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PUBLIC SERVICE ACT 1995

ACT NO.13 OF 1995

[Date of Assent: 28.02.96]

[Date of commencement: See section 1]

An Act to make provision in respect of the public service of Lesotho and for related matters.

Enacted by the Parliament of Lesotho.

Part 1 Preliminary

Short title and commencement

1. This Act may be cited as the Public Service Act 1995, and shall come into operation on such date or dates as the Minister may appoint by notice published in the Gazette.

Object of the Act

2. The object of this Act is to develop and maintain a stable and disciplined public service that will impartially administer the business of the Government of Lesotho under the general direction and control of the Minister and the other Ministers of Government, and under the supervision of Principal Secretaries.

Application

3. This Act does not apply to any office specified in section 137(3) of the Constitution to the extent therein specified.

Interpretation

4. In this Act, unless the context otherwise requires -

“Commission” means the Public Service Commission established by section 136 of the Constitution;

“Constitution” means the Constitution of Lesotho;

“Council” means the Public Service Joint Advisory Council established under section 32;

“head of department” means a public officer who has been designated head of the public officers of a department by the Minister;

“Minister” means the Minister responsible for the Public Service;

proper authority” means a person or authority who under this Act has power to direct a public officer in the performance of his or her duties;

“public office” and “public officer” have the same meaning as in the Constitution;

“public service” has the same meaning as in the Constitution;

“Tribunal” means the Public Service Tribunal established under section 24.

Act is ancillary to the Constitution

5. The provisions of this Act are ancillary to those provisions of the Constitution that relate to the public service and to public offices and public officers.

Powers of the Commission

6. Subject to the provisions of the Constitution, the power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office is vested in the Commission.

Appointment to the public service

7 Appointments to the public service are:

- (a) on permanent and pensionable terms; or
- (b) on temporary terms; or
- (c) on contract terms.

Entry and advancement to be based on merit

8. (1) Entry into and advancement within the public service shall be determined solely on the basis of merit, namely; ability, qualifications, knowledge, skill and aptitude after fair and open competition which assures that all citizens of Lesotho receive equal opportunity.

(2) In selecting candidates for appointment to posts in the public service, the

Commission shall have regard primarily to the need for promoting efficiency in the public service.

Powers of the Minister

9. (1) Subject to the provisions of the Constitution and of this or any other law relating to the public service, the Minister may (subject to the prior concurrence of the Minister responsible for finance in respect of anything involving the expenditure of public funds) do anything that in his opinion is necessary or expedient for giving effect to the objects of this Act or for enabling effect to be given thereto.

(2) Without limiting the generality of subsection (1), the Minister may make provision for all or any of the following matters:

- (i) the creation or abolition of departments, sub-departments, branches or offices, and the transfer of functions from one department to another;
- (ii) the designation, control and organisation of departments;
- (iii) the number and grading of public offices;
- (iv) the number of persons to be employed temporarily or under contract;
- (v) effecting economies and promoting efficiency in the public service;
- (vi) scales of salaries of all classes and grades of public officers;
- (vii) the training of public officers;
- (viii) redeployment of public officers within the public service;
- (ix) all matters relating to the conditions of employment of public officers and the general welfare of public officers.

Appointment and removal from office of Principal Secretaries and the Government Secretary

10. (1) Pursuant to section 139(1) of the Constitution, the power to appoint a person to hold or act in the office of Principal Secretary and Government Secretary shall vest in the Prime Minister, acting after consultation with the Commission.

(2) The Principal Secretary and Government Secretary shall hold office for a period of two years and are eligible for re-appointment.

(3) The power to exercise disciplinary control over the Principal Secretary and the Government Secretary and the power to remove the Principal Secretary and the Government Secretary from office shall vest in the Prime Minister, acting after consultation with the Commission.

Functions of Government Secretary

11. In addition to the functions vested in the Government Secretary by the Constitution, the Government Secretary shall -

- (a) co-ordinate the activities of the Principal Secretaries and transmit communication from the Principal Secretaries to Cabinet;
- (b) be responsible for conveying the policies and discussions of Government to the appropriate person or authority and for ensuring that those policies and discussions are properly carried out by that person or authority;
- (c) have overall responsibility over all public officers.

