

PUBLIC SERVICE ACT 2005

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

Enacted by the Parliament of Lesotho

PART I - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Public Service Act 2005 and shall come into operation on such date or dates as the Minister may, by notice published in the Gazette, determine.

Object of the Act

2. The object of this Act is to develop and maintain a stable, efficient and effectively managed public service.

Application

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

Interpretation

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

“**agency**” means any organisation that is statutorily engaged in carrying out Government business;

“**bargaining unit**” means all public officers on Grade H and below;

“**collective bargaining**” means a process of negotiations entered into between a registered public officers’ association and the employer in respect of any matter of mutual interest, with the purpose of reaching a collective bargaining agreement;

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

“Conciliation Board” means a board established under section 17;

“Constitution” means the constitution of Lesotho;

“Council” means the Public Service Joint Advisory Council established under section 23;

“disciplinary action” means a formal or informal action taken by management against a public officer who fails to conform with the rules and regulations governing public officers or has committed any other misconduct;

“dispute of right” means a dispute arising from a breach or contravention of a law, contract of employment or collective bargaining agreement;

“dispute of interest” means a dispute over employment matters to which a public officer or employer does not have an established right;

“employer” means the Government of Lesotho represented by ministries, departments and agencies;

“essential service” means a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population;

“grievance” means a feeling of dissatisfaction or injustice which a public officer encounters in the work place and is formally brought to the attention of the employer;

“Head of Department” means a public officer who is in charge of a department or an agency under his or her supervision or any other public officer designated as such by the Minister;

“Minister” means the Minister responsible for the public service;

“prescribed” means prescribed by the regulations;

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

“public officer” has the meaning assigned to it in the Constitution;

“Public Officers’ Association” means an association that may be formed by public officers under section 22;

“public service” has the meaning assigned to it in the Constitution;

“retrenchment” means the termination of employment arising from a redundancy caused by the re-organisation of a ministry or department or reduction of an establishment for economic or technological and operational reasons;

“strike” means the withdrawal of labour by public officers in furtherance of a workplace dispute;

“Tribunal” means the Public Service Tribunal established under section 20.

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, 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) and the power to terminate appointments of such persons, save the power to discipline and terminate appointments of such officers for disciplinary reasons, is vested in the Commission.

Appointment to the public service

7. (1) Appointment to the public service shall be on -

- (a) permanent and pensionable terms;
- (b) contract terms;
- (c) temporary terms;
- (d) casual labour terms.

(2) Any person who is appointed to the public service after the coming into operation of this Act shall be appointed under any of the appointments set out in sub-section (1), and the conditions of employment made under this Act.

Entry and advancement to be based on merit

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

(2) In selecting candidates for appointment to a post in the public service, the Commission shall have regard primarily to the need for promoting efficiency within the public service.

(3) The Commission shall have the power to reject short listed candidates who, in the view of the Commission, are not qualified for the job.

Secondment to private or parastatal organisation

9. A public officer may, with his or her consent, be seconded to a private or parastatal organisation for a period not exceeding 3 years.

Powers of the Minister

10. (1) Subject to the provisions of the Constitution and of this Act 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 any matter involving the expenditure of public funds) do what, 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 -

- (a) policy on the establishment or abolition of departments, sub-departments or offices, and transfer of functions and public officers from one department to another;
- (b) employment policy and any other policy that relates to human resources, including but not limited to promotions, training and development, public officers' relations, retirements, control and organisation of ministries and departments;
- (c) policy on salary administration, remuneration and benefits, job evaluation and job grading;
- (d) policy for effecting economies and promoting responsiveness and provision of quality services in the public service;
- (e) policy for public service transformation and reforms;
- (f) policy on norms, standards and matters relating to conditions of employment and general welfare of public officers;
- (g) policy determination with regard to code of conduct, performance management, discipline and other career incidents of public officers including any other matter which relates to the promotion of harmonious relationships between the employer, officers, officers' representatives and management within the public service.

