

Government Gazette 15791

3 June 1994

PROCLAMATION

by the
President
of the Republic of South Africa

No. 103, 1994

RATIONALISATION OF PUBLIC ADMINISTRATION UNDER THE CONSTITUTION OF THE REPUBLIC
OF SOUTH AFRICA, 1993: REPLACEMENT OF LAWS ON PUBLIC SERVICES

Under the powers vested in me by section 237 (3) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), I hereby replace the laws on public services with the law as set out in the Schedule. Given under my Hand and the Seal of the Republic of South Africa at Pretoria this First day of June, One thousand Nine hundred and Ninety-four.

N. R. MANDELA,
President.

By Order of the President-in-Cabinet:
Z. S. T. SKWEYIYA,
Minister of the Cabinet.

SCHEDULE

REPUBLIC OF SOUTH AFRICA

PUBLIC SERVICE ACT, 1994

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

ARRANGEMENT OF SECTIONS

CHAPTER I
INTERPRETATION AND APPLICATION OF ACT

Section

1. Interpretation
2. Application of Act

CHAPTER II
ADMINISTRATION

3. Public Service Commission
4. Transition and rationalisation of public administration
5. Implementation, rejection, referral and Treasury approval of recommendations and directions of Commission
6. Powers of inspection of Commission

CHAPTER III
ORGANISATION AND STAFF

7. Public service, departments and heads of department
8. Composition of public service

CHAPTER IV
APPOINTMENT, PROMOTION AND TRANSFER

9. Powers of executing authority
10. Qualifications for appointment
11. Appointments and filling of posts
12. Appointment of heads of department
13. Appointment, transfer and promotion on probation
14. Transfers within public service
15. Transfer and secondment of officials

CHAPTER V TERMINATION OF SERVICE

16. Retirement and retention of services
17. Discharge of officers

CHAPTER VI INEFFICIENCY AND MISCONDUCT

18. Inefficient officers
19. Inefficient heads of department
20. Misconduct
21. Investigation of charge of misconduct
22. Steps after investigation by investigating officer
23. Hearing of charge of misconduct
24. Proceedings after hearing
25. Other steps against officer charged
26. Appeal against decision of presiding officer or head of department
27. Misconduct of heads of department

CHAPTER VII OBLIGATIONS, RIGHTS AND PRIVILEGES OF OFFICERS AND EMPLOYEES

28. Rights and obligations
29. Saving regarding rights and obligations
30. Other work by officers and employees
31. Unauthorized remuneration
32. Assignment of other functions to officers and employees
33. Cession of emoluments
34. Reduction of salaries
35. Grievances and requests of officers and employees
36. Political rights of officers and employees

CHAPTER VIII MISCELLANEOUS

37. Remuneration of officers and employees
38. Wrongly granted remuneration
39. Limitation of actions
40. Limitation of liability
41. Regulations
42. Public Service Staff Code
43. Repeal of laws and savings
44. Short title

SCHEDULE 1

DEPARTMENTS AND HEADS OF DEPARTMENT

SCHEDULE 2

ORGANISATIONAL COMPONENTS AND POSTS CONTEMPLATED IN SECTION 7 (4)

SCHEDULE 3

LAWS REPEALED BY SECTION 43 (1)

CHAPTER I

INTERPRETATION AND APPLICATION OF ACT

Interpretation

1. (1) In this Act, unless the context indicates otherwise-
 - (i) "agreement" means an agreement as defined in section 1 of the Public Service Labour Relations Act, 1993 (Act No. 102 of 1993); (xv)
 - (ii) "calendar month" means a period extending from a day in one month to a day preceding the day corresponding numerically to that day in the following month, both days inclusive; (x)
 - (iii) "central level" means the central level as defined in section 1 of the Public Service Labour Relations Act, 1993; (xxiii)
 - (iv) "Commission" means the Public Service Commission established by section 209 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)
 - (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; (xii)
 - (vi) "Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); (vi)
 - (vii) "Council" means the Public Service Bargaining Council as defined in section 1 of the Public Service Labour Relations Act, 1993; (xx)
 - (viii) "department" means a department or a provincial administration referred to in section 7 (2); (ii)
 - (ix) "educator" means a teacher or other person performing education functions at a state educational institution; (xvii)
 - (x) "employee" means a person contemplated in section 8 (1) (c); (xxxii)
 - (xi) "employer" means an employer as defined in section 1 of the Public Service Labour Relations Act, 1993; (xxxi)
 - (xii) "executing authority", in relation to-
 - (a) the Office of the President, means the President;
 - (b) the Office of any Executive 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 a Premier of a province, means the Premier of that province; and

- (e) 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)
- (xiii) "fixed establishment" means the posts which have been created for the normal and regular requirements of a department; (xxix)
- (xiv) "head of department", "head of a department" or "head of the department" means the incumbent of a post mentioned in the second column of Schedule 1 and includes any officer acting in such post; (iii)
- (xv) "information technology" means all aspects of technology which are used to manage and support the efficient gathering and utilisation of information as a strategic resource; (ix)
- (xvi) "month" means a period extending from the first to the last day, both days inclusive, of any one of the 12 months of a year; (xiii)
- (xvii) "national department" means a department or organisational component at the national level of government; (xiv)
- (xviii) "officer" means a person who has been appointed permanently, notwithstanding that such appointment may be on probation, to a post contemplated in section 8 (1) (a), and includes a person contemplated in section 8 (1) (b) or 8 (3) (c); (i)
- (xix) "prescribed" means prescribed by or under this Act; (xxx)
- (xx) "provincial administration" means a provincial administration referred to in section 7 (2); (xviii)
- (xxi) "provincial service commission" means a provincial service commission contemplated in section 213 (1) of the Constitution; (xix)
- (xxii) "public service" means the public service contemplated in section 8; (xxv)
- (xxiii) "regulation" means a regulation made or deemed to have been made under this Act; (xxi)
- (xxiv) "revenue" means the National Revenue Fund established by section 185 (1) of the Constitution, or, in relation to an officer or employee of a provincial administration, the relevant Provincial Revenue Fund contemplated in section 159 (1) of the Constitution, as the case may be; (viii)
- (xxv) "salary range" means a minimum and maximum salary limit linked to a specific level of work; (xxii)
- (xxvi) "scale", in relation to salary, includes salary at a fixed rate; (xxiv)
- (xxvii) "state educational institution" means an institution (including an office controlling such institution), other than a university or technikon, which is wholly or partially funded by the State and in regard to which the remuneration and service conditions of educators are determined by law; (xxvi)
- (xxviii) "the National Intelligence Services" means the Department of National Intelligence Services established in terms of section 7 (2); (v)

(xxix) "the services" means-

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

(xxx) "this Act" includes the regulations and Public Service Staff Code mentioned in sections 41 and 42, respectively; (vii)

(xxxi) "transfer" includes a change-over to a regraded or renamed post, or from one grade to a higher grade connected to the same post, or from one rank to a higher rank; (xvi)

(xxxii) "Treasury" means-

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

(2) Any reference in this Act to a reduction in a scale of salary or salary, in relation to an officer, shall be construed as including a reference to the application of a scale of salary which is lower than the scale previously applied as regards the maximum of the scale, or to a salary which is lower in comparison with a salary which would have applied at any time prior to that reduction, as the case may be, and a reference in that connection to a reduction in grade or to a grade being lower than another grade shall be construed correspondingly. Application of Act

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

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

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

(4) The provisions of this Act shall not apply in respect of the employment by the State of persons whose appointment, remuneration and other conditions of service may, in terms of any law, be made or determined by an executing authority or other person without the recommendation of the Commission first having been obtained.

