

PUBLIC SERVICE ACT, 1980 (ACT 2 OF 1980)

as amended by

Government Service Amendment Proclamation, 1981 (Proclamation AG. 10 of 1981)
Prisons Amendment Act, 1981 (Act 13 of 1981)
Water Amendment Act, 1982 (Act 4 of 1982)
Medical Aid Scheme for the Government Service Extension Act, 1982 (Act 13 of 1982)
Government Service Amendment Act, 1982 (Act 23 of 1982)
Repeal of Proclamation AG. 21 of 1979 (Establishment and Powers of, and Regulation of Incidental Matters in connection with, a Legislative Authority for SWA) and AG. 19 of 1980 (Council of Ministers Proclamation), 1983 (Proclamation AG. 3 of 1983)
Amendment of the Government Service Act, 1984 (AG. 39 of 1984)
Proclamation on the Establishment and Powers of Legislative and Executive Authority for Territory of SWA, 1985 (R.101 of 1985)
Representative Authority Proclamation, 1980 (AG. 8 of 1980) as amended by the Amendment of the Representative Authorities Proclamation, 1984 (AG. 40 of 1984) = B1, Ca, Da, He, Ka, Cl, Na, Ow, Ts and as applied in terms of Government Notices 32/85 (Ts), 100/85 (Ka), 25/88 (Ca), 21/89 (B1), 30/89 (Da) and 52/89 (He, Cl, Na, Ow)
Government Service Amendment Act, 1986 (Act 8 of 1986)
Government Service Amendment Act, 1987 (Act 17 of 1987)
Government Service Amendment Act, 1989 (Act 6 of 1989)
Transfer of Powers of Representative Authorities to Administrator-General, 1989 (Proclamation AG. 8 of 1989)
Repeal of the Laws on the National Assembly, the Cabinet and the Constitutional Council Proclamation, 1989 (Proclamation AG. 16 of 1989)
Second Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Elections) Proclamation, 1989 (Proclamation AG. 25 of 1989)
Pension Matters of Government Institutions Proclamation, 1989 (Proclamation AG. 56 of 1989)
Constitution of the Republic of Namibia
Amendment Proclamation, 1990 (Proclamation no. 3 of 1990)
Public Service Commission Act, 1990 (Act 2 of 1990)
Amendment Proclamation, 1990 (Proclamation no. 5 of 1990)
Public Service Amendment Act, 1990 (Act 24 of 1990)

ACT

To provide for the organization and administration of the public service, the regulation of conditions of employment, tenure of office, discipline, retirement, discharge and dismissal of members of the public service and other incidental matters.

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Schedule Ministries, public offices and Chief Executive Officers

PART I

DEFINITIONS

BE IT ENACTED by the National Assembly of South West Africa, as follows:-

1. Definitions.-(1) In this Act, unless the context otherwise indicates -
- (i) "chief executive officer" in relation to a ministry or public office, means the officer who occupies such office as designated by the name specified in the second column of the First Schedule or of the Second Schedule, as the case may be; [Amended by the Public Service Amendment Act, 1990 (Act 24 of 1990)]
 - (ii) "Commission" means the Commission as defined in section 1 of the Public Service Commission Act, 1990 (Act 2 of 1990) [Amended by the said Act]
 - (iii) "employee" means any person -
 - (a) appointed to a post of a class to be held by an employee in terms of section 2(2); or
 - (b) employed temporarily or under a special contract, whether in a full-time or part-time capacity, in accordance with a recommendation made in terms of section 6(2)(d); (xii)
 - (iv) "fixed establishment" means the posts created for the normal and regular requirements of a ministry or public office; (ix)
 - (v) "ministry" means any ministry established under Article 32(3)(g) of the Namibian Constitution and includes the Office of the President and the Office of the Prime Minister; [Public Service Amendment Act, 1990 (Act 24 of 1990)]
 - (vi) "misconduct" means misconduct as defined in section 17; (xi)
 - (vii) "officer" means any person -
 - (a) appointed permanently, notwithstanding that such appointment may be on probation, to a post of a class to be held by an officer in terms of section 2(2); or
 - (b) retained in employment additional to the fixed establishment in accordance with a recommendation made in terms of section 6(2)(e), and includes the Secretary to the Cabinet appointed under Article 43 of the Namibian Constitution; [Public Service Amendment Act, 1990 (Act 24 of 1990)]
 - (viii) "prescribed" means prescribed by or under this Act; (x)
 - (ix) "public office" means an organizational component mentioned in the first column of the Second Schedule; [Public Service Amendment Act, 1990 (Act 24 of 1990)]
 - (x) "regulation" means any regulation made under this Act; (vii)
 - (xi) "revenue", in relation to any person, means the revenue fund or account thereof from which his remuneration is derived; (v)
 - (xii) "scale", in relation to salary, includes salary at a fixed rate; (viii)

(xiii) "this Act" includes the regulations. (iii)

(2) Where in this Act reference is made in relation to any officer to a reduction in a scale of salary, the reference shall be construed as including the application of a scale of salary which is lower than the scale previously applied as regards the maximum or minimum of the scale or the rate of progression in the scale and any such reference to a reduction in grade or to a grade being lower than any other grade shall be construed correspondingly.

PART II

ORGANIZATION AND ADMINISTRATION

2. **Composition and classification of public service.**-(1) Subject to the provisions of subsection (3), the public service shall consist of all such persons as may be appointed on a full-time or part-time basis or temporarily or under a special contract -
- (a) to posts constituting part of the fixed establishment; or
 - (b) additional to the fixed establishment. [Amended by Proclamation AG. 39/84]
- (2) The Commission shall from time to time determine -
- (a) the classes into which posts constituting part of the fixed establishment shall be classified;
 - (b) the classes of such posts to be held by officers;
 - (c) the classes of such posts to be held by employees.
- (3) The President may from time to time, after the Commission has made a recommendation, by notice in the Gazette exclude from or include in the public service the holders of such classes of posts in any ministry or public office as may be specified in such notice. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
3. **Establishment of ministries or public offices.**-(1) The designation of the chief executive officer or a ministry or public office shall be the designation specified in column 2 of the First Schedule or the Second Schedule, as the case may be, opposite the ministry or public office concerned. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (2) The President may by proclamation, in the Gazette -
- (a) vary the designation of the chief executive officer of any ministry or public office; or
 - (b) insert the designation of the chief executive officer of -
 - (i) any other ministry established under Article 32(3)(g) of the Namibian Constitution; or
 - (ii) any other organizational component which the President may determine to be a public office for the purposes of this Act. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (3) Repealed by the Public Service Amendment Act, 1990 (Act 24 of 1990).

(4) The powers, functions, duties, rights or obligations of directorates or directors referred to in the Functions of Directorates Act, 1979 (Act 4 of 1979), shall be deemed to be the powers, functions, duties, rights or obligations of the corresponding departments or heads of departments.

4. Repealed by the Public Service Commission Act, 1990 (Act 2 of 1990)

5. Repealed by the Public service Commission Act, 1990 (Act 2 of 1990)

6. Commission's powers, functions and duties.-(1)(a) The Commission shall have power -

(1) to perform the functions, carry out the duties and exercise the powers assigned to or imposed or conferred upon it in terms of this Act or any other law, and generally, subject to the provisions of paragraph (b), to -

(aa) make recommendations relating to the employment or conditions of employment of officers or employees or of former officers or employees during their terms of office including a recommendation relating to the establishment of a pension fund for the benefit of such officers and employees and their dependants whether exclusively or such a pension fund of which other persons may also be members; [Amended by Proclamation AG. 56/89]

(bb) give directions relating to any matter upon which the Commission is empowered to make any recommendation; [Amended by Proclamation AG. 39/84]

(ii) at the request of the Cabinet to make recommendations to it concerning any matter which it may refer to the Commission whether such matter concerns the public service or not. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(b) The recommendations or directions referred to in paragraph (a)(i) shall not be to the detriment of any former officer or employee and may only be made or given within two years after the expiration of the term of office of such officer or employee.