Functions of Principal Secretaries

12. (1) In addition to the functions vested in a Principal Secretary by the Constitution, the Principal Secretary is the overall supervising and chief accounting officer of a department

(2) Without limiting the generality of subsection (1), the Principal Secretary is responsible for-

- (a) setting direction, objectives and appropriate guidelines and strategies for the department under his supervision;
- (b) assisting in the initiation, formulation and implementation of the policy of the department under his supervision.

Part 2 - Conduct of public officers**Duties of a public officer**

13. A public officer shall -
- (a) at all times have absolute and undivided loyalty to the Constitution and the lawfully constituted government; and
 - (b) support and maintain the Government of Lesotho according to the Constitution and the other laws of Lesotho; and
 - (c) serve the people of Lesotho and promote their welfare and lawful interests; and
 - (d) exercise all powers and perform all duties of his office impartially, efficiently and without undue delay.

General rules of conduct

14. (1) A public officer shall comply with the following general rules of conduct:
- (a) a public officer shall perform all duties and exercise all powers that have been permanently or temporarily assigned by a proper authority to his office, or that are appropriate at the material time to the grade, designation or classification of that office, diligently and impartially and to the best of his ability;
 - (b) a public officer shall not by any act or omission willfully comply with, or willfully disregard, any provision of a law lawful order or instruction given by any proper authority;
 - (c) a public officer shall not engage in conduct that adversely affects the performance of his duties or brings the public service into discredit, disrepute or contempt, or brings the authorities of Government or any Minister of Government into discredit, disrepute or contempt;
 - (d) a public officer shall not be absent from official duties during office hours without leave or valid excuse;
 - (e) a public officer shall not improperly use property or stores that are for the time being in his official custody or control or fail to take reasonable care of any such property or stores;

- (f) a public officer in relation to his official duties or position shall not
 - (i) knowingly make any false, misleading or inaccurate statement, either orally or in any official document or book, or sign any such document; or
 - (ii) destroy or mutilate any document or book or alter or erase any entry with intent to deceive;
- (g) a public officer shall not, whether before or after becoming an officer, willfully supply incorrect or misleading information in connection with the appointment of that officer to his office;
- (h) a public officer in relation to his official duties or position shall account for, and make prompt or true return of, any money or property for which he is responsible;
- (i) a public officer shall not directly or indirectly reveal or use for private purposes, any information coming to his knowledge or acquired by him either in the course of his duties or in his capacity as a public officer, otherwise than in the proper discharge of his duties or as authorized by law or a competent authority;
- (j) a public officer shall not commit a criminal offence involving dishonesty or which brings the public service into disrepute;
- (k) a public officer shall not -
 - (i) be an active member of a political party;
 - (ii) speak in public on any party political matter;
 - (iii) take an active part in the support of any candidate in an election;
 - (iv) do anything by word or deed which is calculated to further the party political interests of any political party.

Nothing in this paragraph shall be construed as preventing a public officer from exercising his right to vote.

(2) The Minister may prescribe classes of conduct that when performed by a public officer -

- (a) are deemed to bring the public service into disrepute, discredit or contempt; or
- (b) are deemed to adversely affect the performance of that officer's duties.

Whole time of public officer to be at the disposal of the Government

15. Unless the terms of employment of an officer or any other law specifically provide to the contrary -

- (a) a public officer shall place the whole of his time at the disposal of the Government; and
- (b) no public officer may claim as of right additional remuneration in respect of any official duty or work any proper authority may require him to do.

Private employment and private interests

16. (1) Except with the approval of the Minister or as provided in the regulations, no public officer shall -

- (a) be employed in any other paid occupation outside the public service;
or
- (b) accept any money, fee, gratuity or reward of any kind for services rendered otherwise than in the public service.

(2) Nothing in this section shall be construed as preventing a public officer from becoming a member or shareholder only, of a company or society of persons registered under any law.

(3) If a public officer has, either direct or indirect financial interest (including loans and shares) in any undertaking, being an interest which, is incompatible with the discharge of the duties of that person as a public officer, that officer shall disclose that interest to the Minister and the Minister may require the officer to dispose of all interests of a nature specified by the Minister.

(4) The Minister may, by notice published in the Gazette, exempt a public officer, or a group of public officers, and any kind of interest or employment, from the provisions of this section, and such an exemption may be absolute or may be subject to conditions specified in the notice.

Fees for official services

17. (1) No public officer shall, unless authorized by law or by the terms of appointment or by the Minister, accept any fee, reward or remuneration of any kind beyond that officer's emoluments for the performance of any service of the Government.

