

REPUBLIC OF SOUTH AFRICA

PUBLIC ADMINISTRATION MANAGEMENT AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory
summary of Bill and prior notice of its introduction published in Government Gazette
No. of) (The English text is the official text of the Bill)*

(MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION)

[B—2023]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments

_____ Words underlined with a solid line indicate insertions in existing enactments

BILL

To amend the Public Administration Management Act, 2014, so as to further provide for the transfer and secondment of employees; to provide clarification regarding the prohibition against employees conducting business with organs of state; to provide for the National School of Government to be constituted as a national department; to provide for the removal of employment disparities across the public administration; to provide for the co-ordination of the mandating process for collective bargaining in the public administration; to amend the Schedule so as to effect certain consequential amendments; and to provide for matters connected therewith.

Amendment of section 1 of Act 11 of 2014

1. Section 1 of the Public Administration Management Act, 2014 (Act No. 11 of 2014) (hereinafter referred to as the principal Act), is hereby amended by—

(a) the insertion after the definition of “family member” of the following definition:

“ **‘head of institution’** means—

- (a) in the case of a national or provincial department or government component, the head of department as defined in section 1 of the Public Service Act; or
- (b) in the case of a municipality, the municipal manager as defined in section 1 of the Municipal Systems Act;”;

(b) the insertion after the definition of “institution” of the following definition:

“ ‘Labour Relations Act’ means the Labour Relations Act, 1995 (Act No. 66 of 1995);”;

(c) the insertion after the definition of “Municipal Council” of the following definition:

“ ‘Municipal Systems Act’ means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);”;

(d) the insertion after the definition of “national department” of the following definition:

“ ‘national government component’ means a national government component listed in column 1 of Part A of Schedule 3 to the Public Service Act;”;

(e) the insertion after the definition of “Office” of the following definitions:

“ ‘organ of state’ means—

- (a) a national department, a provincial department, a national government component or a provincial government component;
- (b) a public school as contemplated in Chapter 3 of the South African Schools Act, 1996 (Act No. 84 of 1996);
- (c) a municipality;

(d) a public entity; or

(e) any institution performing a function in terms of the Constitution or a provincial constitution or performing a public function in terms of any legislation;

‘organised local government’ means an organisation recognised in terms of section 2(1)(a) of the Organised Local Government Act, 1997 (Act No. 52 of 1997), to represent local government;”;

(f) the insertion after the definition of “prescribed” of the following definitions:

“ **‘provincial department’** means—

(a) the Office of the Premier listed in column 1 of Schedule 1 to the Public Service Act; or

(b) a provincial department listed in column 1 of Schedule 2 to the Public Service Act;

‘provincial government component’ means a provincial government component listed in column 1 of Part B of Schedule 3 to the Public Service Act;”;

(g) the substitution for the definition of “public administration” of the following definition:

“ **‘public administration’** means the public service, municipalities **[and their employees,]** and for purposes of sections 17A or 17B, includes public entities;”;

(h) the insertion of the following definition after the definition of “public administration”:

“ **‘public entity’** means—

(a) a public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No.1 of 1999); and

(b) a municipal entity as defined in the Municipal Systems Act.”; and

(i) the substitution for the definition of “public service” of the following definition:

“**public service**’ means all-

(a) national departments;

(b) national government components **[listed in Part A of Schedule 3 to the Public Service Act];**

(c) provincial departments **[which means-**

(i) **the Office of a Premier listed in Schedule 1 to the Public Service Act; and**

(ii) **provincial departments listed in Schedule 2 to the Public Service Act]; and**

(d) provincial government components **[listed in Part B of Schedule 3 to the Public Service Act, and their employees].**

Amendment of section 5 of Act 11 of 2014

2. Section 5 of the principal Act is hereby amended by—

(a) the substitution for subsection (2) of the following subsection:

“Individual transfers

5. (1) **[Any] An employee [of the transferring institution]** may, subject to sections 151(3), 153 and 197(4) of the Constitution, be transferred **[within**

an institution or transferred to another institution] between the public service and a municipality or between municipalities in a manner and on such conditions as prescribed.

(2) An employee may only be transferred—

- (a) **[where]** if reasonable grounds exist;
- (b) if the employee is suitably qualified, as envisaged in section 20(3) to (5) of the Employment Equity Act, 1998 (Act No. 55 of 1998), for the intended position upon transfer;
- (c) if the employee requests or consents in writing to the transfer; and
- (d) **[within that institution by the relevant authority, or to another institution]** with the concurrence of the relevant executive authorities of the transferring and recipient institutions.

