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THE PRESIDENCY

No. 592 7 July 2015

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

Act No. 4 of 2015: Financial and Fiscal Commission Amendment Act, 2015

DIE PRESIDENSIE

No. 592 7 Julie 2015

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No 4 van 2015: Wysigingswet op die Finansiële en Fiskale Kommissie, 2015



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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.

(English text signed by the President)
(Assented to 3 July 2015)

ACT

To amend the Financial and Fiscal Commission Act, 1997 (“the principal Act”), so as to insert, substitute and delete certain definitions; to effect changes to the provisions dealing with the functions of the Commission to ensure that the terminology used and consideration of the Commission’s recommendations are aligned to the Constitution of the Republic of South Africa, 1996 (“the Constitution”), and other legislation; to strengthen the requirements for organs of state concerning the Commission’s recommendations on the assignment of a power or function by an organ of state in one sphere of government to an organ of state in another sphere of government; to adjust the period for filling of vacancies in the Commission and to repeal a duplicate provision on the same matter; to provide for the appointment basis of members of the Commission; to provide that a person may not hold office as a member of the Commission for more than 10 consecutive years; to give effect to section 219(5) of the Constitution by introducing measures for the determination of the remuneration, allowance and other service benefits of the members of the Commission similar to the other constitutional institutions as provided for in the Determination of Remuneration of Office-bearers of Independent Constitutional Institutions Laws Amendment Act, 2014; to provide for the appointment of a person to the newly created administrative position of the chief executive officer, shift the chief executive officer’s and accounting officer’s responsibilities from the Chairperson to the person appointed as the chief executive officer of the Commission, who must also function as the Secretary to the Commission; to enable delegations and instructions by the chief executive officer; to insert new provisions regulating the conduct of members of the Commission and to delete a specific provision on conduct since it will be replaced by those new provisions; to align terminology used in the principal Act with that of the Public Service Act, 1994, in respect of employees seconded from the public service to the Commission; to align the date for the submission of the Commission’s audited financial statements and annual report to Parliament with the provisions in the Public Finance Management Act, 1999; to substitute the reference to the Central Statistical Service for the Statistics South Africa; to enable the Commission to obtain information from any person; to replace the Minister’s power to make regulations with a power for the Commission to make rules regarding its functioning including the distinct roles of, and the relationship between, the Chairperson of the Commission and the chief executive officer; to repeal transitional arrangements; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 99 of 1997

1. Section 1 of the Financial and Fiscal Commission Act, 1997 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the insertion before the definition of “Commission” of the following definition:
“**‘chief executive officer’** means the chief executive officer appointed in terms of section 19(1);”;
 - (b) by the substitution for the definition of “financial year” of the following definition:
“**‘financial year’** means the financial year [of the Commission, which is the same as that of state departments] beginning 1 April and ending 31 March the ensuing year;”;
 - (c) by the insertion after the definition of “financial year” of the following definition:
“**‘Independent Commission’** means the Independent Commission for the Remuneration of Public Office-bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997);”;
 - (d) by the insertion after the definition of “President” of the following definition:
“**‘Public Finance Management Act’** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;
 - (e) by the deletion of the definitions of “state department” and “this Act”.

Amendment of section 3 of Act 99 of 1997, as amended by section 1 of Act 25 of 2003

2. Section 3 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
“(1) The Commission [acts as a consultative body for, and] makes recommendations [and gives advice] to[,] organs of state [in the national, provincial and local spheres of government] on financial and fiscal matters in accordance with section 220 of the Constitution.”;
 - (b) by the substitution in subsection (2A) for paragraph (a)(ii) of the following paragraph:
“(ii) request the recommendation [or advice] of the Commission regarding the assignment.”;
 - (c) by the substitution in section (2A) for paragraphs (b), (c), (d) and (e) of the following paragraphs, respectively:
“(b) The Commission must, not later than 180 days from the date of its receipt of the notification and request contemplated in paragraph (a) or such other period agreed with the relevant organ of state, make such recommendation [or give such advice] on the intended assignment as may be appropriate.
(c) An assignment contemplated in paragraph (a) has no legal force unless the organ of state making such assignment has requested and given consideration to the Commission’s recommendation [or advice] contemplated in paragraph (b).
(d) The organ of state assigning any power or function to another organ of state must [indicate] in an accompanying memorandum explain to the Commission, the organ of state to which a power or function is being assigned, the National Treasury and any other functionary responsible for authorising such assignment, the extent to which it has considered and taken into account the Commission’s recommendation [or advice] contemplated in paragraph (b).
(e) Despite paragraph (c), if the Commission does not make a recommendation [or give advice] within the period contemplated in paragraph (b), the relevant organ of state may, after consultation

- with the National Treasury, proceed to assign a power or function to another organ of state if such assignment takes into account the measures referred to in subsection (2A)(a)(i).”; and
- (d) by the substitution in subsection (2D) for the words preceding paragraph (a) of the following words: 5
- “Before requesting the recommendation [**or advice**] of the Commission, the organ of state seeking to assign the power or function must, in the case—”.