(2) The Commission shall make recommendations -

(a) as to the establishment or abolition of divisions of ministries or public offices, the transfer of functions from one division to another division in the same ministry or public office or in any other ministry or public office or from a ministry or public office to any other body or from any other body to a ministry or public office; [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(aA) as to the designation of divisions established in accordance with paragraph (a); [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(b) as to the control, organization and readjustment of the divisions of ministries and public offices; [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(c) as to the number, grading, regrading and conversion of posts constituting part of the fixed establishment;

(d) as to the number of persons to be employed temporarily or under a special contract, whether in a full-time or part-time capacity -

- ~~(i)~~ (i) against posts constituting part of the fixed establishment which have not been permanently filled; or
- ~~(ii)~~ (ii) additional to the fixed establishment, whether by reason of the absence or illness of the holder of any post, or when it is necessary to provide staff for the performance of any class of work for which staff is not ordinarily maintained on a permanent basis, or when it is necessary for any other reason to increase the staff of any ministries or public offices temporarily; [Public Service Amendment Act, 1990 (Act no 24 of 1990)]
- (e) for the retention in employment of any officer additional to the fixed establishment or in any post graded higher or lower than his own grade; [Amended by Proclamation AG. 39/84]
- (f) for effecting economy and promoting efficiency in the administration and functioning of ministries or public offices or divisions thereof by - [Public Service Amendment Act, 1990 (Act no 24 of 1990)]
 - (i) improved organization, procedure or methods;
 - (ii) improved supervision or control;
 - (iii) simplification of work or the elimination of unnecessary work;
 - (iv) co-ordination of work;
 - (v) limitation of the number of officers or employees and the utilization of the services of officers or employees to the best advantage;
 - (vi) training of officers or employees;
 - (vii) effective application of labour-saving aids; [Amended by Proclamation AG. 39/84]
- (g) as to the scales of salaries, wages or allowances of all the various classes or grades of officers or employees;
- ~~(h)~~ (h) as to the person -
 - (i) to be appointed or promoted, whenever it may be necessary to make any appointment or promotion of any officer or employee in or to any post constituting part of the fixed establishment, whether it is necessary owing to the fact that the post is vacant or has been regraded or converted;
 - (ii) to be employed against any post constituting part of the fixed establishment by virtue of a recommendation made under paragraph (d)(i);
 - ~~(iii)~~ (iii) to be employed additional to the fixed establishment by virtue of a recommendation made under paragraph (d)(ii); [Amended by Proclamation by AG. 39/84]
- (i) as to the making of regulations;
- (j) as to the promotion of the image of the public service. [Public Service Amendment Act, 1990 (Act no 24 of 1990)]

- (s) shall keep a record of officers or employees -
 - (i) employed in posts constituting part of the fixed establishment;
 - (ii) employed or retained in employment additional to the fixed establishment; [Amended by Proclamation AG. 39/84]
- (b) shall enquire into the grievances of officers and subject to the provisions of this Act, make such recommendations in respect thereof as it may deem fit;
- (c) shall give directions as to the age, educational, language and other qualifications, including training and experience, to be possessed by persons on appointment, transfer or promotion to or in the public service, where such qualifications are not prescribed by or under this Act or any other law; [Public Service Amendment Act, 1990 (Act no 24 of 1990)]
- (d) if it deems it necessary, shall provide training or cause training to be provided, or conduct examinations or cause examinations to be conducted in such subjects, including languages, as may be directed by it or be prescribed as a qualification to be possessed by persons on appointment, transfer or promotion to or in the public service;
- (e) Repealed by the Public Service Commission Act, 1990 (Act 2 of 1990)
- (f) Repealed by the Public Service Commission Act, 1990 (Act 2 of 1990)
- (4) Repealed by the Public Service Commission Act, 1990 (Act 2 of 1990)
- 7. The carrying out, withdrawal, rejection or variation and approval of recommendations of Commission.-(1) Any recommendation made by the Commission in accordance with the provisions of any law and which relates to any particular person - [Amended by Proclamation AG. 39/84]
 - (a) may be withdrawn or varied by the Commission or, subject to subsection (6), be rejected or varied by the Cabinet before having been carried out, at any time within a period of six months from the date when made or varied by the Commission; Provided that the Commission may not withdraw or vary any recommendation varied by the Cabinet; [Public Service Amendment Act, 1990 (Act no 24 of 1990)]
 - (b) shall, if varied by the Cabinet be carried out forthwith as so varied, by or in respect of the chief executive officer concerned, as the case may be; [Public Service Amendment Act, 1990 (Act no 24 of 1990)]
 - (c) shall, if approved by the Cabinet, as made or varied by the Commission, be carried out forthwith as so approved, by or in respect of the chief executive officer concerned, as the case may be; [Public Service Amendment Act, 1990 (Act no 24 of 1990)]
 - (d) shall, if the period referred to in paragraph (a) has expired, and the recommendation has not been carried out or has not been withdrawn by the Commission or rejected or varied by the Cabinet, be carried out forthwith as made or varied by the Commission, by or in respect of the chief executive officer concerned, as the case may be. [Public Service Amendment Act, 1990 (Act no 24 of 1990)]
- (2) Any recommendation other than a recommendation for making regulations, made by the Commission in accordance with the provisions of any law, and which does not relate to any par-

particular person -

- (a) may, subject to the provisions of subsection (3), be withdrawn or varied by the Commission before it has been carried out, at any time within a period of six months from the date when made or varied by the Commission;
- (b) shall, subject to the provisions of subsection (3), if the said period has expired and the recommendation has not been carried out or withdrawn by the Commission, be carried out forthwith as made or varied by the Commission, by or in respect of the chief executive officer concerned, as the case may be. [Public Service Amendment Act, 1990 (Act no 24 of 1990)]

(3) Any recommendation of the Commission as to -

- (a) the number, grading, regrading or conversion of posts constituting part of the fixed establishment;
- (b) the employment and retention in employment of officers or employees additional to the fixed establishment or graded lower than their own grading; [Amended by Proclamation AG. 39/84]
- (c) the scales of salaries, wages and allowances of officers or employees;
- (d) the payment to officers or employees, or classes of officers or employees of salaries at higher rates than those of the lowest notches of the scales applicable to their posts on appointment, transfer or promotion;
- (e) the special advancement of officers or employees, or classes of officers or employees, within the scales of salary applicable to their posts or the payment to them of salaries in accordance with higher scales;
- (f) the payment of officers or employees of extra remuneration for the performance of overtime duties;
- (g) the amounts of bonuses, awards, gratuities, honoraria or any other extra payments to be made to officers or employees;
- (h) the granting of bursaries or grants-in-aid for purposes of study or research;
- (i) the conditions of employment generally of officers or employees;
- (j) the provisions of the regulations,

which does not relate to any particular person shall, if it involves expenditure from revenue, not be carried out unless prior approval for such expenditure has been obtained.

