CHAPTER 105

THE PUBLIC SERVICE (NEGOTIATING MACHINERY) ACT

[PRINCIPAL LEGISLATION]

Arrangement of Sections

Section *Title*

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PART I
PRELIMINARY PROVISIONS

1. Short title.
2. Interpretation.

PART II
ESTABLISHMENT OF THE JOINT STAFF COUNCILS

3. Objective of Service Joint Staff Council.
4. Establishment of Service Joint Staff Council.
5. Tenure of office of Chairman, etc., of Service Joint Staff Council.
6. Functions of Service Joint Staff Council.
7. Quorum and meetings of Service Joint Staff Council.
8. Decisions of Service Joint Staff Council.
9. Establishment and composition of Public Service Joint Staff Council.
10. Functions of Public Service Joint Staff Council.
11. Repealed.
12. Tenure of office of members of Public Service Joint Staff Council.
13. Quorum and meetings of Public Service Joint Staff Council.
14. Public Service Joint Staff Council's meeting.
15. Cessation and filling of vacancies of members.

PART III
PROCEDURE FOR RENDERING ADVICE AND DISPUTES SETTLEMENT

16. Advise to Government.
17. Agreements reached in Public Service Joint Staff Council and publication of Minister's award.
18. Report to Minister where no agreement in Public Service Joint Staff Council is reached.
19. Reference of dispute to Public Service Joint Staff Council or Court.
20. Re-consideration of dispute by Public Service Joint Staff Council.
21. Consideration of dispute by Court.

22. Time for reference.
23. Award by President.
24. Publication of Presidential award.
25. Award to be binding.

PART IV
STRIKES AND LOCK-OUTS

26. Rights and conditions to strike and lock-out.
27. Strike and lock- out not allowed.
28. Incitements.
29. Prohibition of acts of discrimination.

PART V
ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE MASTER WORKERS' COUNCIL

30. Establishment of Master Workers' Council.
31. Functions of Master Workers Council.
32. Submission of recommendations.
33. Report of Master Workers Council.

PART VI
MISCELLANEOUS PROVISIONS

34. Disapplication of Arbitration Act.
35. Regulations.
36. Repeal.
37. Transitional and savings provisions.

SCHEDULE

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CHAPTER 105

THE PUBLIC SERVICE (NEGOTIATING MACHINERY) ACT

An Act to make better provisions for the participation of public servants in negotiating and rendering advice to the Government and settling disputes in the public service; to repeal the Civil Service (Negotiating Machinery) Act, 1962 and the Local Government Negotiating Machinery Act, 1982 and to provide for related matters.

[1st July 2004]
[GN. No. 182 of 2004]

Acts Nos.
19 of 2003
24 of 2015
13 of 2016

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PART I
PRELIMINARY PROVISIONS

Short title

1.–(1) This Act may be cited as the Public Service (Negotiating Machinery) Act.

(2) [Omitted.]

Interpretation
Act No.
24 of 2015 s. 24

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

"award" means a final decision of the President made under section 23 of this Act, and includes acceptance of the agreement by the Minister under section 17(2);

Cap. 298

"Chief Secretary" has the meaning ascribed to it under the Public Service Act;

Cap. 300

"Court" means Labour Division of the High Court established under the Labour Institution Act or any successor, court thereto;

"dispute" means any matter regarding the terms and conditions of service of public servants which was a subject of consideration by the Council and to which the Government and the trade unions have failed to reach an agreement;

"lock-out" means the closing of a place of employment, by the employer done in consequence of a dispute, not with

the intention of finally determining employment, but with a view to compelling persons employed by him to accept terms or conditions of, or affecting employment;

"member" means a member of the Service Joint Staff Council and, as the case may be, a member of the Public Service Joint Staff Council and includes the Chairman and Vice Chairman;

"Minister" means the Minister responsible for public service management matters;

"Permanent Secretary" means the Permanent Secretary responsible for public service management matters;

