repeal of any law by subsection (1), any of the provisions of any such law which but for the repeal would have been applicable to any matter or

person, shall continue to be applicable to any such matter or person as if the repeal had not been effected.

(3) Notwithstanding the amendment of any law by subsection (1), anything done by the Public Service Commission referred to in section 34(1)(a), or by its predecessor, under any such law and which could be done by the Minister for the Public Service and Administration under a provision of any such law, as amended by the said subsection (1), shall be deemed to have been so done by the said Minister. 5

Short title and commencement

36. This Act shall be called the Public Service Laws Amendment Act, 1997, and shall come into operation on the date on which the laws referred to in section 14(1) of the Public Service Commission Act, 1997, are repealed by the said section 14(1). 10

SCHEDULE

LAWS REPEALED OR AMENDED (Section 35)

No. and year of law	Short title	Extent of repeal or amendment
Act No. 38 of 1927	Black Administration Act, 1927	The amendment of section 2 by the substitution for paragraph (a) of subsection (3) of the following paragraph: “(a) he has passed the [civil service lower law] <u>diploma iuris</u> examination or an examination determined by the [Public Service Commission] <u>Minister for the Public Service and Administration</u> to be equivalent thereto for the purposes of this section; or”.
Act No. 47 of 1937	Deeds Registries Act, 1937	The amendment of section 2 by the substitution for subsection (2) of the following subsection: “(2) No person shall be appointed as chief registrar, registrar, deputy registrar or assistant registrar of deeds after the commencement of section 2 of the Deeds Registries Amendment Act, 1984 (Act No. 62 of 1984), unless he has passed the [Public Service Law Examination] <u>diploma iuris</u> examination or an examination deemed by the [Commission for Administration] <u>Minister for the Public Service and Administration</u> to be equivalent thereto, and has served in the administrative division of the public service in one or more deeds registries for a period of not less than seven years: Provided that this subsection shall not apply with reference to the authorization of any officer under subsection (1A) or (1B) to act as contemplated in the relevant subsection.”.
Act No. 26 of 1945	Road Transportation Boards Service Act, 1945	The repeal of the whole.
Act No. 43 of 1947	Cable and Wireless Workers Transfer Act, 1947	The repeal of the whole.
Act No. 31 of 1949	Indian Immigration Bureau Transfer Act, 1949	The repeal of the whole.

No. and year of law	Short title	Extent of repeal or amendment
Act No. 54 of 1956	Water Act, 1956	<p>The amendment of section 3 by the substitution for paragraph (b) of subsection (2) of the following paragraph:</p> <p>“(b) the scales of the salaries, allowances, leave privileges and other conditions of employment applicable in relation to any employees so appointed shall be as [laid down] <u>determined from time to time by the Minister [from time to time after consultation with the Public Service Commission] in consultation with the Minister for the Public Service and Administration.</u>”.</p>
Act No. 5 of 1957	Wage Act, 1957	<p>The amendment of section 3 by the substitution for the proviso to subsection (9) of the following proviso:</p> <p>“: Provided that the Minister may, [on the recommendation of the Commission for Administration and with the approval of the Minister of Finance] <u>in consultation with the Minister for the Public Service and Administration,</u> approve of the payment to him during the period of his service as a member, additional member or temporary member of the board, in addition to his emoluments as a person in the full-time employment of the State, of an allowance which shall not form part of his pensionable emoluments.”.</p>
Act No. 44 of 1957	Defence Act, 1957	<p>1. The amendment of section 1(1) by the substitution for paragraph (a) of the definition of “prescribed” of the following paragraph:</p> <p>“(a) in relation to any matter affecting the salaries, pay or allowances of members of the South African Defence Force, the Reserve, the Cadet Corps or any auxiliary or nursing service established under this Act, [recommended by the Commission for Administration in terms of] <u>determined by the Minister for the Public Service and Administration under section 82bis; and</u> ”.</p>