(4) Whenever the Cabinet has varied any recommendation of the Commission in regard to any matter, the recommendation so varied shall be carried out without obtaining a further recommendation of the Commission. [Public Service Amendment Act, 1990 (Act no 24 of 1990)]

(5) For the purpose of the application of subsection (1) in regard to the rejection or variation by the Cabinet of a recommendation of the Commission, any refusal or failure by the Commission to make a recommendation, shall be deemed to be a recommendation of the Commission. [Public Service Amendment Act, 1990 (Act no 24 of 1990)]

(6) At least fourteen days before rejecting or varying any recommendation of the Commission under subsection (1)(a), the Cabinet shall convey to the Commission the facts by rea-

son of which it intends rejecting or varying the recommendation and shall request the Commission to furnish it with the Commission's comments in regard to the proposed rejection or variation. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(7) For the purposes of this Act or any other law, any recommendation shall be deemed -

- (s) to have been made on the date of the written communication conveying such recommendation; and
- (b) if it relates to any particular person, to have been carried out by the Cabinet or any chief executive officer on the date of the written communication to such person stating that the Cabinet approved such recommendation or that it has to be carried out. [Public Service Amendment Act, 1990 (Act no 24 of 1990)]

8. Commission's power to inspect any ministry or public office to have access to official documents and to hold an enquiry.--(1) The Commission shall have power to inspect any ministry or public office, to have access to such official documents and records, and to obtain all such information from any chief executive officer and other officers or employees or other persons employed by a ministry or public office as in its opinion may be necessary for the exercise of its powers, the performance of its functions and the carrying out of its duties under this Act or under any other law. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(2) Repealed by the Public Service Commission Act, 1990 (Act 2 of 1990)

(3) Repealed by the Public Service Commission Act, 1990 (Act 2 of 1990)

(4) Repealed by the Public Service Commission Act, 1990 (Act 2 of 1990)

(5) Repealed by the Public Service Commission Act, 1990 (Act 2 of 1990)

(6) Repealed by the Public Service Commission Act, 1990 (Act 2 of 1990)

(7) Any person who makes any inspection by virtue of a delegation made under section 8(1)(a) of the Public Service Commission Act, 1990, shall for the purpose of the inspection have all the powers of inquiry conferred upon the Commission by section 7 of that Act, and for the purposes of the application of the provisions of the last-mentioned section to an inspection, every reference therein to the Commission shall be construed as including a reference to a person so making an inspection. [Amended by the Public Service Commission Act, 1990 (Act 2 of 1990)]

PART III

APPOINTMENT, PROMOTION, TRANSFER, RETIREMENT, DISCHARGE AND DISMISSAL

9. **Appointments and promotions.**-- Without derogation from the functions to be performed by the Commission under this Act, the appointment or promotion of any person in the public service shall be by the Cabinet or by the holder of a post constituting part of the fixed establishment, to whom the Cabinet has delegated the power to make such an appointment or to promote any person. [Public Service Amendment Act, 1990 (Act no 24 of 1990)]

10. **Conditions in regard to the filling of posts.**--(1) Subject to the provisions of this section and of sections 11 and 12, appointments, transfers or promotions in the public service shall be made in such manner and subject to such conditions (including conditions in regard to the possession of knowledge of the official and other languages) as may be pre-

scribed or as the Commission may direct. [Public Service Amendment Act, 1990 (Act no 24 of 1990)]

(2) No person shall be appointed permanently or be transferred and appointed permanently as an officer or employee, whether on probation or not, unless such person -

(a) is of good character; and

(b) is in the opinion of the Commission free from any disease or physical or mental defect likely to interfere with the proper carrying out of his duties.

(3) Subject to the provisions of subsection (5), whenever any post in the public service is to be filled -

(a) no person who qualifies for the appointment, promotion or transfer concerned shall be favoured or prejudiced;

(b) only the qualifications, level of training, relative merit, efficiency and suitability of the persons being considered for appointment, promotion or transfer shall be taken into account;

(c) due regard shall, in the case of any such post designated by the Cabinet on the recommendation of the Commission, at any educational institution established or maintained under the National Education Act, 1980 (Act 30 of 1980), be had to the recommendation of the school committee or advisory board established for that educational institution under the said Act. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(4) For filling any post of any class to be held by officers, the Commission shall, subject to the provisions of subsections (3) and (5), recommend either -

(a) the transfer or promotion of an officer; or

(b) if the post cannot be satisfactorily filled by any such transfer or promotion, the appointment of any person who is not an officer. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(5) Nothing contained in this section shall prevent the appointment or promotion of a person who would otherwise not be eligible for such appointment or promotion by virtue of any provision of this section, if such appointment or promotion is recommended by the Commission in pursuance of the aim to achieve a balanced structuring of the public service. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

10A. Appointment of chief executive officers.--(1) Subject to the provisions of this Part and Part IV -

(a) (i) a person who is appointed as an officer in the office of chief executive officer;

(ii) an officer who is promoted or transferred to that office; and

(iii) an officer who, at the commencement of this section, occupies that office,

shall occupy that office for a period of five years or for such shorter period as the Cabinet may approve, subject to the provisions of subsections (3), from, in the case of a person contemplated in subparagraphs (i) and (ii), the date of the appointment, promotion or transfer concerned, and in the case of a person contemplated in subpara-

graph (iii), the commencement of this section; [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(b) an officer who is promoted or transferred from the office of chief executive officer contemplated in paragraph (a) to another office of chief executive officer, shall occupy the latter office for the remainder of the term of office which applies to him in regard to the first-mentioned office in terms of paragraph (a), or the remainder of any extended term in terms of paragraph (c); [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(c) an officer's term of office as chief executive officer as prescribed in paragraph (a) or (b), may, subject to the provisions of subsection (2), be extended at the expiry thereof for a period or successive periods of at least one year but not exceeding five years, as the Cabinet may approve. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(2) (a) The Cabinet shall in writing inform the officer concerned at least six calendar months before the expiry of the term contemplated in subsection (1)(a) or (b) or any previously extended term contemplated in subsection (1)(c), of its intention to retain him in service for an extended term, or not. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(b) If the Cabinet so informs the officer of its intention to retain him in service for an extended term, the officer concerned shall in writing inform the Cabinet within one month from the date of that communication of his acceptance or not of that extended employment. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(c) If the officer concerned so informs the Cabinet of his acceptance of the extended employment, his term of office as chief executive officer is extended by a further period upon which he and the Cabinet have agreed. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(3) Before the Cabinet approves a shorter period contemplated in subsection (1)(a) in respect of an officer or communicates with such officer in terms of subsection (2)(a), the Commission shall make a recommendation. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(4) For the purposes of this section -

(a) the office of "chief executive officer" shall, subject to paragraph (b), be limited to those persons who are remunerated in accordance with a scale which from time to time shall be recommended by the Commission for this purpose;

(b) the officer who holds the office of Secretary to the Cabinet shall be deemed to occupy the office of a chief executive officer of a ministry. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

11. Appointments on special conditions.-Any person employed elsewhere than in the public service, may on the recommendation of the Commission, be appointed as an officer on such special conditions as the Commission may determine, having regard to the seniority of such person, his accumulated vacation or sick leave and his existing employment benefits and obligations, provided prior approval has been obtained for expenditure from revenue incurred by such appointment. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

12. Appointments, transfers and promotions on probation.- (1) Appointments, transfers or promotions to or in posts of the classes to be held by officers shall be on probation if the

Commission so recommends.

(2) The period of probation so recommended shall not be less than twelve months: Provided that if any officer serving on probation is transferred or promoted to any other post, a lesser period of service on probation in the new post may be recommended, which, together with the period of probation served in the former post, shall amount to not less than twelve months: Provided further that the probationary period of any officer shall be extended by the number of days leave taken by him during the period of probation or any extension thereof.