"public servant" has the meaning ascribed to it under the Public Service Act;

Cap. 298

"public service" means the public service as defined in the Public Service Act;

Cap. 298

"Service" means the public service in the Government of the United Republic;

"strike" means the cessation of work by public servants or a concerted refusal by any number of public servants to continue to work or a concerted interruption of work or performance of work on a go-slow basis by any number of public servants, done through their trade union or unions as a means of compelling their employer or any person to aid other public servants in compelling their employer or any person acting on behalf of the employer, to accept or not to accept the terms and conditions of employment; and

"trade union" means any registered trade union the member of which includes employees in the public service.

PART II

ESTABLISHMENT OF THE JOINT STAFF COUNCILS

Objective of Service Joint Staff Council

3.–(1) For the purposes of achieving the objectives of this Act, both the Service Joint Staff Council and Public Service Joint Staff Council shall, within the limits of their functions-

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(a) secure the greatest measure of co-operation between the Government, in its capacity as an employer, and the public servants through their respective trade unions;
(b) provide conducive environment that would bring about consultation and negotiation between the Government and public servants on matters affecting the efficiency and well being of the public service; and
(c) provide for the machinery for dealing with the grievances for public servants.

(2) For the purposes of facilitation of the meetings of the Service Joint Staff Council, Public Joint Staff Council and the Master Workers Council, the Government shall pay for the costs of such meetings.

Establishment of Service Joint Staff Council
Acts Nos. 24 of 2015 s. 25
13 of 2016 s. 30

4.–(1) There shall be established for the purposes of putting in place the mechanism and facilitation of negotiations and participatory consultations by each Service Scheme, the Service Joint Staff Council-

(a) the Civil Service Joint Staff Council;
(b) the Teachers Service Joint Staff Council;
(c) the Local Government Joint Staff Council;
(d) Health Service Joint Staff Council; and
(e) Fire and Rescue Services and Immigration Service Joint Staff Council.

(2) The Service Joint Staff Council shall be negotiating body which shall, with respect to the terms and conditions of service, provide a forum for discussion by public servants serving in the service scheme referred to under subsection (1).

(3) Every Service Joint Staff Council shall consist of-

(a) a Chairman and a Vice-Chairman who shall be appointed by the Minister from amongst two persons who shall be recommended by the most representative trade union representing the category of the Service Scheme in question and two other persons recommended by the Minister responsible for the Service Scheme in question;

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(b) four public servants nominated by the respective trade union; and

(c) five Government officials nominated by the Minister being a-

(i) representative of the Ministry responsible for public service;

(ii) representative of the Ministry responsible for finance;

(iii) representative of regional administration and local government authorities;

(iv) representative of the Ministry responsible for labour relations; and

(v) representative of the Ministry responsible for the service scheme.

(4) In nominating persons referred to under paragraphs (b) and (c) of subsection (3), the Trade Union and the Minister shall ensure that, the nominee are such persons who are able to make decisions on any matter which is the subject of negotiation.

(5) The Minister shall appoint a secretary of the Joint Staff Council from the respective service scheme.

Tenure of office of Chairman, etc., of Service Joint Staff Council

5. The Chairman and the Vice Chairman shall each hold office for a period of three years and shall be eligible for re-appointment for one further term.

Functions of Service Joint Staff Council

6. The functions of the Service Joint Staff Council shall be to-

(a) advise the Government on matters relating to the welfare of public servants to which that Service Joint Council belong;

(b) discuss and make recommendations to the Government on any matter concerning interest, well-being and efficiency on part of public servants;

(c) discuss and advise the Government on any matter on which the Government has requested for advice;

(d) negotiate on matters relating to the terms and conditions of service with respect to the public servants generally or to the Service Scheme to which that Service Joint Council belong; and

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(e) discuss any matter which may be referred to it by the Public Service Joint Staff Council.