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

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

(6) The Commission shall exercise the powers and perform the functions set out in this Act in respect of a province, except where, and to the extent to which the said powers and functions are exercised by a provincial service commission in terms of section 213 of the Constitution, subject to the norms and standards applying nationally as contemplated in that section.

CHAPTER II

ADMINISTRATION

Public Service Commission

3. (1) The Commission shall in addition to the powers and functions entrusted to it in terms of section 210 of the Constitution have the powers and functions set out in this Act or any other law, and shall exercise such powers and perform such functions in accordance with the provisions of section 212 of the Constitution.

(2) (a) Subject to the provisions of the Commission Act, the Commission may-

- (i) make recommendations or give directions on all matters not specifically provided for in this Act or any other law, but not inconsistent therewith, relating to or arising out of personnel practices as well as the employment and other career incidents of and the conditions of service generally of officers and employees in the public service;
- (ii) make recommendations or give directions on all matters relating to or arising from the employment and, in general, the conditions of service, of former officers and employees while they were officers and employees, in respect of which it may, under the provisions of this Act or any other law, make recommendations or give directions in the case of serving officers and employees.

(b) A recommendation or direction contemplated in paragraph (a) (ii) may not be to the detriment of a former officer or employee, and the Commission may not make such a recommendation or give such a direction 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.

(3) The Commission may make recommendations-

- (a) regarding the establishment or abolition of departments, 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;
- (b) regarding the establishment or abolition of subdepartments, branches, offices or institutions;
- (c) regarding the control, organisation or readjustment of departments, sub-departments, branches, offices or institutions;
- (d) regarding the number, grading, regrading, designation, redesignation or conversion of posts on the fixed establishment;
- (e) regarding the number of persons to be employed temporarily or under a

special contract, whether in a full-time or a part-time capacity-

- (i) against posts on the fixed establishment which are not permanently filled;
 - (ii) additional to the fixed establishment, either 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;
- (f) when it considers it necessary, regarding the employment of a person or the continued employment of an officer in or against a post graded higher or lower than his or her own grade, or additional to the fixed establishment;
- (g) in order to promote effectiveness, efficiency and effect economies in the management and functioning of departments, subdepartments, branches, offices and institutions by -
- (i) improved organisation, procedure and methods;
 - (ii) improved supervision;
 - (iii) simplification of work and the elimination of unnecessary work;
 - (iv) the utilisation of information technology;
 - (v) co-ordination of work;
 - (vi) limitation of the number of officers and employees of departments, subdepartments, branches, offices and institutions, and the utilisation of the services of officers and employees to the best advantage;
 - (vii) the training of officers and employees;
 - (viii) improved work facilities;
 - (ix) the promotion of sound labour relations;
 - (x) any other action it may consider essential;
- (h) regarding 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;
- (i) regarding the person to be appointed or promoted, when it is necessary to make any appointment in or promotion of a person to a post in the A division, or, when it considers it necessary, regarding the promotion of an officer to a higher rank; regarding regulations to be made under section 41 (1); and
- (k) regarding a code of conduct applicable to members of the public service.
- (4) The Commission may give directions-
- (a) regarding-
 - (i) the requirements as to the age of persons, and the educational, language and other qualifications to be possessed by them for purposes of appointment, transfer or promotion in or to the public service, where those requirements or qualifications are not prescribed by or under this Act or any other law;
 - (ii) the classes of posts and positions in respect of which, the circumstances under which and the conditions on which an executing authority, or any officer to whom such authority has delegated the power of appointment, transfer or promotion, may require qualifications other than those contemplated in

subparagraph (i);

- (b) regarding the health requirements to which a person shall conform before he or she may be appointed as an officer;
- (c) when it considers it necessary, regarding the security requirements with which officers and employees shall comply;
- (d) regarding the training which officers and employees have to undergo;
- (e) regarding information technology.

(5) (a) The Commission -

- (i) shall keep a record of officers employed in posts in the A division;
- (ii) shall inquire into the grievances of officers and employees and, subject to the provisions of this Act, shall make such recommendations thereon as it may think fit;
- (iii) shall, when it deems it necessary, provide training or cause training to be provided or conduct examinations or tests or cause examinations or tests to be conducted, as it may direct or as may be prescribed as a qualification for the appointment, promotion or transfer of persons in or to the public service, and may, on such conditions as the Treasury may approve, establish a training fund, financed by donations and grants, to promote such training;
- (iv) may issue directives which are not contrary to this Act to elucidate or supplement any regulation;
- (v) may, notwithstanding anything to the contrary in any law contained, make a recommendation regarding the establishment or operation of, but excluding the management of and control over, any pension, housing or other scheme which is or will be a condition of service of officers and employees, but which has not or will not be established by or under this Act;
- (vi) may make recommendations and give directions to ensure clarity in respect of the jurisdiction of the Commission vis-a-vis that of a provincial service commission.

(b) Notwithstanding the provisions of section 5 (5), the provisions of section 5 (2) apply mutatis mutandis in respect of a recommendation in terms of paragraph (a) (v) of this subsection.

(6) The provisions of subsections (3) (i) and (5) (a) (i) apply mutatis mutandis in respect of such employees as the Commission may direct.

Transition and rationalisation of public administration

4. (1) The Commission shall, in order to effect the transition and rationalisation of public administration as contemplated in sections 236, 237 and 238 of the Constitution, in addition to any powers assigned to it in or in terms of any other act, have the power, subject to the relevant provisions of the Constitution and section 5 (7) of this Act, to make recommendations, give directions and conduct enquiries in order to establish uniformity as regards the terms and conditions of employment of the persons employed by the institutions referred to in section 236 (1) of the Constitution.

(2) In order to exercise the powers assigned to it in subsection (1), the Commission shall have the power to-

- (a) define classes and groups of personnel as the basis for determining generally prevailing terms and conditions of employment applicable to such groups and classes of personnel; and
- (b) determine the terms and conditions of employment which prevail

generally in regard to a class or group of personnel defined under paragraph (a).

(3) In determining the terms and conditions of employment generally prevailing in regard to a class or group of personnel contemplated in subsection (2), the Commission shall properly take into account the percentage of persons in a particular class or group of personnel to which a particular term or condition of service is applicable.

(4) When uniformity of the terms and conditions of employment or any particular term or condition of employment of a class or group of personnel contemplated in subsection (2) has been established on the recommendation of or by direction of the Commission, no person belonging to such a class or group of personnel shall, subject to subsections (6) and (7), have the right to retain a term or condition of employment which is more favourable than such uniform term or condition of employment.

(5) In cases where a specific contract has been entered into with an individual employed by an institution referred to in section 236 (1) of the Constitution and such contract by itself and not by means of reference to general terms and conditions of employment embodied in a law or measure in terms of a law, contains particular terms and conditions of employment which differ from the applicable uniform terms and conditions of employment, the Commission shall not in terms of this section have the power to recommend or direct that such particular terms and conditions of employment be changed.

