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CONTENTS

	<i>Page</i>
GOVERNMENT NOTICE	
No. 219 Promulgation of Judicial Service Commission Act, 1995 (Act 18 of 1995), of the Parliament	1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 219 1995

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 18 of 1995: Judicial Service Commission Act, 1995

Act No. 18, 1995

**JUDICIAL SERVICE
COMMISSION ACT, 1995****ACT**

To provide for the manner of nomination of members of the legal profession as members of the Judicial Service Commission; to prescribe the tenure of office of the members of the Judicial Service Commission; to consolidate the functions of the Commission; to provide for a balanced structuring of judicial offices; and to provide for other incidental matters.

(Signed by the President on 4 November 1995)

ARRANGEMENT OF SECTIONS

Section

1. Definitions.
2. Representatives of the legal profession on the Judicial Service Commission.
3. Tenure of office of members of the Judicial Service Commission.
4. Functions of the Judicial Service Commission.
5. Balanced structuring of judicial offices.
6. Amendment of Supreme Court Act, 1990.
7. Amendment of High Court Act, 1990.
8. Short title and commencement.

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:

Definition

1. In this Act, unless the context otherwise requires -

"affirmative action" means the policy of affirmative action referred to in subarticles (2) and (3) of Article 23 of the Namibian Constitution;

"judicial offices" means the office of the Chief Justice; the Judge-President of the High Court; a judge of the Supreme Court; a judge of the High Court; the Ombudsman and for the purposes of this Act, the Prosecutor-General;

"Judicial Service Commission" means the Judicial Service Commission established under Article 85 of the Constitution;

"legal practitioner" means a person who has been admitted and authorised or is deemed to have been admitted and authorised to practise as a legal practitioner under the Legal Practitioners Act, 1995;

**JUDICIAL SERVICE
COMMISSION ACT, 1995**

"Minister" means the Minister of Justice;

"superior court" means the Supreme Court of Namibia and the High Court of Namibia as established by law.

Representatives of the legal profession on the Judicial Service Commission

2. (1) The two members of the legal profession referred to in sub-article (1) of Article 85 of the Constitution shall consist of two legal practitioners nominated in accordance with the provisions of subsection (2).

(2) For the purposes of subsection (1), the President shall -

(a) invite in writing each of the organisation or organisations representing the interests of the legal profession in Namibia to submit to him or her the names of two legal practitioners nominated by each organisation from amongst its members; and

(b) appoint two persons from amongst the legal practitioners nominated in accordance with paragraph (a), to serve on the Judicial Service Commission.

(3) The appointment of the members of the Judicial Service Commission by the President shall be published by notice in the *Gazette*.

Tenure of office of members of the Judicial Service Commission

3. (1) Except the Chief Justice and the Attorney-General who are *ex officio* members of the Judicial Service Commission, each of the other members of that Commission referred to in subarticle (1) of Article 85 of the Constitution, shall hold office for a period of three years from the date of appointment, and shall on the expiry of their term of office be eligible for reappointment.

(2) Notwithstanding the provisions of subsection (1), the term of office of the members of the Judicial Service Commission other than the Chief Justice and the Attorney-General, serving on that Commission immediately before the commencement of this Act, shall expire on the date of appointment of the new members appointed after the commencement of this Act.

Functions of the Judicial Service Commission

4. (1) The Judicial Service Commission shall, subject to the Constitution and the provisions of this Act and any other law, perform the following functions, namely -

(a) make recommendations to the President with regard to the appointment of persons to judicial offices, whether in a permanent or acting capacity, and the removal from office of persons holding or acting in such offices;

Act No. 18, 1995

**JUDICIAL SERVICE
COMMISSION ACT, 1995**

- (b) review or make recommendations on the terms and conditions of service, including retirement benefits, of persons holding or acting in judicial offices;
- (c) conduct disciplinary inquiries into the conduct of persons holding or acting in judicial offices, and receive and investigate complaints from the members of the public concerning the conduct of such persons or the administration of justice at superior court level;
- (d) make recommendations to the Minister concerning any matter which by law pertains to the Judiciary or the administration of justice, with a view to the improvement thereof; and
- (e) perform any other function assigned to the Judicial Service Commission by the President or under the law.

(2) The Judicial Service Commission shall conduct its procedures and functions in accordance with the rules and regulations made under sub-article (3) of Article 85 of the Constitution, and the Chief Justice shall preside at all meetings of that Commission, but where he or she is absent, the judge appointed by the President shall preside.

(3) Subject to the provisions of this Act and of any other law, the Judicial Service Commission shall perform its functions independently and shall not be subject to the direction or control of any person or authority.

Balanced structuring of judicial offices

5. (1) Whenever the Judicial Service Commission is required by the provisions of the Constitution or any other law to make a recommendation to the President for the appointment of a person to a judicial office, the Commission shall, as far as is practicable, have due regard to affirmative action and the need for a balanced structuring of judicial offices.

(2) The President may for good cause reject a recommendation of the Commission submitted in terms of subsection (1) and shall in that case refer the matter back to the Commission and -

- (a) give reasons in writing for his or her rejection of the recommendation; and
- (b) request the Commission to submit a fresh recommendation.

**JUDICIAL SERVICE
COMMISSION ACT, 1995****Amendment of the Supreme Court Act, 1990**

6. Section 9 of the Supreme Court Act, 1990 (Act 15 of 1990), is amended -

- (a) by deleting the full stop at the end of paragraph (e) and substituting therefor the phrase "; or "; and
- (b) by adding immediately after paragraph (e) the following -
 - "(f) such person is a legal practitioner who has served in a legal capacity in full time public service for a cumulative period of not less than ten years."

Amendment of the High Court Act, 1990

7. Section 3 of the High Court Act, 1990 (Act 16 of 1990), is amended -

- (a) by substituting for the full stop at the end of paragraph (c) the phrase "; or"; and
- (b) by adding immediately after paragraph (c) the following -
 - "(d) such person is a legal practitioner who has served in a legal capacity in full time public service for a cumulative period of not less than five years; or
 - (e) such person is a magistrate other than an additional or assistant magistrate who -
 - (i) holds a degree in law from the University of Namibia or an equivalent qualification in law prescribed in terms of subsection (4) of section 5 of the Legal Practitioners Act, 1995; and
 - (ii) has presided over a lower court for a cumulative period of not less than five years."

Short title and commencement

8. This Act shall be called the Judicial Service Commission Act, 1995, and shall come into operation on a date to be determined by the Minister of Justice by notice in the *Gazette*.
