



GOVERNMENT GAZETTE
OF THE
REPUBLIC OF NAMIBIA

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No. 123

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 92

1990

**PROMULGATION OF ACT OF
THE NATIONAL ASSEMBLY**

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 24 of 1990: Public Service Amendment Act, 1990.

EXPLANATORY NOTE:

_____ Words underlined with solid line indicate insertions proposed.

[] Words in bold type in square brackets indicate omissions proposed.

ACT

To amend the Public Service Act, 1980 (Act 2 of 1980), so as to define certain expressions; to alter the designation of departments to that of ministries; to make provision for the designation of organizational components as public offices; to designate the chief executive officers of ministries and public offices; to provide that in the appointment or promotion of persons in the public service a policy of affirmative action as contemplated in the Namibian Constitution may be implemented; and to provide for matters incidental thereto.

(Signed by the President on 06 December 1990)

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Amendment of section 1 of Act 2 of 1980, as amended by section 1 of Proclamation AG 39 of 1984 and section 11 of Act 2 of 1990.

1. Section 1 of the Public Service Act, 1980 (hereinafter referred to as the principal Act), is hereby amended -

(a) by the insertion before the definition of "Commission" of the following definition:

"'chief executive officer' in relation to a ministry or public office, means the officer who occupies such office as designated by the name specified in the second column of the First Schedule or of the Second Schedule, as the case may be;";

(b) by the deletion of the definition of "department";

(c) by the deletion of the definition of "head";

- (d) by the insertion, before the definition of "misconduct", of the following definition:

"'ministry' means any ministry established under Article 32(3)(g) of the Namibian Constitution and includes the Office of the President and the Office of the Prime Minister;"

- (e) by the substitution for the definition of "officer" of the following definition:

"'officer' means any person -

- (a) appointed permanently, notwithstanding that such appointment may be on probation, to a post of a class to be held by an officer in terms of section 2(2); or
- (b) retained in employment additional to the fixed establishment in accordance with a recommendation made in terms of section 6(2)(e),

and includes the Secretary to the Cabinet appointed under Article 43 of the Namibian Constitution;"; and

- (f) by the insertion, after the definition of "prescribed", of the following definition:

"'public office' means an organizational component mentioned in the first column of the Second Schedule;"

Amendment of section 2 of Act 2 of 1980 as amended by section 2 of Proclamation AG 39 of 1984.

2. Section 2 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The [Administrator-General] President may from time to time, after the Commission has made a recommendation, by notice in the [Official] Gazette exclude from or include in the [government] public service the holders of such classes of posts in any [department] ministry or public office as may be specified in such notice."

Amendment of section 3
of Act 2 of 1980.

3. Section 3 of the principal Act is hereby amended -

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

“(1) The designation of the chief executive officer of a ministry or public office shall be the designation specified in column 2 of the First Schedule or the Second Schedule, as the case may be, opposite the ministry or public office concerned.”; and

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

“(2) The President may by proclamation in the Gazette -

- (a) vary the designation of the chief executive officer of any ministry or public office; or

- (b) insert the designation of the chief executive officer of -

- (i) any other ministry established under Article 32(3)(g) of the Namibian Constitution; or

- (ii) any other organizational component which the President may determine to be a public office for the purposes of this Act.”; and

- (c) by the deletion of subsection (3).

Amendment of section 6
of Act 2 of 1980 as
amended by section 5 of
Proclamation AG 39 of
1984, section 6 of Pro-
clamation AG 56 of 1989
and section 11 of Act 2 of
1990.

4. Section 6 of the principal Act is hereby amended -

- (a) by the substitution for subparagraph (ii) of paragraph (a) of subsection (1), of the following subparagraph:

“(ii) at the request of the [Administrator-General] Cabinet to make recommendations to [him] it concerning any matter

which [he] it may refer to the Commission whether such matter concerns the [government] public service or not.”

