



Press Release 24.06.2017

As a sign of good will, as a unifying gesture so necessary to unite our beleaguered nation, still deeply divided after a brief and fierce electoral campaign, Hon Dr Marlene Farrugia and myself invite the Hon Prime Minister Joseph Muscat to issue the Legal Notices necessary to empower the following articles of The Administration Act Chapter 497 which to date are not yet in force.

With this meaningful act those amongst us who voted for good governance will be immediately appeased and made to feel acknowledged and respected.

Such a move will go a long way towards strengthening our young democracy.

Such a move will augur well for the upcoming legislature. Let us all move forward together.
Godfrey Farrugia

CHAPTER 497 PUBLIC ADMINISTRATION ACT

To affirm the values of public administration as an instrument for the common good, to provide for the application of those values throughout the public sector, and to provide for the organisation and management thereof.

Merit Principle

21. (1) Except as otherwise provided for in this or any other Act, appointments to public offices shall be made by competitive selection on merit.

(2) For the purpose of this article, competitive selection on merit means the selection of the candidate best suited for the office on the basis of an assessment of eligible candidates' individual and relative merits against the requirements of that office.

Powers of heads of department in relation to employees.

Cap. 12

22. Subject to the provisions of the Constitution, articles 181B and 469A of the Code of Organization and Civil Procedure, this Act, and the Public Service Management Code, a head of department shall exercise in relation to public officers in his department all rights, duties and powers of an employer in relation to his employees.

Power to create, abolish and classify position

23. (1) A head of department may in writing create positions in his department in accordance with such directives and guidelines as may be issued in that respect by the Principal Permanent Secretary.

(2) Positions shall be classified, and the terms and conditions of service applicable thereto determined, in accordance with such directives and guidelines on classification as may be issued by the Principal Permanent Secretary with the approval of the Prime Minister.

(3) A head of department may retitle a position in his department and alter the duties attached to it, and if necessary the position shall be reclassified in accordance with subarticle (2): Provided that this subarticle shall not be read as conferring power to change the terms of an officer's appointment during the course of that appointment.

(4) A head of department may abolish a position in his department only in the following cases:

(a) where a position has been filled through a contract of service for a fixed term or for the duration of a specified task, on the conclusion of that term or task; or

(b) if the position is vacant; or

(c) if the position is no longer needed by the department.

(5) No person in any position may be paid a remuneration which is less than that applicable to his grade.

Appointments to positions.

24. (1) A head of department may appoint a person to fill a position in a department under his charge in accordance with such directives and guidelines as may be issued by the Principal Permanent Secretary in relation thereto.

(2) Appointments to positions shall be made in the manner prescribed under articles 110 and 121(1) of the Constitution and in accordance with article 21, and before making an appointment to a position a head of department shall -

(a) advertise the position in such a manner as to allow eligible persons a reasonable opportunity to apply for the position; and

(b) appoint a selection panel to examine applicants and to make recommendations based on the criteria set out in article 21.

(3) Any person appointed to a position in terms of this article shall, for the duration of his appointment, be considered a public officer and shall have all the rights, powers and duties pertaining thereto under this law and any applicable law, even if he does not hold a grade.

(4) A head of department may make an appointment to a position for a fixed term or for the duration of a specified task.

(5) An appointment for a fixed term may, subject to the provisions of any other law, be extended for one further term without recourse to a fresh call for applications.

(6) The Principal Permanent Secretary may issue directives and guidelines on matters of employment including but not limited to:

(a) the definition of eligibility requirements for positions; and

(b) the conditions under which heads may make appointments;

so however that where the tasks that are to be carried out are intermittent or not on a regular basis, they shall be commissioned through a contract for service.

(7) The Principal Permanent Secretary shall consult with the Public Service Commission before issuing directives and guidelines under this article, and in so far as such directives and guidelines deal with matters falling within the scope of article 110(1) of the Constitution they may only be issued with the agreement of the Public Service Commission.

Filling of positions by lateral appointment.

25.(1) A head of department may opt to fill a position through the appointment of a public officer who holds a grade or position at a level comparable to the vacant position, such that the officer so appointed shall not obtain better terms and conditions, including salary, than those pertaining to his grade or to his previous position solely by virtue of this lateral appointment.

(2) Where a position is filled in terms of subarticle (1), a competitive selection need not be carried out and in this respect article 21 shall not apply to appointments made in accordance with this article.

Removal of Lateral Posts

26.(1) A public officer may not be removed from a position except in the following cases:

- (a) as a sanction in accordance with the Disciplinary Regulations; or
- (b) at the end of the term for which the appointment to the position was made; or
- (c) where the position is abolished.

(2) Where a public officer in a grade has been appointed to a position in accordance with the provisions of this Act, he shall retain his grade and shall, on the expiry or termination of his appointment to the position, be assigned work in his grade, unless his appointment to the grade has also been terminated or he is declared surplus to requirements in terms of article 28.

Surplus Pool

28. (1) In this article "Surplus Pool" means those public officers who are assigned thereto as provided by subarticle (2) because they are surplus to requirements, that is:

- (a) they are not needed in their current posts and cannot be transferred or laterally appointed to other duties within their respective department; and
- (b) they cannot be transferred to another department in terms of article 20.

(2) The Principal Permanent Secretary may by direction in writing assign a public officer who is surplus to requirements to the Surplus Pool, concurrently -

- (a) assigning the said officer such duties in any department as the Principal Permanent Secretary may deem appropriate in view of the officer's skills and abilities; or
- (b) assigning such officer for retraining in a specialisation, skill or profession in which the public service has a shortage of staff.

Applicability of certain provisions in terms of the Constitution.