(2) A public officer who is required in the course of his duty to perform a service for which, if performed otherwise than in the public service, a charge would lawfully be payable, shall report the fact to the Minister, who shall, with the concurrence of the Minister responsible for finance, decide what amount should be charged for that service, and that amount shall be paid into the Consolidated Fund or to some other fund established by or under any law.

Breach of discipline

18. (1) A public officer commits a breach of discipline and is liable to disciplinary Proceedings and to punishment if that officer -

- (a) fails to fulfill his duty as an officer; or
- (b) by any act or omission fails or refuses to comply with a provision of this Part; or
- (c) by any act or omission fails to comply with the general rules of conduct specified in section 14; or
- (d) by any act or omission fails to comply with a provision of any law that provides that such a failure or refusal by an officer is a breach of discipline or misconduct.

(2) For the purposes of subsection (1) a public officer shall be deemed to have failed to fulfill his duty as a public officer if -

- (a) the officer is inefficient or incompetent for reasons or causes within his control; or

(b) the officer is negligent or careless in the discharge of his duties.

(3) The relevant Principal Secretary shall report a breach of discipline that is also a criminal offence to the police and to the Director of Public Prosecutions for action.

(4) If the breach of discipline that is alleged against the public officer is also a criminal offence of which that officer has been convicted, a certified copy of the record of the trial and conviction by the court of law is sufficient proof of the commission of that breach of discipline unless the conviction has been set aside by a superior court.

(5) The acquittal or the conviction of a public officer by a court of law upon a charge of a criminal offence shall not be a bar to proceedings against him under this Act on a charge of a breach of discipline, notwithstanding the fact that the allegation in the disciplinary charge would, if proved, constitute the offence set forth in the criminal charge on which he was so acquitted or convicted or another offence on which he might have been convicted on his trial on that criminal charge.

(6) Criminal prosecution against the officer charged with breach of discipline shall not be a bar to the institution or continuation of disciplinary proceedings against that public officer.

(7) A public officer having custody of the records of any court in which judgment has been given in a criminal case against a public officer shall inform the relevant Principal Secretary.

Part 3 - Disciplinary Proceedings

Charge of breach of discipline

19. (1) When an officer is accused of breach of discipline by the head of the department, the Commission or any officer who has been authorized by the Commission, may charge the first-mentioned officer in writing with that breach of discipline.

(2) The officer who signed the charge shall cause -

(a) notification of the charge; and

(b) a written explanation of the breach of discipline that constitutes the charge, to be served upon the officer charged.

(3) The notification of the charge must state that the officer charged may submit to the Commission within a period specified in the notification (not being a period less than 7 days), a written admission or denial of the charge.

Suspension pending determination of a charge

20. (1) The head of department may at any time before or after an officer has been charged under this Part, suspend him from duty.

(2) An officer who has been suspended from duty in terms of subsection (1) shall not be entitled to payment of any salary or benefits for the period of his suspension but the Commission may, in its discretion, order payment to that officer of the whole or a portion of his salary or benefits.

(3) The Commission may at any time cancel the suspension, but notwithstanding the cancellation of the suspension, the proceedings on the charge of breach of discipline may be continued.

Inquiry into a charge

21. (1) The Commission may, with the consent of the Prime Minister, appoint a public officer to inquire into the charge and that officer shall fix a time and place for the inquiry.

(2) The officer charged must be given reasonable notice in writing of the time and place fixed for the inquiry into the charge.

(3) At an inquiry the officer charged shall have the right to be present and to be heard either personally or through a representative, to cross-examine any person called as a witness in support of the charge, to inspect any documents produced in evidence, to give evidence himself and call other persons as witnesses.

(4) The officer holding the inquiry shall keep a record of the proceedings at the inquiry and of all evidence given.

(5) The failure of the officer charged to attend the inquiry either personally or by a representative, shall not invalidate the proceedings.

(6) At the conclusion of the inquiry, the officer holding that inquiry shall find whether the officer charged is guilty or not of the breach of discipline with which he has been charged and may impose on the officer charged, any of the punishments specified in section 27 if he is found guilty of breach of discipline and shall in writing, inform the officer charged of his findings and punishment and shall report the result of the inquiry to the Commission.