(3) If an employee is transferred **[within an institution, or from one national or provincial institution to another national or provincial institution]** in terms of subsection (1) the—

- (a) transfer does not interrupt the employee's continuity of employment; and
- (b) employee may not upon the transfer suffer any reduction in remuneration and conditions of service, unless the employee consents.

- (4) (a) If an employee is transferred **[between a national or provincial institution and a municipal institution or from one provincial or municipal institution to another provincial or municipal institution]** in

terms of subsection (1), the remuneration and conditions of service of the employee upon the transfer are as agreed between the executive authorities of the transferring and recipient institutions.

(b) If an employee is transferred in terms of **[paragraph (a)]** subsection (1) and unless the employee consents, the remuneration and conditions of service may not be less favourable than those on which the employee was employed immediately before the transfer.”

Amendment of section 6 of Act 11 of 2014

3. Section 6 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) in the absence of consent, after due consideration of any representations by the employee, if the secondment is operationally justified.”.

Repeal of section 7 of Act 11 of 2014

4. Section 7 of the principal Act is hereby repealed.

Substitution of section 8 of Act 11 of 2014

5. The following section is hereby substituted for section 8 of the principal Act :

“Conducting business with [State] organ of state

8. (1) In this section **[and in section 9,]—**
- (a) **‘employee’** includes persons contemplated in section 12A of the Public Service Act and a person performing similar functions in a municipality **[.]** ; and
- (b) **‘director’—**
- (i) means a director of a company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008); and
- (ii) does not apply to an employee appointed *ex officio* as a director of a public entity.
- (2) An employee may not—
- (a) subject to subsection (4), conduct business with **[the State]** an organ of state; or
- (b) be a director of a **[public or private]** company **[conducting]** incorporated in terms of the Companies Act, 2008 (Act No. 71 of 2008), that conducts business with **[the State]** an organ of state.
- (3) A contravention of subsection (2)—
- (a) is an offence, and any person found guilty of the offence is liable to a fine or imprisonment for a period not exceeding **[5]** five years or both such fine and imprisonment; and

- (b) **[constitute]** constitutes serious misconduct which may result in the termination of employment by the employer.

(4) The Minister may prescribe that certain transactions between an employee and an organ of state, which are remunerative but not for profit, do not constitute conducting business with an organ of state for the purposes of this section.”.

Insertion of section 8A in Act 11 of 2014

6. The following section is hereby inserted after section 8 of the principal Act:

“Conduct of employee or former employee participating in award of work to service providers

8A. (1) If a contract is concluded with a person (the "service provider") to provide services or goods (the "work") to an institution against remuneration exceeding a prescribed amount, an employee who—

- (a) set criteria for the award of the work to the service provider; or
 - (b) evaluated or adjudicated the providers for the award of the work; or
 - (c) recommended or approved the awarding of the work,
- may not within 12 months after the conclusion of the contract (the "12-month period")—

- (i) accept employment with that provider or appointment to a board of the provider or provide any service to the provider for payment in money or in kind; or
- (ii) receive any other gratification from the provider.

(2) A service provider, referred to in subsection (1), may not—

(a) within the 12-month period—

- (i) employ an employee, referred to in subsection (1), or appoint that employee to a board of the provider; or
- (ii) engage the employee to provide any service to the provider for payment in money or in kind; or

(b) grant any other gratification to the employee.

(3) Subsections (1) and (2) apply irrespective of whether the employee's employment in the relevant institution is terminated at any time during the 12-month period.

(4) The executive authority may, in accordance with the prescribed criteria, approve a period shorter than the 12-month period.

(5) If the remuneration for an extension of a contract with a service provider together with the remuneration for the original contract and any other extensions, if any, exceeds the amount prescribed by the Minister in terms of subsection (1), subsections (1) and (2) apply, with the necessary changes, to such extension.

(6) Any person who contravenes subsection (1) or (2) is guilty of an offence and on conviction liable to a fine not exceeding R1 million or

such amount as the Minister responsible for the administration of justice may from time to time determine by notice in the Gazette.

Amendment of section 9 of Act 11 of 2014

7. Section 9 of the principal Act is hereby amended by the addition of the following subsection:

“(3) For the purposes of this section, ‘employee’ includes a person contemplated in section 12A of the Public Service Act and a person performing similar functions in a municipality.”.

Amendment of section 10 of Act 11 of 2014

8. Section 10 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) must make appropriate provision in its budget—
 (i) for the compulsory education and training contemplated in section 13(1)(b); and
 (ii) within **[the]** its available resources **[in its budget]** for the education and training of its employees; and”.