(6) Notwithstanding subsections (1) and (2), the Commission shall have the power to recommend or direct that a person or class or group of persons retain or partially retain a particular term or condition of employment that is more favourable than the uniform term or condition of employment applicable to the class or group of personnel of which he or she is a member where there are special circumstances which justify such action: Provided that any such retention of such more favourable term or condition of employment shall not continue for more than six months after the date with effect from which uniformity of the relevant term or condition of employment was established in terms of this section.

(7) The powers conferred upon the Commission by or in terms of this section shall lapse on 27 April 1995, save in so far as any recommendation made or direction given by the Commission before that date shall be acted upon as if this subsection had been enacted.

Implementation, rejection, referral and Treasury approval of recommendations and directions of Commission

5. (1) (a) For the purposes of this Act and any other law, a recommendation or direction of the Commission shall be deemed -

- (i) to have been made or given on the date of the written communication conveying that recommendation or direction;
- (ii) in the case of a recommendation, to have been implemented by the relevant executing authority on the date of the written communication by such authority conveying his or her approval of the said recommendation to the person or body affected thereby;
- (iii) in the case of a direction, to have been implemented on the date on which such direction is given.

(b) Where an executing authority has to determine a date for the commencement of a recommendation, it shall be a date within six months from the date referred to in paragraph (a) (i).

(2) (a) Subject to the provisions of subsection (6), any recommendation or direction of the Commission may be withdrawn or varied or further varied by the Commission, or, subject to the provisions of subsection (4), may be

rejected by the President and referred back to the Commission before it has been implemented, at any time within a period of six months from the date upon which it was made, given or varied or further varied by the Commission, as the case may be.

(b) Subject to the provisions of subsection (6), every recommendation or direction of the Commission shall-

- (i) if the President has rejected it, be referred back to the Commission;
- (ii) if the President has refused to reject it, be carried out as made, given or varied by the Commission, forthwith by the relevant executing authority;
- (iii) if the period contemplated in paragraph (a) has expired, and it has not been carried out or withdrawn by the Commission or rejected by the President, be implemented as made, given or varied by the Commission, forthwith by the relevant executing authority.

(3) For the purposes of subsection (2) regarding the rejection by the President of a recommendation or direction of the Commission, any refusal or failure by the Commission to make a recommendation or give a direction is deemed to be a recommendation or direction of the Commission.

(4) An application for the rejection of a recommendation or direction contemplated in subsection (2) shall not be made to the President unless the department in question has given the Commission at least 14 days notice of its intention so to apply, and that notice shall set forth the grounds upon which the department intends to base its application.

(5) (a) The provisions of subsection (2) shall not preclude the Commission from withdrawing or varying at any time, subject to the provisions of subsections (6), (7) and (8) (b) and the provisions of section 34, any recommendation or direction regarding the employment or conditions of service of persons, even if service benefits are thereby reduced or persons deprived of service benefits.

(b) The provisions of subsection (2) shall apply mutatis mutandis in respect of a recommendation or direction of the Commission regarding any matter relating to persons other than those contemplated in section 8 (1), irrespective of whether the recommendation or direction relates to a particular person or not.

(6) (a) A recommendation or direction by the Commission involving expenditure from the National Revenue Fund or a Provincial Revenue Fund, shall not be carried out unless the Treasury approves the expenditure.

(b) The Treasury may, in its discretion and upon such conditions as it may determine, delegate its power to approve such expenditure, to any officer.

(7) Where a power or function of the Commission, the Department of State Expenditure, any other department, an executing authority, a head of a department or any person acting under delegated authority in terms of this Act or any other applicable law, relates to a matter of mutual interest as contemplated in section 13 (1) of the Public Service Labour Relations Act, 1993 (Act No. 102 of 1993), it, he or she shall, in respect of such a matter and in terms of the provisions of section 13 (6) of the said Act, only make a recommendation, give a direction or take a decision or amend existing provisions and measures, if any, in terms of an agreement negotiated on such a matter in the relevant chamber of the Council.

(8) Notwithstanding subsection (7)-

(a) the Commission, or any department or person mentioned in subsection

(7), may deal with the case of an individual in terms of the provisions of this Act or any other applicable law by making a recommendation, giving a direction or taking a decision: Provided that where such a recommendation, direction or decision constitutes a deviation from an agreement on a matter of mutual interest as contemplated in section 13 (1) of the Public Service Labour Relations Act, 1993, it shall not derogate from or annul such an agreement or the collective bargaining relationship, or reduce the individual's remuneration, service benefits or worker compensation, or deprive such individual of his or her remuneration, service benefits or worker compensation, except in accordance with the provisions of section 34 of this Act; or

- (b) the Commission or any department or person involved in negotiations within the chamber of the Council at central level may, in terms of section 13 (7) of the Public Service Labour Relations Act, 1993, implement the last offer on a specific matter made by the employer in the said chamber if a deadlock in negotiations is reached, by making a recommendation, giving a direction or taking a decision in terms of the provisions of this Act, the Commission Act or any other applicable law, provided such recommendation, direction or decision does not have the effect of reducing existing remuneration, service benefits or worker compensation, except in accordance with the provisions of section 34 of this Act.

Powers of inspection of Commission

6. (1) The Commission may inspect departments and has access to such official documents, and may obtain such information from heads of department and other officers and employees and other persons in the service of departments, as in the opinion of the Commission may be necessary for the exercise of its powers or the performance of its functions in terms of this Act or any other law.

(2) When a member or the members of the Commission contemplated in section 5 (2) (a) (i) of the Commission Act, is or are inspecting a department in terms of subsection (1) of this section, he or she has or they shall for that purpose have the powers conferred upon the Commission by section 8 of that Act, and in the application of that section in relation to such an inspection, a reference therein to the Commission shall be construed as a reference to the member or members conducting the inspection.

(3) The Commission may designate any officer appointed under section 9 (1) of the Commission Act to inspect a department in terms of subsection (1) of this section, and any officer so designated, has the powers conferred upon the Commission by this section.

CHAPTER III

ORGANISATION AND STAFF

Public service, departments and heads of departments

7. (1) The public service established by section 212 (1) of the Constitution shall be structured and organised as provided for in this Act.

(2) For the purposes of the administration of the public service there shall be national departments and provincial administrations mentioned in the first column of Schedule 1, as well as the organisational components mentioned in the first column of Schedule 2.

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

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

(4) (a) An organisational component mentioned in the first column of Schedule 2 and the officer who is the incumbent of the post bearing the designation mentioned in the second column of Schedule 2 opposite the name of the relevant organisational component, or the officer who is acting in that post, shall, for the purposes of the application of the provisions of this Act, be deemed to be a department and a head of department, respectively.

(b) The incumbent of a post contemplated in this subsection shall not by reason only of such incumbency be entitled to the conditions of service of the incumbent of a post referred to in subsection (3).

(5) The President may, after the Commission has made a recommendation, amend Schedule 1 or 2 by proclamation in the Gazette, and which amendment, if he or she deems it necessary, may be effected retrospectively to the date of the recommendation of the Commission.

