



Republic of Namibia
Annotated Statutes

Public Service Commission Act 2 of 1990

(GG 27)

came into force on date of publication: 8 June 1990

as amended by

Public Service Act 13 of 1995 (GG 1121)

brought into force on 1 November 1995 by GN 210/1995 (GG 1185)

ACT

To provide for the establishment of a Public Service Commission in pursuance of the provisions of Chapter 13 of the Namibian Constitution; the powers, functions and duties of the Commission; tenure of office, remuneration and other conditions of service of members of the Commission; the removal from office of and the vacation of office by, those members; the exercising, performance and delegation of the powers and functions of the Commission; the appointment and duties of staff of the Commission; and matters incidental thereto.

(Signed by the President on 5 June 1990)

EXPLANATORY NOTE:

_____ Words underlined with solid line indicate insertions proposed.

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

ARRANGEMENT OF SECTIONS

1. Definitions
2. Establishment, constitution and members of Commission
3. Conditions of service of members
4. Discharge and vacation of office of members
5. Quorum and meetings of Commission

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6. Powers, functions and duties of Commission
7. Commission's power of inquiry
8. Delegation of powers and functions of Commission
9. **[deleted]**
10. Reports of Commission
11. Amendment of Public Service Act
12. Short title

SCHEDULE

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

[Act 13 of 1995 amends this Act by the substitution of the expression "Public Service Act" for the expression "Government Service Act" wherever it occurs, and by the substitution of the term "staff member" for the words "employee" and "official" wherever they occur. These changes have not been individually noted except where they create anomalies.]

Definitions

1. In this Act, unless the context otherwise indicates -

"Commission" means the Public Service Commission established in pursuance of the provisions of Article 112 of the Namibian Constitution, by section 2(1) and, in relation to any power, function or duty conferred upon, assigned to or imposed upon the Commission under this Act or the Public Service Act or any other law, includes any member or members of the Commission or any staff member or staff members to whom the exercise of such power, the performance of such function or the carrying out of such duty has been delegated by the Commission in terms of section 8(1);

[definitions of "employee", "officer" and "Government Service Act" deleted by Act 13 of 1995; these definitions appeared in the original Act in the order listed here rather than in alphabetical order]

"Public Service Act" means the Public Service Act, 1994;

[The definition of "Public Service Act" is inserted by Act 13 of 1995. The Public Service Act referred to must be the Public Service Act 13 of 1995. There is no Public Service Act, 1994.]

"staff member" means a staff member as defined in section 1(1) of the Public Service Act, 1994.

[The definition of "Public Service Act" is inserted by Act 13 of 1995. The Public Service Act referred to must be the Public Service Act 13 of 1995. There is no Public Service Act, 1994.]

Establishment, constitution and members of Commission

2. (1) There shall be an independent and impartial commission to be known as the Public Service Commission, with such powers, functions and duties as are provided under this Act or any other law.

- (2) The Commission shall consist of a chairman and of not more than six and not less than three other persons nominated by the President and appointed by the National Assembly by resolution.

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(3) Every member appointed in terms of subsection (2) shall be entitled to hold office as such member for a period of five years, but shall on the expiry of his or her period of office be eligible for re-appointment.

Conditions of service of members

3. (1) (a) Subject to the provisions of this Act, the President shall determine the salaries and other conditions of service of the chairman and other members of the Commission.

(b) The salary payable to the chairman or any other member shall not be reduced except by an Act of Parliament.

(2) A member of the Commission shall not without the consent of the President perform or engage himself or herself to perform any remunerative work outside the duties of his or her office.

(3) If an staff member is appointed to the Commission -

(a) the period of his or her service as such member (as well as his or her service as a member of the former Government Service Commission) shall be reckoned as part of and continuous with his or her employment in the public service for the purpose of leave and pension and any other condition of service, and the provisions of any pension law applicable to him or her as such staff member or, after his or her death, to his or her dependants, and which are not in conflict with the provisions of this Act, shall *mutatis mutandis* continue to apply; and

(b) such member shall retain the same right to vacate his or her office and to retire as he or she would have had on the attainment of an age prescribed by the Public Service Act or any other law or on any later date on which he or she desires to do so had he or she remained in the public service.

[Subsection (3) is amended by Act 13 of 1995 by the substitution of the expression "staff member" for the expressions "employee" and "officer" wherever they occur. In this provision, this amendment would technically result in the phrases "If an staff member or staff member is appointed" and "such staff member or staff member". However, the amendment has been applied here to create the phrases "If an staff member is appointed" and "such staff member", which is clearly what was intended. The word "an" should now be "a".]

