

## GOVERNMENT OF ZAMBIA

**ACT**

No. 24 of 1991

Date of Assent: 28th August, 1991

**An Act to provide for appointments in the Public Service for the functions and powers of the Judicial Service Commission, for the establishment, functions and powers of a Public Service Commission, a Teaching Service Commission, and a Police and Prison Service Commission; and to provide for matters connected with and incidental to the foregoing.**

[6th September, 1991

ENACTED by the Parliament of Zambia.

Enactment

## PART I

## PRELIMINARY

1. (1) This Act may be cited as the Service Commissions Act, 1991.

Short title and commencement

(2) This Act shall come into operation on such date as the President may, by statutory order, appoint, and the President may appoint different dates for the commencement of different Parts or provisions of this Act.

2. (1) In this Act, unless the context otherwise requires—  
 “appropriate Commission”, in relation to any office, means the Commission which, under this Act, is, or is deemed to be, charged with responsibility in respect of that office;

Interpretation

“Commission” means, as the case may require, the Judicial Service Commission established by article *one hundred and nine* of the Constitution or a Commission established by section *seven* of this Act;

“Judicial Service Commission” means the Judicial Service Commission established under Article 109 of the Constitution;

- “ member ” means a member of a Commission ;
- “ Public Service ” means, subject to clauses (2) and (3) of the Constitution, the civil service of Zambia ;
- “ Public Service Commission ” means the Public Service Commission established under section *seven* ;
- “ relevant regulations ” means the regulations made by the appropriate Commission under section *four* ;
- “ responsible officer ” means an officer designated as the responsible officer in the relevant regulations ;
- “ Teaching Service ” means such offices in the public service as may be declared, by regulations made under section *five*, to constitute the Teaching Service ;
- “ Teaching Service Commission ” means the Teaching Service Commission established under section *seven* ;

## PART II

## THE SERVICE COMMISSIONS

Judicial  
Service  
Commission

3. (1) The Judicial Service Commission established by article *one hundred and sixteen* of the Constitution shall be composed of—

- (a) the Chief Justice, who shall be Chairman ;
- (b) the Attorney-General ;
- (c) the Chairman of the Public Service Commission or such other member of that Commission as may, for the time being, be designated in that behalf by the Chairman of that Commission ;
- (d) the Secretary to the Cabinet ;
- (e) a judge nominated by the Chief Justice ;
- (f) the Solicitor-General ;
- (g) a member of the National Assembly appointed by the Speaker of the National Assembly ;
- (h) a member to represent the Law Association of Zambia nominated by that Association and appointed by the President ;
- (i) the Dean of the Law School of the University of Zambia, and
- (j) one member appointed by the President.

(2) A person shall not be qualified for appointment under paragraph (j) of subsection (1) unless he holds or has held high judicial office, and a person appointed under that paragraph or paragraph (h) of subsection (1)—

- (a) shall, subject to paragraph (b), vacate his office at the expiration of two years from the date of his appointment ; and

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**THE SERVICE COMMISSION ACT, 1991**

**ARRANGEMENT OF SECTIONS**

**PART I**

**PRELIMINARY**

*Section*

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2. Interpretation

**PART II**

**SERVICE COMMISSIONS**

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5. President may give general directions to Judicial Service Commission
6. Judicial Service Commission not subject to authority of any person, etc.
7. Additional Commissions and their responsibilities
8. Members of a Commission
9. Appointment of officers
10. Directors by the President

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**PROVISIONS RELATING TO ALL COMMISSIONS**

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12. Oath on appointment
13. Procedure
14. Exercise of functions
15. Privileged reports, etc.
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*Single copies of this Act may be obtained from the Government Printer,  
P.O. Box 30136, 10106, Lusaka. Price K1.00 each.*

**PART V**

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**FIRST SCHEDULE**

**SECOND SCHEDULE**

- (b) may be removed from office by the President, but shall not be so removed except for inability to discharge the functions of his office, whether arising from infirmity of body or mind, or for misbehaviour.

