

PUBLIC SERVICE (AMENDMENT) ACT, 2010 – 1

Arrangement of Sections

Section

1. Short title.
2. Amendment of section 2 of Act 2007-41.
3. Amendment of section 5 of Act 2007-41.
4. Amendment of section 6 of Act 2007-41.
5. Amendment of section 11 of Act 2007-41.
6. Amendment of section 12 of Act 2007-41.
7. Amendment of section 13 of Act 2007-41.
8. Amendment of section 14 of Act 2007-41.
9. Amendment of section 19 of Act 2007-41.
10. Amendment of section 30 of Act 2007-41.
11. Amendment of section 34 of Act 2007-41.
12. Amendment of section 39 of Act 2007-41.
13. Amendment of First Schedule.
14. Amendment of Second Schedule.
15. Repeal and replacement of Third Schedule.
16. Repeal and replacement of Fourth Schedule.
17. Amendment of Eighth Schedule.

BARBADOS

I assent
C. STRAUGHN HUSBANDS
Governor-General
2nd February, 2010.

2010 – 1

An Act to amend the Public Service Act.

(8th February, 2010.) Commence-
ment.

ENACTED by the Parliament of Barbados as follows:

1. This Act may be cited as the *Public Service (Amendment) Act, 2010*, Short title.

Amend-
ment of
section 2 of
Act 2007-
41.

2. Section 2 of the *Public Service Act*, in this Act referred to as the principal Act, is amended by

(a) inserting in the appropriate alphabetical order the following definitions:

"Code of Discipline" means the code established by paragraph (c) of section 11(1) and set out in the *Third Schedule*;

"days" means working days;

"Head of Department" means a person listed as the head of a department specified in Part II of the *Eighth Schedule*;

(b) deleting the definition "Permanent Secretary" and substituting the following:

"Permanent Secretary" includes

(a) the holder of an office in the same grade as that of Permanent Secretary; and

(b) the holder of an office specified in Part I of the *Eighth Schedule*;"

(c) deleting paragraph (c) of the definition "Public Service" and substituting the following:

(c) the office of a member of or the holder of an office of any board, committee or other similar body (whether incorporated or not) established by any law in force in Barbados; or

(d) inserting in the appropriate alphabetical order the following definition:

"Public Service Appeal Board" means the Board established as such under section 98A of the *Constitution*;"

3. Section 5(1) of the principal Act is amended by deleting subparagraph (i) of paragraph (c) and substituting the following:

Amendment of section 5 of Act 2007-41.

"(i) recruitment to or promotion in the service;"

4. Section 6(1) of the principal Act is amended in paragraph (b), by inserting immediately after the word "designated" the words "in writing".

Amendment of section 6 of Act 2007-41.

5. Section 11 of the principal Act is amended by deleting the introductory words of subsection (1) and substituting the following:

Amendment of section 11 of Act 2007-41.

"11. (1) The following Codes for the Public Service are hereby established:"

6. Section 12 of the principal Act is deleted and the following is substituted:

Amendment of section 12 of Act 2007-41.

"Grievance handling. 12. (1) Where an officer or employee is aggrieved by any action or decision of

(a) a person appointed by the Commission who has or who had supervisory powers over that person;

(b) a person other than a person referred to in paragraph (a) who has supervisory powers in respect of the employment of that person; or

(c) a fellow employee,

the officer or employee may invoke the procedure with respect to grievance handling that is set out in the *Fourth Schedule*.

Fourth Schedule.

(2) An officer or employee referred to in subsection (1) may, in place of the procedure specified in subsection (1), seek the process of alternative dispute resolution.

- (3) In this section,
- (a) "grievance" includes a complaint regarding the alleged violation of
- (i) the provisions of any agreement with a trade union or any other body authorised to represent an officer or employee in respect of employment matters;
 - (ii) the rules or regulations or any conventions applicable to the category of officers to which that person belongs;
 - (iii) the principles of natural justice; or
 - (iv) the dignity of the human person; and
- (b) "alternative dispute resolution" includes conciliation, mediation or any other method of dispute resolution."

Amend-
ment of
section 13
of Act
2007-41.

7. Section 13 of the principal Act is amended
- (a) in subsection (12), by deleting the words "a post" and "post" and substituting the words "an office" and "office" respectively;
- (b) by deleting subsection (13); and
- (c) in subsection (14), by deleting the words "a post" wherever it appears and substituting the words "an office".