Quorum and meetings of Service Joint Staff Council
Act No. 24 of 2015 s. 26

7.–(1) The quorum for a meeting of the Service Joint Staff Council shall be seven members.

(2) The Service Joint Staff Council shall meet twice in a year.

(3) Notwithstanding subsection (2), the Service Joint Staff Council may hold an extra ordinary meeting where there exist any matter which requires immediate consideration and determination.

Decisions of Service Joint Staff Council

8.–(1) All decisions on any matter which was a subject of consideration and determination by the Service Joint Staff Council shall be referred to the Public Service Joint Staff Council for endorsement.

(2) Where the Public Service Joint Staff Council receives a decision on a matter referred to it by the Service Joint Staff Council for consideration and endorsement it may-

(a) endorse with or without amendment and forward the matter to the Minister;

(b) defer its endorsement until such other time as may be appropriate; or

(c) refer back the matter to the Service Joint Staff Council with a direction for further consideration.

Establishment and composition of Public Service Joint Staff Council

9.–(1) There shall be established a Public Service Joint Staff Council which shall be the highest participatory negotiating and consultative body in the public service.

(2) The composition of the Public Service Joint Staff Council shall be-

(a) the Chairman and the Vice Chairman who shall be appointed by the President from a list of persons submitted as such by the Minister;

(b) eight members from the trade unions representing the Council who shall be appointed by the trade unions; and

(c) eight members appointed by the Minister to represent the Government.

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(3) For the purposes of subsection (1), a person shall not be appointed a Chairman or a Vice Chairman who is a member of a trade union or a public servant.

(4) In recommending persons for appointment as Chairman and Vice Chairman, the trade unions and the Government shall each nominate two persons whose names shall be forwarded to the President.

(5) The Secretary and Assistant Secretary shall be appointed on the basis that, the Secretary shall be appointed by the Minister from among the public servants and the Assistant Secretary shall be appointed by the trade unions.

Functions of Public Service Joint Staff Council

10. The functions of the Public Service Joint Staff Council shall be to-

(a) advise the Government on matters relating to the welfare of public servants;

(b) discuss and make recommendations to the Government on any matter concerning interests, well being and efficiency on part of public servants;

(c) discuss and advise the Government on any matter on which the Government has requested for advice of the Council;

(d) negotiate on matters relating to the terms and conditions of service with respect to the public servants generally or to specified category of public servants;

(e) approve and register or discuss any matter referred to it by the Service Joint Staff Council;

(f) determine appeal referred to it arising from the decision of the Service Joint Staff Council; and

(g) initiate any matter of important and refer the same for consideration, opinion or determination by the Service Joint Staff Council.

Repealed

11. [Repealed by Act No. 13 of 2016, s. 31].

Tenure of office of members of Public Service Joint Staff Council

12. A member of the Public Service Joint Staff Council shall hold office for a period of three years and shall be eligible for re-appointment.

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Quorum and meetings of Public Service Joint Staff Council

13.–(1) Subject to subsection (1) of section 14, the Public Service Joint Staff Council shall meet once in every year and shall, for the purposes of discharging its functions, regulate its own proceedings.

(2) Fourteen members shall constitute a quorum for the meeting of the Public Service Joint Staff Council.

Public Service Joint Staff Council's meeting

14.–(1) The Public Service Joint Staff Council shall hold its ordinary meetings during the second quarter of each financial year of the Government and may hold extra-ordinary meetings at any time during which a matter giving rise to the meeting requires or soon after a matter has been referred to it by the Service Joint Staff Council.

(2) Any matter which is a subject of consideration by the Public Service Joint Staff Council which, by its nature, calls for action or measures to be taken in compliance therewith by the Government shall be determined and recommendation submitted to the Minister not later than 15th day of December.

Cessation and filling of vacancies of members

15. Where any member of the Public Service Joint Staff Council ceases to be as such, his position shall be filled by a member appointed in accordance with the procedures as may be set out by the Minister and shall hold office and perform duties as a member for the rest of the remaining period.

