



ANALYSIS

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1980-81, No. 26

An Act to amend the Public Service Act 1975

(5 June 1981)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title and Commencement - (1) This Act may be cited as the Public Service Amendment (No. 3) Act 1980-81, and shall be read together with and deemed part of the Public Service Act 1975 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the date of the commencement of the Constitution Amendment (No. 9) Act 1980-81.

2. Interpretation - Section 2 of the principal Act is hereby amended -

(a) By inserting, after the definition of the term "employee", the following definitions:

" 'Exempted officer' means an officer holding an exempted position:

" 'Exempted position' means an exempted position specified in subclause (2) of Article 74BB of the Constitution (as enacted by section 11 of the Constitution Amendment (No. 9) Act 1980-81.

(b) By adding to the definition of the term "graded position" the words "but does not include an exempted position":

(c) By repealing the definition of the term "special post".

3. Appointments to the Public Service - The principal Act is hereby amended -

- (a) By inserting in section 8, after the words "this Act", the words "(not being appointments to exempted positions)";
- (b) By inserting in section 10, after subsection (1), the following subsection:

"(1A) Subsection (1) of this section shall be read subject to Article 74B(3) of the Constitution (as enacted by section 11 of the Constitution Amendment (No. 9) Act 1980-81).":
- (c) By omitting from section 10 (2) the words "subclauses (3) and (4)", and substituting the words "subclause (4)";
- (d) By omitting from section 15 (1) the words "subclauses (3) and (4)", and substituting the words "subclause (4)";
- (e) By omitting from section 15 (3) the words "subclauses (2), (3), and (4)" and substituting the words "subclauses (3) and (4)";
- (f) By adding to section 15 the following subsection:

"(8) Nothing in this section shall apply with respect to appointments to exempted positions.":
- (g) By omitting from section 17 (1) the words "a special post" in both places where they occur, and substituting in each case the words "an exempted position";
- (h) By omitting from paragraph (a) of section 17 (1) and also from paragraph (b) the words "Any other employee", and substituting in each case the words "Any employee";
- (i) By omitting from section 17 (2) the words "a special post" and also the words "any special post", and substituting in each case the words "an exempted position";
- (j) By adding to section 23 the following subsection:

"(4) In this section the term 'officer' does not include an exempted officer."

4. Salary increments - The principal Act is hereby amended by repealing section 27, and substituting the following section:

- "27. (1) Any person appointed to a graded position who has:
- (a) exceptional merit, may with the approval of the Commissioner, advance up to a maximum of three steps at any one time until he reaches the maximum salary set for that graded position; or
 - (b) has proven merit, may with the approval of the Commissioner, advance up one step until he reaches the maximum salary set for that graded position.

- "(2) Exceptional merit or proven merit for the purposes of subsection (1) shall be determined by the following criteria:
- (a) work experience, dedication and competence shown in the performance of his duties.
 - (b) his personal qualities and attributes to the position he fills.
 - (c) any further educational qualifications or other form of competent training gained relevant to the position he holds."
- "(3) Before approving any salary increment on the basis of exceptional merit or proven merit the Commissioner shall consult the head of the Department in which the officer is employed or in the case of a departmental head the Commissioner shall consult the Minister responsible for the Department concerned".

5. Code of conduct - (1) Section 31 (2) of the principal Act is hereby amended by inserting, after the words "expatriate employee", the words "other than an exempted officer".

(2) Section 35 of the principal Act is hereby amended by adding the following subsection:

"(3) Nothing in this section shall apply with respect to exempted officers."

6. Offences by exempted officers - The principal Act is hereby further amended by inserting, after section 35, the following section:

"35A. Where any exempted officer -

"(a) Is convicted by any Court of any offence punishable by imprisonment; or

"(b) Does or omits to do anything which, if he were not an exempted officer, would be an offence against section 32 or section 33 of this Act; or

"(c) Being a head of Department, does or omits to do anything that would be an offence to which section 34 of this Act would apply if he were not an exempted officer; or

"(d) Absents himself from duty or fails to return to duty and section 35 of this Act would apply to him if he were not an exempted officer, -

the Commissioner shall forthwith report the same in writing to Cabinet.

7. Rights of appeal - Section 40 (1) of the principal Act is hereby amended by omitting the words "sections 46 and 47", and substituting the words "sections 45 and 46".

8. Exempted positions - (1) The principal Act is hereby amended by repealing Part IV, and substituting the following part:

"PART IV

"EXEMPTED POSITIONS

"45. No right of appeal against appointments to or promotions in exempted positions - There shall be no right

of appeal against the appointment of any person to, or promotion of any person in, any exempted position.

"46. No right of appeal for those in exempted position - (1) No exempted officer shall have any right of appeal against the appointment of any person who is not an officer, or the promotion of any officer, to any position in the Public Service."

(2) Section 56 (2) of the principal Act and the First Schedule to that Act are hereby repealed.

9. Transitional provisions - (1) Forthwith on the commencement of this Act, the Public Service Appointments Board shall proceed, in accordance with section 15 of the principal Act, to notify as vacancies the following positions (being positions that were formerly special posts and are not exempted positions), and to make appointments thereto:

Financial Secretary
 Secretary of Justice and Lands and Survey
 (formerly Secretary for Justice and Lands)
 Secretary of Internal Affairs
 Secretary of Works
 (formerly known as Secretary of Supportive Services)
 Secretary of Electric Power Supply
 Secretary of Health
 Secretary of Education
 Secretary of Trade, Industries, Labour and Commerce
 (formerly known as Secretary of Trades, Industry,
 Labour, and Commerce)
 Chief Postmaster
 (formerly known as Secretary of Post and
 Telecommunications)
 Secretary of Agriculture and Fisheries
 (formerly known as Secretary of Agriculture, Marine,
 and Scientific and Industrial Research)
 Collector of Inland Revenue
 Secretary of Survey/Chief Surveyor
 (formerly Secretary of Survey and Physical Planning)
 Superintendent of Police

(2) On the commencement of this Act, the positions specified in subsection (1) of this section shall be deemed to be graded positions.

(3) Any employee (whether or not he is an officer) who immediately before the commencement of this Act held any position specified in subsection (1) of this section shall be eligible for appointment to any position which is notified as vacant pursuant to subsection (1) of this section or to any other position in the Public Service as if he were an officer, and, if his application for appointment is unsuccessful, shall have a right of appeal in accordance with section 40 of the principal Act as if his appointment to the position would have involved his promotion.

(4) Notwithstanding anything in section 15 (5) of the principal Act, for the purpose of appointments made pursuant to subsection (1) of this section and of any appeal against any such appointment, work experience, dedication, and competence shown in the performance of duties carried out by an applicant or appellant (as the case may be) during any period of employment in any such special post shall be disregarded and the qualifications of the applicant or appellant shall be evaluated as if he had not held such a post.

(5) Notwithstanding anything in subsection (4) of this section, any period of employment in such a post shall be deemed to be continuous service.

(6) Any employee who immediately before the commencement of this Act held any position specified in subsection (1) of this section shall, if, pursuant to an appointment made under subsection (1) of this section, he is appointed to any position in the Public Service be deemed to have had uninterrupted service.

10. Jurisdiction of Board of Appeal - Section 42 (1) of principal Act is hereby amended by omitting the words "section 38", and substituting the words "section 41".

11. Annual salary and wage reviews - Cabinet shall annually on the 1st day of August in every year review the salary and wage margins in relation to the availability of public monies to grant an increase in all salaries and wages paid within the Public Service from that date and in doing so Cabinet will give recognition to the cost of living index in the previous twelve months.

This Act is administered by the Public Service Commissioner