(3) (a) If the chief executive officer of any ministry or public office or the head of any division thereof where any officer is employed on probation, certifies that during the period of probation or extended period of probation the officer concerned has been diligent and his or her conduct has been consistently satisfactory and that he or she is in all respects suitable for the post which he or she holds, the Cabinet or the holder of any post to whom the Cabinet has delegated its powers in respect of appointments, transfers or promotions, may, if the officer has complied with all the conditions to which his or her appointment, transfer or promotion was subject, confirm the appointment, transfer or promotion of such officer. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(b) If the probationary appointment, transfer or promotion is not confirmed, the chief executive officer shall report the reasons for the non-confirmation to the Commission which, subject to the provisions of subsection (5), may make such recommendation in the matter as it may deem fit. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(4) Notwithstanding anything to the contrary in subsection (2) or in Part IV contained, but subject to the provisions of subsection (5), any officer serving on probation may, after the Commission has made a recommendation, be discharged from the public service by the Cabinet or the holder of a post in any ministry or public office to whom the Cabinet has delegated such power of discharge, either during, or after the expiration of the period of probation -

(a) by giving one month's notice; or

(b) without any prior notice, if his or her conduct is unsatisfactory. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(5) After the Commission has made a recommendation and notwithstanding anything to the contrary in subsection (3) or (4) or section 13 or 22 contained, any person who immediately prior to his transfer or promotion on probation was an officer, not being a probationary officer, shall, if his probationary transfer or promotion is not confirmed, revert to the post or appointment formerly held by him, or to any post or appointment of equivalent grading, and to the salary he would have attained in his former post or appointment. [Amended by Proclamation AG. 39/84]

13. Transfer and secondment of officers and employees.--(1) Subject to the provisions of this Act, any officer or employee shall, whenever the public interest so requires, be liable to be transferred from the post or appointment held by him or her, to any other post or appointment in the same or any other ministry or public office, whether or not such other post or appointment is of a lower or higher grade, or whether such post or appointment, is within or outside Namibia: Provided that: [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(a) upon transfer any officer or employee shall not suffer any reduction in his scale of salary without his consent, except in accordance with the provisions of Part IV;

- (b) an officer or employee transferred to or employed in any post of a lower or higher grade than his own grade without any change in his scale of salary, shall be recommended by the Commission for transfer to a post to which his scale of salary is appropriate, as soon as a suitable vacancy occurs;
- (c) an officer or employee transferred to or employed in a post which is graded higher than his own grade, or which is regarded or converted to a post of a grade higher than his own grade, shall not by reason only of such transfer or employment be entitled to the higher scale of salary applicable to the post.
- (2) The transfer of any officer or employee from one post or appointment to another post or appointment may, subject to the provisions of subsection (3), be made on the authority of the Cabinet or the holder of a post in any ministry or public office, to whom such power to transfer has been delegated by the Cabinet. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (3) Any officer or employee shall not be transferred from one post to another post which is of a higher or lower grade than his own grade or bears a different designation, unless the Commission has recommended the transfer.
- (4) Repealed by the Public Service Amendment Act, 1990 (Act 24 of 1990).
- (5) Any person outside the public service, may, on the recommendation of the Commission, be employed by any ministry or public office for any particular service or for any period of time and on such conditions as may be recommended by the Commission, provided prior approval has been obtained for expenditure from revenue incurred as a result of such employment. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (6) Any officer or employee may, with his consent and on the recommendation of the Commission and on such conditions (in addition to those prescribed by or under any law) as it may recommend, be seconded either for any particular service or for any period, to the service of any other government, or of any board, institution or body established by or under any law, or of any other body or person, provided prior approval has been obtained for expenditure from revenue incurred by the secondment of the said officer or employee, and any such officer or employee while so seconded, shall remain subject to the laws governing officers or employees in the public service. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (7) The salary, allowance, money, bonus or honorarium payable in respect of the services of any officer or employee seconded under subsection (6), shall be paid into revenue: Provided that the Commission may in special circumstances recommend that an amount equal to the said salary, allowance, money, bonus or honorarium, or any portion thereof, shall be paid from revenue to the said officer or employee.
14. Retirement, discharge and dismissal of officers.—(1)(a) Subject to the provisions of subsections (2), (3) and (4), any officer shall have the right to retire from the public service on attaining the age of sixty years and shall be so retired on reaching the said age. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (b) (i) Subject to the provisions of this section and section 10A an officer who occupies the office of chief executive officer has the right to retire from the public service and he shall be so retired at the expiry of the term contemplated in section 10A(1)(a) or (b), or of any extended term contemplated in section 10A(1)(e), as the case may be. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

- (ii) If an officer retires or is retired in terms of subparagraph (i), he is deemed to have been discharged from the public service in terms of subsection (5)(b). [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (c) (i) The Cabinet may, at the request of an officer occupying the office of chief executive officer, and subject to a recommendation by the Commission, allow him to retire from the public service before the expiry of the term contemplated in section 10A(1)(a) or (b) or any extended term contemplated in section 10A(1)(c), and notwithstanding the absence of any reason for discharge in terms of subsection (5), if a reason exists which the Cabinet deems sufficient. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (ii) If an officer is allowed to retire from the public service in terms of subparagraph (i), he is, notwithstanding anything to the contrary contained in subsection (4), deemed to have retired in terms of that subsection, and he is entitled to such pension as he would have been entitled to if he had retired from the public service in terms of that subsection. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (d) A chief executive officer who retires or is retired in terms of paragraph (b) or (c) shall be deemed for the purposes of section 16(1)(c)(i) of the Income Tax Act, 1981, to have attained the age referred to therein. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (1A) For the purposes of subsection (1), the officer who holds the office of Secretary to the Cabinet shall be deemed to occupy the office of a chief executive officer of a ministry. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (2) Subject to the provisions of subsection (3) -
- (a) any officer who was in the employment of the Government of the Republic of South Africa;
- (b) any employee or teacher who was in the employment of the Administration of South West Africa on 31 March 1980,
- and who is without interruption of service appointed in the public service, shall, if he stipulates it as a condition of his appointment, retain such right as he may have had in such employment to retire at any particular age. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (3) If it is in the public interest to retain any officer in employment in his post beyond the age at which, in accordance with subsections (1) and (2), he shall be retired, he may, with his consent, be so retained from time to time on the recommendation of the Commission and subject to the approval of the Cabinet for any further period expiring not later than the last day of the month in which he attains the age of sixty-seven years. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (4) (a) Any officer who has reached the age of fifty-five years may, subject to the recommendation of the Commission and the approval of the Cabinet, be retired from the public service. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (b) (i) The Cabinet may, at the request of an officer who has attained the age of fifty-five years and subject to a recommendation by the Commission, notwithstanding the absence of any reason for discharge in terms of subsection (5), allow him to retire from the public service if in the opinion of the Cabinet sufficient reason exists therefor and the retirement will be

to the advantage of the State. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(ii) The provisions of subsection (1)(c)(ii) shall mutatis mutandis apply to any officer who is allowed to retire from the public service in terms of subparagraph (i). [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(5) Any officer is liable to be discharged from the public service -

(a) on account of continued ill-health;

(b) owing to the abolition of his post or any reduction in or reorganization or re-adjustment of any ministry of public office or division thereof; [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(c) if, for reasons other than his own unfitness or incapacity, his discharge will promote efficiency or economy in the ministry or public office in which he is employed; [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(d) on account of unfitness for his duties, or incapacity to carry them out efficiently; [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(e) on account of misconduct;

(f) if, in the case of an officer appointed on probation, his appointment is not confirmed;

