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Judicial Service Commission Act, 1982

Act 13 of 1982

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Judicial Service Commission Act, 1982

Act 13 of 1982

Commenced on 1 April 1983

[This is the version of this document at 1 December 1998.]

An Act to re-establish a Judicial Service Commission and to provide for other matters relating to the Commission and the judicial service.

1. Short title and commencement

This Act may be cited as the Judicial Service Commission Act, 1982 and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

2. Interpretation

In this Act, unless the context otherwise requires—

"**appointment**" means the conferment of a judicial office on a person and includes a probationary appointment, a promotion and an acting appointment;

"**Commission**" means the Judicial Service Commission established by [section 3](#);

"**Member**" means a member of the Commission and includes the Chairman and an acting Chairman;

"**Minister**" means the Minister responsible for justice;

"**judicial office**" means any office referred to in [section 5](#);

"**judicial officer**" means any person holding or acting in a judicial office.

3. Establishment and composition of Judicial Service Commission

(1) There is hereby established a Judicial Service Commission which shall consist of—

- (a) the Chief Justice, who shall be the chairman;
- (b) the Chairman of the Civil Service Board; and
- (c) three persons (hereinafter referred to as "appointed members") appointed by the King on such terms and conditions as he may determine and two of whom possess such legal qualifications and experience as the King may determine.

[Amended K.O-I-C. 16/1993]

(2) If the office of the Chief Justice is vacant or the Chief Justice is, for any reason, unable to perform the functions of his office, the provisions of subsection (3) shall apply.

(3) Where the provisions of subsection (2) apply, one of the following persons may perform the functions of the chairman, namely—

- (a) a person acting in the office of the Chief Justice; or
- (b) in the absence or incapacity of the person referred to in paragraph (a), the Judge President of the Court of Appeal; or
- (c) in the absence or incapacity of both the persons referred to in paragraphs (a) and (b), a Justice of Appeal designated by the King.

- (4) No person shall be qualified to be appointed or, if he is a member, to continue to be an appointed member under paragraph (c) of [section 3\(1\)](#) if—
 - (a) he is or becomes a Senator or a member of the House of Assembly; or
 - (b) he is or becomes a public officer other than a Judge of the Court of Appeal or of the High Court.
- (5) The Permanent Secretary to the Ministry responsible for justice shall be the Secretary to the Commission.

4. Tenure of Office of appointed member

- (1) Subject to the provisions of this section, the office of the appointed member shall become vacant—
 - (a) at the expiration of five years or such lesser period, not being less than two years, from the date of his appointment as may be specified in his appointment; or
 - (b) if any circumstances arise that, if he were not the appointed member, would cause him to be disqualified to be appointed as such under [section 3\(4\)](#).
- (2) The appointed member may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.
- (3) The appointed member shall be removed from office by the King if the question of his removal from office has been referred to a tribunal appointed under subsection (4) and the tribunal has recommended to the King that he ought to be removed from office for inability as aforesaid or for misbehaviour.
- (4) If the Chairman represents to the King that the question of removing the appointed member under this section ought to be investigated, then—
 - (a) the King shall appoint a tribunal which shall consist of a chairman and not less than two but not more than four, other members, on the recommendation of the Chairman from among persons who hold or have held judicial office; and
 - (b) the tribunal shall enquire into the matter and report on the facts thereof to the King and recommend to him whether the appointed member ought to be removed under this section.
- (5) If the question of removing the appointed member has been referred to a tribunal under this section, the King, after consultation with the Chairman, may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the King, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the King that that member should not be removed.
- (6) If the office of the appointed member is vacant or if the person holding that office is for any reason unable to exercise the functions of his office, the King, acting in accordance with the advice of the Chairman, may appoint a person who is qualified to be an appointed member to act as that member, and any person so appointed shall, subject to the provisions of subsection (1), continue to act until the office in which he is acting is filled or, as the case may be until the holder thereof resumes his functions or until his appointment to act is revoked by the King, acting in accordance with the advice of the Chief Justice.
- (7) An appointed member shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office in the form set out in the First Schedule or such other oaths as may be prescribed.
- (8) Subject to this Act, the Commission may regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.