Amendment of section 4 of Act 99 of 1997

3. Section 4 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 10
- “The Commission is responsible for determining and overseeing the strategic direction and the operational policy of the Commission, and may do all that is necessary or expedient to perform its functions effectively, which includes the power to—”.

Amendment of section 5 of Act 99 of 1997, as substituted by section 2 of Act 25 of 2003

4. Section 5 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 15
- “(3) The President must make an appointment to fill a vacancy on the Commission within a period of six months from the date when the vacancy occurs.”.

Repeal of section 6 of Act 99 of 1997

5. Section 6 of the principal Act is hereby repealed.

Substitution of section 8 of Act 99 of 1997 25

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

“Term of office

8. (1) Members of the Commission are appointed for a term of office not exceeding five years. 30
- (2) The appointment basis of—
- (a) the Chairperson of the Commission is full-time; and
- (b) other members of the Commission are part-time.
- (3) When the term contemplated in subsection (1) expires, a member may, subject to subsection (4), be reappointed in accordance with section 5.
- (4) A person may not hold office as a member of the Commission for a period of more than 10 consecutive years. 35
- (5) Despite subsection (1), a member of the Commission who immediately before the commencement of section 6 of the Financial and Fiscal Commission Amendment Act, 2015, was appointed on a full-time basis continues to serve on a full-time basis until that member’s term expires.”.

Substitution of section 9 of Act 99 of 1997

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

“Remuneration, allowances and benefits

9. (1) Members of the Commission shall be entitled to such remuneration, allowances and other benefits— 45
- (a) as determined by the President, from time to time, by notice in the *Gazette*, taking into consideration the recommendations of the Independent Commission; and
- (b) approved by the National Assembly in terms of subsection (5).

(2) The remuneration of a member shall not be reduced, nor shall the allowances and other terms and conditions of office and service benefits be adversely altered, during the term of office of the member.

(3) The Independent Commission shall, when investigating or considering the remuneration, allowances and other terms and conditions of office and service benefits of the members of the Commission, consult with the Minister.

(4) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.

(5) (a) A notice issued under subsection (1)(a) shall be submitted to the National Assembly for approval before publication thereof.

(b) The National Assembly shall, by resolution—

(i) approve the notice, whether in whole or in part; or

(ii) disapprove the notice.”.

Repeal of section 12 of Act 99 of 1997

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

Amendment of section 14 of Act 99 of 1997

9. Section 14 of the principal Act is hereby amended by the deletion of subsection (4).

Amendment of section 16 of Act 99 of 1997

10. Section 16 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“Rules [of procedure]”;

(b) by the deletion at the end of paragraph (a) of the word “and”; insertion at the end of paragraph (b) after the word “decisions” of the expression “; and”; and the addition after paragraph (b) of the following paragraph:

“(c) make rules regarding the effective corporate governance of the Commission, the distinct roles of, and the relationship between, the Chairperson of the Commission and the chief executive officer and the conduct of the employees of the Commission.”; and

(c) by the addition of the following subsection, the existing provision becoming subsection (1):

“(2) The Commission may, after consultation with the Minister, by notice in the *Gazette*, make rules regarding—

(a) requests by organs of state for the Commission to make recommendations in terms of section 3(2)(b)(ii);

(b) a power for the Commission to call for the production of books, documents or other objects, or to summon any person as a witness, cause an oath or affirmation to be administered to the person, or to examine the person; or

(c) any other ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper performance by the Commission of its functions.”.

Insertion of section 18A in Act 99 of 1997

11. The following section is hereby inserted in the principal Act, after section 18:

“Conduct of members

18A. (1) A member of the Commission—

(a) must perform the functions of his or her office in good faith and without fear, favour or prejudice;

- (b) must disclose to the Commission any personal or private business interest which that member or that member's family member may have in any matter before the Commission, and must withdraw from the proceedings of the Commission when that matter is considered, unless the Commission decides that the member's interest in the matter is trivial or irrelevant; 5
 - (c) may not use the position or privilege of a member for private gain or to benefit another person improperly;
 - (d) may not act in any other way that compromises the credibility, impartiality, independence or integrity of the Commission; and 10
 - (e) must comply with the rules of conduct determined by the Minister by notice in the *Gazette*, after consultation with the Commission.
- (2) For the purposes of this section, 'family member' means a person's—
- (a) spouse; 15
 - (b) permanent life partner; or
 - (c) child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption.
- (3) A member of the Commission who contravenes or fails to comply with subsection (1) commits misconduct.”. 20