Discharge and vacation of office of members

4. (1) (a) The President may, subject to the provisions of paragraphs (c), (d) and (e), remove a member of the Commission from office -

(i) on account of continued ill-health;

(ii) on account of misconduct;

(iii) on account of unfitness for the duties of his or her office or incapacity to carry them out efficiently;

(iv) if, for reasons other than his or her own unfitness or incapacity, his or her removal from office will promote efficiency.

(b) The President may require a member of the Commission to absent himself or herself temporarily from his or her duties in order to afford the President the

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opportunity to consider the possible removal of such member from office in terms of paragraph (a).

- (c) The President shall, if for any of the reasons set out in paragraph (a) the President decides to remove such member from office, communicate such decision and the reason for doing so by message to the National Assembly within 14 days after the decision, if the National Assembly is then in session or, if the National Assembly is not then in session, on the first day of its next ensuing session.
 - (d) If, within 21 days from the date on which the aforesaid decision and the reason therefor have been so communicated to the National Assembly, the President is presented with an address from the National Assembly praying for the removal of the member from office for any reason referred to in paragraph (c), the President may remove such member from office with effect from the date such address is presented to the President.
 - (e) If, within the period referred to in paragraph (d), no such address is presented to the President, the member shall be restored to office.
- (2) (a) The President may allow a member of the Commission at his or her request to vacate his or her office -
- (i) on account of continued ill-health; or
 - (ii) for any other reason which the President may deem sufficient.
- (b) If a member referred to in section 3(3) -
- (i) is allowed to vacate his or her office in terms of paragraph (a)(i), it shall be deemed that his or her services have been terminated on the grounds of ill-health and such member shall be entitled to such pension as he or she would under the pension law applicable to him or her have been entitled to if his or her services had been terminated on the ground of ill-health without the member being instrumental in causing his or her own ill-health; or
 - (ii) is allowed to vacate his or her office in terms of paragraph (a)(ii), such member shall be deemed to have vacated his or her office in terms of subsection (1)(a)(iv) or to have been retired in terms of section 24(3)(a) of the Public Service Act, as the President may direct, and such member shall be entitled to such pension as he or she would under the pension law applicable to him or her have been entitled to if he or she had so vacated his or her office or had been so retired.

[subparagraph (ii) amended by Act 13 of 1995]

[This subsection is incorrectly labelled as "2." rather than "(2)" in the *Government Gazette*; this obvious error has been corrected here to avoid confusion.]

- (3) A member of the Commission who -
 - (a) immediately prior to his or her appointment as such a member was a staff member in the public service;
 - (b) at the expiry of his or her period of office as a member of the Commission is not re-appointed thereto; and

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- (c) at that expiry date has not reached the age at which he or she would in terms of the Public Service Act have had the right to retire and would have been compelled to retire if he or she had not been appointed as a member of the Commission,

shall have the right to retire, or may be required by the President to retire, and if such member so retires or is so required to retire, he or she shall be entitled to such pension as he or she would under the pension law applicable to him or her have been entitled to, if he or she had been compelled to retire from the public service owing to the abolition of his or her post.

(4) If a member of the Commission who immediately prior to his or her appointment as such a member was an staff member in the public service, is appointed under an Act of Parliament and with his or her consent to an office to which the provisions of this Act or the Public Service Act do not apply, such member shall as from the date on which he or she is so appointed, cease to be a member of the Commission, and if at that date such member has not reached the age at which he or she would in terms of the Public Service Act have had the right to retire, he or she shall be deemed to have retired on that date and such member shall, subject to the said provisions, be entitled to such pension as he or she would under the pension law applicable to him or her have been entitled to, had he or she been compelled to retire from the public service owing to the abolition of his or her post.

[Subsection (4) is amended by Act 13 of 1995 by the substitution of the expression "staff member" for the expressions "employee" and "officer" wherever they occur. In this provision, this amendment would technically result in the phrase "an staff member or staff member in the public service". However, the amendment has been applied to create the phrase "an staff member in the public service", which is clearly what was intended. The word "an" should now be "a".]

(5) A member of the Commission who retires or is retired in terms of this section shall be deemed for the purposes of section 16(1)(o)(i) of the Income Tax Act, 1981, to have attained the qualifying ages referred to therein.

Quorum and meetings of Commission

5. (1) The majority of the members of the Commission shall constitute a quorum for any meeting of the Commission.

(2) The decision of a majority of the members present at any meeting of the Commission shall be the decision of the Commission.

(3) In the event of an equality of votes on any matter considered by the Commission at a meeting thereof, the chairman shall have a casting vote in addition to his or her deliberative vote.

Powers, functions and duties of Commission

6. (1) The Commission may exercise the powers and perform the functions and shall carry out the duties expressly mentioned in this Act and the Public Service Act, as well as the functions entrusted to it and the duties imposed upon it under a provision of this Act or the Public Service Act or under any other law.