4. (1 In addition to the functions conferred on the Judicial service Commission by the Constitution, the Commission shall have power to appoint the following persons:

Functions of Judicial Service Commission

- (a) Master or Deputy Master or Assistant Master or Assistant Master of the Supreme Court;
- (b) Registrar or Deputy Registrar or Assistant Master of the High Court;
- (c) Principal Resident Magistrate, Senior Resident Magistrate, Resident Magistrate or Magistrate;
- (d) presiding officer or member of any subordinate court;
- (e) such other presiding officer or member of any other court of law or connected with any court of law as may be prescribed by or under an Act of Parliament;

and such power shall include the power to confirm appointments to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office and the Commission shall exercise its powers in respect of such persons in the name and on behalf of the President.

(2) In this section, references to a Magistrate does not include references to any administrative office holder who is, under the provisions of the Subordinate Courts Act, entitled by virtue of that office to hold a subordinate court, and references to a court of law do not include references to a court-martial or to the Industrial Relations Court.

5. Subject to section *thirteen*, the President may give to the Judicial Service Commission or to any person to whom the functions or powers of the Commission are delegated in accordance with regulations made under section *twenty-one* such general directions with respect to the exercise of the functions of the Commission in relation to persons specified in section *four* as the President may consider, necessary, and the Commission or that person shall comply with such direction.

President may give general directions to Judicial Service Commission

6. Except as provided in section *five*, the Judicial Service Commission shall not be subject to the direction or control of any person or authority in the exercise of its functions under the Constitution or under this Act.

Judicial Service Commission not subject to authority of any persons, etc.

7. There is hereby established—

- (a) a Public Service Commission, which shall have the responsibility under this Act in respect of any office in the public service which does not fall within the responsibility of some other Commission;

Additional Commissions and their responsibilities

- (b) a Teaching Service Commission, which shall have responsibility under this Act, in respect of the Teaching Service;
- (c) a Police and Prison Service Commission, which shall have responsibility under this Act, in respect of all police and prison officers.

Members of  
a  
Commission

8. (1) This section shall apply to the Commissions established by section *seven*.

(2) A Commission shall consist of a Chairman and not less than three nor more than six other members.

(3) The members of a Commission shall be appointed by the President.

(4) A person shall not be qualified for appointment as a member of a Commission if he holds the office of President or is a member of the National Assembly or a public officer:

Provided that a public officer shall be qualified for appointment as a member of the Police and Prison Service Commission.

(5) Subject to the provisions of this section, the office of a member of a Commission shall become vacant—

- (a) at the expiration of two years from the date of his appointment; or
- (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(6) A member of a Commission may be removed from office by the President only for inability to discharge the functions of his office, whether arising from infirmity of body or mind, or for misbehaviour.

(7) If the office of Chairman of a Commission is vacant or if the person holding that office is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, those functions shall be performed by such one of the other members of the Commission as may be designated in that behalf by the President.

(8) If at any time there are less than three members of a Commission besides the Chairman or if any such member is appointed to act as Chairman or is for any reason unable to perform the functions of his office, the President may appoint a person who is qualified for appointment as a member of such Commission to act as a member, and any person so appointed shall, subject to the provisions of paragraph (b) of subsection (5) continue to act until the office in which he is acting is filled or until the holder thereof resumes his functions or until his appointment to act is revoked by the President as the case may be.

9. (1) Subject to the Constitution, power to appoint persons to hold or act in any office in the public service, the teaching service, the Zambia Police Force or the Zambia prison service, including the power to confirm appointments, to exercise disciplinary control over persons holding or acting in such offices and to remove any such person from office shall vest in the President.

Appoint-  
ment of  
officers

(2) The President shall consult the appropriate Commission—

- (a) before exercising the powers conferred by subsection (1), in any case in relation to the office of Permanent Secretary, Deputy Permanent Secretary, Inspector-General of Police or Commissioner of Prisons or to any person holding or acting in any of those offices;
- (b) before exercising the power to appoint to the office of Ambassador, High Commissioner or Principal representative of Zambia in another country any person who holds an office in respect of which a Commission is charged with responsibilities under this Act;
- (c) before exercising the power of disciplinary control over or to remove from any office any person referred to in paragraph (b).