(g) if the Cabinet, in the public interest, appoints him under any provision of any other law to any office to which the provisions of this Act do not apply. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(6) (e) Any officer who without permission of the chief executive officer or head of the division where he is employed - [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(i) absents himself from his official duties for any period exceeding thirty days; or

(ii) absents himself from his official duties and assumes duty in other employment,

shall be deemed to have been discharged from the public service on account of misconduct, with effect from the date immediately succeeding his last day of attendance at his place of employment. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(b) The Commission may, notwithstanding anything to the contrary in any law contained, recommend that, subject to the approval of the Cabinet, any officer so deemed to have been discharged, be reinstated in the public service in his former or any other post or work, on such conditions as the Commission may recommend, and thereupon the period of his absence from his official duties shall be deemed to have been absence on vacation leave without pay or leave on such other conditions as the Commission may recommend. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(7) The power to retire or discharge an officer or employee under this section shall be vested in the Cabinet or the holder of any post in any ministry or public office to whom

the Cabinet has delegated any such power and shall, in the case of any officer, be exercised only on the recommendation of the Commission. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

PART IV

INEFFICIENCY AND MISCONDUCT ✓✓

- *15. Inefficient officers.-(1) If, in the opinion of the chief executive officer of the ministry or public office in which any officer (other than a member of the Namibian Police Force or the Prison Service) holds any post, or of any person designated to inspect such ministry or public office, such officer is unfit for his or her duties or incapable of carrying out his or her duties efficiently, the said chief executive officer shall submit a report on the matter compiled by himself or herself or the person aforesaid, as the case may be, to the Cabinet who shall appoint the holder of any post in any ministry or public office as investigating officer to enquire into the allegations (hereinafter in this section referred to as the charge) contained in the report. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (2) The investigating officer shall, in consultation with the chief executive officer, fix the time and place of the enquiry and the said chief executive officer shall give the officer concerned reasonable notice in writing of the said time and place and shall furnish him with particulars of the charge in a statement in writing. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (3) The chief executive officer may authorize any person to attend the enquiry and to adduce evidence and arguments in support of the charge and to cross-examine any person who has given evidence in rebuttal of the charge. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (4) (a) At the enquiry the officer concerned shall have the right to be present and to be heard either personally or through a representative, to cross-examine any person called as a witness in support of the charge, to examine any documents produced in evidence, to give evidence himself and to call any other person as a witness.
- (b) The investigating officer shall keep a record of the proceedings at the enquiry and of all evidence given thereat.
- (c) The failure of the officer concerned to attend the enquiry shall not invalidate the proceedings.
- (5) At the conclusion of the enquiry the investigating officer -
- (a) shall find whether or not the officer concerned is unfit for his duties or incapable of carrying out his duties efficiently;
- (b) shall advise the officer concerned of his finding; and
- (c) shall report the result of the enquiry to the Cabinet.
- (6) If the investigating officer finds that the officer concerned is unfit for his duties or incapable of carrying them out efficiently -
- (a) he shall furnish the Commission with the record of the proceedings at the enquiry, including documentary evidence admitted at the enquiry, together with a written statement of his findings and his reasons for such findings and any observa-

- tions he may desire to make;
- (b) the Commission shall furnish the officer concerned at his request, made within fourteen days after his having been advised of the finding of the investigating officer, with a copy of the said record, statement and reasons;
 - (c) the said officer may, within fourteen days after receipt by him of the copy referred to in paragraph (b), appeal to the Commission against the finding of the investigating officer, by written notice stating fully the grounds of appeal and submitting representations in support of the appeal.
- (7) (a) If the officer appeals against the finding of the investigating officer, the Commission shall forward a copy of the record, statement and reasons referred to in subsection (6)(a) and a copy of the notice referred to in subsection (6)(c), to the chief executive officer concerned, who, within fourteen days after the date of receipt of the said copies - [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (i) may submit to the Commission written representations in support of the findings against which the appeal is brought; and
 - (ii) shall furnish a copy of such representations to the officer concerned, who may submit to the Commission his written reply thereto, within fourteen days after receipt thereof.
- (b) The Commission shall furnish a copy of the said reply to the chief executive officer who, with leave of the Commission, may submit further representations in answer to the said reply.
- (8) (a) After consideration of all the documents submitted to it, the Commission may allow the appeal wholly or in part and set aside or alter the finding, or dismiss the appeal and confirm the finding wholly or in part, or the Commission may, before arriving at a final decision on the appeal, remit any question in connection with the enquiry to the investigating officer for his report thereon or for a further enquiry and finding.
- (b) For the purpose of such a remittal, the provisions of subsections (3) and (4) shall mutatis mutandis apply.
- (9) Whenever the Commission arrives at a final decision on an appeal, it shall convey such decision to the appellant and to the Cabinet. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (10) If the officer does not appeal against the finding of the investigating officer, or his appeal is dismissed, the Commission shall forward all the documents relating to the enquiry to the Cabinet and recommend - [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (a) that no further action be taken in the matter; or
 - (b) that the officer concerned be transferred to another post or be retained in employment additional to the fixed establishment; or [Amended by Proclamation AG. 39/84]
 - (c) that his salary or grade or both his salary and grade be reduced to such extent as may be recommended; or

(d) that action be taken against him under paragraph (b) as well as paragraph (c);
or

(e) that he be discharged from the public service with effect from such date as the Cabinet may determine. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(11) The Cabinet may take such action as the Commission may recommend under subsection (10) or, subject to the provisions of section 7(1), any such other action as the Commission could so have recommended. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

16. Inefficient chief executive officers.—(1) If the Cabinet has reason to believe that any chief executive officer is unfit for his or her duties or incapable of carrying out his or her duties efficiently, the Cabinet may appoint any person to enquire into the matter. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(2) The provisions of section 15(2) to (11), both inclusive, shall, mutatis mutandis, apply to any enquiry under subsection (1) of this section, and for the purposes of such application any reference in such first-mentioned section to any chief executive officer shall be construed as a reference to the Cabinet and any reference to the investigating officer shall be construed as a reference to the person referred to in the said subsection. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(3) For the purposes of this section, the officer who holds the office of Secretary to the Cabinet shall be deemed to occupy the office of a chief executive officer of a ministry. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

17. Definition of misconduct.—(1) Any officer (other than a member of the Namibian Police Force or the Prison Service) shall be guilty of misconduct if he or she - [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(a) contravenes any provision of this Act or fails to comply with any provision thereof with which it is his duty to comply; or

(b) performs, or causes or permits to be performed or, connives at, any act prejudicial to the administration, discipline or efficiency of any ministry or public office or division thereof; or [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(c) disobeys, disregards or makes wilful default in carrying out any lawful order given to him by any person authorized to do so, or by word or conduct is guilty of insubordination; or

(d) is negligent or indolent in the discharge of his duties; or

(e) operates or undertakes, without the permission of the chief executive officer, granted on the recommendation of the Commission, any private agency or private work in regard to any matter connected with the performance of his official functions or the carrying out of his official duties; or [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(f) in public criticises the administration of any ministry or public office; or [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(g) [Repealed by the Second Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Elections) Proclamation, 1989 (Proclamation AG 25 of 1989)].