Amendment
of section
14 of Act
2007-41.

8. Section 14 of the principal Act is amended
- (a) in subsection (1), by deleting the words "by Order"; and

(b) by deleting subsection (2) and substituting the following:

"(2) The Minister may extend the duration of a temporary office beyond the initial period for which it was created

(a) where the office was created for the implementation of a specific project and the project extends beyond the period for which the office was created, the extension shall be for the period required to complete the project; or

(b) in any case other than that mentioned in paragraph (a), for a further period not exceeding 3 years beyond the initial period."; and

(c) by inserting immediately after subsection (3) the following subsection:

"(4) An Order made under subsection (3) is subject to

(a) affirmative resolution; and

(b) the provisions of sections 13(3) and 15."

9. Section 19 of the principal Act is deleted and the following is substituted:

Amend-
ment of
section 19
of Act
2007-41.

"Transfers. **19.** An appointment on transfer in respect of the holder of a public office

(a) referred to in Part 2 of Chapter VIII of the *Constitution*, shall be made in accordance with the provisions of that Part;

(b) other than an office referred to in paragraph (a), shall be made by the Chief Personnel Officer; or

S.I. 1974
No. 122.

(c) to which the *Delegation of Functions (Public and Police Services) (Miscellaneous Provisions) Order, 1974* refers, shall be made in accordance with the provisions of that Order."

Amend-
ment of
section 30
of Act
2007-41.

10. Section 30 of the principal Act is amended by deleting subsection (1) and substituting the following:

"**30.** (1) An appeal shall lie to the Public Service Appeal Board from

- (a) a decision of a Service Commission; or
- (b) a decision of any person to whom the powers of the Commission have been delegated,

in respect of disciplinary proceedings, other than dismissal, brought against a public officer."

Amend-
ment of
section 34
of Act
2007-41.

11. Section 34 of the principal Act is amended by

- (a) redesignating that section as subsection (1) of section 34; and
- (b) inserting as subsection (2) of that section the following:

"(2) An Order made under subsection (1) is subject to negative resolution."

Amend-
ment of
section 39
of Act
2007-41.

12. Section 39 of the principal Act is deleted and the following is substituted:

"Proceedings
started
prior to
commence-
ment of
this Act.

39. Any

- (a) investigations into any matter; or
- (b) legal proceedings commenced in any court

under any enactment in respect of disciplinary or other matters brought against a public officer that commenced prior to the date of commencement of this Act and are pending on that date shall continue under the enactment."

13. The First Schedule to the principal Act is amended in Amend-
ment of
First
Schedule.
- (a) the Index to the Recruitment and Employment Code by deleting paragraph 4 and substituting the following:
- "4. Procedure for selection.";
- (b) paragraph 3, by deleting sub-paragraph (3);
- (c) paragraph 9, by
- (i) redesignating that paragraph as paragraph 9(1);
- (ii) deleting sub-paragraph (a) and substituting the following:
- "(a) when filling short term vacancies for a period of not more than 12 months and where the Commission considers, in the interest of the Public Service, that the appointment is necessary for the effective functioning or good administration of the relevant Ministry or Department;"
- (iii) deleting sub-paragraph (b) and substituting the following:
- "(b) when employing a person with a disability;" and
- (iv) adding as paragraph 9(2), the following:
- "(2) For the purposes of this Code, a person with a disability is a person who has a physical or mental impairment which has a substantial and long term adverse effect on that person's life activities but which does not or is not expected to interfere with the ability of that person to perform the type of employment which he seeks in the Public Service.";

- (d) note 7 of the Notes appearing after paragraph 10, by deleting the words 3 months appearing therein and substituting the words "12 months".

Amend-
ment of
Second
Schedule.