(3) The powers of the President to make appointments to any office referred to in subsection (1) other than an office to which subsection (2) refers, to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall, unless otherwise provided by an Act of Parliament, be exercised by the appropriate Commission acting in the name of the President.

10. (1) Subject to section *thirteen* the President may give to a Commission established by section *seven* or to any public officer to whom the functions or powers of such Commission are delegated in accordance with regulations made under section *twenty-two* such general directions with respect to the exercise of the functions of the Commission under section *seven* as the President may consider necessary and the Commission or that public officer shall comply with those directions.

Directions  
by the  
President

### PART III

#### PROVISIONS RELATING TO ALL COMMISSIONS

11. There shall be a secretary to a Commission and such other members of staff as a Commission may consider necessary.

Secretary  
and other  
staff

12. (1) Every member of a Commission shall, on appointment, take an oath in the form set out in the First Schedule.

Oath on  
appoint-  
ment

(2) The secretary and such other members of staff of a Commission as the Chairman may require so to do, shall, on appointment, take an oath in the form set out in the Second Schedule.

(3) Where any person is required to take an oath under this section and—

(a) he has no religious belief; or

(b) the taking of an oath is contrary to his religious belief;

he may make and subscribe a solemn affirmation in the form of the oath appointed, substituting the words “solemnly and sincerely declare and affirm” for the word “swear” and omitting the words “so help me God”.

(4) Every oath or affirmation taken by a member shall be administered by a judge and every oath or affirmation taken by the secretary or any other member of the staff of a Commission shall be administered by a commissioner for oaths.

**Procedure**

13. (1) Every meeting of a Commission shall be presided over by the Chairman.

(2) Subject to subsection (3), a Commission may act notwithstanding a vacancy in the office of a member thereof or the absence of a member.

(3) Any decision of a Commission shall require the support of the votes of the majority of all the members:

Provided that, if upon any question the votes are equally divided, the Chairman shall have a casting vote.

(4) A decision may be made by a Commission without a meeting by circulating the relevant papers among the members and the members may express their views in writing but any member shall be entitled to require that any such decision shall be deferred until the subject-matter is considered at a meeting of the Commission.

(5) Any member shall be entitled to dissent from a decision of the Commission and to have his dissent and his reasons therefor set out in the records of the Commission.

(6) Subject to the other provisions of this Act and of regulations made by the Commission, a Commission may determine its own procedure.

**Exercise of functions**

14. (1) A Commission shall not exercise its powers in connection with the dismissal, disciplinary action or termination of appointment of any officer holding an office for which it is responsible under this Act except in accordance with the provisions of the relevant regulations.

(2) A Commission, at the request of a responsible officer shall hear the responsible officer personally in connection with any recommendation made by him to the Commission.

**Privileged reports, etc.**

15. Any report, statement or other communication or record of any meeting, inquiry or proceedings of a Commission relating to the exercise of its functions or any report, statement



or other communications or record made by a member in the course of his duties, and any application form, report or other communication despatched to the Commission in connection with the exercise of its functions, and in the possession of the Commission, shall be privileged in that its production may not be compelled in any legal proceedings unless the Chairman certifies that such production is not against the public interest.

16. Every member of a Commission shall have such protection and privilege in case of any action or suit brought against him for any act done or attempted to be done in the *bona fide* execution of his duties, as is by law given to the acts done or words spoken by a judge in the exercise of his judicial office.

Privilege of members

## PART IV

### PENSIONS

17. (1) Where under any law any person or authority has a discretion—

Function of a Commission in relation to pensions

(a) to decide whether or not any pension benefits shall be granted; or

(b) to withhold, reduce in amount or suspend any such benefits that have been granted;

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefit or, in the decision to withhold them, reduce them in amount or suspend them, as the case may be.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.