(h) takes an active part in party-political matters or uses his position in the public

service to further or prejudice the interest of a political party; or [Public Service Amendment Act, 1990 (Act 24 of 1990)]

- (i) attempts to secure intervention from political or outside sources in relation to his position or conditions of employment as an officer, except through a legislative body; or [Amended by Proclamation AG. 39/84]
 - (j) conducts himself in a disgraceful, improper or unbecoming manner, or whilst on duty is grossly discourteous to any person; or
 - (k) uses intoxicating liquor excessively or uses stupefying drugs without a prescription from a medical practitioner; or
 - (l) is under the influence of intoxicating liquor or stupefying drugs during the prescribed official hours of attendance; or
 - (m) becomes subject to an order for the sequestration of his estate or compromises with his creditors or becomes financially embarrassed, unless it is shown that the sequestration, composition or embarrassment is the result of unavoidable misfortune; or
 - (n) without first having obtained the permission of the chief executive officer discloses, otherwise than in the discharge of his official duties, information gained by or conveyed to him as a result of his employment in the public service, or uses such information for any purpose other than the discharge of his official duties, whether or not he discloses such information; or [Public Service Amendment Act, 1990 (Act 24 of 1990)]
 - (o) accepts without the permission of the chief executive officer, granted on the recommendation of the Commission, or demands in respect of the carrying out of or the failure to carry out his duties any commission, fee or reward, pecuniary or otherwise, to which he is not entitled by virtue of his office, or fails to report forthwith to the said chief executive officer the offer of any such commission, fee or reward; or [Public Service Amendment Act, 1990 (Act 24 of 1990)]
 - (p) misappropriates or improperly uses any property of his employer without committing an offence; or
 - (q) commits an offence; or
 - (r) absents himself from his office or duty without leave or valid cause; or
 - (s) with a view to obtaining any privilege or advantage in relation to his official position or his duties, or to causing prejudice or injury to his employer or any ministry or public office or the public service or any member of the public service, makes a false or incorrect statement, knowing it to be false or incorrect; or [Public Service Amendment Act, 1990 (Act 24 of 1990)]
 - (t) contravenes any regulation relating to any medical aid scheme of which he is a member or, as a member, fails to comply therewith contrary to his duty. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (2) For the purposes of the application of subsection (1) to any officer who is the chief executive officer the expression "chief executive officer" means the Cabinet. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
18. Misconduct and suspension of officers other than chief executive officers.-(1) If the chief executive officer of any ministry or public office has reason to believe that any

officer (other than a member of the Namibian Police Force or the Prison Service) in his or her ministry or public office is guilty of misconduct, he or she or the holder of any post authorized by him or her, may charge such officer in writing under his or her hand with misconduct. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

- (2) (a) On the recommendation of the Commission the Cabinet or, if authorized thereto by the Cabinet either specially in any particular case or generally, the chief executive officer of any ministry or public office or the holder of any other post in any ministry or public office, may at any time before or after any officer is charged under this section, suspend the officer if he or she has reason to believe that such officer is guilty of misconduct. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (b) Any officer suspended in terms of paragraph (a), shall not be entitled to any remuneration for the period of his suspension, except to such extent as the Cabinet may otherwise direct. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (c) Any officer who has been suspended shall forthwith be permitted to resume duty and shall be paid his full remuneration for the period of his suspension -
- (i) if no charge is brought against him under this section within a reasonable time;
 - (ii) if he is found not guilty on any such charge;
 - (iii) if his appeal is allowed against any finding that he is guilty on any such charge;
 - (iv) if he is dealt with in accordance with paragraph (a), (b), (c) or (d) of, or the second proviso to subsection (1): Provided that where he is dealt with in accordance with subsection (1)(c), duty shall be assumed additional to the fixed establishment or in any post referred to in the said subsection (1)(c), and that where he is dealt with in accordance with subsection (1)(d), duty shall be assumed at the reduced salary or in the lower grade or both at the reduced salary and in the lower grade and the reduced salary shall also be paid for the period of suspension unless payment at the former higher salary has already taken place during that period. [Amended by Proclamation AG. 39/84]
- (d) The suspension of any officer may at any time be cancelled by the person who ordered it or any person of a higher rank than such first-mentioned person, who could have ordered it, but notwithstanding the cancellation the proceedings in connection with the charge of misconduct may be proceeded with.
- (e) Any person cancelling the suspension of an officer under paragraph (d), shall forthwith notify the Commission of the cancellation of the suspension. [Amended by Proclamation AG. 39/84]
- (3) The person signing the charge in terms of subsection (1), shall cause it to be served on the officer charged, together with any statement of particulars of the alleged misconduct and request to furnish a person mentioned in the request within a reasonable time so mentioned, with a written admission or denial of the charge.
- (4) If the person charged admits the charge, he shall for the purposes of subsection (1) be deemed to have been found guilty of the misconduct charged, on the date of admitting the charge and not to have noted an appeal against the finding of guilty, unless the Commission directs that for the purposes of this section he shall be deemed to have denied

the charge.

(5) If the officer charged denies the charge or fails to comply with the request referred to in subsection (3), the Cabinet shall appoint any person as investigating officer to enquire into the charge. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(6) The investigating officer shall, in consultation with the person who signed the charge, fix the time and place of the enquiry, and such person shall give the officer charged reasonable notice in writing of the said time and place, and thereupon the provisions of section 15(3) and (4) shall mutatis mutandis apply in respect of the enquiry and for the purposes of such application any reference in section 15(3) to the chief executive officer shall be construed as a reference to the person who signed the charge. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(7) The acquittal or the conviction of any officer by a court of law upon a charge of any offence shall ~~not~~ be a bar to proceedings against him under this Act on a charge of misconduct, notwithstanding the fact that the facts set forth in the charge of misconduct would, if proved, constitute the offence set forth in the charge on which he was so acquitted or convicted or any other offence on which he might have been convicted on his trial on the said first-mentioned charge.

(8) If the misconduct with which the officer is charged amounts to an offence of which he has been convicted by a court of law, a certified copy of the record of his trial and conviction by that court shall, upon the identification of such officer as the person referred to in the record, be sufficient proof of the commission by him of such offence, unless the conviction has been set aside by a superior court or unless the person charged proves that he had in fact been wrongly convicted.

(9) At the conclusion of the enquiry the investigating officer shall find whether the officer charged is guilty or not guilty on the charge brought against him and shall inform the officer charged and the Cabinet of his finding. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(10) If the investigating officer finds the officer charged guilty of the misconduct with which he has been charged, the provisions of section 15(6) to (9), both inclusive, shall, mutatis mutandis apply.

(11) If an officer does not note an appeal against the finding, or if his appeal is dismissed wholly or in part, the Commission may recommend to the Cabinet - [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(a) that the said officer be cautioned or reprimanded; or

(b) that a fine not exceeding five hundred rand be imposed upon him, which fine may be recovered by deduction from his remuneration in such instalments as the Cabinet may determine; or [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(c) that he be transferred to any other post or that he be retained in employment additional to the fixed establishment; or [Amended by Proclamation AG. 39/84]

(d) that his salary or grade or both his salary and grade be reduced or decreased to such extent as may be recommended; or

(e) that he be discharged or be called upon to resign from the government service with effect from a date to be specified by the Cabinet: [Public Service Amendment Act, 1990 (Act 24 of 1990)]

Provided that -

- (i) except where a recommendation is made under paragraph (e), the Commission shall not be precluded from making a recommendation under more than one of the foregoing paragraphs;
- (ii) the Commission may postpone the making of a recommendation for a period not exceeding twelve months from the date on which the finding has been made; and
- (iii) if any officer who has been called upon to resign from the public service with effect from a specified date, fails so to resign, he shall be deemed to have been discharged therefrom on such date, owing to misconduct. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(12) The Commission shall forward to the Cabinet with its recommendation in terms of subsection (11) all documents relating to the enquiry or to the appeal. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(13) Subject to the provisions of section 7(1), the Cabinet may act in accordance with the recommendation of the Commission or take such other action as could have been recommended under subsection (11). [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(14) Any officer, who while suspended in terms of subsection (2)(a), or while a charge preferred against him under this section, has not been finally dealt with in accordance with the provisions of this section, resigns from the public service or assumes duty in other employment, shall be deemed to have been discharged on account of misconduct, with effect from the date on which he resigned or assumed duty in other employment, unless the Commission otherwise directs. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