PART III

PROCEDURE FOR RENDERING ADVICE AND DISPUTES SETTLEMENT

Advise to Government

16.–(1) Where the Public Service Joint Staff Council has considered a matter and, in relation therewith it is minded to advise the Government as such, it shall submit in writing a report to the Minister which shall be signed by the Chairman or any other member nominated on that behalf by the Chairman and by the Vice Chairman or any other member nominated on that behalf by the Vice Chairman.

(2) Where a report is made to the Minister, he shall consider it and advise the Government accordingly.

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(3) A decision of the Government made pursuant to or consequent upon advice given according to this section may be reported back to the Public Service Joint Staff Council at its subsequent meeting.

Agreements reached in Public Service Joint Staff Council and publication of Minister's award

17.–(1) An agreement reached by the Public Service Joint Staff Council or any matter referred to the Public Service Joint Staff Council by the Service Joint Staff Council for approval in relation to any dispute regarding terms and conditions of service of public servants shall be recorded in writing and signed by the Chairman or any other member nominated on that behalf by the Chairman and be forwarded to the Minister.

(2) On receipt of the agreement, the Minister shall accept the agreement.

(3) Where the agreement is accepted by the Minister without modification, it shall *ipso facto*, be an award.

(4) Where the Minister considers that there is a need for further consideration of the matter, he shall refer it back to the Public Service Joint Staff Council for further negotiation.

(5) Every award made shall be final and binding upon the Government and the public servants to whom the agreement relates for a period of twelve months beginning on the date on which the award was made.

(6) An application to negotiate another agreement relating to any matter that has been covered by the agreement or vary the agreement on a matter which involves or which have the effect of making variation to agreement shall not, save with the prior permission of the Minister, be placed upon the agenda or discussed by the Public Service Joint Staff Council unless twelve months have expired.

(7) Every award shall be published by the Minister in the *Gazette* and shall take effect on the date specified in the agreement.

Report to Minister where no agreement in Public Service Joint Staff Council is reached

18.–(1) Where the Public Service Joint Staff Council is unable to reach agreement on any dispute, the Chairman and the Vice Chairman of the Council shall submit a report to the Minister signed by both of them or by their nominees.

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(2) The report shall contain as precise as possible-

(a) minutes of deliberations of the Public Service Joint Staff Council; and

(b) memorandum on the subject matter of the deliberations.

(3) As much as possible, the report shall state the dispute in relation to which an agreement has not been reached.

Reference of dispute to Public Service Joint Staff Council or Court

19. Where a report is made to the Minister pursuant to subsection (1) of section 18, the Minister may-

(a) upon finding that, the Public Service Joint Staff Council was unable to reach any agreement because-

(i) it did not take into account any material issue or matter relevant to the dispute under consideration;

(ii) it took into account any issue or matters which were irrelevant or immaterial to the dispute;

(iii) it lent undue weight or consideration to any issues or matters; or

(iv) it did not have the benefit of any relevant or material information,

so that further efforts are required to be made to settle the dispute through negotiation by the Public Service Joint Staff Council in which case, he shall refer the dispute back to the Public Service Joint Staff Council; or

(b) refer the dispute to the Court.

Re-consideration of dispute by Public Service Joint Staff Council

20. Where the Minister has referred the dispute back to the Public Service Joint Staff Council, it shall re-consider the dispute with a view to reach an agreement and where an agreement is reached, the provisions of subsections (1) and (2) of section 17 shall apply in relation therewith.

Consideration of dispute by Court

21. Where the Minister has referred the dispute to the Court, the Court shall consider the matter and submit the report in respect thereof to the Minister.

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Time for reference

22. Reference to the Public Service Joint Staff Council or to the Court shall be made within twenty-one days from the date on which the report was made to the Minister pursuant to section 18 unless, in the opinion of the Minister, there are special circumstances which make it necessary or desirable to postpone the reference for such further period or periods not exceeding thirty days in the aggregate, as the Minister may, in writing, allow.