Removal of suspension

22. If the officer charged is under suspension from duty under section 20 and the officer holding the inquiry finds that the officer is not guilty of the breach of discipline with which the officer has been charged, the first-mentioned officer shall be reinstated to his post and be paid his full salary and allowances for the period of the suspension.

Officer who resigns before finalization of inquiry

23. Where an officer who has been charged with a breach of discipline resigns from the public service before the charge has been dealt with to finality in accordance with the provisions of this Part, the disciplinary proceedings on the charge of breach of discipline shall continue against him notwithstanding his resignation.

Public Service Tribunal

24. Tribunal
- (1) There is established a Tribunal to be called the Public Service Tribunal
 - (2) The Tribunal shall consist of -
 - (a) a chairman who shall be a legal practitioner of not less than five years' standing and shall be appointed by the Commission after consultation with the Minister; and
 - (b) two other members appointed by the Commission after consultation with the Minister.
 - (3) A member holds office for such term not exceeding five years and is eligible for re-appointment.
 - (4) Two members of the Tribunal shall form a quorum.
 - (5) At a meeting of the Tribunal the chairman shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote.
 - (6) The Tribunal may
 - (a) regulate its own procedure;
 - (b) appoint one of its members to act as chairman if the chairman is absent.
 - (7) There shall be a Secretary of the Tribunal who shall be a public officer appointed by

the Commission.

(8) Where a person who is not a public officer is appointed a member of the Tribunal, he shall receive such remuneration as the Minister after consultation with the Minister responsible for finance may determine.

Appeals to the Tribunal

25. (1) A public officer found guilty of breach of discipline may, within 21 days as from the date upon which he is informed of his punishment, appeal to the Tribunal by giving to the Secretary of the Tribunal a written notice of appeal where he shall set out fully the grounds upon which the appeal is based.

(2) A public officer or head of department may appeal against -

- (a) the findings of an officer who held the inquiry; or
- (b) severity or leniency of the punishment.

(3) The Tribunal may confirm, set aside or vary the decision appealed against. subject to confirmation by the Commission.

(4) The Tribunal shall in writing give reasons, for its decision on an appeal under this section.

Service of notices etc.

26. Where under this Part a notice is required to be given or served on a person, that notice may be given or served -

- (a) by delivering it personally to the person to be served; or
- (b) by leaving it at the last known place of residence of the person to be served; or
- (c) by sending it by post addressed to the person to be served at the usual or last known place of residence of that person; or
- (d) by serving it in such other manner as the Minister may prescribe.

Punishment

27. (1) The following punishments may be imposed on a public officer who has been proved to have committed a breach of discipline: .

- (a) dismissal from office;
- (b) removal from office by compulsory retirement;
- (c) demotion to an office of lower rank;
- (d) reduction of salary;
- (e) deprivation of contract gratuity or suspension of the payment of contract gratuity until conditions are fulfilled or disciplinary, civil or criminal proceedings have been concluded;
- (f) deferral of an increment otherwise due;
- (g) suspension of the payment of an increment until conditions are fulfilled or disciplinary, civil or criminal proceedings have been concluded;
- (h) a fine;
- (i) caution or reprimand

(2) The imposition of a punishment under subsection (1) may be postponed for a period not exceeding 6 months.

(3) Punishment may be imposed under more than one of the provisions of section (1) except in the case of dismissal or compulsory retirement or other termination of appointment.

Damage or loss of Government Property

28. (1) Where a public officer is found guilty of breach of discipline involving damage or loss of Government property, the breach of discipline shall in respect of the loss or damage sustained by the Government, have the effect of a civil judgment for the payment of money, and shall be enforced in the same manner as any other judgment for the payment of the money in a civil court.

(2) Where public funds sustain loss or depletion as a result of failure by a public

officer to comply with or act inconsistent with any provision of this act or any other law, the Minister responsible for finance shall cause or authorize a surcharge of that officer unless the public officer shows that he acted in accordance with the advice of the Attorney-General.

Part 4- Retirement of Public Officers

Application of this Part

29. The provisions of this Part apply to a public officer who at the material time holds on permanent terms a public office that is pensionable under the provisions of the Pensions Proclamation 1964¹.

