

Lesotho

## Local Government Service Act, 2008

Act 2 of 2008

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## Local Government Service Act, 2008

### Act 2 of 2008

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**An Act to make provision for a local government service and related matters.**

Enacted by the Parliament of Lesotho.

### Part I – Preliminary

#### 1. Short title and commencement

This Act may be cited as the Local Government Service Act 2008 and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**Act**" means the Local Government Service Act 2007;

"**citizen**" means a citizen of Lesotho;

"**Commission**" means the Local Government Service Commission referred to in [section 14](#);

"**Code of Conduct**" means the Code of Conduct established under the Local Government Service Act 2007<sup>1</sup>;

"**Conciliation Board**" means the Board established under the Local Government Service Act 2007;

"**Council**" means a Community Council, District Council, Urban Council or any Municipal Council, constituted for any community area, district area, urban area or municipal area respectively;

"**disciplinary action**" means a formal or an informal action taken by management against an Officer who fails to conform with the rules and regulations governing officers or has committed any misconduct;

"**dispute of rights**" means a dispute arising from a breach or contravention of the law, contract of employment or collective bargaining agreement;

"**dispute of interest**" means a dispute over employment matters to which an officer or employer does not have an established right;

"**employer**" means the Government of Lesotho represented by a local authority;

"**Head of Department**" means an officer who is in charge of a department or an agency under his or her supervision or any other officer designated as such by the Minister;

"**Labour Court**" means the Labour Court established under section 22 of the Labour Code Order 1992;

"**Local Authority**" means a Community, District, Urban, Municipal Council;

<sup>1</sup> Act No. 1 of 2007

"**Management**" means the Head of Department, Head of Section or any other officer responsible for organising, controlling, planning, directing, and monitoring the work of other officers under his or her supervision;

"**member**" means a member of the Local Government Service Commission;

"**Minister**" means the Minister responsible for local government;

"**office of Chief**" means the office of Principal Chief;

"**officer**" means a person appointed by the Local Government Service Commission to the Local Government Service;

"**Service**" means the Local Government Service;

"**Tribunal**" means the Local Government Service Tribunal established under [Section 26](#).

## Part II – Local Government Service

### 3. Local Government Service

The Local Government Service constituted under the Local Government Act 1997<sup>2</sup> shall continue in existence and shall consist of:

- (a) all officers appointed by the Commission; and
- (b) all staff in the offices of Principal Chiefs.

### 4. Qualifications for appointments

- (1) The Commission shall have regard to efficiency of service in selecting candidates for appointments to the Service and those working in the Principal Chiefs' offices.
- (2) The Commission shall give priority to the citizens of Lesotho while making appointment to the service.
- (3) The Commission may recruit a non-citizen if it is in the interest of the service to do so.

### 5. Appointment to the Service

- (1) A person shall be appointed to the Service on—
  - (a) permanent and pensionable terms after successfully completing a probation period of twelve months;
  - (b) contract, being a fixed period of time of service that shall be in accordance with the contract agreement;
  - (c) casual terms, where a person is engaged for the performance of specific time bound tasks.

### 6. Entry and advancement within the Service

- (1) Entry into and advancement in the Service shall be based on merit and experience, namely: qualification, knowledge, skill and assessment test after a fair and open competition.

<sup>2</sup> Act No. 6 of 1997 as amended

- (2) In selecting candidates for appointment to a post in the Service, the Commission shall have regard primarily to the need for promoting efficiency within the Service.

## **7. Transfer of officers**

- (1) Officers from other public services as stipulated in Lesotho Constitution Chapter XIII may apply for positions in the Local Government Service.
- (2) The Commission shall have the power to transfer officers in the Service from one local authority to another.

## **8. Pensions and gratuity**

For the time being the laws governing pensions in the public service shall equally apply to the service.

## **9. Secondment**

- (1) An officer may be seconded to other organizations for a period not exceeding three years.
- (2) Officers in Local Government Service may be seconded to other services stipulated in Lesotho Constitution Chapter XIII.