14. The Second Schedule to the principal Act is amended

- (a) in the Index to the code of Conduct and Ethics, by deleting paragraphs 2 and 3 and substituting the following:

"2. Application

3. The Role of the Public Service";

- (b) by inserting immediately before paragraph 1 the following:

"General

- Cap. 167. This Code also applies to public officers who are governed
by the *Police Act*, the *Prisons Act* and the *Fire Service Act*
Cap. 168. where no specific provision under those Acts or under statutory
Cap. 163. instruments made under those Acts applies in relation to the
misconduct specified in this Code;"

- (c) in paragraph 3, by deleting

- (i) the words "2(d)" appearing in sub-paragraph (3) and substituting the words "(2)(c)"; and
- (ii) the words "sub-paragraph (1)" appearing in
- (A) sub-paragraph (4) and substituting the words "sub-paragraph (2)"; and
- (B) sub-paragraph (5) and substituting the words "sub-paragraph (2)".

15. The Third Schedule to the principal Act is repealed and the following is substituted:

Repeal and
replac-
ement of
Third
Schedule.

"THIRD SCHEDULE

(Sections 2 and 11(1)(c))

CODE OF DISCIPLINE IN THE PUBLIC SERVICE

General

Cap. 167. This Code also applies to public officers who are governed
Cap. 168. by the *Police Act*, the *Prisons Act* and the *Fire Service Act*
Cap. 163. where no specific provision under those Acts or under statutory
instruments made under those Acts applies in relation to the
misconduct specified in this Code."

1. This Code is aimed at ensuring
 - (a) that standards of conduct laid down in this Act, in any statutory instruments made thereunder or in the Code of Conduct and Ethics are observed;
 - (b) the existence of general principles that guide the disciplinary process including:
 - (i) procedural fairness;
 - (ii) determining each case on its merits;
 - (iii) indicating the factors to be taken into account; and
 - (iv) the powers and responsibilities of the investigating officer.

2. In this Code,

"misconduct of a serious nature" means conduct that warrants the dismissal of the offending person and, in addition to the misconduct specified in paragraph 27(b)(i) of the Code of Conduct and Ethics, includes the following:

- (a) absence from duty without leave or approval;
- (b) conviction of a criminal offence punishable by a term of imprisonment;
- (c) failure to report or disclose any information that ought reasonably to be reported or disclosed where the consequence of that failure amounts to a grave injustice;
- (d) unauthorised disclosure of information pertaining to the Government;
- (e) insubordination;
- (f) habitual intoxication or possession, use or distribution of illegal drugs while on duty;
- (g) reporting for duty or performing duties while under the influence of alcohol or illegal drugs;
- (h) failure to observe any laws, orders, rules or regulations governing the Public Service;
- (i) falsification of accounts or records, either manual or electronic;
- (j) wilful mutilation, alteration or destruction of property including official documents or records, either manual or electronic;
- (k) the threatening of a fellow officer or any person or threatening the destruction of any property while on duty;

- (l) the causing of grievous bodily harm;
- (m) the unauthorised possession of a firearm or other device that can be considered an offensive weapon;
- (n) acceptance of bribes or other inducements;
- (o) misappropriation of public funds;
- (p) major loss of or damage to property;
- (q) failure to perform the duties assigned to the office;
- (r) negligence in the performance of duty;
- (s) failure to maintain official records where the consequence amounts to a grave injustice;
- (t) misconduct involving 3 or more of the matters listed herein as matters of misconduct of a minor nature in sub-paragraphs (a) to (f) within a period of 2 years;

"misconduct of a minor nature" means misconduct that does not warrant dismissal and in addition to the misconduct specified in paragraph 27(b)(ii) of the Code of Conduct and Ethics includes the following:

- (a) use of obscene, abusive or insulting language while on duty;
- (b) malingering on duty;
- (c) failure to maintain official records as required;
- (d) loss of or damage to property of the Crown other than that considered as misconduct of a serious nature;
- (e) misuse of the Government's Intranet, the Internet and any other information technology network;

(f) disorderly conduct;

"officer" includes a temporary employee;

Criminal
Investiga-
tion.

3. (1) Notwithstanding the fact that an officer is under investigation in respect of the commission of an offence leading to criminal charges or has been charged with an offence, disciplinary proceedings or action may be instituted or continued under this Code in relation to a breach of this Code or the Code of Conduct and Ethics.

(2) Where an officer is charged with a criminal offence, the Permanent Secretary or Head of Department shall inform the Commission through the Chief Personnel Officer of the charge and the Commission may recommend to the Governor-General that the officer be interdicted on half pay until the determination of the charge.

(3) An officer who is under interdiction from duty in accordance with sub-paragraph (2) may not leave Barbados without the permission of the Governor-General granted on the recommendation of the Commission.