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

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

(2) The Government Secretary and the Principal Secretaries shall hold office for a period of three years.

(3) Subsection (2) shall not apply to a contract of the Government Secretary and a Principal Secretary which already exists at the coming into operation of this Act.

(4) The power to exercise disciplinary control over a Principal Secretary shall vest in the Government Secretary and, the power to exercise disciplinary control over the Government Secretary shall vest in the Prime Minister.

(5) The disciplinary power referred to in subsection (4) shall be exercised in accordance with the provisions of the Disciplinary Code and, where dismissal of a Principal Secretary is contemplated, the Government Secretary shall recommend such dismissal to the Prime Minister.

(6) Notwithstanding subsections (4) and (5), the power to remove the Government Secretary and a Principal Secretary from office shall vest in the Prime Minister acting after consultation with the Commission.

Functions of the Government Secretary

12. In addition to the functions vested in the Government Secretary under section 97 of 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) enter into performance agreements with the Principal Secretaries, supervise and monitor their performance; and

have overall responsibility over all public officers.

Functions of the Principal Secretary

13. (1) In addition to the functions vested in the Principal Secretary under section 96 of the Constitution, the Principal Secretary is the chief accounting and overall supervising officer of a Ministry under his or her supervision.

- (2) Without limiting the generality of subsection (1), the Principal Secretary is responsible for –
- (a) setting directions, objectives and appropriate guideline and strategies for the Ministry under the Principal Secretary's supervision, in accordance with the performance agreement entered into with the Government Secretary;
 - (b) annually setting and agreeing with officers under the Principal Secretary's supervision about their individual workplans and to supervise and monitor their performance;
 - (c) assisting in the initiation, formulation and implementation of the policies of the Ministry or Department under the Principal Secretary's supervision;
 - (d) ensuring that the services which the Ministry or Department under the Principal Secretary's supervision provides to the public and to other areas of government are delivered in accordance with the principles and object of this Act;
 - (e) transferring and rotating public officers from one department to another within, and reorganising the Ministry under the Principal's Secretary's supervision.

(3) The Principal Secretary shall exercise the powers under this section subject to the general direction and control of the Minister responsible for the Ministry concerned.

PART II - CONDITIONS OF EMPLOYMENT AND CONDUCT OF PUBLIC OFFICERS

Conditions of employment

14. (1) The conditions of employment for public officers shall be as set out by the Minister.

(2) The Minister may, from time to time revise or amend the conditions of employment, after consultation with such persons or bodies which are in the Minister's opinion representative of the interests concerned.

Codes of practice

15. (1) The Minister may, from time to time and after consultation with such persons or bodies which are in the Minister's opinion representative of the interests concerned -

- (a) prepare and issue, codes of practice for the purpose of providing practical guidance in respect of this Act including the following codes -
 - (i) Code of Conduct which shall be primarily a guide to public officers in the conduct of their relationships and dealings with their employers and the general public;
 - (ii) Grievance Code which shall prescribe the procedure to be followed in handling public officers' grievances;
 - (iii) Disciplinary Code which shall prescribe the procedure to be followed in instituting disciplinary action against a public officer who has committed a misconduct;
 - (iv) Code on Collective Bargaining which shall guide the public officers and registered public officers' associations on how to bargain collectively with the employer on matters of mutual interest without outside interference;
 - (v) Code on Dispute Resolution which shall prescribe the procedure to be followed to resolve any dispute emanating from the work place, and shall not be applicable in the case of Principal Secretary and the Government Secretary; and
 - (vi) Code on Retrenchment which shall prescribe the procedure to be followed when retrenchment is imminent within the public service;

(b) revise any code referred to in paragraph (a).

(2) A code prepared and any alteration proposed to be made on a revision of such a code in pursuance of this section, shall be laid before Parliament, and the Minister shall not issue the code or revised code, until after the code has been passed by Parliament.

