

REPUBLIC OF SOUTH AFRICA

PUBLIC ADMINISTRATION MANAGEMENT AMENDMENT BILL

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

(MINISTER FOR THE PUBLIC SERVICE AND PUBLIC ADMINISTRATION)

[B—2021]

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 doing business with the State; to provide anew for the establishment of the National School of Government; 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; 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 of the following definition after the definition of “family member”:

“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 Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);;

(b) the insertion of the following definition after the definition of ‘institution’:

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

(c) 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 a public entity;”; and

(d) 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);

(b) a municipal entity as defined in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and

(c) the employees of an entity referred to in paragraphs (a) and (b).”.

Amendment of section 5 of Act 11 of 2014

2. Section 5 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) if the employee requests or consents in writing to the transfer or in the absence of consent, after due consideration of any representations made by the employee, if the transfer is operationally justified; and”.

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

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

[.] :

(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; or

(b) be a director of a **[public or private]** company incorporated in terms of the Companies Act, 2008 (Act No. 71 of 2008), [conducting] that conducts business with the 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 years or both such fine and imprisonment; and

(b) 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 the State that are remunerative but not for profit do not constitute doing business with the State for the purposes of this section.”.

Amendment of section 10 of Act 11 of 2014

6. Section 10 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) In addition to the education and training budget requirements in terms of the Skills Development Act or provision for a training levy in terms of the Skills Development Levies Act, an institution—

(a) must make appropriate provision in its budget—

(i) for the compulsory 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

(b) may apply to any applicable sector education and training authority established in terms of the Skills Development Act for additional funds for training.”.

Amendment of section 11 of Act 11 of 2014

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

“(1) The National School of Government is hereby established 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 realization of a capable developmental state.

(2) The School—

- (a) must provide training and education courses or cause training and education courses to be provided in the public administration;
- (b) 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), further education and training institutions as defined in section 1 of the Further Education and Training Act, 1998 (Act No. 98 of 1998), and private sector training providers to assist in providing that training and education;
- (c) may conduct tests, or cause tests to be conducted, in respect of training and education courses; and
- (d) may issue diplomas or certificates on the successful completion of training and education courses or cause diplomas and certificates to be issued.”.

Repeal of section 12 of Act 11 of 2014

8. Section 12 of the principal Act is hereby repealed.

Amendment of section 13 of Act 11 of 2014

9. 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 training 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

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

Amendment of section 17 of Act 11 of 2014

11. 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

12. 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 employment in the public administration, the Minister may, subject to applicable labour legislation and legislation governing the employment of employees in the public administration and after consultation with the committee of Ministers contemplated in section 17B, prescribe the factors that institutions and public entities must take into account in determining remuneration and conditions of service for employees or any category of employees in the public administration.

Mandate for the determination of conditions of service with financial implications

17B. (a) Subject to the Labour Relations Act, the laws governing the employment of employees and any collective agreement, the determination of any conditions of service for employees in the public administration must be made in accordance with the factors prescribed in section 17A and with the concurrence of a committee of Ministers.

(b) For the purposes of paragraph (a)—

- (i) 'conditions of service' include annual salary adjustments, salary scales or levels, performance bonuses, pay incentives, pension benefits and any other benefits with financial implications;
- (ii) the committee of Ministers must consist of the Minister, the Ministers responsible for finance, local government, educators, public enterprises, defence, police, correctional services and such other Ministers as the Cabinet may designate (if any), and must function the same as a committee of the Cabinet.

Amendment of section 18 of Act 11 of 2014

13. Section 18 of the principal Act is hereby amended by 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] finance, [and] after consultation] with organised local government.”.

Insertion of section 18A in Act 11 of 2014

14. The following section is hereby inserted after section 18 of the principal Act:

“Conflict with other laws

18A. If any conflict, relating to the matters dealt with in this Act, arises between this Act and the provisions of any other law save the Constitution or any Act expressly amending this Act, the provisions of this Act will prevail.”

Short title and commencement

15. This Act is called the Public Administration Management Amendment Act, 2021, 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 Since the promulgation of the Public Administration Management Act, 2014 (Act No 11 of 2014) (hereinafter referred to as “the Principal Act”), there have been challenges to ensure the full implementation of the Principal Act as:

- (a) the Principal 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 overlap;
- (b) some of the provisions of the Principal Act are impossible to implement due to fiscal and other considerations; and
- (c) implementation of most provisions 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 Association.