(3) A public officer in a substantive grade who is assigned to the Surplus Pool shall retain his substantive grade.

(4) An officer who has been retrained to a satisfactory standard in terms of subarticle (2)(b) may be withdrawn from the Surplus

Applicability of certain provisions in terms of the Constitution.

29 Articles 21 to 26 inclusive and 28 shall have effect subject to there being an instrument of delegation in force under article 110 of the Constitution, and they shall cease to have effect to the extent that such delegation is withdrawn, suspended or derogated from by amendment, until such time as the instrument is restored.

Extension to the public service of powers assigned to the Merit Protection Commission.

30. Once the relative articles are brought into force in terms of article 1(2), the Public Service Commission shall, acting in accordance with article 121(1) of the Constitution, extend to the public service any or all of the provisions of articles 33 and 34, assuming directly in respect of the public service the powers therein assigned to the Merit Protection Commission: Provided that the restrictions applying to the Merit Protection Commission concerning matters under the jurisdiction of the Industrial Tribunal shall not apply to the Public Service Commission acting in relation to the public service and public officers.

Recommendation on victimisation

31. (1) The Public Service Commission shall ensure, in so far as its powers under articles 33 and 34 (as extended to the public service under article 30) permit, that no public officer is victimised for making any report to his superior, to the Commission or to another relevant authority about any breach of the Code of Ethics or of any other provision of this or any other Act.

(2) Where the Public Service Commission finds that a public officer has been victimised as aforesaid in a manner that it is unable to prevent or redress, it shall make a report to the Prime Minister or to other authorities recommending such measures to redress the situation as it considers appropriate.

Public Service Commission to act as Merit Protection Commission.

32. In addition to its functions under any other law the Public Service Commission shall act as a Merit Protection Commission (in this Title referred to as the "Commission") for the purposes of this Act.

Functions of the Commission

33. (1) Subject to subarticle (3), the functions of the Commission shall be:

(a) to audit the appointment of employees of government agencies and government entities to verify that these are made in accordance with article 21; to monitor and suggest amendments to directives and guidelines on employment matters issued by the Principal Permanent Secretary in relation to agencies and government entities, as well as the application of such directives and guidelines; and

unless otherwise catered for in the legislation, Order or instrument setting up the government entity, agency, board or commission or any other similar organisation or body, to inquire into reports that the directives issued by the Principal Permanent Secretary have not been adhered to.

(2) In performing its function the Commission in virtue of subarticle (1) (a) shall operate through after-the-event scrutiny and shall not subject any agency or government entity to any requirement to obtain the Commission's clearance or approval in advance of making appointments or taking decisions, except as a temporary measure in cases where the Commission -

(a) finds that the provisions of this Act have been, or are likely to be, breached; and

(b) is of the view that such a measure is necessary to prevent further breaches of this Act until such time as the Commission is able to conclude any investigations and take corrective measures.

(3) The Commission shall not hear and investigate complaints on matters which are assigned exclusively by any other law to any other body or to the jurisdiction of the Industrial Tribunal referred to in the Employment and Industrial Relations Act, and if any such complaints are made to the Commission it shall refer the complainants to the Tribunal; but in relation to such matters the Commission may -

- (a) on its own initiative inquire into and investigate any cases with respect to which no formal complaints have been raised; and
- (b) follow up a decision or award of the Industrial Tribunal with a view to taking additional remedial action under paragraph of subarticle of article 34(4)(c) and (5).
- (4) The Commission shall regulate its own procedure in the discharge of its functions under this Act

Powers of investigation and remedy

34. (1) For the purposes of its functions under this Act the Commission may:

- (a) carry out such inspections and investigations as it may deem necessary;
- (b) summon any person to appear before it and give evidence on oath;
- (d) enter the premises of any agency or government entity, subject to compliance with any legal requirements placed by any law on the police for the same purposes.
- c) request in writing the production of information, documents or files in the custody of any public employee for the purpose of examining the same or making copies thereof; and
- (d) enter the premises of any agency or government entity, subject to compliance with any legal requirements placed by any law on the police for the same purposes.

(2) Article 6 of the Inquiries Act shall apply to the investigations undertaken by the Commission and any summons or requests it may make in pursuit thereof.

(3) Without prejudice to subarticles (4) and (5), the Commission's findings may be used in evidence in any civil cause that may be filed by the injured party but, notwithstanding any other law, the members of the Commission cannot be called to give evidence.

(4) The Commission shall make a report to the Prime Minister following every investigation under this Act, and where it finds that an employment decision has been made otherwise than in conformity with the provisions of this Act it shall:

- (a) annul the decision in question;
- (b) issue such directives as it may consider necessary to redress the situation; and
- (c) recommend the taking of such disciplinary or criminal action as it may consider appropriate in the circumstances.

(5) Without prejudice to any disciplinary or criminal action that may be taken in accordance with subarticle (4)(c), where an employee of a government agency or government entity has made an employment decision that is not in conformity with the provisions of this Act the Commission may remove the employee from his position and/or interdict him from appointment or re- appointment for a maximum period of five years.

(6) Notwithstanding the provisions of any other law, the decisions taken and directives issued by the Commission under subarticles (4)(a) and (b) and (5) shall be binding on the organisation to which they apply, and the board of directors or head of the organisation as applicable shall ensure that the Commission's decisions and directives are complied with.

(7) The Commission shall, as soon as possible after the conclusion of each year of its activity, make an annual report to the Prime Minister about its workings during the said year, and the Prime Minister shall, as soon as possible after he has received the said report, lay it on the Table of the House of Representatives.

Application of this Title.

35. The provisions of this Title, unless otherwise indicated in this Act, shall only apply to agencies and government entities.

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