No. and year of law	Short title	Extent of repeal or amendment
		<p>2. The amendment of section 9 by the substitution for paragraph (a) of subsection (2) of the following paragraph:</p> <p>“(a) Subject to the provisions of the Public Service Act, [1984 (Act No. 111 of 1984), or the Commission for Administration Act, 1984 (Act No. 65 of 1984)] 1994 (promulgated under Proclamation No. 103 of 1994), the procedure for enrolment, appointment and promotion in the Permanent Force and, subject to the provisions of any law relating to the grant of pensions or any other benefit under such law to members of the Permanent Force, the conditions of such enrolment, appointment and promotion as well as other conditions of service, shall be as may be prescribed or as may, subject to the above provisions, be authorized by the Minister.”.</p> <p>3. The substitution for section 82<i>bis</i> of the following section:</p> <p>“Salaries, pay and allowances to be determined by Minister for the Public Service and Administration</p> <p>82<i>bis</i>. Members of the South African Defence Force, the Reserve, the Cadet Corps or any auxiliary or nursing service established under this Act shall receive such salaries, pay or allowances in respect of their service, training or duty in pursuance of this Act as the [Commission for Administration] Minister for the Public Service and Administration may from time to time [recommend] determine.”.</p>

No. and year of law	Short title	Extent of repeal or amendment
Act No. 8 of 1959	Correctional Services Act, 1959	<p>1. The amendment of section 1 by the deletion of the definition of “Commission for Administration”.</p> <p>2. The amendment of section 5 by the substitution for subsection (4) of the following subsection: “(4) The members of a correctional board who are not in the full-time service of the State, may receive such remuneration and allowances as the Minister may [on the recommendation of the Commission for Administration] determine with the concurrence of the Minister of Finance.”.</p> <p>3. The amendment of section 5C by the substitution for subsection (4) of the following subsection: “(4) The members of a parole board who are not in the full-time service of the State, may receive such remuneration and allowances as the Commissioner may [on the recommendation of the Commission for Administration] determine with the concurrence of the Minister of Finance.”.</p> <p>4. The amendment of section 7 by the substitution for subsection (2) of the following subsection: “(2) A minister of religion, psychologist, social worker, educationist or other person contemplated in subsection (1) shall be paid [the] such allowances as determined by the Commissioner [on the recommendation of the Commission for Administration and after consultation with the Department of State Expenditure] in consultation with the Minister for the Public Service and Administration: Provided that any other remuneration paid by the State to such person shall not be affected by this provision.”.</p>
Act No. 59 of 1959	Supreme Court Act, 1959	The amendment of section 34 by the deletion of the proviso to paragraph (b) of subsection (1).
Act No. 12 of 1961	Defence Amendment Act, 1961	The amendment of section 6 by the deletion of subsection (2).

No. and year of law	Short title	Extent of repeal or amendment
Act No. 66 of 1965	Administration of Estates Act, 1965	<p>The amendment of section 2 by the substitution in subsection (2) for the words preceding the proviso of the following words:</p> <p>“No person shall be appointed as Master, Deputy Master or Assistant Master of the Supreme Court unless he has passed the [Public Service Law Examination] diploma <i>iuris</i> examination or an examination deemed by the [Public Service Commission] Minister for the Public Service and Administration to be equivalent thereto, or has before the commencement of this Act held a substantive appointment as a Master or Assistant Master of the Supreme Court:”.</p>
Act No. 66 of 1974	Post Office Service Act, 1974	<p>The amendment of section 5 by the deletion of subsections (5) to (8).</p>
Act No. 29 of 1979	General Pensions Act, 1979	<p>1. The amendment of section 7 by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>“(a) any contributions or moneys due or payable by a pensioner to any <u>registered</u> medical aid fund or medical aid society [established by or in terms of or] recognized by the [Public Service Commission in accordance with any regulations made under section 26(1) of the Public Service Act, 1957 (Act No. 54 of 1957)] Minister for the Public Service and Administration have not been paid; or”.</p> <p>2. The amendment of section 11 by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p>