(3) The procedure applicable to allowance and disallowance of subordinate legislation under sections 27A and 27B of the Interpretation Act 1977¹, shall apply with modifications and adaptations, to the code or revision of a code referred to in subsection (2).

(4) If Parliament resolves that the codes be not issued or proposed alterations be not made, the Minister shall not issue the code or revised code, but may still lay further codes or proposed alterations before Parliament.

(5) The Minister shall cause a code including a revision of the code passed Parliament under this section to be made available to public officers and the public within 15 days after the date on which the code and the revision of the code were so laid.

(6) Failure on the part of a public officer to follow any provision contained in a Code of Conduct issued under this section shall constitute a misconduct rendering the public officer liable to proceedings and sanctions as set out in the Code of Conduct.

(7) A public officer who is a party in any proceedings under subsection (1) (a)(ii) and (iii) may be represented by another public officer from his or her Ministry or association, if the public officer is a member of an association.

(8) The right to representation under subsection (7) does not include the right to be represented by a legal practitioner

(9) In all criminal and civil proceedings any such code shall be admissible in evidence, and if any provision of such a code appears to the court conducting the proceedings to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.

(10) The Head of Department may, having regard to –

(a) the safety and security of persons or public funds or property;

- (b) the process of investigations; and
- (c) other circumstances,

suspend a public officer, on full pay, pending a disciplinary enquiry.

(11) Notwithstanding subsection (6), a public officer who has been convicted of a criminal offence shall be summarily dismissed from the public service on the basis of that conviction.

PART III – SETTLEMENT OF DISPUTES

Legal Representation

16. In any proceedings under this Part, a party to the dispute may be represented by a legal practitioner.

Conciliation Board

17. (1) There shall be a Conciliation Board which shall conciliate disputes of interest.

(2) The Commission shall nominate one of its members to constitute the Conciliation Board.

(3) Where the Commission is a party to a dispute, the Minister shall assign a person to constitute the Conciliation Board.

(4) The decision of the Conciliation Board shall not be binding on the parties.

Arbitration

18. (1) Disputes of right may be resolved by arbitration.

(2) A matter involving a dispute of right shall not be referred to arbitration unless the parties involved have agreed.

(3) All disputes involving essential services shall be resolved by arbitration unless the parties agree otherwise.

(4) The decision of the arbitration shall be final and binding on the parties, but reviewable in the courts of law.

Strike

19. (1) Public officers shall not engage in a strike.

(2) A public officer who contravenes subsection (1) shall be dealt with in accordance with the Disciplinary Code.

Public Service Tribunal

20. (1) There shall be a Public Service Tribunal which shall deal with appeals instigated by either a public officer, registered public officers' association, or employer arising from a grievance and disciplinary action.

(2) The Tribunal shall consist of -

(a) a chairperson who shall be a legal practitioner of not less than 5 years standing and shall be appointed by the Judicial Service Commission after consultation with the Minister; and

(b) two other members, one of whom shall have experience of not less than 10 years in administration and public affairs appointed by the Commission after consultation with the Minister, and the other shall have experience in human resource management and shall be appointed by the Minister.

(3) The Minister shall cause the names of members of the Tribunal to be published in the Gazette.

(4) A member of the Tribunal shall hold office for a term not exceeding five years.

(5) Two members of the Tribunal shall form a quorum.

(6) At a meeting of the Tribunal the chairperson shall have a deliberate vote, and in the case of an equality of votes shall also have a casting vote.

(7) The Tribunal shall -

- (a) regulate its own procedure; and
- (b) in the absence of the chairperson, appoint one of its members to act as chairperson.

(8) The Tribunal shall have a secretariat whose officers shall be in the public service.

(9) Members of the Tribunal shall receive such sitting allowance as the Minister may, after consultation with the Minister responsible for finance, determine.