## **10. Retirement**

- (1) An officer shall retire from the service at the age of sixty.
- (2) An officer may, by written notice to the Commission, voluntarily retire from the service on attaining the age of fifty years.
- (3) Where notification is given under sub-section (2), officers on LA 3 and above shall give three (3) calendar months' notice prior to the intended day of retirement. Officer on Grade LA 4 and below shall give one calendar month.
- (4) Other circumstances for retirement or termination of employment shall be as prescribed by the Minister in the conditions of employment.
- (5) Notwithstanding sub-section (1), the Commission may, having regard to the conditions of the service and after consultation with the Minister and the officer concerned, retire an officer from the service before or after the officer attains the age of fifty years.
- (6) An officer is liable to retirement at the discretion of the Commission:
  - (a) for medically proven incapacity to perform the duties of the officer's office; or
  - (b) for the purpose of facilitating improvements in the service by which greater efficiency or economy may be effected.

## **11. Termination**

Appointments in the Service may be terminated:

- (a) by resignation by giving one calendar month written notice, or salary equivalent to gross salary in lieu of notice;
- (b) by dismissal after disciplinary proceedings;
- (c) by desertion;

- (d) by death;
- (e) by operational requirements such as abolition of a position, efficiency and effectiveness of the service and economic factors
- (f) in accordance with the terms and conditions specified in the contract of employment;
- (g) on being sentenced to imprisonment; or
- (h) on medical grounds.

## 12. Powers of the Minister

- (1) Subject to the provisions of the Constitution and of this Act or any other written law relating to the Service, the Minister may (subject to the prior concurrence of the Minister responsible for finance in respect of any matter involving the expenditure of public funds) do what in his or her opinion is necessary or expedient for giving effect to the objects of this Act or for enabling effect to be given thereto.
- (2) Without limiting the generality of subsection (1), the Minister may make provision for all or any of the following matters:
  - (a) policy on the establishment or abolition of departments, sub-departments or offices, and transfer of functions from one Council to another;
  - (b) employment policy and other policies that relate to human resources, including but not limited to promotions, training and development, officers' relations, retirements, control and organisation of Councils and departments;
  - (c) policy on salary administration, remuneration and benefits, job evaluation and job grading;
  - (d) policy for effecting economies of scale and promoting responsiveness and provision of quality services in the Service;
  - (e) policy for local government service transformation and reforms;
  - (f) policy on norms, standards and matters relating to conditions of employment and general welfare of officers;
  - (g) policy determination with regard to code of conduct, performance management, discipline and other career incidents of the officers including any other matter which relates to the promotion of harmonious relationships between the employer, officers, officers' representatives and management within the Service;
  - (h) to declare fixed establishment with the concurrence of the Minister responsible for finance;
  - (i) to classify into classes or grades posts in the service and to determine qualifications necessary for appointment to any such posts or to a post in any class or grade and to revise or adjust with effect from such date as may determine any scales so fixed.

## Part III – Local Government Service Commission

### 13. Local Government Service Commission

- (1) The Local Government Service Commission established under the Local Government Act 1997 shall continue in existence.

- (2) The Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its name.
- (3) The Commission shall consist of a Chairperson and four other members all of whom shall be appointed by the Minister by notice published in the *Gazette*.

#### **14. Qualifications**

A person shall not be qualified to be appointed as a member of the Commission unless the person—

- (a) is a person of integrity;
- (b) possesses experience in administrative and public affairs and such other qualities as to enable him to discharge his duties in a fair manner free from bias or prejudice;
- (c) does not take an active part in politics or in political activity.

#### **15. Disqualifications**

A person shall be disqualified from being appointed or continuing as the Chairperson or a member of the Commission—

- (a) if he becomes a member of the National Assembly or the Senate;
- (b) if he becomes a Councillor or an employee of any Council;
- (c) if he is adjudged insolvent or declared to be of unsound mind; and
- (d) if he is convicted of a criminal offence involving moral turpitude.

#### **16. Temporary absence**

Where the Chairperson is, by reason of infirmity of body or mind or absence from Lesotho, temporarily unable to perform the duties of his office, the Minister may appoint any other member of the Commission to act in his place.

#### **17. Resignation**

A member of the Commission, including the Chairperson, may resign his office by letter addressed to the Minister.

#### **18. Tenure of office**

The term of office of a member, including the Chairperson, shall be five years which may be renewed for another term not exceeding five years.

#### **19. Conduct of business**

- (1) The Chairperson shall preside at a meeting of the Commission and in the absence of the Chairperson the members present at the meeting shall elect a member to be the Chairperson for that meeting.
- (2) A question that comes up for consideration shall be determined by the majority of the members present at such meeting.
- (3) In the event of a tie of votes, the Chairperson shall have a casting vote.