Amendment of section 11 of Act 11 of 2014

9. The following section is hereby substituted for section 11 of the principal Act:

“National School of Government

11. (1) The National School of Government which exists when this section takes effect continues to exist, is regarded as having been established in terms of this Act and must be constituted as a national department to enhance the quality, extent and impact of human resource capacity in institutions through training in order to achieve the progressive realisation of a capable developmental state.

(2) To give effect to subsection (1) the School—

- (a) must provide education and training programmes or courses or cause education and training programmes or courses to be provided in the public administration;**
- (b) must, subject to section 10(2)(a), provide the compulsory education and training contemplated in section 13(1)(b);**
- (c) may, at the request of any public entity, provide education and training programmes or courses or cause education and training programmes or courses to be provided to that public entity;**
- (d) may collaborate and, if necessary, enter into agreements with other training institutions, higher education institutions as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997), continuing education and training institutions as contemplated in the Continuing Education and Training Act, 2006 (Act No. 16 of 2006) and private sector training providers to assist in providing education and training;**
- (e) may conduct tests, or cause tests to be conducted, in respect of education and training programmes or courses; and**

- (f) may, subject to the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), issue qualifications, part-qualification or certificates on the successful completion of education and training programmes or courses or cause such qualifications, part-qualification or certificates to be issued.”.

Repeal of section 12 of Act 11 of 2014

- 10.** Section 12 of the principal Act is hereby repealed.

Amendment of section 13 of Act 11 of 2014

- 11.** Section 13 of the principal Act is hereby amended by—
- (a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Minister may [, **after approval by the Cabinet,**]
direct that the successful completion of specified education, training, examinations or tests is—”;

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

“(2) The Minister must consult organised local government and obtain the concurrence of the Minister responsible for local government [**before seeking the approval of the Cabinet contemplated in subsection (1)**] in respect of a directive to be applicable to municipalities.”.

Amendment of section 16 of Act 11 of 2014

12. Section 16 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 17 of Act 11 of 2014

13. Section 17 of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection:

“(7) The Minister must prescribe the powers of the Office **[and its members]** including those necessary to achieve the objects referred to in subsection (6).”.

Insertion of sections 17A and 17B in Act 11 of 2014

14. The following sections are hereby inserted after section 17 of the principal Act:

“Removal of disparities in public administration”

17A. In order to remove unjustifiable disparities in relation to remuneration and conditions of service in the public administration, the Minister may, subject to applicable labour legislation, any collective agreement and legislation governing the employment of employees in

the public administration and after consultation with the relevant Minister responsible, prescribe—

- (a) norms and standards to establish the upper limits of remuneration and conditions of service for employees who do not fall within the scope of the relevant bargaining council; and
- (b) steps to remove unjustifiable disparities among employees in the public administration provided that these steps may not reduce the salary of an employee except in terms of an Act of Parliament or a collective agreement.

Mandate for determination of conditions of service with financial implications

17B. (1) Subject to the Labour Relations Act, the laws governing the employment of employees and any collective agreement, no employer in the public administration may enter into a collective agreement in respect of conditions of service with financial implications or determine them for their employees without a mandate from the Committee of Ministers.

(2) The Committee of Ministers must, in determining the mandate contemplated in subsection (1), take into account affordability and any other factor prescribed by the Minister in consultation with the Minister of Finance.

(3) For the purposes of subsection (1)—

- (a) 'conditions of service' includes annual salary adjustments, salary scales or levels, performance bonuses, pay incentives, pension benefits and any other such benefits;
- (b) the Committee of Ministers must consist of the Minister, the Ministers responsible for finance, local government, education, public enterprises, defence, police, correctional services and such other Ministers as the Cabinet may designate, and must function the same as a committee of the Cabinet;

(4) The Committee of Ministers must establish an inter-governmental forum in terms of section 9(1) of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005) including Premiers, Deputy Ministers, organised local government and any other member that the committee may determine to consult for purposes of subsection (1)."

Amendment of section 18 of Act 11 of 2014

15. Section 18 of the principal Act is hereby amended by-

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

“(2) The Minister must make regulations insofar as they apply to municipalities in consultation with the Minister responsible for local government [.] and the Minister responsible for **[Finance and]** finance, after consultation with organised local government.”.

- (a) the insertion of the following subsection after subsection (2)

“(2A) Any regulation made in terms of section 17A may only be made after consultation with the Minister responsible for public entities.”