Composition of public service

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

(a) hold posts on the fixed establishment-

- (i) classified in the A division and the B division;
- (ii) in the services;
- (iii) in the National Intelligence Services; and
- (iv) in state educational institutions;

(b) (i) having ceased to hold posts on the fixed establishment contemplated in paragraph (a), and not having retired or having been discharged, are employed additional to the fixed establishment or who are deemed to continue to hold posts under the circumstances contemplated in subsection (3) (c);

(ii) are appointed permanently additional to the fixed establishment;

(c) (i) hold posts on the fixed establishment other than posts referred to in paragraph (a);

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

(2) The A and B divisions shall consist of such posts as the Commission may direct to be included therein.

(3) (a) The Commission may direct 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 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), be deemed to continue to hold a post in the division in which his or her post was included

immediately before the direction whereby such exclusion was effected came into force.

CHAPTER IV

APPOINTMENT, PROMOTION AND TRANSFER

Powers of executing authority

9. (1) Without derogating from the functions of the Commission in terms of this Act, 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 authority has delegated his or her power of appointment, promotion or transfer.

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

Qualifications for appointment

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

- (a) is a South African citizen;
- (b) is of good character; and
- (c) in so far as his or her condition of health is concerned, complies with such requirements as may be directed by the Commission under section 3 (4) (b).

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

Appointments and filling of posts

11. (1) In the making of any appointment or the filling of any post in the public service -

- (a) no person who qualifies for the appointment, transfer or promotion concerned shall be favoured or prejudiced;
- (b) only the qualifications, level of training, merit, efficiency and suitability of the persons who qualify for the appointment, promotion or transfer in question, 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.

(2) For the filling of any post in the A division, the Commission shall, subject to the provisions of subsection (1), recommend either-

- (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.

Appointment of heads of department

12. (1) Subject to the provisions of this Chapter and of Chapters V and VI-

- (a) (i) a person who is appointed as an officer in the office of head of department;
- (ii) an officer who is promoted or transferred to that office; or
- (iii) an officer who, at the commencement of this Act, occupies such an office for a fixed term under a law repealed by this Act, shall in the case of a person referred to in subparagraph (i) or (ii), occupy that office 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 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) an officer who is promoted or transferred from the office of head of department referred to in paragraph (a) to another office of head of department, shall occupy the latter office for the remainder of the term of office which applies to him or her in regard to the first-mentioned office in terms of paragraph (a), or the remainder of any extended term in terms of paragraph (c);
- (c) an officer's term of office as head of department as provided in paragraph (a) or (b) may be extended at the expiry thereof for a period or successive periods not exceeding five years, as the relevant executing authority may approve, subject to the provisions of subsection (2).

(2) (a) The relevant executing authority shall in writing inform the officer concerned at least two calendar months before the expiry of the terms contemplated in paragraph (a) or (b) of subsection (1) or any previously extended term contemplated in paragraph (c) of that subsection, whether he or she proposes to retain such officer in service for an extended term, or not.

- (b) If the officer concerned is so informed of such intention to retain him or her in service for an extended term, he or she shall in writing inform the relevant executing authority, within one calendar month from the date of that communication, of his or her acceptance or not of such extended employment.
- (c) If the officer concerned so informs the relevant executing authority of his or her acceptance of extended employment, his or her term of office as head of department shall be extended by the further period as have been agreed to with such executing authority.

(3) Before an executing authority approves a shorter period contemplated in sub-section (1) (a) in respect of an officer who is not a member of the services or the National Intelligence Services, or communicates with such an officer in terms of sub-section (2) (a), the Commission shall make a recommendation.

Appointment, transfer and promotion on probation

13. (1) The appointment of a person and the transfer and 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 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 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 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 from the public service by the person having the power of discharge, either during or at or after the expiry of the period of probation -

(i) by the giving of one month's written notice to such officer; or

(ii) 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.

Transfers within public service

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

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

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

(c) The provisions of this subsection shall not be construed as precluding the Commission from -

- (i) recommending the transfer of an officer from one post to another post in the A division; or
- (ii) recommending that an officer, other than a member of the services or an educator or a member of the National Intelligence Services, who occupies the office of head of department be transferred to a post to which the provisions of section 12 do not apply during or 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), on such conditions as the Commission may recommend.

(d) In the case of a transfer of an officer or employee from a national department to a provincial administration or from a provincial administration to a national department or from one provincial administration to another provincial administration, such a transfer shall be subject to a recommendation by the Commission in addition to any recommendation made by a relevant provincial service commission.

(3) An officer-

(a) shall not upon transfer suffer any reduction in his or her salary or scale of salary without his or her consent, except in accordance with the provisions of Chapter VI and section 38;

(b) who has been transferred to or is employed in a post of a lower or higher grade than his or her own grade without a change in his or her scale of salary, shall be recommended by the Commission for transfer to a post to which his or her scale of salary is appropriate;

(c) who has been transferred to or who is employed in a post which is graded higher than his or her own grade, or which is regraded or converted to a post of a higher grade than his or her own grade, shall

not by reason only of that transfer or employment be entitled to the higher scale of salary applicable to the post;

- (d) shall not be transferred from one post to another post which is of a higher or lower grade than his or her own grade or bears a different designation, unless the Commission has recommended the transfer, except where each of the two posts concerned is in the services or in the B division;
- (e) holding a post in the A or B division shall not without his or her consent be transferred to a post in any branch of the services or in the National Intelligence Services.

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

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 institution established by an Act of Parliament and which obtains its funds directly in whole or in part from the National Revenue Fund, 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 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 conditions, other than conditions laid down by or under any pensions law, as may be recommended by the Commission after consultation with the employer of the person concerned 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 by the Commission after consultation with the Treasury, be placed at the disposal of another government, or of a council, institution or body established by or under any law, or of any other body or person, for a particular service or for a stated period.

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

(4) (a) A person (in this paragraph referred to as the official) in the service of a department under any law other than this Act, or of another government, or of a 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 conditions, other than conditions laid down by or under any pensions law, as may be recommended by the Commission after consultation with the employer of the official 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 by or under any law, as may be recommended by the Commission after consultation with the Treasury, an officer or employee may with his or her consent and in terms of 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.

- (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.

CHAPTER V TERMINATION OF SERVICE

Retirement and retention of services

16. (1) (a) Subject to the provisions of this section, an officer, other than a member of the services or an educator or a member of the National Intelligence Services, shall have the right to retire from the public service, and shall be so retired, on the date when he or she attains the age of 65 years.

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

(2) (a) Notwithstanding the provisions of subsection (1), an officer or employee, other than a member of the services or an educator or a member of the National Intelligence Services, who is in employment 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.

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

- (i) if that notification is given at least three calendar months prior to the date on which he or she attains the retirement age applicable to him or her in terms of paragraph (a), be so retired on the date on which he or she attains that age or, if he or she attains it after the first day of a month, on the first day of the following month; or

- (ii) if that notification is not given at least three calendar months prior to the date on which he or she attains the said age, be so retired on the first day of the fourth month after the month in which the notification is received.

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

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

(3) (a) Subject to the provisions of this section, 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.

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

(4) An officer, other than a member of the services or an educator or a member of the National Intelligence Services 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.

(5) (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 National Intelligence Services, 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.

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

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

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

(7) If it is in the public interest to retain an officer, other than a member of the services or an educator or a member of the National Intelligence Services, 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, for further periods which shall not, except with the approval, by resolution, of Parliament, exceed in the aggregate two years.

Discharge of officers

17. (1) (a) Subject to paragraphs (b) and (c) of this subsection, subsection (6) of this section and section 19 (1) of the Public Service Labour Relations Act, 1993 (Act No. 102 of 1993), the power to discharge an officer or employee shall vest in the relevant executing authority, who may delegate that power to an officer.