5. Functions of the Commission

- (1) The functions of the Commission shall be—
 - (a) to advise the King in pursuance of any law providing for such advice by the Commission;
 - (b) to appoint persons to hold or act in any judicial office;
 - (c) to exercise disciplinary control over any person holding or acting in a judicial office;
 - (d) to remove, for good cause, such persons from office; and
 - (e) to do all such other things as it may consider appropriate for the performance of its functions under this Act or any other law.
- (2) For the purposes of this Act, the following are hereby designated to be judicial offices:—
 - (a) the office of Registrar or Assistant Registrar of the High Court or of the Court of Appeal;
 - (b) the office of a magistrate;
 - (c) such other office connected with any court as the Minister may, by notice in the *Gazette*, determine.
- (3) The Commission may, in writing or by Notice in the *Gazette*, delegate, subject to any such conditions as it may think fit, any of its functions under this Act to any of its members or to any public officer either generally or in any particular case or class of cases:

Provided that nothing in this subsection shall be construed as precluding the Commission from itself performing any function delegated to any other person if the Commission has, prior to the performance of such function or at any other time before the final determination of the matter in question by the person to whom such function has been delegated, informed that person that it intends to exercise or is exercising such function.
- (4) The Commission may, in the performance of any of its functions appoint any person or a body of persons to assist it in the discharge of such function and any such person or body of persons shall, for that purpose, have the powers and privileges set out in sections [6](#) and [8](#).

6. Other powers of the Commission

In the performance of its functions, the Commission may—

- (a) require any public officer to attend and give information or evidence concerning any matter which it is required to consider and may require the production of any documents relating to any such matter by any person attending before it or by any other person whom, in writing, it requires to do so;
- (b) obtain information or advice from any public officer;
- (c) do all such other things, including the taking of evidence on oath and the administration of such oaths, as are incidental or conducive to the exercise of its functions.

7. Proceedings of the Commission

- (1) The quorum for any meeting of the Commission shall be the Chairman, or any person acting as Chairman, and one other member.
- (2) All decisions of the Commission shall be by agreement of at least two members.
- (3) Subject to sub-sections (1) and (2) and any Regulations made under this Act, the Commission may regulate its own procedure.

8. Protection of Commission and members from legal proceedings

- (1) The question whether—
 - (a) the Commission has validly performed any function vested in it by this Act;
 - (b) any member of the Commission or any other person or body of persons has validly performed any function of the Commission delegated to such member or other person or body of persons under this Act; or
 - (c) any member of the Commission or any other person or body of persons has validly performed any other function in relation to the work of the Commission or in relation to any function as is referred to in paragraph (b),shall not be inquired into in any court.
- (2) Every member of the Commission shall have such and the like protection and privilege in case of any action or suit brought against him for any act done or omitted 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 of the High Court in the exercise of his judicial office.

9. Communications of Commission to be privileged

No person shall in any legal proceedings be permitted or compelled to produce or disclose any communication, written or oral, which has taken place between the Commission or any member or officer thereof and any other person or between any members or officers of the Commission, in exercise of or in connection with the exercise of the functions of the Commission, unless the Chairman consents in writing to such production or disclosure.

10. Commission not to consider irregular representations

In the performance of the functions of the Commission, the Commission, a member thereof, the Secretary or any other officer thereof or any person or body of persons exercising functions delegated or entrusted by the Commission, shall not take into account any representations made otherwise than in accordance with this Act, any Regulations made thereunder or any other matter prescribed in pursuance of the objects of this Act.

11. Annual reports

The Commission shall, not later than three months after the end of each financial year, or such longer period as the Minister may in writing permit, submit a report of its activities relating to that financial year.

12. Office to influence Commission

- (1) Without prejudice to any other law, any person who—
 - (a) otherwise than in the course of his official duty improperly, whether directly or indirectly, by himself or by any other person and in any manner whatsoever, influences or attempts to influence any decision of the Commission; or

- (b) in connection with the exercise by the Commission of its functions or duties, wilfully gives to the Commission any information which he knows to be false or does not believe to be true or which he knows to be false by reason of the omission of any material particular;

shall be guilty of an offence and on conviction liable to a fine of E1,000 or twelve months' imprisonment or both:

Provided that nothing in paragraph (a) shall be construed as prohibiting any person from giving a certificate or testimonial to any applicant or candidate for any public office or from providing any information or assistance upon a request made by the Commission.

