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THE PRESIDENCY

No. 1900

8 July 1992

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 112 of 1992: Coloured Persons Education Amendment Act (House of Representatives), 1992.



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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.

ACT

To amend the Coloured Persons Education Act, 1963, so as to make provision for the establishment of certain professional posts and for the appointment of persons in those posts; and to amend a certain expression; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 2 July 1992.)

BE IT ENACTED by the State President and the House of Representatives of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 47 of 1963, as amended by section 1 of Act 76 of 1967, section 1 of Act 53 of 1973, section 1 of Act 29 of 1976, section 1 of Act 95
5 of 1976, section 1 of Act 15 of 1980, section 1 of Act 85 of 1983 and section 1 of Act 76 of 1985

1. Section 1 of the Coloured Persons Education Act, 1963 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of "primary school" of the following definition:

10 "‘professional post’ means a post to which a person is appointed, transferred or promoted under this Act to assist in certain professional educational services, to wit planning, subject advisory and inspection services;”.

Substitution of section 8 of Act 47 of 1963

15 **2.** The following section is hereby substituted for section 8 of the principal
Act:

“Appointment, promotion, transfer and discharge of staff at State schools, schools of industries, reform schools and certain State-aided schools, and of staff in professional posts

20 8. (1) Notwithstanding anything to the contrary contained in any
other law the establishment of any State school, school of industries
or reform school, or any State-aided school other than a State-aided
vocational school, or the establishment of professional posts in the
25 division of Education of the Department, shall be determined by the
Minister, on such basis as he may fix from time to time after
consultation with the Minister of **[Finance]** State Expenditure and on
the recommendation of the Commission for Administration.

(2) Notwithstanding anything to the contrary contained in any

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other law but subject to the provisions of this Act, the power to appoint any person to any post included in the establishment of any State school, school of industries or reform school, or any State-aided school other than a State-aided vocational school, or in any professional post included in the establishment of the division of Education of the Department, and to promote, transfer or discharge any person occupying any such post, shall be vested in the Minister.”.

Substitution of section 11 of Act 47 of 1963

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

“Conditions of service of persons employed at State schools, schools of industries, reform schools and certain State-aided schools, and of persons in professional posts

11. (1) Notwithstanding anything to the contrary contained in any other law but subject to the provisions of subsections (2) and (3) of this section, the conditions of service, salary scales, allowances and leave privileges of persons (other than officers) employed in any post included in **[the] an establishment [of a State school, school of industries or reform school, or a State-aided school other than a State-aided vocational school]** referred to in section 8(1) shall be determined or prescribed by the Minister after consultation with the Minister of **[Finance] State Expenditure** and on the recommendation of the Commission for Administration.

(2) The salary, salary scale, allowances and leave privileges of any person who is, by virtue of the provisions of subsection (1) of section 9, deemed to have been appointed to a post in terms of the provisions of this Act, shall remain the same as if he had continued occupying the post occupied by him immediately prior to the commencement of this Act, unless or until the Minister determines that the provisions of subsections (1) and (3) of this section shall apply in respect of him.

(3) As from the date on which a person is in terms of the provisions of section 10 transferred to the service of the Department, his salary shall be adjusted to the salary scale applicable to his post, at such notch on that scale as the Minister may determine.

(4) Subject to the provisions of this Act any continuous whole-time employment of any person referred to in section 10 at any State-aided school immediately prior to the date referred to in that section, shall, for leave purposes, be deemed to be employment in the service of the Department: Provided that any sick and accumulative vacation leave to which such person is entitled on that date shall, subject to such conditions as the Minister on the recommendation of the Commission for Administration may determine, be deemed to be leave earned in terms of this Act.”.

