



**Isle of Man**

*Ellan Vannin*

**AT 1 of 2015**

**PUBLIC SERVICES COMMISSION ACT 2015**





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## PUBLIC SERVICES COMMISSION ACT 2015

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**Isle of Man***Ellan Vannin*

## PUBLIC SERVICES COMMISSION ACT 2015

*Signed in Tynwald:* 20 January 2015  
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AN ACT to establish a new body to be responsible for the employment of certain public sector employees and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### 1 Short title

The short title of this Act is the Public Services Commission Act 2015.

### 2 Commencement

- (1) This Act (apart from this section and section 1) comes into operation on such day or days as the Council of Ministers may by order appoint and different days may be appointed for different purposes of the Act.<sup>1</sup>
- (2) An Order under subsection (1) may make such transitional and saving provision as the Council of Ministers considers necessary or expedient.

### 3 Interpretation

- (1) In this Act —
  - “**Commission**” means the Public Services Commission established by section 4;
  - “**employee of the Commission**” has the meaning assigned by section 7(1);
  - “**officer of the Commission**” means an employee of the Commission whom the Commission has assigned to work directly for it;
  - “**prescribed**” means prescribed by an order made by the Council of Ministers;
  - “**stationed employer**” means the Department, Statutory Board, office of Government or other public sector entity to which the employee of the Commission is assigned.

- (2) For the purposes of this Act a person is a “**public sector employee**” if the person is employed by or holds office within a Department, Statutory Board, office of Government or other public sector entity.
- (3) However, the following are not public sector employees –
  - (a) persons mentioned in paragraphs (a), (b), (d), (e) and (f) of section 3(1) of the *Public Sector Pensions Act 2011* (judges and persons appointed by the Crown or by Tynwald);
  - (b) Ministers and members of Departments;
  - (c) officers and employees of a local authority;
  - (d) members of the police force maintained under section 1 of the *Police Act 1993*.

#### 4 Public Services Commission

- (1) The Commission is established as the body responsible for employing the individuals to be employed by it under this Act.
- (2) The Commission –
  - (a) is a body corporate with perpetual succession; and
  - (b) has the functions given to it by section 5.
- (3) The Commission is to consist of the following members –
  - (a) a chairperson and a vice-chairperson who must be members of Tynwald;
  - (b) no more than 3 other individuals who must not be members of Tynwald.
- (4) However, an employee of the Commission must not be a member of the Commission.
- (5) The members of the Commission are appointed by the Chief Minister and hold office at the Chief Minister’s pleasure.
- (6) A member of the Commission may resign by giving notice to the Chief Minister.
- (7) If a member of the Commission –
  - (a) being appointed under subsection (3)(a), ceases to be a member of Tynwald; or
  - (b) being appointed under subsection (3)(b), becomes a member of Tynwald,the member remains in office as a member of the Commission until a successor is appointed, subject to subsections (5) and (6).
- (8) Paragraphs 9 (except for sub-paragraph (1)(a)), 10, 11, 11A 11B and 12(2) of Schedule 2 to the *Statutory Boards Act 1987* apply to the Commission as they apply to a Statutory Board.

- (9) Subject to this Act the Commission may regulate its own proceedings.
- (10) To avoid doubt —
  - (a) the Commission does not have in respect of its officers or employees any of the rights or privileges which the Crown has or had in respect of civil servants; and
  - (b) an officer or employee of the Commission does not, in his or her capacity as such, have any right or privilege as an officer or servant of the Crown.

## 5 Functions of Commission

- (1) The Commission has the following functions —
  - (a) to determine policies relating to the employment, and the terms and conditions of employment, of its employees that are consistent with the Government's human resources strategy and policies;
  - (b) to employ such persons on such terms as it considers appropriate;
  - (c) by agreement with such bodies as it considers to represent the interests of its employees, to establish as necessary negotiating and consultation committees that include members of such bodies;
  - (d) where appropriate, to negotiate or consult with its employees or their representatives, whether via those committees or otherwise, about the employees' pay and other terms and conditions of employment;
  - (e) to arrange for the recruitment of its future employees;
  - (f) to organise the training of its employees;
  - (g) to make arrangements for the assessment of performance and appraisal of individual employees of the Commission;
  - (h) to make promotions and arrange for the transfer of its employees between the various stationed employers;
  - (i) where appropriate to discipline its employees and provide for the suspension or termination of their employment;
  - (j) without limiting any duties it has under health and safety legislation, to make arrangements for securing the welfare of its employees;
  - (k) to make arrangements for loss of office in relation to any public sector employee;
  - (l) to make arrangements, with the consent of the employee concerned, for its employees to be seconded to another employer;

- (m) to determine such other matters that may be considered reasonably necessary for the proper administration and management of its employees;
  - (n) to perform such other functions as directed by the Council of Ministers.
- (2) If it is not possible for the Commission to reach agreement with the bodies mentioned in subsection (1)(c) as to the establishment and membership of the committees there mentioned, a special committee of Tynwald established for the purpose must determine the collective bargaining and consultation arrangements that are applicable to the negotiation or consultation mentioned in subsection (1)(d).
- (3) The Chief Minister may, after consultation with the Commission, direct the Commission as to the exercise of its functions and the Commission must comply with the direction.