Amendment of section 19 of Act 99 of 1997

- 12.** Section 19 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
“**[Administrative responsibilities of Chairperson] Chief executive officer and other staff of Commission**”;
 - (b) by the substitution for subsection (1) of the following subsection: 25
“(1) (a) The Commission must, in accordance with section 4(1)(a) and for a renewable period not exceeding five years at a time, appoint a suitably qualified and experienced person as the chief executive officer, who must also be the accounting officer of and the Secretary to the Commission; 30
(b) If a member of the Commission is appointed as chief executive officer of the Commission, the member is regarded as having resigned as a member of the Commission with effect from the date of assumption of duty as chief executive officer.”;
 - (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 35
“As chief executive officer **[the Chairperson]** of the Commission, the person referred to in subsection (1) is responsible for—”;
 - (d) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 40
“As accounting officer **[the Chairperson]** of the Commission, the person referred to in subsection (1) is responsible for—”;
 - (e) by the substitution in subsection (3)(c) for the words “Part 5.” of the words “Part 5; and”;
 - (f) by the addition after subsection (3)(c) of the following paragraph: 45
“(d) all the functions and duties of an accounting officer of a constitutional institution in terms of the Public Finance Management Act.”; and
 - (g) by the addition of the following subsections: 50
“(4) The chief executive officer may—
(a) delegate any of his or her powers to any other employee of the Commission; or
(b) instruct any other employee of the Commission to perform any of his or her duties.
(5) A delegation or instruction in terms of subsection (4)— 55
(a) is subject to any conditions the chief executive officer may impose; and

(b) does not divest the chief executive officer of the responsibility concerning the exercise of the power or the performance of the duty.

(6) The chief executive officer may confirm, vary or revoke any decision taken by an employee in consequence of a delegation or instruction in terms of subsection (4).”

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Amendment of section 20 of Act 99 of 1997

13. Section 20 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Persons in the public service seconded to the Commission perform their duties subject to the control and discipline of the [**Chairperson**] chief executive officer of the Commission.”

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Amendment of section 21 of Act 99 of 1997

14. Section 21 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) An employee of the Commission who becomes a member of that pension fund, is entitled to pension and retirement benefits as if that person is an [**official**] employee in the public service, as defined in section 1 of the Public Service Act, 1994.”

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Amendment of section 24 of Act 99 of 1997, as amended by section 4 of Act 25 of 2003

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15. Section 24 of the principal Act is hereby amended—

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

“As accounting officer of the Commission, the [**Chairperson**] chief executive officer must—”; and

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(b) by the substitution for paragraph (d) of the following paragraph:

“(d) within two months after the end of each financial year, prepare annual financial statements as required by the Public Finance Management Act [, 1999 (Act No. 1 of 1999)].”

Amendment of section 26 of Act 99 of 1997, as amended by section 5 of Act 25 of 2003

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16. Section 26 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“The report must be submitted [**within six months after the end of the financial year to which it relates**] in accordance with section 40(1)(e) of the Public Finance Management Act, and must include—”; and

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

“(b) audited financial statements reflecting the Commission’s financial affairs during the year, as required by the Public Finance Management Act [, 1999 (Act No. 1 of 1999)].”

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Amendment of section 27 of Act 99 of 1997

17. Section 27 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

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“(1) The Commission may obtain information it requires for the performance of its functions from [**the Central Statistical Service**] Statistics South Africa, referred to in section 4(1) of the Statistics Act, 1999 (Act No. 6 of 1999), or any other organ of state or person the Commission considers appropriate.”

Repeal of sections 30, 31, 32, 33 and 34 of Act 99 of 1997

18. Sections 30, 31, 32, 33 and 34 of the principal Act are hereby repealed.

Amendment of law

19. The law mentioned in the Schedule is hereby amended to the extent set out in the third column of the Schedule.

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Amendment of Arrangement of Sections to Act 99 of 1997

20. The Arrangement of Sections to the principal Act is hereby amended—

(a) by the substitution for item 16 of the following item:

“16. Rules [of procedure]”;

(b) by the insertion after item 18 of the following item:

“18A. Conduct of members”; and

(c) by the substitution for item 19 of the following item:

“19. [Administrative responsibilities of Chairperson] Chief executive officer and other staff of Commission”.

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Short title

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21. This Act is called the Financial and Fiscal Commission Amendment Act, 2015.

Schedule

Laws amended (section 19)

Number and year of law	Short title	Extent of amendment
Act No. 92 of 1997	Independent Commission for the Remuneration of Public Office-bearers Act	<p>Amendment of section 1 of Act 92 of 1997, as amended by section 7 of Act 28 of 2003 and section 8 of Act 22 of 2014</p> <p>Section 1 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, is hereby amended—</p> <p>(a) by the substitution for the definition of “constitutional institution” of the following definition: “constitutional institution” means the Public Protector, the Auditor-General and any commission established by Chapter 9 of the Constitution, including the Independent Communications Authority of South Africa [referred to contemplated in section 192 of the Constitution and the Financial and Fiscal Commission referred to in section 220 of the Constitution;”]; and</p> <p>(b) by the substitution for paragraph (f) of the definition of “office-bearer” of the following paragraph: “(f) any member or office-bearer of [an independent] the constitutional institution, including the Deputy Public Protector;”.</p>