Award by President

23.–(1) Where the report of the Court in respect of any dispute referred to it is submitted to the Minister, he shall, in any case, without delay and within fourteen days of such receipt, submit the report with any comments he may wish to make thereon to the President.

(2) On receipt of the report of the Court and comments of the Minister, the President may make an award on the dispute.

(3) An award made by the President may be expressed to have retrospective effect and shall be made within twenty-one days from the date on which the report of the Court and the comments of the Minister were submitted to the President.

(4) Where, in the opinion of the President, there are special circumstances which makes it necessary or desirable to postpone making the award for such period or periods as the President may state, the award shall stand deferred until such period or periods as the President has stated.

(5) In any proceedings conducted pursuant to the provisions of this Act, a certificate made under the hand of the Minister to the effect that-

(a) the President has or has not made an award on or by a date specified therein; or

(b) the President has not postponed the period for making an award; and

(c) the President has postponed such period of making the award and has instead specified further period within which the award is to be made,

shall be admissible in evidence and shall, in the absence of any proof to the contrary, be conclusive evidence of the facts stated therein.

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Publication of Presidential award

24.–(1) Every award made by the President shall be published in the *Gazette* and shall take effect from the date of such publication.

(2) Where an award is expressed to be retrospective, it shall take effect from the date specified in the award.

Award to be binding

25. Every award made by the President shall be binding upon the Government and public servants to whom the award relates for a period of twelve months and no application shall be made to vary the award or make any matter which involves the variation of the award, unless there is prior written permission of the Minister, and shall not, in any cases, be placed upon the agenda of or discussed within the Public Service Joint Staff Council until the expiration of such period of twelve months.

PART IV
STRIKES AND LOCK-OUTS

Rights and conditions to strike and lock-out
Act No. 24 of 2015 s. 27

26.–(1) Subject to the provisions of this Part-

(a) every public servant has a right to strike in respect of a dispute; and

(b) every employer has a right to lock-out in respect of a dispute.

(2) A public servant may take part in a strike if the following conditions have been satisfied:

(a) there is a dispute;

(b) the dispute is not resolved;

(c) a ballot strike has been conducted under the supervision of the Labour Officer and the majority of the public servants in the respective Service Scheme support the strike; and

(d) sixty days have passed since notice was served to the Government, counting from the date on which a ballot strike was cast.

(3) An employer may take part in a lock-out if the following conditions are satisfied:

(a) there is a dispute;

(b) the dispute is not resolved; and

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(c) a forty eight hours notice has been served to the Chairman of a branch of trade union presenting the majority of employees at the work place, counting from the date of submission of the notice to the Chairman of the trade union.

Strike and lock-out not allowed Act No. 24 of 2015 s. 28

27. This Act shall not authorise the striking or locking-out by public servants or employer in any employment or service rendered the result of which may cause interruption or continued interruption which endangers life, health or personal safety of the whole or part of the population.

Incitements Act No. 24 of 2015 s. 29

28.–(1) Any person being a public servant or not who persuades or incites any public servant to take part in a strike contrary to the provisions of sections 26 and 27 shall-

(a) in the case of public servant, render himself the subject of disciplinary measures, including deduction from his salary, any amount of money that may be considered to be commensurate to the loss occasioned to the employer; and

(b) in the case of a person who is not a public servant, render himself the subject of criminal proceedings.

(2) Where as a result of participation by a public servant in a strike contrary to this Act, any damage is caused to property of employer, any public servant who took part in the strike or any person who persuaded or incited such public servant to take part in the strike shall be liable to make good of the damage to such property.

Prohibition of acts of discrimination Act No. 24 of 2015 s. 30

29. An employer shall not treat or do any act or omission calculated to show disfavor or inspire fear of security of employment on part of a public servant or do any act of discrimination against any public servant by reason that such public servant took part in a strike or is a leader or activist of a trade union which inspired or incited public servants to take part in the strike.