45 Substitution of section 12 of Act 47 of 1963

4. The following section is hereby substituted for section 12 of the principal Act:

“Pension rights and retirement benefits of persons employed at State schools and certain State-aided schools, and of persons in professional posts

12. Notwithstanding anything to the contrary contained in any other law but subject to the provisions of section 13, any person (other than an officer) employed on a whole-time basis and in a permanent capacity at—

- (a) a State school; **[or]**
(b) a State-aided school, if his salary is paid in full by the Department; or

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(c) the division of Education of the Department in a professional post,
shall in respect of pension rights and retirement benefits be dealt with as if he occupied a post included in a division of the public service referred to in paragraph (a) of subsection (1) of section 3 of the Public Service Act, 1957 (Act No. 54 of 1957).".

Substitution of section 14 of Act 47 of 1963

5. The following section is hereby substituted for section 14 of the principal Act:

10 **"Transfer and secondment of certain persons employed at State schools, schools of industries, reform schools and certain State-aided schools, and of persons in professional posts**

15 **14. (1) Any person (other than an officer) occupying a post included in [the] an establishment [of a State school, school of industries or reform school, or a State-aided school other than a State-aided vocational school] referred to in section 8(1) may, subject to the provisions of subsections (2) and (3), be transferred from the post in which he is employed to any other post at the said school or any other such school, or at any other institution under the control of the Department, whether established under this Act or any other law, and whether or not it is a transfer to a post of a lower grade.**

20 **(2) If a transfer in terms of subsection (1) will involve a reduction of the pensionable emoluments of the person in question for the purposes of any law, such transfer shall not be made without his consent, unless it is made in consequence of a reduction of rank under section 17 or 18.**

25 **(3) If a person is in terms of subsection (1) transferred, without a reduction of his pensionable emoluments for the purposes of any law, to a post of a grade lower than that of the post which he occupied, he shall, as soon as a suitable vacancy occurs, be re-transferred to a post of a grade appropriate to his salary.**

30 **(4) Any person referred to in subsection (1) may, subject to the provisions of subsection (5) and upon such conditions as the Minister after consultation with the Minister of [Finance] State Expenditure may determine, be seconded by the Minister—**

35 **(a) upon the recommendation of the Commission for Administration, to the service of the State [or the administration of the territory of South-West Africa or the service of the State] in any other capacity; or**

40 **(b) with his own consent, to the service of the government of any other country or of any person.**

45 **(5) If any person is so seconded such secondment shall not affect the application in respect of him of any law which would have applied in respect of him if he had continued occupying his post at the school in question."**

Substitution of section 15 of Act 47 of 1963

6. The following section is hereby substituted for section 15 of the principal Act:

50 **"Discharge of persons employed at State schools, schools of industries, reform schools and certain State-aided schools, and of persons in professional posts**

55 **15. (1) Any person (other than an officer) occupying on a whole-time basis a post included in [the] an establishment [of a State school, school of industries or reform school, or a State-aided school other than a State-aided vocational school] referred to in section 8(1), may be discharged by the Minister—**

(a) on account of attaining the pensionable age as fixed by or in terms of any law which applies in respect of him, if he is not a person to whom subsection (1) of section 13 applies;

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- (b) on account of continued ill-health;
- (c) on account of the abolition of his post or a reduction, reorganization or rearrangement of the staff of the school in question;
- (d) subject to the provisions of section 18, on account of unfitness for his duties or incapacity to perform them efficiently;
- (e) if for reasons other than those referred to in paragraph (d), his discharge will, in the opinion of the Minister, promote efficiency or economy in the school in question;
- (f) subject to the provisions of section 17, on account of misconduct as defined in section 16;
- (g) in the case of a female, if she marries.
- (2) Any person referred to in subsection (1) who without the permission of the Director-General or the head or the governing body of the school in question—
- (a) is absent from duty for a period exceeding one month; or
- (b) is absent from duty and has accepted other employment,
- shall, subject to the provisions of subsection (3), be deemed to have been discharged on account of misconduct in terms of subsection (1) with effect from the date immediately succeeding the last day on which he was on duty.
- (3) If any person referred to in paragraph (a) of subsection (2) reports for duty at any time after the expiry of the period referred to in the said paragraph, the Minister may, on such conditions as he may determine, reinstate such person in his former post or appoint him to any other post referred to in subsection (1), and in that event the period of absence from duty shall be deemed to have been absence on vacation leave without pay or leave on such other conditions as the Minister may determine.”.