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

“(a) as to the establishment or abolition of divisions of ministries or public offices, the transfer of functions from one division to another division in the same ministry or public office or in any other ministry or public office or from a ministry or public office to any other body or from any other body to a ministry or public office;”;

- (c) by the insertion after paragraph (a) of subsection (2) of the following paragraph:

“(aA) as to the designation of divisions established in accordance with paragraph (a); and

- (d) by the substitution for paragraph (b) of subsection (2) of the following paragraph -

“(b) as to the control, organization and re-adjustment of [**any departments or subdivisions thereof**] the divisions of ministries and public offices;”;

Amendment of section 7 of Act 2 of 1980, as amended by section 6 of Proclamation AG 39 of 1984.

5. Section 7 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) At least fourteen days before rejecting or varying any recommendation of the Commission under subsection (1)(a), the [**Administrator-General**] Cabinet shall convey to the Commission the facts by reason of which [he] it intends rejecting or varying the recommendation and shall request the Commission to furnish [him] it with [its] the Commission's comments in regard to the proposed rejection or variation.”.

Amendment of section 8 of Act 2 of 1980, as amended by section 11 of Act 2 of 1990.

6. Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Commission shall have power to inspect [**departments**] any ministry or public office, to have access to such official documents and records, and to obtain all such information from [**heads of departments**] any chief executive officer and other officers or employees or other persons employed by [**departments**] a ministry or public office as in its opinion may be necessary for the exercise of its powers, the performance of its functions and the carrying out of its duties under this Act or under any other law.”.

Amendment of section 10 of Act 2 of 1980 as amended by section 7 of Proclamation AG 39 of 1984.

7. Section 10 of the principal Act is hereby amended -

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

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

- (a) no person who qualifies for the appointment, promotion or transfer concerned shall be favoured or prejudiced;
- (b) only the qualifications, level of training, relative merit, efficiency and suitability of the persons being considered for appointment, promotion or transfer shall be taken into account;
- (c) due regard shall, in the case of any such post designated by the Cabinet on the recommendation of the Commission, at any educational institution established or maintained under the National Education Act, 1980 (Act 30 of 1980), be had to the recommendation of the school committee or advisory board established for that educational institution under the said Act.”.

(b) by the substitution for subsection (4) of the following subsection -

“(1) Subject to the provisions of this Act, any officer or employee shall, whenever the public interest so requires, be liable to be transferred from the post or appointment held by him or her to any other post or appointment in the same or any other [department] ministry or public office whether or not such other post or appointment is of a lower or higher grade, or whether such post or appointment, is within or outside [the territory of South West Africa] Namibia: Provided that -”; and

(b) by the deletion of subsection (4).

Amendment of section 14 of Act 2 of 1980, as amended by section 1 of Act 23 of 1982, and section 2 of Act 17 of 1987.

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

(a) by the insertion after subsection (1) of the following subsection:

“(1A) For the purposes of subsection (1), the officer who holds the office of Secretary to the Cabinet shall be deemed to occupy the office of a chief executive officer of a ministry.”; and

(b) by the substitution for subsection (7) of the following subsection:

“(7) The power to retire or discharge an officer or employee under this section shall be vested in the [Administrator-General] Cabinet or the holder of any post in any [department] ministry or public office to whom [he] the Cabinet has delegated any such power and shall, in the case of any officer, be exercised only on the recommendation of the Commission.”.

Amendment of section 15 of Act 2 of 1980, as amended by section 1 of Proclamation AG 10 of 1981, section 54 of Act 13 of 1981 and section 9 of Proclamation AG 39 of 1984.

12. Section 15 of the principal Act is hereby amended by the substitution for subsection 1 of the following subsection:

“(1) If, in the opinion of the [head of the department] chief executive officer of the ministry or public office in which any officer (other than a member of the [South West African] Namibian Police Force or the Prison Service) holds any post, or of any person designated to inspect such [department] ministry or public office, such officer is unfit

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

(b) by the substitution for subsection (4) of the following subsection -

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

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

(b) without any prior notice, if his or her conduct is unsatisfactory.”.

Amendment of section 13
of Act 2 of 1980.

10. Section 13 of the principal Act is hereby amended -

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

“(1) Subject to the provisions of this Act, any officer or employee shall, whenever the public interest so requires, be liable to be transferred from the post or appointment held by him or her to any other post or appointment in the same or any other [department] ministry or public office whether or not such other post or appointment is of a lower or higher grade, or whether such post or appointment, is within or outside [the territory of South West Africa] Namibia: Provided that -”; and

(b) by the deletion of subsection (4).