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PART V

ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE MASTER WORKERS' COUNCIL

Establishment of Master Workers' Council

30.–(1) There shall be established for purposes of participation of public servants in implementation of public business, a Master Workers' Council.

(2) The provisions of the Schedule to this Act shall have effect as to the composition, tenure of office, proceedings of meetings and other matters relating to the Council.

(3) Notwithstanding the provisions of subsection (1), each Ministry, independent department, regions, local government authority, Government institutions and executive agencies shall establish Workers' Council in the manner as the Minister may, by regulation, prescribe.

Functions of Master Workers Council

31. Subject to the provisions of section 6, the functions of the Master Workers' Council in relation to the business for which it is established shall be to-

(a) advise the Government on procedures for promotion and disciplinary measures in respect of public servants;

(b) advise the Government on measures to be taken in order to ensure effective delivery of services; and

(c) advise the Government on the changes that are to be made to the Government Standing Orders and conditions of work and service;

Submission of recommendations

32. Where the Master Workers' Council decides to make recommendations to the Government, it shall submit such recommendations through the Minister.

Report of Master Workers Council

33.–(1) The Master Workers' Council shall cause in every year to be prepared and published a report and submit it to the Chief Secretary.

(2) Upon receipt of the report, the Chief Secretary shall consider such recommendations and adopt them for purposes of improving the public service.

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PART VI
MISCELLANEOUS PROVISIONS

Disapplication of Arbitration Act

34. The Arbitration Act shall not apply in relation to any proceedings, agreement or award under this Act.

Regulations

35. The Minister may make regulations for the better carrying out of the provisions and purposes of this Act and, without prejudice to the generality of the foregoing, may make regulations prescribing anything that is to be prescribed under this Act.

Repeal
Acts Nos.
52 of 1962
11 of 1982

36. [Repeals the Civil Service (Negotiating Machinery) and the Local Government Negotiating Machinery Act].

Transitional and savings provisions
Acts Nos.
52 of 1962
11 of 1982

37.–(1) Notwithstanding the repeal of the Civil Service (Negotiating Machinery) Act and the Local Government Negotiating Machinery Act-

(a) all subsidiary legislation, and all other administrative orders, directions or instructions made, given or issued under or in pursuance of the provisions of the Civil Service (Negotiating Machinery) Act, as well as the Local Government Negotiating Machinery Act, which were in force on commencement of this Act, shall be deemed to have been made, given or issued under or in pursuance of the provisions of this Act, and shall remain in force until revoked, cancelled or rescinded by subsidiary legislation, administrative orders, directions or instructions made or issued under this Act; and

(b) the Chairman, members and officers of the Master Workers' Council shall, from the date of commencement of this Act, continue to hold office on the terms and conditions of service on which they were each appointed unless their appointments are revoked, and shall, for that purpose be deemed to be the Chairman, members and officers respectively of the

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Master Workers' Council appointed in accordance with the provisions of this Act.

(2) The President may, by notice in the *Gazette*, at any time before the expiry of twenty-four months from the commencement of this Act, make such consequential transitional or supplementary provisions as he may consider necessary for facilitating effective performance by the Master Workers' Council of its functions.

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SCHEDULE

(Made under section 30(2))

PROVISIONS RELATING TO THE MASTER WORKERS' COUNCIL

Composition of Master Workers' Council

1. The Master Workers' Council shall consist of thirty three members drawn as follows:

(a) the Permanent Secretary of the Office of Public Service Management who shall be the Chairman;

(b) the Vice Chairman who shall be elected from amongst the members of the Master Workers' Council representing trade unions;

(c) seven executives representing regions who shall be appointed in a representative capacity of Zones as follows:

(i) Northern Zone that consists of Kilimanjaro, Arusha, Manyara and Tanga regions;

(ii) Eastern Zone that consists of Dar es Salaam, Pwani and Morogoro regions;

(iii) Southern Zone that consists of Lindi, Mtwara and Ruvuma regions;

(iv) Southern Highlands Zone that consists of Iringa, Mbeya and Rukwa regions;

(v) Western Zone that consists of Kigoma, Tabora and Shinyanga regions;

(vi) Lake Zone that consists of Mwanza, Kagera and Mara regions;

(vii) Central Zone that consist of Dodoma and Singida.