Substitution of section 18 of Act 47 of 1963

7. The following section is hereby substituted for section 18 of the principal Act:

“Action in the case of persons employed at State schools, schools of industries, reform schools and certain State-aided schools, and of persons in professional posts, who are inefficient

18. (1) If it is alleged that any person referred to in subsection (1) of section 15 is unfit for, or is incapable of performing efficiently, the duties attached to his post from causes not within his control and not attributable to the performance of his duties in the employment of the Department or the school in question, the Director-General may appoint a person to enquire into the allegation.
- (2) The provisions of subsections (9), (10), (11), (13), (15) to (21), inclusive, and (23), paragraphs (a) and (c) of subsection (25) and paragraph (a) of subsection (29) of section 17 shall *mutatis mutandis* apply in respect of any enquiry referred to in subsection (1) and the person in respect of whom the allegation was made: Provided that in the application of the said subsection (23) the Director-General shall only have the power to recommend that the person in question be discharged from the service of his employer or that his grade be reduced and his emoluments be reduced to the maximum for the reduced grade.”.

Substitution of section 19 of Act 47 of 1963

8. The following section is hereby substituted for section 19 of the principal Act:

- “Powers of persons employed at State schools, schools of industries, reform schools and certain State-aided schools, and of persons in professional posts, in respect of acceptance of other employment or remuneration**

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19. (1) Any person referred to in subsection (1) of section 15—
- (a) shall, as far as is practicable, place the whole of his time at the disposal of the school at which he is employed;
 - (b) shall not, without the permission of the Director-General or a person acting on the authority of the Director-General, perform or bind himself to perform other remunerative work; and
 - (c) shall not have the right to claim additional remuneration in respect of any duty or work performed by him by order of a competent authority.
- (2) If any person referred to in subsection (1) receives any remuneration or allowance otherwise than in terms or by virtue of the provisions of this Act or any other law, he shall pay it into the Consolidated Revenue Fund, and if he fails to do so, the Minister of **[Finance]** State Expenditure may recover it from him by legal proceedings or in such other manner as the said Minister may deem fit, and pay it into that fund.”.

Amendment of section 34 of Act 47 of 1963, as amended by section 4 of Act 76 of 1967, section 4 of Act 53 of 1973, section 39 of Act 94 of 1974 and section 10 of Act 85 of 1983

9. Section 34 of the principal Act is hereby amended by the substitution for paragraph (g) of subsection (1) of the following paragraph:
- “(g) as to the appointment of persons for duty at State schools, schools of industries and reform schools, and State-aided schools other than State-aided vocational schools, and of persons in professional posts, and the grading, remuneration, promotion, transfer, discharge, discipline, behaviour, powers, duties, hours of attendance, leave privileges and other conditions of service of, and the occupation of teachers’ quarters by, and the payment of travelling, subsistence and other allowances and remuneration for services outside the prescribed hours of attendance to, such persons and persons deemed to be appointed in terms of this Act;”.

Substitution of expression in Act 47 of 1963

10. The principal Act is hereby amended by the substitution for the expression “Minister of Finance”, wherever it occurs, of the expression “Minister of State Expenditure”.

Transitional provision

11. Persons appointed to posts under the Public Service Act, 1984 (Act No. 111 of 1984), immediately prior to the commencement of this Act, which are professional posts in terms of the Coloured Persons Education Act, 1963 (Act No. 47 of 1963), shall be deemed to be appointed to those posts in terms of section 8(2) of the last-mentioned Act, retaining their remuneration, allowances and other benefits, and the establishment of such posts shall be deemed to be determined in terms of section 8(1) of the Coloured Persons Education Act, 1963.

Short title and commencement

12. This Act shall be called the Coloured Persons Education Amendment Act (House of Representatives), 1992, and shall be deemed to have come into operation on 1 January 1992.