No. and year of law	Short title	Extent of repeal or amendment
Act No. 75 of 1979	Temporary Employees Pension Fund Act, 1979	<p>“Notwithstanding anything to the contrary in any law contained, the Minister may, with the concurrence of the Minister of Finance, the Minister [of] for Posts [and], Telecommunications and Broadcasting and the [Administrators] Premiers, and after consultation with the Minister [responsible for National Intelligence Service] of Justice, the Minister [responsible for the Commission] for the Public Service and Administration, the Minister of Defence, the Minister [of Police] for Safety and Security and the Minister of [Prisons] Correctional Services, make regulations which provide—”.</p> <p>The amendment of section 8—</p> <p>(a) by the substitution for paragraph (i) of subsection (2) of the following paragraph: “(i) provide for the exercise or performance by the Secretary, the Treasury or the [Public Service Commission] Minister for the Public Service and Administration, of such powers or functions as the Minister may deem necessary for the achievement of the objects of this Act.”; and</p> <p>(b) by the substitution for subsection (6) of the following subsection: “(6) Regulations made under this section shall be made by the Minister with the concurrence of the Minister of Finance and after consultation with the Ministers responsible for the [Commission for] Public Service and Administration, [National] Education and Posts [and], Telecommunications and Broadcasting.”.</p>

No. and year of law	Short title	Extent of repeal or amendment
Act No. 90 of 1979	Education and Training Act, 1979	The amendment of section 4 by the substitution for subsection (4) of the following subsection: “(4) The Department shall place a full-time secretary at the disposal of the Council with such remuneration and allowances, if any, as may be determined by the Minister with the concurrence of the Minister of Finance [and on the recommendation of the Commission for Administration] .”.
Act No. 75 of 1986	Abolition of Development Bodies Act, 1986	The repeal of section 4.
Act No. 80 of 1991	Public Accountants’ and Auditors’ Act, 1991	The amendment of section 12 by the substitution for subsection (2) of the following subsection: “(2) A member of the board or any such committee who is in the full-time service of the State may, in addition to his remuneration in respect of such service, receive such remuneration for special services rendered by him to the board as may be determined by the Minister [on the recommendation of the Commission for Administration] <u>in consultation with the Minister for the Public Service and Administration</u> , but not exceeding an amount recommended by the board.”.
Act No. 95 of 1991	Abolition of the National Energy Council Act, 1991	The repeal of section 4.
Act No. 122 of 1992	Audit Arrangements Act, 1992	1. The amendment of section 1 by the deletion of the definition of “Commission”. 2. The amendment of section 19 by the deletion of subsections (5) to (8).
Act No. 44 of 1993	Airports Company Act, 1993	The amendment of section 6 by the substitution for subsection (3) of the following subsection: “(3) The Minister may, in accordance with the provisions of an agreement concluded between the Department and the company, [with the concurrence of the Commission for Administration] transfer to the company any person who is an officer or employee in the Department in terms of the Public Service Act, [1984 (Act No. 111 of 1984)] <u>1994 (promulgated under Proclamation No. 103 of 1994)</u> .”.

No. and year of law	Short title	Extent of repeal or amendment
Act No. 86 of 1993	Academic Health Centres Act, 1993	<p>The amendment of section 27 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The staff of an academic health centre shall after the closure of such a centre in terms of section 26 become officers in the employment of the State and be appointed to such posts as the Minister [on the recommendation of the Commission for Administration established by section 2(1) of the Commission for Administration Act, 1984 (Act No. 65 of 1984)] may determine.”.</p>
Act No. 90 of 1993	Magistrates Act, 1993	<p>The amendment of section 12 by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>“(a) Subject to the provisions of this section, any person occupying the office of magistrate shall, in respect of that office, be paid a salary in accordance with the scale determined from time to time for his or her rank and grade by the Minister by notice in the <i>Gazette</i> in consultation with the Commission [and after consultation with the Public Service Commission] and with the concurrence of the Minister of [State Expenditure] Finance.”.</p>
Act No. 23 of 1994	Public Protector Act, 1994	<p>1. The amendment of section 1 by the deletion of the definition of “Public Service Commission”.</p> <p>2. The amendment of section 3—</p> <p>(a) by the substitution for subsection (10) of the following subsection:</p> <p>“(10) In exercising his or her powers in terms of subsections (1) and (9), the Public Protector shall consult with the Minister of Finance [and the Public Service Commission].”; and</p>