- (4) The quorum for any meeting of the Commission shall be three members.
- (5) The Commission may regulate its own procedure at its meetings.

## 20. Remuneration of the members

The Chairperson and other members of the Commission shall be entitled to receive such remuneration and allowances as the Minister may, with the concurrence of the Minister responsible for finance, determine.

## 21. Staff of the Commission

The Commission shall be assisted by a Secretary and other members of staff who shall be appointed by the Commission and shall be members of the service.

## 22. Powers of the Commission

- (1) The Commission shall have the following powers:
  - (a) to determine all matters relating to methods of recruitment to posts in the service, and the principles to be followed in making appointments to such posts including making promotions and transfers in the Service.
  - (b) to recruit, appoint, promote, transfer and retire members who hold posts in the Service;
  - (c) to terminate appointments of officers save the power to discipline and terminate appointments to such officers for disciplinary reasons;
  - (d) to approve the suitability assessment prior to appointment;
  - (e) to delegate, subject to such terms and conditions as may be determined by the Commission, to local authorities any of the powers, duties or functions conferred or imposed upon, or vested in the Commission by or under this Act;
  - (f) to regulate its own procedure by regulation;
  - (g) to exercise such other powers as may be vested in the Commission by the Minister under this section and published by notice in the *Gazette*.
  - (h) to regulate its own procedure by regulation.
- (2) In the exercise of the powers vested in the Commission under subsection (1) the Commission may modify, vary, revise or set aside any decision or determination made by the Commission.

## 23. Powers of the Minister in relation to the Commission

- (1) The Minister may call upon the Commission to furnish such files and other documents of information as the Minister may require in respect of the performance of the duties and the exercise of the powers of the Commission.
- (2) Notwithstanding the provisions of (1) above, the Commission shall submit annual reports on the performance of its duties to the Minister for tabling before the National Assembly.

## 24. Immunity of members of the Commission

No action or other proceedings shall be brought against any member of the Commission or any other person acting under its authority for or in respect of any act done or omitted to be done in good faith in

the exercise or purported exercise of its or his/her powers under this Act, any regulation, rule or by-law made thereunder.

## Part IV – Codes of practice and discipline

### 25. Codes of good practice

- (1) The Minister may, from time to time and after consultation with such persons or bodies which are in the Minister's opinion representative of the interests concerned:
  - (a) prepare and issue, codes of practice for the purpose of providing practical guidance in respect of this Act including the following codes—
    - (i) Code of Conduct which shall be primarily a guide to local government officers in the conduct of their relationships and dealings with their employers and the general public;
    - (ii) Grievance Code which shall prescribe the procedure to be followed in handling officer's grievances;
    - (iii) Disciplinary Code which shall prescribe the procedure to be followed in instituting disciplinary action against an officer who has committed a misconduct;
    - (iv) Code on Collective Bargaining which shall guide the officers and registered officer's associations on how to bargain collectively with the employer on matters of mutual interest without outside interference;
    - (v) Code on Dispute Resolution which shall prescribe the procedure to be followed to resolve any dispute emanating from the workplace, and shall not be applicable in the case of the Principal Secretary and the Government Secretary; and
    - (vi) Code on Retrenchment which shall prescribe the procedure to be followed when retrenchment is imminent within the local government service;
  - (b) revise any code referred to in paragraph (a).
- (2) A code prepared and any alteration proposed to be made on a revision of such a code in pursuance of this section, shall be tabled before Parliament.
- (3) The Minister shall cause a code including a revision of the code made under this section to be made available to the officers in the Service and the public after the code and the revision of the code were publicised.
- (4) Officer who is a party in any proceedings under sub-section 26 (1)(a)(i), (ii) and (iii) may be represented by another officer from his or her local authority.
- (5) The right to representation under sub-section (5) does not include the right to be represented by a legal practitioner.
- (6) In all criminal and civil proceedings any such code shall be admissible in evidence, and if any provision of such a code appears to the court conducting the proceedings to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.
- (7)
  - (a) The Executive Head of the Local Authority may, having regard to—
    - (i) the safety and security of persons or public funds or property;
    - (ii) the process of investigations; and

- (iii) other circumstances, suspend an officer, on full pay, pending a disciplinary enquiry.
- (b) Suspension shall be for a period of three months, subject to further extension of another three months, within which disciplinary action shall be taken.
- (c) Notwithstanding paragraph (b), suspension shall not lapse if the criminal proceedings are pending.
- (d) A criminal charge against an officer in a court of law shall be a ground for suspension.
- (8) Notwithstanding sub-section (4) an officer who has been convicted of a criminal offence shall be summarily dismissed from local government service on the basis of that conviction.