Adjudica-
tion of
misconduct
of a serious
nature.

4. (1) The Governor-General shall, on the advice of the Commission, appoint a resident panel comprising not less than 10 persons, members of which shall include attorneys-at-law, retired and serving public servants to enquire into misconduct of a serious nature; but only 3 of whom shall sit and enquire into any matter at any one time.

(2) The Permanent Secretary or Head of Department shall, within 14 days of becoming aware of misconduct of a serious nature on the part of an officer, investigate the matter and if the authorized officer is of the opinion that the public interest requires that the officer should cease forthwith to perform the functions of his office during the investigation, the Permanent Secretary or Head of Department may suspend the officer on full pay for the purpose of carrying out the investigation and immediately inform the Commission through the Chief Personnel Officer, of the suspension.

(3) Where the Permanent Secretary or Head of Department is directly involved in the misconduct referred to under sub-paragraph (2), the investigation may be carried out by such other officer of the same grade as the Permanent Secretary as the Commission determines.

(4) In any case in which an authorized officer fails to take the action referred to in sub-paragraph (2), the Commission may issue instructions setting out the manner in which any case of misconduct is to be dealt with; and the case shall be dealt with accordingly.

(5) Where an authorized officer who carries out the investigation pursuant to this paragraph is satisfied that a breach of the Code of Conduct and Ethics or the Code of Discipline has occurred, the authorized officer shall within 7 days of being so satisfied,

- (a) inform the Commission of the breach; and
- (b) recommend that a charge be brought against the officer.

(6) Where the Commission determines that a breach of one or both of the Codes referred to under sub-paragraph (5) may have occurred, the Commission shall within 14 days of that determination,

- (a) bring a charge of misconduct against the officer; and
- (b) establish an investigatory committee of 3 persons from the resident panel of persons to conduct an enquiry into the charge; and
 - (i) at least one of the three shall be an attorney-at-law; and

- (ii) each of the members should be selected with due regard to the standing of the officer concerned and to the nature of the charges made against the officer.

(7) Where a member of the investigatory committee is a public officer, that member shall be the holder of an office which is at a grade higher than that of the officer against whom the charge has been brought, but in any case shall not be at a grade below that of Senior Personnel Officer.

(8) An officer who is charged under sub-paragraph (6) may be interdicted from duty by the Governor-General on the recommendation of the Commission

- (a) on such reduced pay not exceeding one half the salary to which the officer would have been entitled had the officer not been interdicted; and
- (b) for a period of not more than 6 months;

and notice of the interdiction shall be in writing and shall be sent to the officer as soon as practicable.

(9) Where a period of more than 6 months has elapsed in respect of an officer who is interdicted under sub-paragraph (8) and the charge against the officer has not been determined, the Commission may extend the period of interdiction for such period as it determines; and the officer shall receive the salary to which he would have been entitled but for the interdiction.

(10) An officer who is under interdiction from duty under sub-paragraph (8) may not leave Barbados without the permission of the Governor-General granted on the recommendation of the Commission.

(11) A charge brought against an officer under sub-paragraph (6) shall be defined in a written statement that also sets out the nature of the case to be answered, together with

- (a) an individual statement signed by the officer, if any;

- (b) signed statements from all witnesses, supervisors and any other relevant parties; and
- (c) advice to the officer that he may be assisted, if he so wishes, throughout the enquiry by a trade union representative, an attorney-at-law or a friend.

(12) A copy of the statements and all documentary evidence that may be used in an enquiry relating to a charge of misconduct of a serious nature shall be given to the officer who is charged as soon as is practicable but not later than 7 days thereafter.

(13) The officer who is charged under sub-paragraph (6) shall be given 14 days after the receipt of the statements and documentary evidence supplied pursuant to sub-paragraph (12) to reply to the charge, and to make any observations he may wish to make in writing in respect of the charge.

(14) The investigatory committee referred to under sub-paragraph (6)

- (a) is required to conclude an enquiry into the charge within 6 months of the date when the charge was brought; and
- (b) shall submit a report of the hearing to the Commission not more than 14 days after completion of the enquiry, giving the opinion of the panel as to
 - (i) whether the charge has been proved;
 - (ii) the reasons for arriving at its opinion; and
 - (iii) the penalty that may be imposed for the offence, by the Commission.