No. and year of law	Short title	Extent of repeal or amendment
Act No. 30 of 1994	Volkstaat Council Act, 1994	<p>(b) by the substitution for subsection (12) of the following subsection:</p> <p>“(12) The Public Protector may, in the performance of the functions contemplated in subsection (1)(b), at his or her request [after consultation with the Public Service Commission], be assisted by officers in the Public Service seconded to the service of the Public Protector in terms of any law regulating such secondment.”.</p> <p>The amendment of section 5 by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>“(a) The Council may, with the approval of the Director-General of the Department of Constitutional Development and subject to the terms and conditions determined in consultation with the Minister [for the Public Service and Administration and the Public Service Commission] of Finance, appoint a secretary and such other staff as may be necessary for the efficient performance of its functions.”.</p>
Act No. 37 of 1994	Commission on the Remuneration of Representatives Act, 1994	<p>The amendment of section 5 by the substitution for subsection (5) of the following subsection:</p> <p>“(5) The commission shall be assisted in the performance of its functions by a secretariat provided, after consultation with the commission, by the [Public Service Commission] Minister for the Public Service and Administration.”.</p>
Act No. 38 of 1994	Intelligence Services Act, 1994	<p>1. The amendment of section 1 by the deletion of the definition of “Public Service Commission”.</p>

No. and year of law	Short title	Extent of repeal or amendment
		<p>2. The amendment of section 8 by the substitution for paragraph (ii) of subsection (3) of the following paragraph:</p> <p>“(ii) [after consultation with the Public Service Commission] with the <u>approval of the Minister responsible for the department concerned</u>, transfer such person or member to [another] <u>that department [on] subject to the conditions [determined by the Deputy President or the Minister]</u> imposed by <u>any law governing the transfer.</u>”.</p> <p>3. The amendment of section 12—</p> <p>(a) by the substitution for subparagraph (ii) of paragraph (a) of subsection (1) of the following subparagraph:</p> <p>“(ii) if the Minister [concerned has concurred therein and the Public Service Commission has so recommended] <u>responsible for the department concerned has granted his or her approval, in [any other] that department,</u>”; and</p> <p>(b) by the substitution for paragraph (bb) of the proviso to the said paragraph (a) of the following paragraph:</p> <p>“(bb) such a transfer to another department shall [take place on such] <u>be subject to the conditions [as may be determined on the recommendation of the Public Service Commission]</u> <u>imposed by any law governing that transfer; and</u>”.</p>

No. and year of law	Short title	Extent of repeal or amendment
Act No. 54 of 1994	Human Rights Commission Act, 1994	<p>1. The amendment of section 16—</p> <p>(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph: “(a) shall, in consultation with [the Public Service Commission and] the Minister of Finance and subject to <u>the approval of the Commission and the provisions of subsection (5)</u>, appoint such staff [in accordance with section 117(1) of the Constitution] as may be reasonably necessary to assist him or her with the work incidental to the performance by the Commission of its functions;” and</p> <p>(b) by the substitution for subsection (6) of the following subsection: “(6) The Commission may, in consultation with the [Public Service Commission] Minister of Finance, in the exercise of its powers or the performance of its duties and functions by or under this Act, the Constitution or any other law, for specific projects, enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the work of the Commission and [with the concurrence of the Minister of Finance] determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of such persons.”.</p> <p>2. The amendment of section 19 by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p>

No. and year of law	Short title	Extent of repeal or amendment
Proclamation No. 138 of 1994	Educators' Employment Act, 1994	<p>“The President may, after the Commission has made a recommendation [and after consultation with the Public Service Commission], make regulations regarding the following matters in relation to the staff of the Commission:”.</p> <p>The amendment of section 30 by the deletion of subsection (1).</p>
Act No. 2 of 1995	Land Administration Act, 1995	The amendment of section 2 by the deletion of paragraph (b) of subsection (4).
Proclamation No. R. 5 of 1995	South African Police Service Rationalisation Proclamation, 1995	<p>The amendment of section 8 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The salary, salary scale and allowances in respect of the National and Provincial Commissioners shall be determined by the Minister in consultation with the [Public Service Commission] Minister for the Public Service and Administration.”.</p>
Act No. 13 of 1995	Constitutional Court Complementary Act, 1995	The amendment of section 14 by the deletion of the proviso to subsection (3).
Act No. 30 of 1995	Labour Appeal Court Sitting as Special Tribunal Act, 1995	<p>The amendment of section 1 by the substitution for the definition of “Minister” of the following definition:</p> <p>“ ‘Minister’ means the Minister [appointed by the President in terms of section 88 of the Constitution to administer the Office of the Public Service Commission] for the <u>Public Service and Administration;</u>”.</p>
Act No. 34 of 1995	Promotion of National Unity and Reconciliation Act, 1995	<p>The amendment of section 5 by the substitution for subparagraph (ii) of paragraph (h) of the following paragraph:</p> <p>“(ii) seconded to its service by any department of State at the request of the Commission [and after consultation with the Public Service Commission]”.</p>
Act No. 53 of 1995	Audit Matters Rationalisation and Amendment Act, 1995	<p>1. The amendment of section 1 by the deletion of the definition of “Public Service Commission”.</p>