PART IV - PUBLIC SERVICE STAFF ASSOCIATION

Freedom of Association

21. Public officers shall be entitled to freedom of association in accordance with section 16(1) of the Constitution.

Public officers' associations

22. (1) In pursuance of section 21, public officers may form a public officers' association under the provisions of the Societies Act 1966² for the purpose of collective bargaining and ethical conduct of its members.

(2) An association which is representative of over 50% of the general body of public officers from within the bargaining unit may apply to the Minister for recognition for purposes of collective bargaining.

Public Service Joint Advisory Council

23. (1) The Minister, if satisfied that an association which has applied under section 22(2) is representative of over 50% of the general body of the public officers from within the bargaining unit, shall establish a council to be known as the Public Service Joint Advisory Council.

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

(3) The Minister shall appoint a chairperson from among members of the Council.

Rules of the Council

24. (1) The Minister shall prescribe rules –
- (a) for the qualifications of the members;
 - (b) for the organisation, procedure and conduct of business of the Council;
 - (c) for a quorum at meetings of the Council;
 - (d) for the tenure of office of members;
 - (e) for the establishment and functioning of committees that may be established by the Council;
 - (f) for the procedure to be followed if a dispute arises between the members appointed by the Minister and the members appointed by a registered association; and
 - (g) for the termination of membership of the Council.
- (2) The Minister shall cause the rules to be published in the Gazette.

Functions of the Council

25. (1) The objects of the Council are -
- (a) to develop proposals for submission to the Minister on policy and legislation that may affect the public service;
 - (b) to secure cooperation between the employer and the general body of public officers in matters affecting the public service with a view to increase efficiency in the public service combined with the well-being of public officers;
 - (c) to conclude and enforce collective bargaining agreements;

- (d) to prevent and resolve disputes;
- (e) to provide machinery for dealing with general grievances; and
- (f) 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 shall 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.

PART V - RETIREMENT OF PUBLIC OFFICERS

Retirement

26. (1) A public officer shall retire from the public service, and shall be so retired, on attaining the age of 60 years.

(2) A public officer may, by written notice to the Principal Secretary of his or her Ministry, voluntarily retire from the public service on attaining the age of 50 years.

(3) Where notification is given under subsection (2), officers on Grade I and above shall give 3 calendar months' notice prior to the intended day of retirement. Officers on Grade H and below shall give one calendar month.

(4) Notwithstanding subsection (1) and (2), a public officer already employed in the Public Service on the coming into force of this Act shall, within a period and in a manner to be prescribed by the Minister –

- (a) elect to voluntarily retire from the Public Service on attaining the age of 45 or 50 years; or
- (b) elect to retire on attaining the age of 55 or 60 years.

(5) Other circumstances for retirement or termination of employment shall be as prescribed by the Minister in the conditions of employment.

(6) Notwithstanding subsection (1), the Commission may, having regard to the conditions of the public service and after consultation with the Minister and the officer concerned, retire an officer from the public service before or after the public officer attains the age of 45 or 50 years.

(7) A public officer is liable to retirement at the discretion of the Commission: -

- (a) for medically proven incapacity to perform the duties of the officer's office; or
- (b) for the purpose of facilitating improvements in the public service by which greater efficiency or economy may be effected.

PART VI - MISCELLANEOUS

Staff of the Commission

27. (1) The Commission shall have such qualified staff as to allow it to effectively carry out its functions.

(2) The staff of the Commission shall be employed in accordance with this Act.

Annual Report of the Commission

28. (1) The Commission shall as soon as practicable after the 31st day of December each year, prepare a report on its work for that year.

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

Regulations

29. The Minister may make Regulations for the general management of the public service.

Non-Application of Labour Code

30. The Labour Code Order 1992³ shall not apply to public officers.

Repeals and savings

31. (1) The Public Service Act 1995⁴ is repealed.

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

NOTE

¹ . Act No. 17 of 1977 as amended by Act No.4 of 1993

² . Act No.20 of 1966

³ . Order No. 24 of 1992

⁴ . Act No.13 of 1995