19. Misconduct and suspension of any chief executive officer.-(1) If the Cabinet has reason to believe that any chief executive officer is guilty of misconduct the Cabinet may cause such chief executive officer to be charged with such misconduct in writing under the hand of the Minister responsible for the ministry or public office concerned. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(2) The provisions of section 18(2) to (4), both inclusive, shall mutatis mutandis apply in respect of any chief executive officer referred to in subsection (1) and any charge preferred under that subsection, and for the purposes of such application any reference in the said section or in any other provisions of this Act referred to in that section, to the chief executive officer shall be construed as a reference to the Cabinet. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(3) For the purposes of this section, the officer who holds the office of Secretary to the Cabinet shall be deemed to occupy the office of a chief executive officer of a ministry. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

20. Manner in which notices may be given or certain documents may be served.-Whenever this Part provides -

(a) that any notice, statement or other document shall be given or furnished to or served upon or sent to any person or that any matter shall be or may be conveyed to any person in writing, the notice, statement, document or writing may be sent by registered post addressed to his last known address or delivered to him personally or left at his last known place of residence; or

(b) that any person shall be advised or informed of any decision or finding, he may be informed thereof verbally or by written document sent to him by registered-

red post addressed to his last known address or delivered to him personally or left at his last known place of residence.

PART V

GENERAL

21. **Remuneration of officers and employees.**-(1) Subject to the provisions of sections 7 and 13(7), officers and employees shall be paid salaries, wages and allowances in accordance with the scales recommended for their grades by the Commission in terms of section 6(2)(g).
- (2) On the recommendation of the Commission but subject to the provisions of section 7 -
- (a) officers or employees or classes of officers or employees may, on appointment, transfer or promotion be paid salaries or wages at higher rates than the minimum amounts of the appropriate scales; and
 - (b) officers or employees, or classes of officers or employees may be specially advanced within the scales applicable to them; and
 - (c) any officer or employee of exceptional ability or possessing special qualifications or who has rendered meritorious service may, and any officer or employee may, if it is in the interest of the public service, be specially advanced within the scale applicable to him, or may be paid a salary or wage in accordance with a scale higher than his existing scale, or may be granted any other fitting reward. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- (3) Subject to the provisions of section 7, no officer or employee shall be paid in respect of his employment any remuneration, allowance, honorarium, award or bonus of any kind whatsoever other than that which may be prescribed or recommended by the Commission.
22. **Reduction of salary prohibited.**-An officer's salary or scale of salary shall not be reduced without his consent, except in accordance with the provisions of Part IV.
23. **Cession of remuneration prohibited.**-No officer or employee shall, without the written approval of the chief executive officer cede the whole or any part of any salary or allowance payable to him. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
- 23A. **Bursaries and grants-in-aid for purposes of study.**-The Cabinet or the holder of a post in any ministry or public office to whom the Cabinet has delegated the power to do so, may, in accordance with the conditions recommended by the Commission as to the granting of bursaries or grants-in-aid for purposes of study, grant to any officer or employee or to any person who undertakes to join the public service a bursary or grant-in-aid for purposes of study at such institution as the Cabinet may on the recommendation of the Commission determine. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
24. **Officers and employees to place all their time at disposal of their employers.**-(1) Unless it is otherwise provided in his conditions of employment -
- (a) any officer or employee shall place all his time at the disposal of his employer;
 - (b) no officer or employee shall, subject to the provisions of subsection (2), perform or engage himself to perform remunerative work outside his employment in the public service; and [Public Service Amendment Act, 1990 (Act 24 of 1990)]

- (c) no officer or employee may claim as of right any additional remuneration in respect of any official duty or work performed by him.

(2) Notwithstanding the provisions of subsection (1)(b) -

(a) the chief executive officer or the holder of a post in his ministry or public office authorized to do so by the chief executive officer, may, on the recommendation of the Commission, grant permission to any other officer or any employee to perform or engage himself to perform remunerative work outside his employment in the public service; [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(b) ^{2C.} the Cabinet, may, on the recommendation of the Commission, grant the permission referred to in paragraph (a) to the chief executive officer. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

25. Amount of remuneration irregularly received, to be paid into revenue.-Where any remuneration of whatever nature -

(a) is received by any officer or employee in connection with the performance of his work in the public service otherwise than in accordance with the provisions of this Act or any recommendation of the Commission under any other law; or [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(b) is received by any officer or employee in contravention of the provisions of section 24(1)(b),

such officer or employee shall pay into revenue an amount equal to the amount of such remuneration, or, where it does not consist of money, the value thereof, as determined by the chief executive officer of the ministry of public office in which he was employed at the time of receipt thereof or, in the case of the chief executive officer, as determined by the Cabinet, and if the amount is not so paid, it may be recovered from the officer or employee by legal proceedings and be paid into revenue: Provided that -

(i) there shall be a right of appeal to the Cabinet against the said determination by the chief executive officer; [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(ii) the Commission may recommend that any officer or employee may retain as a whole or in part the remuneration concerned applicable to them.

26. Assignment of other functions to officers and employees.-The Minister responsible for the ministry or public office or the chief executive officer or the head of any division of a ministry or public office may direct any officer or employee under his or her control temporarily to perform duties other than those ordinarily assigned to such an officer or employee or appropriate to the grade, designation or classification of his or her post, and such officer or employee shall comply with such a direction. [Public Service Amendment Act, 1990 (Act 24 of 1990)]

27. Establishment and functions of Public Service Joint Advisory Council.- (1) There shall be established, from such date as the Cabinet may fix by notice in the Official Gazette, a council to be known as the Public Service Joint Advisory Council, consisting of - [Public Service Amendment Act, 1990 (Act 24 of 1990)]

(a) not more than four persons holding posts constituting part of the fixed establishment, to be nominated by the Commission;

(b) Repealed by the Public Service Amendment Act, 1990 (Act 24 of 1990).

(c) not more than four officers or employees representing officers or employees in the public service who shall, subject to such conditions and exceptions as the Commission may determine, be nominated by staff associations recognized by the Commission.

(2) The functions and duties of the Public Service Joint Advisory Council shall be to advise the Commission from time to time on -

(a) matters to be dealt with by the Commission under this Act or any other law, including regulations made or proposed to be made thereunder;

(b) legislation passed or proposed to be passed, in so far as such legislation affects or may affect the public service;

(c) such other matters as may be prescribed.