No. and year of law	Short title	Extent of repeal or amendment
Act No. 59 of 1995	Pan South African Language Board Act, 1995	<p>2. The amendment of section 2 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The Auditor-General shall, in respect of each of the laws mentioned in the Schedule and in respect of each audit office, determine an effective date in consultation with the [Public Service Commission] Minister for the Public Service and Administration and shall, not later than 30 days before such date, announce the date by notice in the <i>Gazette</i>: Provided that no person shall be adversely affected by the determination of different effective dates for the different audit offices.”.</p> <p>The amendment of section 10—</p> <p>(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>“(a) shall, in consultation with [the Public Service Commission and] the Minister of Finance, appoint such staff as may reasonably be necessary to assist him or her with the work incidental to the performance of the functions of the Board;”;</p> <p>(b) by the substitution for subsection (6) of the following subsection:</p> <p>“(6) The Board may, in consultation with the [Public Service Commission] Minister of Finance, in the exercise of its powers or the performance of its functions in terms of this Act, the Constitution or any other law, in the case of specific projects, enter into contracts for the purpose of obtaining the services of persons</p>

No. and year of law	Short title	Extent of repeal or amendment
Act No. 68 of 1995	South African Police Service Act, 1995	<p>having technical or specialised knowledge of any matter relating to the functions of the Board and [with the concurrence of the Minister of Finance] determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of such persons.”; and</p> <p>(c) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:</p> <p>“The President may, after the Board has made a recommendation [and after consultation with the Public Service Commission], make regulations regarding the following matters in relation to the staff of the Board:”.</p> <p>1. The amendment of section 35 by the substitution for paragraph (c) of the following paragraph:</p> <p>“(c) 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 or the Public Service [Commission] Act, [1984 (Act No. 65 of 1984)] 1994 (promulgated under Proclamation No. 103 of 1994), does not apply.”.</p> <p>2. The amendment of section 52 by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The terms and conditions of service of the personnel of the directorate shall be [determined by the Minister in consultation with the Executive Director and the Public Service Commission] prescribed by or under the laws governing the public service.”.</p>

No. and year of law	Short title	Extent of repeal or amendment
Act No. 19 of 1996	National Youth Commission Act, 1996	<p>1. The amendment of section 13—</p> <p>(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph: “(b) shall, in consultation with [the Public Service Commission and] the Minister of Finance and subject to subsection (5), appoint such staff as may be reasonably necessary to assist him or her with the work incidental to the performance by the Commission of its functions;” and</p> <p>(b) by the substitution for subsection (6) of the following subsection: “(6) The Commission may, in consultation with the [Public Service Commission] Minister of Finance, in the exercise of its powers or the performance of its duties and functions by or under this Act, for specific projects, enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the work of the Commission and [with the concurrence of the Minister of Finance] determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of such persons.”.</p> <p>2. The amendment of section 14 by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: “The President may, after the Commission has made a recommendation [and after consultation with the Public Service Commission], make regulations regarding the following matters in relation to the staff of the Commission:”.</p>
Act No. 39 of 1996	Commission on Gender Equality Act, 1996	<p>1. The amendment of section 1 by the deletion of the definition of “Public Service Commission”.</p>