(d) nine executive officers representing Ministries, Government department and the Local Government Authorities as follows-

(i) one member who shall be appointed by the Minister;

(ii) three members appointed by the Chief Secretary;

(iii) the Commissioner for Labour;
(iv) the Chief Education Officer;
(v) one member from the Office of Public Service Management Gender Unit;
(vi) three members who shall be appointed by the Minister responsible for local government authorities; and

(e) twenty-one members from the public services employees who shall be elected as follows-
(i) seven members representing the public service employee from the regions;
(ii) seven members representing the public service employees from the Ministries and Government Departments; and
(iii) seven members appointed by trade union.

Criteria for division of regions Act No. 24 of 2015 s. 31

2. For the purpose of paragraph 1(c), where a new region is established by-
(a) subdivision of a region, the new region shall be in the same zone with the subdivided region; or
(b) subdivision of more than one region belonging to different zones,

the Minister shall, decide the zone in which the new region shall belong.

[para. 1A]

Tenure of Office

3.–(1) The members of the Master Workers' Council other than the members appointed under subparagraphs (a) and (d)(iii) and (iv) of paragraph 1, shall hold office for a period of three years from the date of appointment or election and shall be eligible for re-appointment or re-election.

(2) The member of the Master Workers' Council shall cease to be a member if-
(a) his tenure of office has expired;
(b) he ceases to be a public service employee;
(c) he is transferred to a region falling within a different zone; and
(d) he fails to attend to at least three Master Workers' Council meetings consecutively.

(3) In the case of the Master Workers' Council member who is a member by virtue of his holding some office he shall cease to be a member upon ceasing to hold that office.

[para. 2]

Secretary and Assistant Secretary

4. The Secretary and the Assistant Secretary of the Public Service Joint Staff Council shall be the Secretary and Assistant Secretary of the Master Workers' Council.

[para. 3]

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Vacancy

5. Where a Master Workers' Council member ceases to be a member in accordance with the provisions of paragraph 3(2) and (3) his vacant position shall be filled with a member elected or appointed in accordance with the prescribed procedures and he shall perform his duties for the remaining period and he may be eligible for re-election, or as the case may be, re-appointment.

[para. 4]

Quorum

6. Eighteen members of the Master Workers' Council shall constitute a quorum at any meeting and all acts, matters or things to be done by the Master Workers' Council shall be decided by a simple majority of the members present.

[para. 5]

Meetings of Master Workers' Council

7.–(1) The Master Workers' Council shall ordinarily meet at such times and places as it deems necessary for the transaction of its business but shall meet at least once in a year.

(2) The Chairman, may at any time when necessary, call an extra-ordinary meeting of the Master Workers' Council.

(3) The Chairman or in his absence, the Vice Chairman, shall preside over every meeting of the Master Workers' Council, and in the absence of both the Chairman and Vice Chairman, members present shall appoint a member from amongst themselves to preside over the meeting.

[para. 6]

Committees

8.–(1) The Master Workers' Council may establish in relation to a matter or matters of a particular kind, such number of committees as may be necessary for the proper discharge of the functions of the Master Workers' Council taking into account the Master Workers Council's needs and priorities.

(2) The Committee may co-opt as members of such committee any person who is not a member of the Master Workers' Council to provide expertise to a matter or matters of a particular kind.

[para. 7]

Master Workers' Council to regulate its own proceedings

9. Subject to the provisions of this Schedule, the Master Workers' Council may make rules to regulate its own meetings.

[para. 8]

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