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

(c) In the case of an officer holding a post in the A division, except where it is contemplated to discharge him or her in terms of subsection (2) (e) or to terminate his or her services in terms of section 19 (1) (c) of the Public Service Labour Relations Act, 1993, the Commission shall first make a recommendation for his or her discharge.

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

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

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

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

(c) If the services of an officer is terminated under section 19 (1) (c) of the Public Service Labour Relations Act, 1993, he or she shall be deemed to have been discharged under subsection (2) (e).

(4) (a) The services of an officer who occupies a post in the A or B division may, notwithstanding the absence of any reason for discharge in terms of giving of notice in writing, and that notice shall, in the case of an officer with less than 10 years' continuous service, be one month, and in the case of an officer with 10 years or more continuous service, be three months.

(b) A recommendation in terms of paragraph (a) in respect of an officer in the A division shall be made only after the officer concerned has been afforded an opportunity of making representations with regard to his or her position to the Commission and after the Commission has given due consideration to any representations made by the officer.

(c) In the application of paragraph (a) to an officer in the A division the relevant executing authority may delegate the power conferred upon him or her by subsection (1) only to the head of the department concerned.

(5) (a) (i) An officer, other than a member of the services or an educator or a member of the National Intelligence Services, who absents himself or herself from his or her official duties without permission of his or her head of department, office or institution for a period exceeding one calendar month, shall be deemed to have been discharged from the public service on account

of misconduct with effect from the date immediately succeeding his or her last day of attendance at his or her place of duty.

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

(b) If an officer who is deemed to have been so discharged, reports for duty at any time after the expiry of the period referred to in paragraph (a), the Commission may, 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 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.

(6) If it is in the public interest to appoint an officer under any law to an office to which the provisions of this Act or the Commission Act do not apply, the President or a Premier may so appoint him or her to that office and may discharge him or her from the public service without the Commission first having made a recommendation for his or her discharge.

CHAPTER VI INEFFICIENCY AND MISCONDUCT

Inefficient officers

18. (1) If a head of department reports to an executing authority that any officer, other than an officer who occupies a post in the B division or a member of the services or an educator or a member of the National Intelligence Services, in his or her department is, in his or her opinion, unfit for his or her duties or incapable of carrying them out efficiently, such authority shall appoint an officer to inquire into those allegations, and if such a report is made to a head of department by an officer designated in terms of section 6 (3) to inspect departments, the head of department shall, within one calendar month of the date on which he or she received it, sent it to the said authority, who shall appoint an officer to inquire into those allegations.

(2) If an inquiry is to be held in terms of subsection (1), the officer concerned shall be notified in writing thereof, and thereupon he or she shall have the right-

- (a) to a written statement 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;
- (b) to be present at the inquiry, to be assisted or represented by another person, to give evidence and, either personally or through a representative -
 - (i) to be heard;
 - (ii) to call witnesses;
 - (iii) to cross-examine any person called as a witness in support of the said allegations; and
 - (iv) to have access to documents produced in evidence.

(3) At the conclusion of the inquiry, the officer concerned shall be notified of the finding of the officer conducting the inquiry, and if it has been found that he or she is unfit for his or her duties or that he or she is incapable of carrying them out efficiently, he or she shall have the right to appeal to the Commission against that finding.

(4) The procedure at any inquiry and the noting and hearing of an appeal shall be as prescribed.

(5) 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 Commission shall, having regard to the documents relating to the finding and any appeal, recommend to the relevant executing authority-

- (a) that no further action be taken in the matter;
- (b) that the officer concerned be transferred to another post or be employed additional to the fixed establishment;
- (c) that his or her salary or grade or both his or her salary and grade be reduced to an extent recommended;
- (d) that action be taken against him or her as prescribed in paragraph (b) as well as paragraph (c); or
- (e) that he or she be discharged from the public service from a date to be fixed by the relevant executing authority.

(6) The Commission shall send the documents relating to the inquiry and, where applicable, the appeal, together with its recommendation in terms of subsection (5), to the relevant executing authority and such authority may act according to the recommendation of the Commission or, subject to the provisions of section 5, according to any other recommendation which can be made under subsection (5).

Inefficient heads of department

19. (1) If in the opinion of an executing authority there are reasonable grounds for believing 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 may appoint a person or persons to inquire into the allegations.

(2) The provisions of section 18 (2) to (6) shall apply mutatis mutandis to an inquiry in terms of subsection (1) of this section, and for that purpose 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.

Misconduct

20. An officer, other than a member of the services or an educator or a member of the National Intelligence Services, shall be guilty of misconduct and may be dealt with in accordance with section 21, if he or she -

- (a) contravenes any provision of this Act or fails to comply with any provision thereof;
- (b) performs or causes or permits to be performed or connives at any act which is to the prejudice of the administration, discipline or efficiency of any department, office or institution of the State;
- (c) disobeys, disregards or makes wilful default in carrying out a lawful order given to him or her by a person having the authority to give it, or by word or conduct displays insubordination;
- (d) is negligent or indolent in the carrying out of his or her duties;
- (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;

- (f) publicly comments to the prejudice of the administration of any department;
- (g) makes use of his or her position in the public service to promote or to prejudice the interest of any political party;
- (h) attempts to secure intervention from political or outside sources in relation to his or her position and conditions of service in the public service, unless it occurs in an endeavour to obtain redress of any grievance through Parliament or a provincial legislature;
- (i) conducts himself or herself in a disgraceful, improper or unbecoming manner, or, while on duty, is grossly discourteous to any person;
- (j) uses intoxicants or stupefying drugs excessively;
- (k) becomes insolvent or compromises with his or her creditors, or has a decree of civil imprisonment made against him or her by any court of law, unless it is shown that his or her insolvency or composition or the making of the decree has been occasioned by unavoidable misfortune;
- (l) becomes pecuniarily embarrassed, unless it is shown that his or her pecuniary embarrassment has not been occasioned by imprudence or other reprehensible cause and is not prejudicial to the faithful carrying out of his or her duties;
- (m) without first having obtained the permission of his or her head of department, discloses, otherwise than in carrying out his or her official duties, information gained by or conveyed to him or her through his or her employment in the public service, or uses that information for any purpose other than for carrying out his or her official duties, whether or not he or she discloses that information;
- (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), 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;
- (o) misappropriates or makes improper use of any property of the State under circumstances not amounting to an offence;
- (p) commits an offence;
- (q) absents himself or herself from his or her office or duty without leave or valid cause;
- (r) makes a false or incorrect statement, knowing it to be false or incorrect, with a view to obtaining any privilege or advantage in relation to his or her official position or his or her duties, or to causing prejudice or injury to the State or a department or the public service or a member of the public service;
- (s) contravenes any rule of the constitution of a medical aid fund or aid scheme or aid society of which he or she is a member in terms of the regulations, or fails to comply therewith; or

- (t) contravenes any provision of a prescribed code of conduct or fails to comply with any provision thereof.

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 National Intelligence Services, 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 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 head of department or such an authorised officer shall, appoint an officer (hereinafter referred to as an investigating officer) 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 investigating officer shall inform the head of department 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 (1 1) of the Public Service Labour Relations Act, 1993 (Act No. 102 of 1993).