No. and year of law	Short title	Extent of repeal or amendment
		<p>2. The amendment of section 7—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The Commission shall at its first meeting or as soon as practicable thereafter—</p> <p>(a) in consultation with [the Public Service Commission and] the Minister of Finance, appoint a suitably qualified and experienced person or a person seconded in terms of subsection (4) as Chief Executive Officer of the Commission for the purpose of assisting the Commission in the performance of its financial, administrative and clerical functions; and</p> <p>(b) be assisted by such staff, seconded in terms of subsection (4) or appointed by the Commission in consultation with [the Public Service Commission and] the Minister of Finance, as may be necessary to enable the Commission to perform its functions.”;</p> <p>(b) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The persons appointed by the Commission in terms of subsection (1) shall receive such remuneration, allowances and other employment benefits and shall be appointed on such terms and conditions and for such periods as the Commission may, in consultation with [the Public Service Commission and] the Minister of Finance, determine.”;</p> <p>(c) by the substitution for subsection (4) of the following subsection:</p>

No. and year of law	Short title	Extent of repeal or amendment
Act No. 103 of 1996	Telecommunications Act, 1996	<p>“(4) The Commission may, in the performance of its functions contemplated in subsection (1)(a), at its request [after consultation with the Public Service Commission], be assisted by officers [of] in the public service seconded to the service of the Commission in terms of any law regulating such secondment.”; and</p> <p>(d) by the substitution for subsection (5) of the following subsection:</p> <p>“(5) The Commission may, in consultation with the [Public Service Commission] Minister of Finance, in the exercise of its powers or the performance of its functions by or under this Act or any other law, for specific projects, enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the work of the Commission and [with the concurrence of the Minister of Finance] determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of such persons.”.</p> <p>The amendment of section 17—</p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p>“The Council shall, [in consultation with the Public Service Commission and] subject to the approval of the Minister with regard to staff and resources, establish its own administration to assist the Authority in the performance of its functions and to this end the Council shall appoint—”; and</p>

No. and year of law	Short title	Extent of repeal or amendment
		<p>(b) by the substitution for subsection (3) of the following subsection:</p> <p>“(3) The Authority may pay to the persons in its employ such remuneration and allowances and provide them with such pension and other benefits as the Authority may determine with the approval of the Minister <u>and</u> with the concurrence of the Minister of Finance [and after consultation with the Public Service Commission].”</p>

**MEMORANDUM ON THE OBJECTS OF THE PUBLIC SERVICE
LAWS AMENDMENT BILL, 1997**

1. Since the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), has established a single Public Service Commission for the Republic, which Commission will, in view of its substantially altered role, no longer be responsible for the day to day administration of departments of State, it has become necessary to amend the laws relating to the public service in order to distribute the said responsibility among the Minister for the Public Service and Administration and the relevant executing authority. In this regard it is proposed that the said Minister concentrates on matters of policy and takes responsibility for the framework of norms and standards within which the public service is to provide its services and in terms of which the conditions of service of public servants are to be determined, whilst the executing authority performs those functions which relate to the internal organisation and post establishment of the office or department concerned and to the individual career incidents of persons in the service of that office or department. The relevant laws, including the Public Service Act, 1994, are being adjusted accordingly.

2. The Bill also contains various other amendments to the Public Service Act, 1994, the most important of which are set out below:

- (a) It is proposed that the Chairperson of the said Commission be the executing authority in respect of the relevant office.
- (b) The Act is being brought into line with the provisions of the said Constitution and the Labour Relations Act, 1995 (Act No. 66 of 1995).
- (c) In order to remove any doubt which may have existed in connection with the performance of certain functions, the management, administration and functions of the South African Management and Development Institute and the administration of the Training Fund are now expressly regulated.
- (d) It is no longer considered desirable that the President should be able to reject certain actions affecting the public service or its members. The Act is being amended accordingly.
- (e) The principle of broad representivity is being applied to appointments and the filling of posts in the public service.
- (f) The provisions relating to inefficiency and misconduct are being amended in order to comply with the constitutional requirements in respect of administrative actions and the delegation of legislative powers and to achieve efficiency by the fixing of time-scales.
- (g) The said Minister is being empowered—
 - (i) to have access to certain documents and information;
 - (ii) to make regulations; and
 - (iii) to assign certain functions to officers or employees of his or her Department.

3. In the opinion of the State Law Adviser, the Bill must be dealt with in accordance with the procedure prescribed by section 76 of the said Constitution.

4. The following parties were consulted in the preparation of the Bill:

- (a) All departments and provincial administrations.
- (b) The Public Service Commission and provincial service commissions.
- (c) Trade unions represented in the Chamber of the Public Service Bargaining Council at central level.