(15) The Commission shall, within 21 days of receiving a report referred to under sub-paragraph (14), make such decision on the matter as the Commission considers appropriate; and shall advise the Governor-General accordingly.

(16) Where

- (a) the charge brought against an officer under sub-paragraph (6) has not been proved, and
- (b) the salary of that officer was reduced,

the salary of the officer shall be reinstated to the amount that the officer received immediately before the suspension or interdiction as the case may be; but if the enquiry results in any disciplinary action other than removal from office, the officer shall be allowed such emoluments as the Governor-General approves on the recommendation of the Commission.

(17) The Commission shall, through the Chief Personnel Officer, inform the officer of the decision of the Governor-General made pursuant to sub-paragraph (16); and that decision shall be communicated by the Chief Personnel Officer to the officer concerned within 7 days of the receipt of the information by the Chief Personnel Officer.

(18) A member of the resident panel appointed under sub-paragraph (1) who is not a public officer, may be paid such fee for his services as the Governor-General, acting in his discretion after consultation with the Commission and the Minister, determines.

(19) In this paragraph, "authorized officer" means the Permanent Secretary, Head of Department or an officer of the same grade as Permanent Secretary to whom sub-paragraph (3) refers, as the case may be.

Adjudica-
tion of
minor
offences.

5. (1) A person who is a senior personnel officer or other officer of a similar or a higher grade in the Public Service deputed by the Permanent Secretary, shall conduct the necessary enquiry into any charge relating to misconduct of a minor nature by a public officer.

(2) The person who conducts an enquiry under sub-paragraph (1) shall be at a grade that is higher than that of the officer who is charged.

(3) The person who conducts the hearing of a charge brought under sub-paragraph (1) shall at the end of the hearing,

- (a) decide whether the public officer committed the misconduct for which he is charged; and
- (b) recommend to the Permanent Secretary a penalty which is permissible under this Code if the public officer is found to have committed the misconduct.

(4) The decision of the person who is conducting the enquiry and any penalty recommended shall be conveyed to the public officer charged in writing within 7 days of the completion of the enquiry.

(5) A copy of all the material relating to the case shall be submitted to the Chief Personnel Officer within 7 days of the completion of the case.

Penalties.

6. (1) The penalties that may be imposed on an officer against whom a disciplinary charge constituting misconduct of a serious nature is proved are as follows:

- (a) suspension on half pay for a period not in excess of 6 months;
- (b) reduction in rank;
- (c) suspension of future increments for a period not exceeding 2 years;
- (d) reprimand in writing;
- (e) compulsory retirement; or
- (f) dismissal.

(2) The penalties that may be imposed on an officer against whom a disciplinary charge constituting misconduct of a minor nature is proved, are as follows:

- (a) an oral warning; or
- (b) reprimand in writing.

Referral to
Privy
Council.

7. (1) Where the Commission has advised that

- (a) an officer ought to be removed from office; or
- (b) any penalty ought to be imposed on the officer by way of disciplinary control,

and the officer desires to apply by virtue of section 98 of the *Constitution* for a reference of the case to the Privy Council, the application shall be made in writing to the Governor-General within 14 days of the date on which the officer is informed of that advice; and the case shall be referred accordingly.

(2) Notwithstanding sub-paragraph (1), an officer suspended pursuant to section 98 of the *Constitution* shall not be paid any of his emoluments during the suspension."

Repeal and
replac-
ement
of Fourth
Schedule.

16. The Fourth Schedule is deleted and the following is substituted:

"FOURTH SCHEDULE

*(Section 12(1))**Grievance Handling Procedure*

1. The procedure for handling grievances is as follows but may be varied where the union and the Government agree to do so:

