

DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION**NOTICE 1753 OF 2023****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.

DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION
PUBLICATION OF EXPLANATORY SUMMARY OF THE PUBLIC ADMINISTRATION
MANAGEMENT AMENDMENT BILL, 2023

1. Notice is hereby given in terms of Rule 276(1)(b) of the Rules of the National Assembly that the Minister for the Public Service and Administration intends to introduce the Public Administration Management Amendment Bill, 2023 ("the Bill"), in the National Assembly shortly.

2. The explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly.

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.

3. A copy of the Bill can be found on the websites of the Department of Public Service and Administration at <https://www.dpsa.gov.za/legislation/> and that of the Parliamentary Monitoring Group at <http://www.pmg.org.za> and, after introduction, may also be obtained from Government Printers: Cape Town (Telephone number: (021) 465 7531).