## 6 Delegation of functions

- (1) The Commission may authorise any member or officer of the Commission, or any other person, to exercise any function of the Commission, either alone or jointly with it or any other person.
- (2) Any person authorised under subsection (1) to exercise any function of the Commission may authorise any employee of the Commission to exercise that function in place of the person.
- (3) Subsection (2) does not prevent the person given the power to delegate a function of the Commission from exercising the function personally.

## 7 Employees of the Commission

- (1) An “**employee of the Commission**” is a public sector employee –
- (a) employed by the Commission under a contract of employment made between the individual and the Commission; or
  - (b) in employment or an office prescribed for the purposes of this section.
- (2) An order under this section cannot come into operation unless it is approved by Tynwald.
- (3) The Commission may organise its employees in such categories as it considers appropriate and apply terms and conditions of employment according to that categorisation.
- (4) Where a person is to be appointed as a chief executive officer (by whatever title designated) –
- (a) of a Department or Statutory Board, the appointment may not have effect without the concurrence of that Department or Statutory Board;

- (b) of any other stationed employer, the appointment may not have effect without the concurrence of such person or body (if any) as the Council of Ministers may direct.
- (5) Where a person is to be appointed as the Chief Secretary, the appointment may not have effect without the concurrence of the Chief Minister who must, before giving such concurrence, consult the Governor.
- (6) Where any statutory provision (whether enacted before or after the coming into operation of this Act) provides for a person to be appointed to any public sector employment or perform any functions that would normally fall to be performed by a public sector employee but does not stipulate the person or body who is to appoint the person, the person is to be appointed by the Commission.
- (7) Nothing in this Act prevents the appointment of an individual to more than one employment at the same time.

## **8 Protection of rights of public sector employees who become employees of the Commission**

- (1) A public sector employee who becomes an employee of the Commission by virtue of an order made under section 7 is employed on the same terms and conditions that applied immediately before he or she becomes an employee of the Commission.
- (2) Subsection (1) is subject to section 4(10)(b).
- (3) Nothing in subsection (1) prevents the Commission from implementing any change to the terms and conditions of employment of any of its employees following any collective bargaining or other arrangements applicable to the employee.

## **9 Terms of employment of employees**

- (1) An employee of the Commission is required to perform such duties and observe and comply with such reasonable instruction as his or her stationed employer or any person duly authorised by the stationed employer may require.
- (2) Without limiting subsection (1) the terms and conditions of employment of an employee of the Commission is governed by his or her contract of employment.

## **10 Liability in tort**

- (1) The relevant body is liable in respect of torts committed by an employee of the Commission in the performance or purported performance of the employee's functions and accordingly is treated for all purposes as a joint tortfeasor in respect of any such tort.

- (2) In this section “relevant body” means —
- (a) where an employee of the Commission’s stationed employer is a Department or Statutory Board, that Department or Statutory Board;
  - (b) in any other case, the Treasury.

## **11 Annual report**

- (1) As soon as practicable after the end of each financial year or more frequently if the Chief Minister so directs, the Commission must make a report to the Chief Minister with respect to the carrying out of its functions under this Act.
- (2) A copy of every such report must be laid before Tynwald.

## **12 Consequential amendments and repeals**

- (1) The Schedule contains amendments to enactments consequential on this Act and the *Public Sector Pensions Act 2011*.
- (2) [Repealed the following Acts —
- (a) the *Civil Service Act 1990*;
  - (b) the *Civil Service (Amendment) Act 2007*.]

(3) This section and the Schedule cease to have effect on the day following —

    - (a) the promulgation of this Act; or<sup>2</sup>
    - (b) the date they come into operation,

whichever is the later.

(4) Subsection (3) does not —

    - (a) revive the enactments repealed by subsection (2); or
    - (b) affect the continuing effect of the amendments made by the Schedule.