Amendment of Schedule

16. Amendment of the Schedule by substituting the following wording in the third column in the first row:

“The repeal of sections 4 **[,14]** and 15”

The amendment of section 2 by the substitution of subsection (2A) for the following subsection:

“(2A) (a) Subject to the Labour Relations Act and any collective agreement, the determination of any conditions of service for—

- (i) employees in general or a particular category in terms of this Act; and
- (ii) educators or members of the services in general or for a particular category in terms of the laws governing their employment,

shall be made with the concurrence of **[a committee of]** the Committee of Ministers referred to in section 17B(3)(b) of the Public Administration Management Act, 2014 (Act No. 11 of 2014).

- (b) For the purposes of paragraph (a)~~]~~ —

- (i) 'conditions of service' **[means]** include annual salary adjustments, salary scales or levels, performance bonuses, pay incentives, **[or]** pension benefits and any other benefits of similar nature **;** and
- (ii) **the committee of Ministers shall consist of the Minister, the Minister of Finance and the Ministers responsible for the educators and the members of the services and such other Ministers as the Cabinet may designate (if any), and shall function the same as a committee of the Cabinet]."**

Short title and commencement

17. This Act is called the Public Administration Management Amendment Act, 2023, and takes effect on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE PUBLIC ADMINISTRATION MANAGEMENT AMENDMENT BILL

1. BACKGROUND

- 1.1 To give effect to the vision of the Single Public Administration, a Public Administration Management Bill was developed in 2008 to provide for the organisation, management, functioning and personnel related matters in the three spheres of government.
- 1.2 The Public Administration Management Bill progressed through the Parliamentary processes from 2008 to 2014 and was eventually promulgated as the Public Administration Management Act, 2014 (Act No. 11 of 2014) (“the principal Act”), and assented to by the President in 2014.
- 1.3 The intention to have one piece of legislation governing the public administration was, however, not realised as the principal Act did not repeal the Public Service Act, 1994, nor did it repeal the Municipal Systems Act, 2000, as initially contemplated.
- 1.4 Currently, only thirteen sections of the principal Act were brought into operation, effective from 1 April 2019, while the remaining seven sections (sections 5, 6, 7, 9, 11, 12 and 19) remain inoperative as they either require regulations for implementation, are difficult to operationalise or require amendment.
- 1.5 Since the promulgation of the principal Act, it has been a challenge to ensure the full implementation thereof as the Act created overlaps of policy areas and responsibilities already provided for in other legislation without providing for the repeal or other mechanism to address the overlaps. Some of the provisions of the principal Act are impossible to implement due to fiscal and other considerations. Implementation of most provisions of the principal Act is reliant on regulations which can only be approved under onerous circumstances requiring the concurrence of the Ministers for the Public Service and

Administration, Finance, Cooperative Governance and Traditional Affairs and the South African Local Government

- 1.6 In addition to the aforesaid, new provisions are being introduced to remove and eliminate unfair disparities that exist in remuneration and conditions of service in the public sector, including public entities and to provide for coordinated mandating processes for the determination of remuneration and conditions of service.

2. CLAUSE-BY-CLAUSE SUMMARY OF BILL

2.1. Objects of the Bill

The main objects of the Bill is to improve service delivery through the alignment of human resource, governance and related arrangements in the three spheres of government; to further provide for the transfer and secondment of employees, to provide clarification regarding the prohibition against employees conducting business with an organ of state; to provide for the constitution of the National School of Government as a national department, to remove unjustifiable disparities across State institutions and to provide for the co-ordination of mandating processes for collective bargaining in the public administration.

2.2. Clause 1

Clause 1 provides for the insertion of new definitions in section 1 of the principal Act to provide for ease of interpretation. The definitions such as, “head of institution”, “Labour Relations Act”, “Municipal Systems Act” “national government component” “organ of state” “organised local government” “provincial department” “provincial government component” “public administration” “public entity” and “public service” are dealt with.

2.3. Clause 2

Clause 2 seeks to amend section 5 of the principal Act to further provide for the transfer of employees between the public service and municipalities and between municipalities. Transfers ensure the mobility of employees across the spheres of Government to where human resource deficiencies exist or where operational requirements necessitate. This will enhance good governance and enable the transferability of skills and resources where required.

2.4. Clause 3

Clause 3 seeks to provide that secondments contemplated in section 6 of the principal Act should occur only where it is operationally justified. This ensures that secondments do not result in deficiencies being created which hamper service delivery within institutions.

2.5. Clause 4

Clause 4 proposes the repeal of section 7 of the principal Act as the transfer of employees affected by the transfer of functions across institutions is adequately regulated in terms of the Constitution of the Republic of South Africa, 1996, the Public Service Act, 1994 and the Local Government: Municipal Systems Act, 2000. Further the reference to section 197 of the Labour Relations Act, 1995, in section 7 is not applicable to transfers or assignments of legislation.