(2) The President may delegate to the Commission such powers, functions and duties as are under any law conferred upon, entrusted to or imposed upon a Minister in respect of the employment, remuneration and other conditions of service, in general, of persons in the employment of councils, boards, institutions or other bodies which are not Ministries and Government departments as referred to in Article 40 or, Regional or Local Authorities about to be established in pursuance of Chapter 12, of the Namibian Constitution.

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- (3) (a) The Commission may advise -
- (i) the President and the Government on any matter in relation to -
 - (aa) the appointment of suitable persons to specified categories of employment in the public service, with special regard to the balanced structuring thereof;
 - (bb) the exercise of adequate disciplinary control over such persons in order to assure the fair administration of personnel policy;
 - (cc) the remuneration and the retirement benefits of any such persons;
 - (dd) all other matters which by law pertain to the public service;
 - (ee) in general, the employment, remuneration or other conditions of service of functionaries whose remuneration or allowances derive wholly or partially from money appropriated by law, or persons employed in terms of any law other than the Public Service Act, or the employment of staff or the remuneration and other conditions of service of the staff or the office-bearers of councils, boards, institutions or other bodies referred to in subsection (2), or in relation to any matter in respect of such functionaries, persons, councils, boards, institutions or bodies in respect of which any power, function or duty has under any law been conferred upon, entrusted to or imposed upon the President or any Minister and which the President or such Minister may refer to the Commission;
 - (ii) the President on the identity, availability and suitability of persons to be appointed by the President to offices in terms of the Namibian Constitution or any other law.
- (b) If a matter referred to in paragraph (a)(i)(ee) has been referred to the Commission in terms of that paragraph, the Commission, or the staff member or staff members designated for that purpose, shall have the power to inspect all such official documents and records and to obtain all such information from the functionary concerned, or of the executive head of the council, board, institution or body concerned, as in its or his or her opinion may be necessary to inspect or to obtain in order to advise the President or the Minister concerned.

[paragraph (b) amended by Act 13 of 1995]

- (4) (a) The Commission may, at the request of any Minister, or if circumstances otherwise require, establish committees to assist and advise the Commission on any matter in the exercise of its functions and the performance of its duties requiring special or expert knowledge, and may for that purpose appoint in addition to any of its members, such other persons as it may deem fit to be members of such committee: Provided that the Commission may from time to time appoint not more than three additional members to any such committee for a particular purpose on the ground of their special or expert knowledge of the matter for the purpose of which they are appointed;

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- (b) A member of any such committee for a particular purpose shall hold such appointment until the matter for the purpose of which such member was appointed has been disposed of by the committee.

(5) The Commission shall exercise such other powers, perform such other functions and carry out such other duties as may be conferred upon, entrusted to or imposed upon it by the President for the promotion of efficient administration, and which are not inconsistent with the provisions of this Act or any other law.

[The word "exercise" is misspelt in the *Government Gazette*, as reproduced above.]

Commission's power of inquiry

7. (1) The Commission may -

- (a) summon any person who in the opinion of the Commission may be able to give material information concerning the subject of any inquiry held by it in terms of section 8 (2), or who it 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 upon the subject of the inquiry, to appear before it at the time and place specified in the summons, to be questioned or to produce that book, document or object, and the Commission may keep any book, document or object thus produced, for the duration of the inquiry;
- (b) call and administer an oath to or accept an affirmation from any person present at the inquiry who was or might have been summoned in terms of paragraph (a), and may question such person and require 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 Commission suspects or believes to have a bearing upon the subject of the inquiry.

(2) A summons of a person to appear before the Commission or to produce a book, document or object, shall be in the form which has been prescribed by the Commission, shall be signed by the chairman of the Commission or by the person or one of the persons designated under section 8(2), and shall be served in the manner determined by the Commission from time to time.

- (3) (a) If any person, having been summoned under subsection (1)(a), fails, without sufficient cause, to attend at the time and place specified in the summons or to remain in attendance until excused by the Commission from further attendance, or if any person called in terms of subsection (1)(b), refuses to be sworn or to affirm as a witness, or fails without sufficient cause 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 liable on conviction to a fine not exceeding R1 000.
- (b) In connection with the questioning of any such person by or the production of such book, document or object before the Commission, the law relating to privilege, as applicable to a witness summoned to give evidence or to produce any book, document or object before a court of law, shall apply.

(4) Any person who, after having been sworn or after having been affirmed as a witness, gives a false answer to any question lawfully put to him or her by the Commission, or makes a false statement on any matter, knowing that answer or statement to be false, shall be

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guilty of an offence and liable on conviction to the punishment prescribed by law for the crime of perjury.

(5) Any person who hinders or prevents any other person from obeying any summons issued under subsection (1)(a), or from giving any evidence or producing any book, document or object which such other person may be required to give or produce, shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000.