Retirement at prescribed ages or in prescribed circumstances

30. (1) Subject to the provisions of this section, a public officer shall retire from the public service, and shall be so retired, on attaining the age of fifty-five years.
- (2) A public officer who has attained the age of forty-five years may in the discretion of the Commission be retired from the public service.
- (3) A public officer may at any time before or after attaining the age of forty-five years retire from the public service and shall give written notification to the relevant Principal Secretary of his wish to be retired from the public service.
- (4) Where notification is given under subsection (3) -
- (a) at least six calendar months prior to the date on which the officer attains the age of forty-five years, the officer shall be retired on attaining that age; or
- (b) less than six calendar months prior to the date on which the officer attains the age of forty-five years, the officer shall be retired on the first day of the seventh month following the month in which that notification is received.
- (5) Notwithstanding subsection (2), the Commission may, having regard to the conditions of the public service and after consultation with the Minister, retire a public officer from the public service before the public officer attains the age of forty-five years.

(6) The Commission may, having regard to the conditions of service of the public service, not allow a public officer from retiring from the public service under subsection(3).

(7) If in the opinion of the Minister it is in the public interest to retain a public officer in office beyond retiring age, the officer may if willing, be retained from time to time by the Commission for further periods that shall not exceed in the aggregate five years.

(8) A public officer is liable to compulsory retirement in the discretion of the Commission –

(i) on the abolition of the officer's office, reduction of establishment or on the grounds of redundancy; or

(ii) for medically proven incapacity to perform the duties of that officer's office;

(iii) if, having regard to the conditions of the public service, the usefulness of the public officer thereto and all other circumstances of the case, his retirement is desirable in the public interest.

Part 5 -Public service staff associations

Public service staff associations

31. (1) Public officers may form and establish a staff association or staff associations under the provisions of the Societies Act 1966².

(2) Notwithstanding any other law, public officers shall not become members of any trade union registered under the Labour Code Order 1992³.

Public Service Joint Advisory Council

32. (1) The Minister may establish a Council to be known as the Public Service Joint Advisory Council.

(2)The Council shall consist of equal number of members appointed by the Minister and members appointed by any registered associations representing the general body of public officers in the public service of Lesotho.

(3) The Minister shall appoint one member as a chairman and one member as a

deputy chairman.

Rules of the Council

33. The Minister may prescribe rules-

- (a) for the organization, procedure and conduct of business of the Council;
- (b) for a quorum at meetings of the Council;
- (c) for the tenure of office of members; and
- (d) for the termination of membership of the Council.

Objects of the Council

34. (1) The objects of the Council are:

- (1) (a) to secure the greatest measure of co-operation between the Government of Lesotho, as employer, and the general body of public officers in matters affecting the public service with a view to increased efficiency in the public service combined with the well-being of public officers;
- (c) to provide machinery for dealing with general grievances; and
- (c) generally to bring together the experience and different points of view of representatives of departments, sub-departments, branches and offices of the public service.

(2) The Minister may prescribe the scope and functions of the Council and may limit the discussions of the Council to matters of general principle, and exclude discussion of individual cases.

Non Application of Labour Code Order 1992

35. The Labour Code Order 1992 shall not apply to public officers.

Part 6 -Miscellaneous

Staff of the Commission

36. (1) The Commission shall have sufficient staff to allow it to effectively carry out its functions.

(2) The staff of the Commission shall be officers employed pursuant to this Act.

Annual Report of the Commission

37. (1) The Commission shall as soon as practicable after the 31st day of December each year, prepare a report on matters dealt with by the Commission during the year.

(2) A report prepared by the Commission shall be presented to the Minister who shall lay the report before Parliament within 15 sitting days after receiving it.

Regulations

38. (1) The Minister may make regulations not inconsistent with this Act prescribing matters -

(a) required or permitted by this Act to be prescribed ; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Minister may make regulations -

- (a) to provide for the posting, secondment and transfer of public officers;
- (b) to provide for the occupation by officers of official quarters, the rent to be paid in respect of official quarters and the removal of officers from official quarters;
- (c) to provide for the circumstances in which a public officer is to be medically examined, and the form of medical reports and certificates;
- (d) relating to the conditions of employment of public officers.

Repeals and savings

39. (1) The Public Service Order 1970 is repealed.

(2) Notwithstanding subsection (1), all subsidiary legislation made under the repealed enactment or kept in force by the repealed enactment shall be deemed to have been made under this Act and shall continue in force, so far as it is consistent with this Act, until revoked by regulations made under this Act.

NOTE

- 1. Proclamation No. 4 of 1964.
- 2. Act No. 20 of 1966
- 3. Order No. 24 of 1992