28. Regulations.-(1) The President may, after the Commission has made a recommendation, make regulations as to -

(a) the appointment, promotion, transfer, discipline, conduct, powers and duties, hours of attendance or leave of absence of officers or employees and other conditions of employment applicable to them, including the occupation of official quarters;

(b) (i) the establishment and management of and control over a medical aid scheme for the public service;

(ii) the classes of officers or employees who may become members of any such scheme;

(iii) the officer by whom the scales of contributions payable by officers or employees or classes of officers or employees, shall be determined and the manner in which the said scales of contributions are to be determined; [Amended by Government Service Amendment Act, 1986 (Act 8 of 1986)]

(iv) the rights, privileges and obligations of members; and

(v) generally all matters reasonably necessary for the regulation and operation of such scheme, including the circumstances or manner in which and conditions under which contributions and any other moneys which are payable or owing by or in respect of officers or employees under such scheme, may be recovered from the salaries or wages of such officers or employees or from other moneys payable to them under this Act;

(c) the circumstances in which medical examination shall be required for the purposes of this Act, or the form of medical reports or certificates so required;

(d) the particular classes of officers or employees who may be required to give security, and the amount and form thereof;

(e) the procedure to be observed in investigating and dealing with allegations of misconduct committed by officers;

- (f) the form of summons to appear at any investigation or enquiry or there to produce any book, document or thing;
- (g) all matters which under this Act are required or permitted to be prescribed;
- (h) generally, all matters which the Cabinet considers it necessary or expedient to prescribe in order that the objects of this Act may be achieved,

and such regulations may confer on any authority the power to deviate from the provisions of the regulations in such circumstances as may be specified therein, in respect of any officer or employee or any specified class of officers or employees.

(2) Different regulations may be made in respect of different classes of officers or employees, or to suit the different requirements of different ministries or public offices or divisions thereof, or of different classes of officers or employees, or of different kinds of employment in the public service.

- (3)(e) The regulations referred to in paragraph (b) of subsection (1) may also provide for membership of the medical aid scheme established thereunder of -
 - (i) any person appointed under section 3(1) of the Water Act, 1956 (Act 54 of 1956);
 - (ii) the widow of a person who was an officer or employee or a person referred to in subparagraph (i) of the date of his death;
 - (iii) a person who was an officer or employee or a person referred to in subparagraph (i) on the date immediately before the date on which he in terms of the Statutory Institutions Pensions Act, 1980 (Act 3 of 1980), became entitled to a pension, as referred to in that Act;
 - (iv) the widow of a person who was a person referred to in subparagraph (iii) on the date of his death.
- (b) In the application of paragraph (b) of subsection (1) in relation to a person referred to in paragraph (e) of this subsection, a reference to -
 - (i) an officer or employee, shall be construed as including a reference to a person referred to in the said paragraph (a);
 - (ii) moneys payable under this Act, shall be construed as a reference to an annuity payable to such a person in terms of the Statutory Institutions Pensions Act, 1980 (Act 3 of 1980). [Medical Aid Scheme for Government Service Extension Act, 1982 (Act 13 of 1982)]

29. Repealed by the Public Service Commission Act, 1990 (Act 2 of 1990)

30. Limitation of actions.--(1) No legal proceedings of whatever nature shall be brought in respect of anything done or omitted under this Act, unless the proceedings are brought before the expiry of a period of twelve months after the date upon which the claimant had knowledge, or after the date on which the claimant might reasonably have been expected to have knowledge, of that which is alleged to have been done or omitted, whichever is the earlier date.

(2) No such proceedings shall be commenced before the expiry of thirty days after written notice of intention to bring such proceedings has been served on the defendant, and unless in such notice particulars shall be clearly and explicitly given as to that which is

alleged to have been done or omitted.

31. **Application of Act.**-(1) Subject to the provisions of section 2, the provisions of this Act shall apply to or in respect of all officers and employes whether employed in or outside Namibia.
- (2) The provisions of this Act which do not exclude persons in the employment of the Namibian Police Force or the Prison Service shall apply to or in respect of such persons only to the extent that they are not in conflict with the laws governing their employment. [Public Service Amendment Act, 1990 (Act 24 of 1990)]
32. **Certain persons deemed to be officers or employees.**-(1) Subject to the provisions of subsection (3), any person who, immediately prior to the commencement of this subsection, was employed in any directorate as defined in section 1 of the Functions of Directorates Act, 1979 (Act 4 of 1979), shall, with due recognition of his previous period of service, be deemed to be an officer or employee, as the case may be, of the ministry or public office performing the functions of such directorate.
- (2) If, by reason of the establishment by law of any representative authority for any particular population group, any body or authority employing any person, ceases to exist, and such employment of such person is terminated for that reason, he shall, subject to the provisions of subsection (3), be deemed to have been transferred, whether on probation or not, to the ministry or public office established for such population group, in such capacity and on such conditions as the Commission may determine and with due recognition of his previous period of service.
- (3) The provisions of subsections (1) and (2) shall not apply to any person -
- (a) in the service of the Government of the Republic of South Africa who has not signed any undertaking whereby he forfeits any claim to or right to claim any post in the public service of the geographical territory of the said Republic; or
- (b) in respect of whom any competent authority has given an undertaking that he or persons of such class under which he may fall, may enter the service of the said Government or be transferred to such service.
33. **Repeal of laws.**-Section 2B(1)(a) of the Post Office Act, 1958, (Act 44 of 1958), are hereby repealed. [Amended by Act 4/82 and Proclamation AG. 39/84]
34. **Short title.**-(1) This Act shall be called the Public Service Act, 1980 [Amendment by the Public Service Commission Act, 1990 (Act 2 of 1990)].

First Schedule

MINISTRIES AND CHIEF EXECUTIVE OFFICERS

COLUMN 1 Designation of Ministry	COLUMN 2 Designation of Chief Executive Officer
Office of the President	Deputy Secretary to the President
Office of the Prime Minister	Deputy Secretary to the Cabinet
Ministry of Agriculture, Water and Rural Development	Permanent Secretary: Agriculture, Water and Rural Development
Ministry of Defence	Permanent Secretary: Defence
Ministry of Education and Culture	Permanent Secretary: Education and Culture
Ministry of Finance	Permanent Secretary: Finance
Ministry of Fisheries and Marine Resources	Permanent Secretary: Fisheries and Marine Resources
Ministry of Foreign Affairs	Permanent Secretary: Foreign Affairs
Ministry of Health and Social Services	Permanent Secretary: Health and Social Services
Ministry of Home Affairs	Permanent Secretary: Home Affairs
Ministry of Information and Broadcasting	Permanent Secretary: Information and Broadcasting
Ministry of Justice	Permanent Secretary: Justice
Ministry of Labour and Human Resources Development	Permanent Secretary: Labour and Human Resources Development
Ministry of Lands, Resettlement and Rehabilitation	Permanent Secretary: Lands, Resettlement and Rehabilitation
Ministry of Regional and Local Government and Housing	Permanent Secretary: Regional and Local Government and Housing
Ministry of Mines and Energy	Permanent Secretary: Mines and Energy
Ministry of Trade and Industry	Permanent Secretary: Trade and Industry
Ministry of Wildlife, Conservation and Tourism	Permanent Secretary: Wildlife, Conservation and Tourism
Ministry of Works, Transport and Communication	Permanent Secretary: Works, Transport and Communication

Ministry of Youth and Sport

| Permanent Secretary: Youth and Sport

[Amended by the Public Service Amendment Act, 1990 (Act 24 of 1990), proclamation no.2 of 1994 dated 10/1/94 (no. 776) and proclamation no.10 of 1994 dated 22/3/94 (no.824)]

Second Schedule

PUBLIC OFFICES AND CHIEF EXECUTIVE OFFICERS

COLUMN 1 Organizational component	COLUMN 2 Designation of Chief Executive Officer
Office of the Auditor-General	Deputy Auditor-General
Namibia Security Intelligence Agency	Director: Namibia Security Intelligence Agency
National Planning Commission	Permanent Secretary: National Planning Commission ✓

[Amended by the Public Service Amendment Act, 1990 (Act 24 of 1990), proclamation no.5 of 1994⁰ dated 25/7/90 (no. 36) and proclamation no.10 of 1994 dated 22/3/94 (no.824)]

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