(6) Any person who holds an inquiry in pursuance of a delegation under section 8(1)(a) or holds an inquiry in pursuance of a designation under section 8(2) of this Act, shall, for the purpose of the inquiry, have all the powers conferred upon the Commission by this section, and in the application of the provisions of this section to any such an inquiry, every reference therein to the Commission shall be construed as including a reference to such person.

[subsection (6) amended by Act 13 of 1995;
not all of the changes are indicated by amendment markings]

Delegation of powers and functions of Commission

8. (1) The Commission may, subject to the conditions determined by it, delegate any power conferred upon it or any function entrusted to it under this Act or the Public Service Act or any other law, except the powers conferred upon it by this subsection or section 6(3)(a) or 10(1) of this Act, or by section 17(2), 18(1) or 26(15)(b) of the Public Service Act, under a general or special delegation to -

- (a) one or more of its members; or
- (b) a staff member or staff members.

[subsection (1) amended by Act 13 of 1995;
not all of the changes are indicated by amendment markings]

(2) The Commission may designate one or more of its members or may request that a staff member or staff members be provided to conduct an inquiry into any matter in respect of which in terms of this Act or the Public Service Act or any other law it may make a recommendation or give advice and may at any time withdraw or amend such designation or request.

[subsection (2) amended by Act 13 of 1995]

(3) The Commission shall not be divested of any power or function which it may have delegated in terms of subsection (2) and it may at any time withdraw or amend any decision given.

9.

[section 9 deleted by Act 13 of 1995]

Reports of Commission

10. (1) The Commission shall as soon as possible after 31 March in each year compile a report on matters dealt with by the Commission during the year that ended on that day, and also from time to time such special reports as the Commission may deem desirable.

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[subsection (1) amended by Act 13 of 1995]

(2) Every report compiled by the Commission in pursuance of the provisions of subsection (1), shall be transmitted to the Minister charged with personnel affairs in the public service and shall be laid by such Minister upon the Table of the National Assembly within 14 days after such Minister has received it if the National Assembly is then in session, or if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session.

Amendment of Public Service Act

11. The provisions of the Public Service Act are hereby repealed or amended to the extent set out in the second column of the Schedule.

[This provision as amended could give rise to some confusion.

Act 13 of 1995 amends this Act by the substitution of the expression “Public Service Act” for the expression “Government Service Act” wherever it occurs. This section previously referred to “Amendment of the Government Service Act”, and so now refers to “Amendment of the Public Service Act”.

However, there were two laws which were called the “Public Service Act”.

(1) Public Service Act 2 of 1980: The Government Service Act 2 of 1980 was renamed the Public Service Act 2 of 1980 by the amendments contained in the Schedule of this Act.

(2) Public Service Act 13 of 1995: The Public Service Act 13 of 1995 repeals the Public Service Act 2 of 1980 and amends this Act.

Act 13 of 1995 amends section 1 of this Act to define “Public Service Act” as “the Public Service Act, 1994”. This definition is in error and must have been meant to refer to the Public Service Act 13 of 1995. If the corrected definition is applied to this section, it would mean that the “Public Service Act” referred to in this section is the Public Service Act 13 of 1995. But the Public Service Act referred to in this section can only be the former Public Service Act 2 of 1980, previously known as the Government Service Act 2 of 1980. Act 13 of 1995 repealed the Government Service Act 2 of 1980, meaning that this section is now irrelevant.]

Short title

12. This Act shall be called the Public Service Commission Act, 1990.

SCHEDULE

PROVISIONS OF THE PUBLIC SERVICE ACT REPEALED OR AMENDED

(Section 11)

[The same confusion noted in respect of section 11 applies to this Schedule. Act 13 of 1995 repealed the Public Service Act 2 of 1980, thus making this Schedule irrelevant.]

Provision	Extent of repeal or amendment
Section 1	The substitution in subsection (1) for the definition of “Commission” of the following definition: “ ‘Commission’ means the Commission as defined in section 1 of the <u>Public Service Commission Act, 1990</u> ;”.
Sections 4 and 5	The repeal of the whole.

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Section 6 The deletion of subsection (3) (e) and (f) and subsection (4).

Section 8 (a) The deletion of subsections (2), (3), (4), (5) and (6);

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

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

Section 29 The repeal of the whole.

Section 34 The substitution for section 34 of the following section:

“Short title

34. [(1)] This Act shall be called the [Government] Public Service Act, 1980 [, and shall, subject to the provisions of subsections (2) and (3), come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

(3) The provisions of this Act brought into operation in accordance with subsection (1) or (2), may so be brought into operation -

(a) in respect of different classes of persons, officers or employees; or

(b) to such extent as may be stated in the proclamation concerned].”