Steps after investigation by investigating officer

22. (1) A 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.

(2) If the head of department is of the opinion that an investigation in terms of section 21 is not necessary, he or she may in writing under his or her hand charge the officer concerned with misconduct and appoint an officer to exercise the powers of an investigating officer in terms of section 23.

(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.

(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, if he or she so desires, a written explanation regarding the misconduct with which he or she is charged.

(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 guilty of misconduct as charged.

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

(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.

(7) 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.

Hearing of charge of misconduct

23. (1) (a) An investigating officer may for the purposes of a hearing in terms of section 22 (6) summon any person who in his or her opinion may be able to give material information concerning the subject of the hearing. or who he or she suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing, to appear before the presiding officer appointed under section 22 (6) at the time and place specified in the summons, to be interrogated or to produce such book, document or object.

(b) A subpoena to a person to appear before the presiding officer or to produce a book, document or object. shall be signed by the investigating officer or presiding officer and be served on such person by delivering or tendering it to him or her or by sending it by registered post to him or her.

(c) The investigating officer may retain a book. document or object so produced, for the duration of the hearing.

(2) During a hearing an investigating officer may-

(a) lead evidence and advance arguments in support of the charge and cross-examine witnesses; and

(b) call upon and administer an oath to or accept an affirmation from any person present at the hearing who was or might have been summoned in terms of subsection (1), and interrogate him or her and order him or her to produce any book, document or object in his or her possession or custody or under his or her control which the investigating officer suspects or believes to have a bearing on the subject of the hearing.

(3) (a) If a person who has been summoned in terms of subsection (1), without sufficient cause fails to attend at the time and place specified in the subpoena, or to remain in attendance until excused by the presiding officer from further attendance, or if a person called upon in terms of subsection (2) (b) refuses to be sworn in or to affirm as a witness, or without sufficient cause fails to answer fully and satisfactorily to the best of his or her knowledge all questions lawfully put to him or her, or to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce, he or she shall, subject to the provisions of paragraph (b), be guilty of an offence and be liable upon conviction to a fine not exceeding R2 000.

(b) The law relating to privilege, as applicable to a witness summoned to give evidence or to produce a book, document or object in a civil trial before a court of law, shall mutatis mutandis apply in relation to the examination of, or the production of any book, document or object to the presiding officer, by any person called in terms of this section as a witness.

(c) A person who, after having been sworn in or having been affirmed as a witness, gives a false statement on any matter, knowing that answer or statement to be false, shall be guilty of an offence and liable upon conviction to the penalties which may lawfully be imposed for the

offence of perjury.

- (d) A person who prevents another person from obeying a subpoena issued under subsection (1), or from giving evidence or producing a book, document or object which he or she is in terms of this section required to give or produce, shall be guilty of an offence and liable upon conviction to a fine not exceeding R2 000.

(4) At a hearing an officer charged has the right-

- (a) to be personally present, to be assisted or represented by another person, to give evidence and, either personally or through a representative -
 - (i) to be heard;
 - (ii) to call witnesses;
 - (iii) to cross-examine any person called as a witness in support of the charge; and
 - (iv) to have access to documents produced in evidence;
- (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, whereupon he or she shall be deemed to be guilty of misconduct as charged;
- (c) if the misconduct with which he or she is charged amounts to an offence of which he or she was convicted by a court of law, to show cause why in his or her opinion he or she was wrongfully convicted.

(5) After the conclusion of the hearing the presiding officer shall make a finding on the charge, mentioning in the case of a finding of guilty, any aggravating and mitigating circumstances he or she may find, and make a recommendation regarding action in terms of section 24 (2).

Proceedings after hearing

24. (1) At the conclusion of the hearing the presiding officer shall notify the head of department concerned of his or her finding and recommendation contemplated in section 23 (5).

(2) (a) If the officer charged is found guilty of the misconduct as charged by the presiding officer, or if he or she 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) -

- (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 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 grade to the extent recommended;
- (v) discharge him or her or direct him or her to resign from the public service from a date to be determined by the head of department; or
- (vi) postpone his or her decision under subparagraphs (i) to (v) for a period not exceeding 12 calendar months.

- (b) Except where a head of department acts under paragraph (a) (v) or (vi), he or she may take decisions under more than one of the subparagraphs of paragraph (a).

(3) A head of department shall notify the officer charged as soon as

possible of the finding of the presiding officer under section 23 (5) and of his or her decision under subsection (2) and of the officer's right of appeal in terms of section 26.

Other steps against officer charged

25. (1) If an officer suspended from duty before or during the trial is found not guilty, he or she may resume duty under the prescribed circumstances and receive in the prescribed manner emoluments which were withheld during the period of suspension.

(2) If an officer who has been directed under section 24 (2) (a) (v) to resign, fails so to resign, he or she shall be deemed to have been discharged as from the date determined under the said section.

(3) A fine imposed under section 24 (2) (a) (ii) may be recovered by the deduction from the salary of the officer concerned of such instalments as the head of department may determine.

(4) If an officer who has been charged under section 22 (1) or (2) or who has been suspended from duty under section 22 (7) -

(a) resigns from the public service; or

(b) assumes other employment [not being remunerative work contemplated in section 30 (b)], before the proceedings 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 discharged on account of misconduct.

Appeal against decision of presiding officer or head of department

26. (1) An officer charged in terms of section 22 shall have the right to appeal to the Commission against a finding of guilty of the presiding officer or the decision of the head of department, or both, within 21 days after the head of department notified him or her of his or her decision in accordance with section 24 (3).

(2) If an officer charged lodges an appeal in terms of subsection (1), the decision of the head of department under section 24 (2) shall not be put into effect before the Commission has issued a direction under subsection (3) of this section.

(3) After considering an appeal in terms of subsection (1) the Commission may direct that-

(a) the appeal be allowed;

(b) the appeal be dismissed; or

(c) any other steps mentioned in section 24 (2) (a) be taken.

Misconduct of heads of department

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 authority to charge the 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 may appoint a person to conduct the hearing.

(2) The provisions of sections 21 to 26 shall apply mutatis mutandis to any proceedings following upon an investigation and a direction under subsection (1) (a) of this section, and for that purpose a reference in sections 21, 22, 24, 25 (3) and 26 (2) to the head of department shall be construed as a reference to the relevant executing authority and 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, and a reference in sections 22 (6), 23, 24 and 26 to the presiding officer conducting the hearing, as a reference to the person appointed under subsection (1) of this section.

CHAPTER VII OBLIGATIONS, RIGHTS AND PRIVILEGES OF OFFICERS AND EMPLOYEES

Rights and obligations

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

Saving regarding rights and obligations

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

Other work by officers and employees

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

- (a) every officer and employee shall place the whole of his or her time at the disposal of the State;
- (b) no officer or employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the public service, without permission granted on the recommendation of the Commission by the relevant executing authority or an officer authorized by such authority; and
- (c) no officer or employee may claim any additional remuneration in respect of any official duty, or work which he or she performs voluntarily or is required by a competent authority to perform.

Unauthorized remuneration

31. (1) (a) (i) If any remuneration, allowance or other reward is received by an officer or employee in connection with the performance of his or her work in the public service otherwise than in accordance with the provisions of this Act or a recommendation of the Commission, or is received contrary to the provisions of section 30 (b), that officer or employee shall pay into revenue an amount equal to the amount of such remuneration, allowance or other reward, or, where it does not consist of money, the value thereof as determined by the head of department in which he or she was employed 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 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 determination by the head of department to the relevant executing authority, who may make such order as he or she may think fit.