(3) For the purpose of this section, where a person ceases to be a public officer before the establishment of a Commission the appropriate Commission means the Commission which would have responsibility under this Act where the officer still to hold his last public office.

(4) In this section "pensions benefits" means any pensions' compensation, gratuities or other like allowances for persons in respect of their service as public officers, including service as members of the teaching service of, and services as public officers under, the Government of the territories which on the 24th October, 1964, became the sovereign Republic of Zambia or for the widows, children, dependants or personal representatives of such persons in respect of such services.

## PART V

## MISCELLANEOUS

Offence of  
false  
information

18. Any person who, in connection with the exercise of any function of a Commission, wilfully gives to the Commission or any member thereof, any information which he knows to be false or misleading in any material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand kwacha.

Publication  
and dis-  
closure of  
information  
to  
unauthorised  
persons  
prohibited

19. (1) No member of a Commission or of the staff of a Commission or any other person shall, without the consent in writing of the appropriate authority, publish or disclose to any person otherwise than in the course of his duties the contents or any part of the contents of any documents, communication or information whatsoever, which has come to his knowledge in the course of his duties under this Act or any regulation made thereunder; and any person who knowingly acts in contravention of any of the provisions of this subsection shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding ten thousand kwacha.

(2) If any person having information which to his knowledge has been published or disclosed in contravention of subsection (1) publishes or communicates any such information to any other person, otherwise than for the purpose of any prosecution under this Act or in the course of his duty, he shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding ten thousand kwacha.

(3) In this section, "the appropriate authority" in relation to the Judicial Service Commission means the Chief Justice, and in relation to any other Commission means the Minister.

Offence to  
influence or  
attempt to  
influence  
Commission

20. Any person who otherwise than in the course of his duties directly or indirectly by himself or by any other person in any manner whatsoever influences or attempts to influence any decision of the Commission shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding ten thousand kwacha:

Provided that nothing in this section shall prohibit any person from giving a certificate or testimonial to any applicant or candidate for any office or prohibit any person from supplying any information or assistance upon formal request made by the Commission.

Regulations

21. (1) A Commission may, by statutory instrument made with the consent of the President, make regulations for the appointment, including the power to confirm appointments of persons, to any office with respect to which it is charged with responsibility under this Act, promotions to such offices, the disciplinary control of persons holding or acting in such offices

the termination of appointments and the removal of such persons from office and the practice and procedure of the Commission in the exercise of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision for—

- (a) prescribing the qualifications for appointment or promotion to any post and such training courses as shall be considered necessary for promoting or maintaining efficiency;
- (b) the transfer or secondment of any person holding any such office.

(3) Regulations under this section may make different provisions for different categories of officers and may authorise the Commission to delegate any of its functions or powers to any responsible officer or officer subordinate to a responsible officer.

22. Notwithstanding the repeal of the Constitution in the Schedule to the Constitution of Zambia Act, 1973, the members of any Commission established by article one hundred and thirty of that Constitution shall continue to hold office as members of the equivalent Commission established by this Act, subject to the same terms and conditions as referred to in section nine of the Constitution of Zambia Act, 1991.

Transitional

FIRST SCHEDULE

(Section 12 (1))

OATH OF MEMBERS OF COMMISSION

I, ..... having been appointed as Chairman/member of the ..... of the Service Commission do swear that I will, without fear or favour, affection or ill will, discharge the functions of the office of Chairman/member of the Commission, and that I will not, directly or indirectly, reveal any matters relating to such functions to any unauthorised person or otherwise than in the course of my duties.

SO HELP ME GOD

Sworn/Declared before me this ..... day of ..... 19.....

Judge

SECOND SCHEDULE

(Section 12 (2))

OATH OF SECRETARY AND OTHER EMPLOYEES OF COMMISSION

I, ..... having been appointed to exercise the functions of secretary to/member of the staff of the ..... Service Commission, do swear that I will not directly or indirectly, reveal to any unauthorised person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of my duties as such.

SO HELP ME GOD

Sworn/Declared before me this ..... day of ..... 19.....

Commissioner for Oaths

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