## SCHEDULE

[Section 12(1)]

## ENACTMENTS AMENDED

**1 General amendments**

[Amended the following Acts —

Public Authorities Staff (War Service) Act 1940  
The Superannuation Schemes (War Service) Act 1941  
Interpretation Act 1976  
Chronically Sick and Disabled Persons Act 1981  
Land Registration Act 1982  
Trade Disputes Act 1985  
Customs and Excise Management Act 1986  
Rent and Rating Appeals Act 1986  
Interception of Communications Act 1988  
Payment of Members Expenses Act 1989  
Redundancy Payments Act 1990  
Police Act 1993  
Public Records Act 1999  
Employment (Sex Discrimination) Act 2000  
Minimum Wage Act 2001  
Residence Act 2001  
Data Protection Act 2002  
Employment Act 2006  
Financial Services Act 2008  
Civil Partnership Act 2011  
Tynwald Commissioner for Administration Act 2011.]

- 2 [Amended Finance Act 1958]
- 3 [Amended Interpretation Act 1976]
- 4 [Amended Income Tax (Retirement Benefit Schemes) Act 1978]
- 5 [Amended Jury Act 1980]
- 6 [Amended Administration of Justice Act 1981]
- 7 [Amended Tobacco Products Duty Act 1986]
- 8 [Amended Government Departments Act 1987]
- 9 [Amended Payment of Members Expenses Act 1989]
- 10 [Amended Redundancy Payments Act 1990]
- 11 [Amended Education Act 2001]
- 12 [Amended Data Protection Act 2002]
- 13 [Amended Employment Act 2006]
- 14 [Amended Tribunals Act 2006]
- 15 [Amended Audit Act 2006]
- 16 [Amended Personal Liability (Ministers, Members and Officers) Act 2007]
- 17 [Amended Financial Services Act 2008]
- 18 [Amended Insurance Act 2008]
- 19 [Amended Proceeds of Crime Act 2008]
- 20 [Amended Company Officers (Disqualification) Act 2009]
- 21 [Amended Gender Recognition Act 2009]

**22 [Amended Gambling Supervision Act 2010]****23 [Amended Civil Partnership Act 2011]****24 Public Sector Pensions Act 2011**

(1) The *Public Sector Pensions Act 2011* is amended as follows.

(2) In section 3 —

(a) for subsection (1)(c) and (d) substitute —

▮ (c) persons employed by, or holding office within, a Department, Statutory Board, office of Government or other public sector entity other than Ministers or members of Departments; ▮;

(b) in subsection (3) —

(i) for “being employed by a Department” substitute ▮ falling within subsection (1)(c) ▮; and

(ii) at the end insert the following paragraph —

▮ (i) persons —

(i) who have been transferred from a relevant employing authority to an employer not falling within subsection (1) or any of the preceding paragraphs of this section; and

(ii) in respect of whose transfer an admission agreement has been made. ▮;

(c) after that subsection insert —

▮(3A) In this section —

“admission agreement” means an agreement permitting a public sector employee whose employment is transferred to an external provider of the services for the purposes of which the public sector employee served (before the transfer) with the relevant employing authority, to remain a member of the scheme relating to his or her former employment for so long as he or she is wholly or mainly employed in connection with the delivery of the service which is the subject of the transfer;

“relevant employing authority” means a Department or Statutory Board or any of the bodies referred to in subsection (3)(a), (e) or (f). ▮.

(3) In section 4 in the definition of “superannuation” delete “and compensation for those who suffer loss of office”.

(4) In section 5(3)(b) for “Chairman of the Civil Service Commission” substitute ▮ chairperson of the Public Services Commission ▮.

- 25 [Amended Social Services Act 2011]
- 26 [Amended Tynwald Auditor General Act 2011]
- 27 [Amended Tynwald Commissioner for Administration Act 2011]
- 28 [Amended Regulation of Care Act 2013]
- 29 [Amended Control of Employment Act 2014]

## ENDNOTES

## Table of Endnote References

<sup>1</sup> ADO – see table

SD2015/0046 as amended by SD2015/0072 and SD2015/0229	s 3(1) other than definition of “stationed employer” s 4 s 5(1)(a), (c) and (d) s 5(2) s 5(3), s 6 and s 11 (so far as referable to s 3(1) and s 4) s 10 (so far as referable to ss 3(1), 4, 5(1)(a), 5(1)(c), 5(1)(d), 5(2), 5(3), 6 and 11) Paras 9(1), 9(2) and 16 of Sch (subject to transitional modifications).	In operation 06/02/2015
SD2015/0229 as amended by SD2015/0277	[1] s 7(1) and 7(2) [2] remaining provisions except s 5(1)(k) and para 24 of Sch	[1] In operation 03/07/2015 [2] In operation 01/09/2015 for all remaining purposes

<sup>2</sup> Act promulgated 6 July 2015.