Amendment of section 14 of Act 2 of 1980, as amended by section 1 of Act 23 of 1982, and section 2 of Act 17 of 1987.

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

(a) by the insertion after subsection (1) of the following subsection:

“(1A) For the purposes of subsection (1), the officer who holds the office of Secretary to the Cabinet shall be deemed to occupy the office of a chief executive officer of a ministry.”; and

(b) by the substitution for subsection (7) of the following subsection:

“(7) The power to retire or discharge an officer or employee under this section shall be vested in the [Administrator-General] Cabinet or the holder of any post in any [department] ministry or public office to whom [he] the Cabinet has delegated any such power and shall, in the case of any officer, be exercised only on the recommendation of the Commission.”.

Amendment of section 15 of Act 2 of 1980, as amended by section 1 of Proclamation AG 10 of 1981, section 54 of Act 13 of 1981 and section 9 of Proclamation AG 39 of 1984.

12. Section 15 of the principal Act is hereby amended by the substitution for subsection 1 of the following subsection:

“(1) If, in the opinion of the [head of the department] chief executive officer of the ministry or public office in which any officer (other than a member of the [South West African] Namibian Police Force or the Prison Service) holds any post, or of any person designated to inspect such [department] ministry or public office, such officer is unfit

Substitution of section 26 of Act 2 of 1980.

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

"Assignment of other functions to officers and employees.

26. The Minister responsible for the ministry or public office or the chief executive officer or the head of any division of a ministry or public office may direct any officer or employee under his or her control temporarily to perform duties other than those ordinarily assigned to such an officer or employee or appropriate to the grade, designation or classification of his or her post, and such officer or employee shall comply with such a direction."

Amendment of section 27 of Act 2 of 1980.

18. Section 27 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (1).

Amendment of section 28 of Act 2 of 1980, as amended by section 3 of Act 13 of 1982, section 13 of Proclamation AG 39 of 1984 and section 1 of Act 8 of 1986.

19. Section 28 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The [Administrator-General] President may, after the Commission has made a recommendation, make regulations as to -"

Substitution of section 31 of Act 2 of 1980, as amended by section 14 of Proclamation 39 of 1984.

20. The following section is hereby substituted for section 31 of the Act:

"Application of Act.

31. [1] Subject to the provisions of section 2, the provisions of this Act shall apply to or in respect of all officers and employees whether employed in or outside [the territory of South West Africa] Namibia.

[(3)](2) The provisions of this Act which do not exclude persons in the employment of the [South West African] Namibian Police Force or the Prison Service shall apply to or in respect of such persons only to the extent that they are not in conflict with the laws governing their employment."

Substitution and deletion of certain words in Act 2 of 1980.

21. The principal Act is hereby amended -

(a) by the substitution for the word "department", wherever it occurs, of the words "ministry or public office";

- (b) by the substitution for the words "head of department", "head of a department", "head of his department" or "head of any department", wherever they occur, of the words "chief executive officer";
- (c) by the substitution for the words "Administrator-General" wherever they occur, of the word "Cabinet";
- (d) by the substitution for the words "subdivision" and "subdivisions", wherever they occur, of the words "division" and "divisions", respectively;
- (e) by the substitution for the words "government service", wherever they occur, of the words "public service"; and
- (f) by the deletion of the words "or executive authority of a representative authority" wherever they occur.

Construction of certain references in other laws.

22. Any reference in any other law -

- (a) to a department shall be construed as a reference to the corresponding ministry or public office, as the case may be;
- (b) to the head of a department shall be construed as a reference to the chief executive officer of the corresponding ministry or public office, as the case may be;
- (c) to a secretary of a department shall be construed as a reference to the chief executive officer of the corresponding ministry or public office, with the designation specified in column 2 of the First Schedule or the Second Schedule to the principal Act, as the case may be; and
- (d) to the government service shall be construed as a reference to the public service.

Substitution of the Schedule to Act 2 of 1980.

23. The following schedules are hereby substituted for the Schedule to the Act: