

SPECIAL ISSUE

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**THE PUBLIC SERVICE COMMISSION
(AMENDMENT) BILL, 2019**

A Bill for

**AN ACT of Parliament to amend the Public Service
Commission Act**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Public Service Commission (Amendment) Act, 2019.

Short title.

2. Section 34 of the Public Service Commission Act, 2017 (hereinafter referred to as the principal Act) is amended by inserting the following new subsection immediately after subsection (3)—

Amendment of section 34 of No. 10 of 2017.

“(3A) Upon the expiry of six months, an officer appointed under subsection (3) shall not be entitled to any acting allowances”.

3. Section 80 of the principal Act is amended—

Amendment of section 80 of No. 10 of 2017.

(i) in subsection (1) by deleting the words “as may be prescribed in the regulations” and substituting therefor the words “of sixty years”;

(ii) by deleting subsection (2).

4. A public officer engaged for service by the Commission or other appointing authority after attaining the mandatory retirement age before the commencement of this Act shall serve for the remainder of the term of the contract.

Saving and transition.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Public Service Act, 2017 to prescribe the mandatory retirement age of sixty years in the Act. The Public Service Act, 2017 provides that the mandatory age is to be prescribed in the regulations. Further, the Bill provides for the penal provisions in the event that an appointing authority allows a person to act for a period of more than six months. Lastly, the Act provides for mandatory retirement at the age of sixty without any exceptions.

The amendments are meant to increase the job vacancies available to Kenya citizens below the age of sixty years. These positions are sometimes held by person beyond the age of sixty years on account that they possess rare knowledge, skills and competencies for the time required in the service. The Public Service Commission and other appointing authorities should be keen on succession planning and take the necessary steps to ensure that they train other person in the organisations to take up these positions.

The Bill also intends to address the issue of an officer acting in a position for more than six months. The period of six months prescribed should provide adequate time for the organisation to recruit and substantively fill the position. Failure to comply with this provision will result in the officer not earning any acting allowances.

Clause 1 of the Bill provides for the short title.

Clause 2 of the Bill provides for the amendment of section 34 of the Act to provide that any officer appointed in an acting capacity shall not be entitled to any acting allowances after the expiry of six months.

Clause 3 of the Bill provides for the amendment of section 80 by prescribing the retirement age of sixty years in the Act as opposed to this age being prescribed in the regulations. It also deletes the provisions allowing the Public Service Commission or any other appointing authority from engaging a person who has attained the age of sixty years.

Clause 4 of the Bill seeks to save the contracts of the officers currently engaged by the Public Service Commission or other appointing authority to be allowed to complete their contracts. It gives the Public Service Commission and other appointing authority a grace period to train officers for the necessary skills required by the organisation.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not limit any fundamental rights and freedoms as provided under the Constitution.

Statement that the Bill concerns county governments

The Bill does not affect the functions of the county governments and is therefore not a Bill concerning counties for purposes of the Standing Orders.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 3rd March, 2019.

BENJAMIN GATHIRU MWANGI,
Member of Parliament.

Section 34 of the Public Service Commission Act which it is proposed to amend—

Acting appointments

34. (1) Acting appointments shall be—

- (a) made by the lawful appointing authority; and
- (b) subject to the prescribed regulations and procedures which apply to appointments.

(2) A person shall not be appointed to hold a public office in an acting capacity unless the person satisfies all the prescribed qualifications for holding the public office.

(3) An officer may be appointed in an acting capacity for a period of at least thirty days but not exceeding a period of six months.

(4) A public officer may be assigned to perform duties vested in another public officer during a temporary absence of the other public officer.

(5) An acting appointment under subsection (4) shall—

- (a) be in favour of a public officer who is duly qualified and competent to perform the duty; and
- (b) not undermine the expeditious appointment or deployment of a competent person to the public office concerned.

(6) The Commission shall, whenever it comes to its attention that an authorised officer has purportedly made an acting appointment or assignment, in contravention of the provisions of this section, take corrective action.

Section 80 of the Public Service Commission Act which it is proposed to amend—

Retirement on the basis of age

80. (1) Where a public officer has attained the mandatory retirement age as may be prescribed in regulations—

- (a) the public officer shall retire from the service with effect from the date of attaining the mandatory retirement age; and
- (b) the Commission or other appointing authority shall not extend the service of such retired public officer beyond the mandatory retirement age.

(2) Despite subsection (1) (b), the Commission or other appointing authority may engage the public officer for service after the retirement upon such terms of contract as may be agreed if—

- (a) the public officer possesses rare knowledge, skills and competencies for the time being required in the service;
- (b) the retired officer is willing to be engaged on contract; and
- (c) the retired public officer's performance shall not in any way be impaired by age.