- (2) For the purpose of this section, the term "Commission" includes any member of the Commission, the Secretary and any person or body of persons exercising any of the functions of the Commission.

13. Unauthorised issue of information

- (1) A member of the Commission, the Secretary, any other officer of the Commission or any other person shall not, without the written permission of the Commission, publish or disclose to any person otherwise than in the exercise of his official functions the contents of any document, communication or information whatsoever which has come to his notice in the course of his duties.
- (2) Any person who acts in contravention of subsection (1) or who has in his possession any document, communication or information which to his knowledge has been disclosed in contravention of this section and who publishes or communicates it to any other person otherwise than for the purpose of a prosecution under this Act or any Regulations made thereunder or in the course of his official duty, shall be guilty of an offence and on conviction liable to a fine of E1,000 or twelve months' imprisonment or both.

Transitional and consequential provisions

14. Pending proceedings and other matters

Notwithstanding any other law, on the date of coming into operation of this Act all proceedings (whether disciplinary or of any other nature) and all other matters pending before any authority in respect of the matters set out in [section 5](#) of this Act shall be continued or otherwise dealt with by the Commission in accordance with this Act and any Regulations made thereunder.

15. Continued application of Judicial Service Commission Regulations, 1968

The Judicial Service Commission Regulations, 1968 shall, except to the extent to which they are inconsistent with this Act, continue in force as if they had been made under [section 4](#) of this Act and may be amended or revoked and replaced in accordance with that section.

16. Consequential amendment of certain laws

The laws set out in the first column of the Second Schedule are hereby amended in the manner specified in relation thereto in the second column of that Schedule.

First Schedule (under section 4(7))

(1) – Oath or affirmation of allegiance

I _____ do swear (or solemnly affirm) that I will be faithful and bear true allegiance to King _____ his heirs and successors, according to law.

So help me God.

(To be omitted in affirmation)

(2) – Oath or affirmation for due execution of office

I _____ do swear (or solemnly affirm) that I will well and truly serve King _____ his heirs and successors, in the office of *(here insert the description of the office)*.

So help me God.

(To be omitted in affirmation)

Second Schedule (under section 16)

(1)	(2)
1. The General Administration Act, 1905	Section 6 of the General Administration Act, 1905 is repealed.
2. The Magistrates Courts Act, 1938	<p>(1) Section 2 is amended by inserting after the definition "judicial officer" the following—</p> <p style="padding-left: 40px;">"Minister" means the Minister responsible for justice;"</p> <p>(2) <u>Section 4</u> is replaced with the following—</p> <p style="padding-left: 40px;">"4. Minister may determine area of jurisdiction</p> <p style="padding-left: 80px;">(1) Subject to subsection (2), a magistrate or a magistrate's court shall have jurisdiction over such area as the Minister may, by notice in the <i>Gazette</i>, determine and a magistrate above the rank of Senior Magistrate or a magistrate's court presided over by him shall, unless otherwise stated in any notice under this subsection, have jurisdiction within every district in Swaziland.</p>

(2) The area of jurisdiction of magistrates' courts as set out under the General Administration Act, 1905 in accordance with [Legal Notice No. 121 of 1963](#) shall, until such Notice is amended or revoked, be deemed to be areas of jurisdiction determined under subsection (1).".

(3) Section 5 is repealed.

(4) Section 13 is amended by replacing subsection (2) with the following—

"(2) The presiding officer shall report forthwith to the Minister any action he has taken under this section and the Minister may, after investigation, set aside, confirm the order or dismiss the messenger from Office.".

(5) Section 72 is amended by replacing the second proviso thereto with the following—

"Providing that a magistrate above the rank of Senior Magistrate shall, in addition to the other powers conferred by this section and subject to the maximum penalty prescribed by any law, have jurisdiction in criminal matters to impose a fine not exceeding one thousand Emalangeni or a term of imprisonment not exceeding seven years or, where the law provides for both a fine and

	imprisonment, both such fine and imprisonment."
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