(iii) The Commission may recommend that the officer or employee concerned may retain the whole or a portion of the remuneration, allowance or reward.

(b) If in the opinion of the head of department mentioned in paragraph (a) an officer or employee has received any remuneration, allowance or other reward contemplated in that paragraph, and it is still in his or her possession or under his or her control or in the possession or under the control of any other person on his or her behalf, or, if it is money, has been deposited in any deposit-taking financial institution in his or her name or in the name of any other person on his or her behalf, that head of department may in writing require that officer or employee or that other person or that financial institution not to dispose thereof, or, if it is money, not to dispose of a corresponding sum of money, as the case may be, pending the outcome of any legal steps for the recovery of that remuneration, allowance or reward or the value thereof.

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

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

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

(b) In circumstances regarded by the Commission as exceptional, it may recommend the payment 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.

Assignment of other functions to officers and employees

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

Cession of emoluments

33. No officer or employee shall without written approval of the accounting officer, as defined in section 1 of the Exchequer Act, 1975 (Act No. 66 of 1975), of the department or office in which he or she is employed, cede the right to the whole or any part of any salary or allowance payable to him or her.

Reduction of salaries

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

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

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

Grievances and requests of officers and employees

35. If an officer in the A or B division has a complaint or a grievance concerning an official act or omission, or if an officer in those divisions or an employee wants to address a request or communication to the Commission, he or she has the right to lodge that complaint, grievance, request or communication with the authority concerned under the prescribed circumstances, on the prescribed conditions and in the prescribed manner, and that authority shall submit it to the Commission in the prescribed manner, and at the prescribed time or within the prescribed period.

Political rights of officers and employees

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

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

CHAPTER VIII MISCELLANEOUS

Remuneration of officers and employees

37. (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 for their ranks and grades in terms of section 3 (3) (g).

(2) On the recommendation of the Commission, but subject to the provisions of section 5-

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

Wrongly granted remuneration

38. (1) If an incorrect salary or scale of salary on appointment, transfer or promotion, or an incorrect advancement of salary within the limits of the

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

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

(a) been underpaid, an amount equal to the amount of the underpayment shall be paid to him or her, and that other benefit which he or she did not receive, shall be awarded to him or her as from a current date; or

(b) been overpaid or received any such other benefit not due to him or her-

(i) an amount equal to the amount of the overpayment shall be recovered from him or her by way of the deduction from his or her salary of such instalments as the head of department, with the approval of the Treasury, may determine if he or she is in the service of the State, or, if he or she is not so in service, by way of deduction from any moneys owing to him or her by the State, or by way of legal proceedings, or partly in the former manner and partly in the latter manner;

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

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

Limitation of actions

39. (1) No legal proceedings shall be instituted against the State or any body or person in respect of any alleged act in terms of this Act, or any alleged omission to do anything which in terms of this Act should have been done, unless the legal proceedings are instituted before the expiry of a period of 12 calendar 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 the alleged act or omission, whichever is the earlier date.

(2) No such legal proceedings shall be commenced before the expiry of at least one calendar month after a written notification, in which particulars as to the alleged act or omission are given, of intention to bring those proceedings has been served on the defendant.

(3) Subsections (1) and (2) shall not be construed as precluding a court of law from dispensing with the requirements or prohibitions of those sections where the interests of justice so require.

Limitation of liability

40. Whenever any person is conveyed in or makes use of any vehicle, aircraft or vessel which is the property of the State, the State or a person in the

Database Government Gazettes

Gazette No 15791

Part 2 of 2

Notice No 103

Regulation 0

Gazette No

Gazette GOV

Date 19940603

service of the State shall not be liable to such person or his or her spouse, parent, child or other dependant for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in any way connected with the conveyance in or the use of such vehicle, aircraft or vessel, unless such person is so conveyed or makes use thereof in, or in the interest of, the performance of the functions of the State: Provided that the provisions of this section shall not affect the liability of a person in the service of the State who wilfully causes the said loss or damage.

Regulations

41. (1) The President may, after the Commission has made a recommendation, make regulations regarding-

- (a) the employment of persons and the transfer, promotion and continued employment of officers and employees;
- (b) 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;
- (c) a code of conduct with which officers and employees shall comply;
- (d) journeys on official duty and transport privileges of officers and employees;
- (e) 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;
- (f) 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;
- (g) the particular classes of officers and employees who may be required to provide security, and the amount and form thereof;
- (h) the circumstances under which, the conditions on which, and the manner in which an officer may be found unfit for his or her duties or incapable of carrying them out efficiently, and the conditions on which and the manner in which he or she may appeal against such a finding;
- (i) the manner of charging an officer with misconduct, the requirements with which a presiding officer must comply, the circumstances under which, the conditions on which, the manner in which, and the time when, an officer may be suspended from service, the manner in which a finding of guilty of misconduct and the contemplated action, may be appealed against, and the hearing of such an appeal;
- (j) the procedure for dealing with complaints and grievances of officers,

and the manner in which and time when documents in connection therewith and in connection with requests and communications of officers and employees, shall be submitted to the Commission;

- (k) medical aid to officers and employees;
- (l) (i) the establishment and management of and control over a training fund for the public service;

 (ii) in general, all matters reasonably necessary for the regulation and operation of such a fund;
- (m) the general security in departments and the security requirements with which officers and employees shall comply;
- (n) all matters which shall or may be prescribed under this Act;
- (o) the designation or establishment of an authority or more than one authority and the powers of such an authority to authorize a departure from the provisions of a regulation in respect of an officer or employee or class of officers or employees under stated circumstances;
- (p) any matter which the President may consider necessary or expedient to prescribe in order to achieve the objects of this Act.

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

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

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

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

Public Service Staff Code

42. (1) Subject to the provisions of section 5 (7) -

- (a) any standing recommendation or direction of a general nature made or given by the Commission; and
- (b) any directive by the Commission to elucidate or supplement any regulation, and which is not contrary to this Act, may be included in a code called the Public Service

Staff Code.

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

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

Repeat of laws and savings

43. (1) Subject to the provisions of subsection (2), the laws mentioned in Schedule 3 are hereby repealed to the extent indicated in the third column of that Schedule.

(2) Notwithstanding the repeal of the laws referred to in subsection (1), but subject to subsections (3), (4) and (5) -

- (a) any department, administration, office or other institution established by or under or functioning in accordance with any such law, shall continue to exist until abolished by direction of the Commission or otherwise dealt with under this Act;
- (b) any person employed immediately before the commencement of this Act by an institution referred to in paragraph (a) or subsection (3) (a), shall continue in such employment until he or she is dealt with in terms of this Act, and the terms and conditions applicable to his or her employment immediately before such commencement shall continue to apply to him or her, subject to any alteration thereof in terms of this Act;
- (c) any recommendation made, direction given or decision taken by an institution referred to in subsection (3) (a) and not yet executed at the commencement of this Act, shall, unless withdrawn by the Commission, be deemed to be a recommendation made or direction given or decision taken by the Commission;
- (d) anything done under any such law which is capable of being done under a provision of this Act, shall be deemed to have been done under such provision of this Act; and
- (e) any investigation of misconduct and any proceedings relating to a grievance or complaint, instituted under any such law, shall be continued and concluded as if such law were not repealed: Provided that any power or function assigned by such law to an institution referred to in subsection (3) (a), shall be exercised or performed by the Commission.