## **Part V – Settlement of disputes**

### **26. Legal representation**

In any proceedings under this Part, a party to the dispute may be represented by a legal practitioner.

### **27. Conciliation Board**

- (1) There shall be a Conciliation Board which shall conciliate disputes of interest.
- (2) The Commission shall nominate one of its members to constitute the Conciliation Board.
- (3) Where the Commission is a party to a dispute, the Minister shall assign a person to constitute the Conciliation Board.
- (4) The decision of the Conciliation Board shall not be binding on the parties.

### **28. Arbitration**

- (1) Disputes of right may be resolved by arbitration.
- (2) A matter involving a dispute of right shall not be referred to arbitration unless the parties involved have agreed.
- (3) All disputes involving essential services shall be resolved by arbitration unless the parties agree otherwise.
- (4) The decision of the arbitration shall be final and binding on the parties.

### **29. Strike**

- (1) An officer shall not engage in a strike.
- (2) An officer who contravenes sub-section (1) shall be dealt with in accordance with the Disciplinary Code of the Local Government Service Act 2007.

## Part VI – Local Government Service Tribunal

### 30. Local Government Service Tribunal

- (1) There shall be a Local Government Service Tribunal which shall deal with appeals instigated by an officer, registered local government officers' association or employer arising from a grievance and or a disciplinary action.
- (2) The Minister may cause to be set up, such panels to serve as a tribunal when need arises.
- (3) The Tribunal shall consist of:
  - (a) a Chairperson who shall be a legal practitioner of not less than five years' standing and shall be appointed by the Judicial Service Commission after consultation with the Minister; and
  - (b) two other persons, one of whom shall have experience of not less than ten years in public administration, and the other shall have experience in human resource management both of whom shall be appointed by the Commission after consultation with the Minister.
- (4) The Minister shall cause the names of members of the Tribunal to be published in the *Gazette*.
- (5) A member of the Tribunal shall hold office for a term not exceeding five years.
- (6) Two members of the Tribunal shall form a quorum.
- (7) At the meeting of the Tribunal the Chairperson shall have a deliberative vote, and in the case as equality of votes shall also have a casting vote.
- (8) The Tribunal shall:
  - (a) regulate its own procedure; and
  - (b) in the absence of the Chairperson, appoint one of its members to act as a Chairperson.
- (9) The Tribunal shall have a secretariat whose offices shall be in the Service.
- (10) Members of the Tribunal shall receive such sitting allowance as the Minister may, after consultation with the Minister responsible for finance, determine.
- (11) A party who is not satisfied with a decision of the Tribunal may appeal to the Labour Court.

## Part VII – Miscellaneous

### 31. Freedom of association

- (1) An officer shall be entitled to freedom of association in accordance with Section 16(1) of the Constitution.
- (2) In pursuance of (1) above, officers may form officers' association under the provisions of the Societies Act 1966<sup>3</sup> for the purpose of collective bargaining and ethical conduct of its members.
- (3) An association which is representative of over 50% of the general body of officers from within the bargaining unit may apply to the Minister for recognition for purposes of collective bargaining.

<sup>3</sup> Act No. 20 of 1966

**32. Penalties**

- (1) The following penalties may be imposed on an officer who has been found guilty of misconduct:
  - (a) caution and reprimand;
  - (b) surcharge;
  - (c) demotion;
  - (d) compulsory retirement; or
  - (e) dismissal.
- (2) An officer shall not be dismissed or otherwise punished except in accordance with this Act, regulations or rules made hereunder.

**33. Regulations**

The Minister may, by notice published in the *Gazette*, make regulations for the carrying into effect of this Act.

**34. Repeals**

Sections 38, 41 and Part VI (save for sections 67(1) and 74(1)) of the Local Government Act 1997 are repealed.