1.2 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.

1.3 The main purpose of the Principal Act is to improve service delivery through the alignment of human resource, governance and related arrangements in the three spheres of government. For this purpose, the key objectives of the Public Administration Management Amendment Bill are aimed at-

- (a) addressing legal difficulties in the implementation and application of the Principal Act;

- (b) clarifying provisions by including appropriate definitions and removing unintended consequences of interpretation in respect of employees conducting business with the State;
- (c) removing unfair disparities in the public administration by creating a framework within which remuneration and other conditions of service of employees is determined and creating better coordination in the mandating processes for collective bargaining in the public administration; and
- (d) ensuring that conflicts with other legislation are dealt with.

2. CLAUSE-BY-CLAUSE SUMMARY OF THE PUBLIC ADMINISTRATION MANAGEMENT AMENDMENT BILL (THE BILL)

2.1. Objects of the Bill

The main objects of the Bill are to improve service delivery through the alignment of human resource, governance and related arrangements in the three spheres of government; 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 such as, “head of institution”, “Labour Relations Act”, “public administration” and “public entity”.

2.3. Clause 2

Clause 2 seeks to amend section 5 of the Principal Act to provide for the transfer of employees across the spheres of government without the consent of employees where such transfer is operationally justified and after due consideration of representations from the affected employee.

This amendment is required to 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 where required.

2.4. Clause 3

Clause 3 seeks to align with the amendment proposed in clause 2. An amendment to section 6 of the Principal Act is proposed to require that secondments be effected if it is operationally justified.

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.

2.6. Clause 5

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

- (a) clarify that an employee who is a director of a company incorporated in terms of the Companies Act, 2008 are precluded from conducting business with the State- This will mean that employees who are directors of not for profit companies are permitted to conduct business with the State;
- (b) clarify that employees appointed *ex-officio* on boards are not construed within the scope of the prohibition in terms of section 8; and

- (c) empower the Minister to determine that certain transactions between the State and an employee are not construed as “conducting business with the State” so as to remove the unintended consequences that are encountered.

2.7. Clause 6

Clause 6 seeks to amend section 10(2) 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.

2.8. Clause 7

Clause 7 seeks to amend section 11 of the Principal Act to create the National School of Government as a national department, as it is currently, as opposed to it being created as a higher education institution whilst still empowering the National School of Government to provide education and training to employees in all spheres of government, including municipalities.

2.9. Clause 8

Clause 8 seeks to amend section 12 of the Principal Act is proposed to be repealed following the proposed amendment to section 11 of the Principal Act.

2.10. Clause 9

Clause 9 seeks to amend section 13(1) of the Principal Act to remove the unnecessary burden placed on the Cabinet in the determination of prerequisite and/or mandatory education and training.

2.11. Clause 10

Clause 10 provides for the deletion of section 16(2) of the Principal Act. This will mean that if the Minister for the Public Service and Administration were to issue norms and standards in respect of the promotion of values and principles contemplated in section 195 of the Constitution, same will be done through regulations following the processes contemplated in section 18 of the Principal Act.

2.12. Clause 11

Clause 11 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.

2.13. Clause 12

Clause 12 provides for the insertion of sections 17A and 17B in the Principal Act. Section 17A will enable the Minister for the Public Service and Administration to prescribe factors to be taken into account by institutions in the public administration, including public entities, to remove unjustifiable disparities in the determination of remuneration and conditions of service for employees in the public administration. Section 17B further provides for the coordination of mandating processes for collective bargaining in the public administration, including public entities.

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.

2.14. Clause 13

Clause 13 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 after consultation with organised local government.

Therefore it is proposed that section 18(2) of the Principal Act be amended to provide for the making of regulations by the Minister for the Public Service and Administration, in so far as it relates to municipalities, in consultation with the Minister responsible for local government and the Minister of Finance, after consultation with organised local government.

2.15. Clause 14

Clause 14 seeks to create a mechanism to manage the conflicts that may arise with other legislation by providing that in the event of conflict with other Acts, in relation to matters dealt with in the Principal Act, the provisions of the Principal Act will prevail.

3. DEPARTMENTS/BODIES/PERSONS TO BE CONSULTED

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

4. PARLIAMENTARY PROCESS

The Bill will be processed in terms of section 76 of the Constitution as the Bill affects the provinces.