2.6. Clause 5

Clause 5 seeks to amend section 8 of the principal Act to-

- (a) clarify the definitions of words or expressions to ensure easier interpretation of the provisions of section 8 such as the references to 'organ of state' instead of State and the definition of a director of a company;
- (b) exclude employees appointed *ex-officio* on boards from the scope of the prohibition in terms of section 8; and

- (c) empower the Minister to determine that certain transactions between an organ of state and an employee are not construed as “conducting business with an organ of state” to remove the unintended consequences in the implementation of the Act.

2.7. Clause 6

The amendment in clause 6 seeks to address post-employment restrictions. Provision is made for the imposition of a 12 month ‘cooling off’ period for employees involved in the procurement of services of service providers. It provides for a prohibition from accepting employment or appointment to the board of the service provider, the performance of remunerated work or the receipt of any other gratification. Service providers or employees who contravene this provision are guilty of an offence and on conviction liable to a fine of R1 million.

2.8. Clause 7

The amendment in clause 7 seeks to clarify the current provisions in respect of the definition of “employee” for purposes of the disclosure of financial interests contemplated in section 9 of the principal Act.

2.9. Clause 8

Clause 8 seeks to amend section 10(2)(a) of the principal Act to provide that departments must, within their available budget, provide for compulsory training that is directed by the Minister to address developmental needs of categories of employees.

2.10. Clause 9

Clause 9 seeks to amend section 11 of the principal Act to establish the National School of Government as a national department to provide education and training to employees in all spheres of government, including municipalities and public entities.

2.11. Clause 10

Clause 10 seeks to repeal section 12 of the principal Act as it has become redundant following the proposed amendment to section 11 of the principal Act.

2.12. Clause 11

Clause 11 seeks to amend section 13 of the principal Act to remove the unnecessary burden placed on the Cabinet in relation to the determination of prerequisite and/or mandatory education and training.

2.13. Clause 12

Clause 12 provides for the deletion of section 16(2) of the principal Act. Therefore the process to issue norms and standards in respect of the promotion of values and principles contemplated in section 195 of the Constitution will be in terms of the processes contemplated in section 18 of the principal Act.

2.14. Clause 13

Clause 13 seeks to amend section 17(7) of the principal Act to remove reference to "*and its members*". Section 17(7) of the principal Act requires the Minister responsible for the Public Service and Administration to prescribe the powers of the Office and its members. The principal Act does not provide for functions of individual members and therefore it is proposed that it is not required or necessary for powers of members to be prescribed.

2.15. Clause 14

Clause 14 provides for the insertion of sections 17A and 17B in the principal Act. Section 17A provides for a process to remove unjustifiable disparities across

institutions, including public entities. To this end the Bill provides for the Minister, after consultation with the relevant Minister, and subject to the processing of regulations, to prescribe-

- (a) upper limits of remuneration and conditions of service for certain categories of employees who do not fall within the scope of the relevant bargaining council; and
- (b) steps to remove unjustifiable disparities among employees in the public administration provided that such steps must not reduce the salary of an employee unless provided for in an Act of Parliament or a collective agreement.

Section 17B provides for the coordination of mandating processes for collective bargaining in the public administration, including public entities. The amendment establishes a Committee of Ministers which must, in determining a mandate, take into account affordability and any other factor prescribed by the Minister in consultation with the Minister of Finance.

These provisions aim to create better integration and coordination between the various institutions to remove unjustifiable disparities without eroding existing collective bargaining structures and processes or undermining the prescripts governing employees in the various institutions.

The Bill recognises the role of Premiers, Deputy Ministers and organised local government and creates an inter-governmental forum to ensure that such parties are consulted in these processes.

2.16. Clause 15

Clause 15 seeks to amend section 18(2) of the principal Act to align with the Local Government: Municipal System Act, 2000, regarding the issuing of regulations pertaining to local government after consultation with organised local government. Additionally, a further amendment is proposed to allow for the

making of any regulation affecting public entities to be made after consultation with the Minister responsible for public entities.

3. DEPARTMENTS/BODIES/PERSONS TO BE CONSULTED

National and provincial departments, local government, organised labour, NEDLAC, organised local government and the public.

4. FINANCIAL IMPLICATIONS FOR THE STATE

The Bill will result in no financial implications for public administration institutions.

5. PARLIAMENTARY PROCESS

- 5.1 The State Law Advisers and the Department are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution as it is legislation listed in section 76(3) of the Constitution, namely legislation envisaged in sections 195(3) and 197 of the Constitution.
- 5.2 The State Law Advisers are of the opinion that it may be necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a)(ii) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it pertains to matters referred to in section 154(2) of the Constitution.