(3) (a) Subsection (2) (a) shall not apply to a public service commission, commission for administration or other like institution established by or under or functioning in accordance with a law referred to in subsection (1), and any such commission or other institution shall, subject to section 238 (5) of the Constitution, cease to exist upon the commencement of this Act.

- (b) The office of an institution referred to in paragraph (a) shall, until dealt with in terms of this Act or the Commission Act, be deemed to be a regional office of the Office of the Commission.

(4) A person who immediately before the commencement of this Act occupied the post of director-general, or was the administrative head under any other designation, of an institution referred to in subsection (2) (a) shall, while continuing in office in terms of subsection (2) (b), perform his or her functions and exercise his or her powers under the control of and in accordance with the directions of a head of department referred to in the second column of Schedule 1 or 2 and designated by the Commission in each particular case.

(5) The provisions of this Act shall apply mutatis mutandis in respect of any institution and person referred to in subsection (2) (a) and (b), respectively, and in such application the Commission and an executing authority shall have all such powers and functions assigned to them by this Act or any other law in relation to a department or an officer as are necessary to effectively deal with any such institution or person for the purposes of the rationalisation contemplated in section 237 of the

Constitution.

Short title

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

SCHEDULE 1

DEPARTMENTS AND HEADS OF DEPARTMENT	
COLUMN I	COLUMN II

Department of Agriculture.....	Director-General: Agriculture
Department of Arts, Culture,..... Science and Technology	Director-General: Arts, Culture, Science and Technology
Department of Constitutional..... Development	Director-General: Constitutional Development
Department of Correctional..... Services	Commissioner: Correctional Services
Department of Education.....	Director-General: Education
Department of Environmental..... Affairs and Tourism	Director-General: Environmental Affairs and Tourism
Department of Finance.....	Director-General: Finance
Department of Foreign Affairs.....	Director-General: Foreign Affairs
Department of Health and Welfare....	Director-General: Health and Welfare
Department of Home Affairs.....	Director-General: Home Affairs
Department of Housing.....	Director-General: Housing
Department of Justice.....	Director-General: Justice
Department of Labour.....	Director-General: Labour
Department of Land Affairs.....	Director-General: Land Affairs
Department of Mineral and..... Energy Affairs	Director-General: Mineral and Energy Affairs
Department of National..... Intelligence Services	Director-General: National Intelligence Services

COLUMN I	COLUMN II
----------	-----------

Department of Public Works.....	Director-General: Public Works
Department of Sport and Recreation..	Director-General: Sport and Recreation
Department of State Expenditure.....	Director-General: State Expenditure
Department of Trade and Industry....	Director-General: Trade and Industry
Department of Transport.....	Director-General: Transport
Department of Water Affairs..... and Forestry	Director-General: Water Affairs and Forestry

National Defence Force.....	Chief of the National Defence Force
Office of the President.....	Director-General: Office of the President
Office of the Public Service..... Commission	Director-General: Office of the Public Service Commission
Provincial Administration:.....	Director-General: Provincial Eastern Cape Administration: Eastern Cape
Provincial Administration:..... Transvaal	Director-General: Provincial Eastern Administration: Eastern Transvaal
Provincial Administration:.....	Director-General: Provincial KwaZulu/Natal Administration: KwaZulu/Natal
Provincial Administration:.....	Director-General: Provincial Northern Cape Administration: Northern Cape
Provincial Administration:..... Transvaal	Director-General: Provincial Northern Administration: Northern Transvaal
Provincial Administration:.....	Director-General: Provincial North-West Administration: North-West
Provincial Administration:..... State	Director-General: Provincial Orange Free Administration: Orange Free State
Provincial Administration:..... Pretoria-Witwatersrand-Vereeniging	Director-General: Provincial Administration: Pretoria-Witwatersrand-Vereeniging
Provincial Administration:.....	Director-General: Provincial Western Cape Administration: Western Cape
South African Police Service..... Police Service	National Commissioner: South African Police Service

SCHEDULE 2

ORGANISATIONAL COMPONENTS AND POSTS CONTEMPLATED IN SECTION 7 (4)

COLUMN I	COLUMN II
Central Economic Advisory Service.....	Head: Central Economic Advisory Service
Central Statistical Service.....	Head: Central Statistical Service
Office of the Executive Deputy..... President	Head: Office of the Executive Deputy President
Office of the Executive Deputy..... President from the Largest Minority Party	Head: Office of the Executive Deputy President from the Largest Minority Party
Office for Public Enterprises.....	Head: Office for Public Enterprises
South African Communication Service...	Head: South African Communication Service

SCHEDULE 3

LAWS REPEALED BY SECTION 43 (1)

Number and year of law	Short title	Extent of repeal
Act No. 2 of 1972..... (Lebowa)	Lebowa Public Service Act, 1972	The repeal of the whole
Act No. 4 of 1972..... (Bophuthatswana)	Bophuthatswana Public Service Act, 1972	The repeal of the whole
Act No. 5 of 1972..... (Gazankulu)	Gazankulu Public Service Act, 1972	The repeal of the whole
Act No. 5 of 1973..... (QwaQwa)	QwaQwa Public Service Act, 1973	The repeal of the whole
Act No. 5 of 1973..... (KaNgwane)	KaNgwane Public Service Act, 1973	The repeal of the whole
Act No. 43 of 1978..... (Transkei)	Transkei Public Service Act, 1978	The repeal of the whole
Act No. 2 of 1981..... (Ciskei)	Ciskei Public Service Act, 1981	The repeal of the whole
Act No. 3 of 1981..... (KwaNdebele)	KwaNdebele Public Service Act, 1981	The repeal of the whole
Act No. 111 of 1984.....	Public Service Act, 1984	The repeal of the whole
Act No. 67 of 1985.....	Public Service Laws Amendment Act,	The repeal of sections 2 and 31985
Act No. 7 of 1986..... (Venda)	Venda Public Service Commission Act, 1986	The repeal of the whole
Act No. 8 of 1986..... (Venda)	Venda Public Service Act, 1986	The repeal of the whole
Act No. 22 of 1986.....	Public Service Amendment Act, 1986	The repeal of the whole
Act No. 4 of 1989..... (KaNgwane)	KaNgwane Public Service Commission Act, 1989	The repeal of the whole
Act No. 5 of 1990..... (KwaZulu)	KwaZulu Public Service Act, 1990	The repeal of the whole
Act No. 6 of 1990..... (KwaZulu)	KwaZulu Public Service Commission Act, 1990	The repeal of the whole
Act No. 120 of 1990.....	Public Service Laws Amendment Act, 1990	The repeal of sections 2, 3 and 4
Act No. 57 of 1991.....	Public Service Amendment Act, 1991	The repeal of the whole
Act No. 47 of 1993.....	Public Service Acts Amendment Act, 1993	The repeal of sections 2 to 10
Act No. 102 of 1993.....	Public Service Labour Relations Act, 1993	The repeal of section 27 and the Schedule
Act No. 179 of 1993.....	Public Service Amendment Act, 1993.	The repeal of the whole