- (a) the aggrieved officer or employee, the shop steward of the union that represents the officer or employee and the supervisory officer of the officer or employee may seek to resolve the grievance within 3 days after the grievance has been reported;
- (b) where there is no resolution of the matter in accordance with sub-paragraph (a), the aggrieved officer or employee may, in writing, appeal to the Permanent Secretary assigned to the Ministry or Department within which the office to which the aggrieved party is appointed falls, to determine the matter within 7 days of the date when the matter reaches the Permanent Secretary;
- (c) where the union representing the aggrieved officer or employee is dissatisfied with the decision of the Permanent Secretary made pursuant to sub-paragraph (b), the aggrieved officer or employee may so inform the Permanent Secretary, Ministry of the Civil Service or the Chief Personnel Officer, in writing; and the Permanent Secretary or the Chief Personnel Officer shall determine the matter within 10 days of the receipt of the matter by the Permanent Secretary of the Ministry of the Civil Service or the Chief Personnel Officer;
- (d) where the aggrieved officer or employee is dissatisfied with the decision made pursuant to sub-paragraph (c), he may, within 10 days of the date when that decision was made, appeal to the Head of the Public Service;

- (e) where the decision made by the Head of the Public Service is not accepted, the union may declare that a dispute exists.

2. For the purposes of this Schedule, "union" means the trade union or other body authorised to represent an officer or employee in respect of employment matters."

Amend-
ment of
Eighth
Schedule.

17. The Eighth Schedule to the principal Act is amended by

- (a) deleting the title thereto and substituting the following:

"Part I

*Offices to which paragraph (b) of the definition
"Permanent Secretary" refers";*

- (b) inserting in the appropriate alphabetical order in the Part I specified in sub-paragraph (a), the following:

"Chief Town Planner"; and

- (c) inserting the following as Part II of that Schedule:

"Part II

*(Section 2)**Departments whose Administrative Head is a Head of
Department for the Purposes of this Act*

| DEPARTMENT | HEAD |
|---|--|
| Analytical Services | Director |
| Barbados Drug Service | Director |
| Bureau of Gender Affairs | Director |
| Central Purchasing Department | Chief Supply Officer |
| Children's Development Centre | Coordinator |
| Coastal Zone Management Unit | Director |
| Community Development Department | Chief Community Development Officer |
| Co-operatives Department | Registrar |
| Corporate Affairs and Intellectual Property Office | Registrar |
| Customs Department (including the VAT Unit) | Comptroller |
| Data Processing Department | Director |
| Department of Archives | Chief Archivist |
| Department of Commerce and Consumer Affairs | Director |
| Department of Emergency Management | Director |
| Electoral Department | Chief Electoral Officer |

Part II – *Cont'd*

| DEPARTMENT | HEAD |
|-------------------------------------|------------------------------|
| Electrical Engineering Department | Chief Electrical Officer |
| Environmental Protection Department | Director |
| Erdiston College | Principal |
| Fire Service Department | Chief Fire Officer |
| Fisheries | Chief Fisheries Officer |
| Forensic Science Centre | Director |
| Government Industrial Schools | Principal |
| Government Information Service | Chief Information Officer |
| Government Printing Department | Government Printer |
| Immigration Department | Chief Immigration Officer |
| Inland Revenue Department | Commissioner |
| Labour Department | Chief Labour Officer |
| Land Registry Department | Registrar of Titles |
| Land Tax Department | Commissioner |
| Lands and Surveys Department | Chief Surveyor |
| Licensing Authority | Chief Licensing Officer |
| Media Resource Department | Chief Media Resource Officer |

Part II – *Cont'd*

| DEPARTMENT | HEAD |
|------------------------------------|-------------------------------------|
| Meteorological Department | Director of Meteorological Services |
| National Disabilities Unit | Director |
| National HIV/AIDS Commission | Director |
| National Insurance Department | Director |
| National Library Service | Director |
| National Nutrition Department | Nutrition Officer |
| Natural Heritage Department | Director |
| Ombudsman | Ombudsman |
| Post Office | Postmaster General |
| Prisons Department | Superintendent |
| Probation Department | Chief Probation Officer |
| Psychiatric Hospital | Hospital Director |
| Public Markets | Manager |
| Registration Department | Registrar |
| Samuel Jackman Prescod Polytechnic | Principal |
| School Meals Department | Manager |
| Secondary Schools | Principal |
| Statistical Services Department | Director |

Part II – *Concl'd*

| DEPARTMENT | HEAD |
|----------------------------|--------------------------------------|
| Supervisor of Insurance | Supervisor of Insurance and Pensions |
| Telecommunications Service | Chief Telecommunications Officer |
| Treasury Department | Accountant General |
| Welfare Department | Chief Welfare Officer |
| Youth Affairs | Director of Youth Affairs." |