



# LESOTHO Government Gazette

*AMMAN* EXTRAORDINARY *ARZAN*

Vol. LV

Monday - 15th March, 2010

No. 20

## CONTENTS

No.		Page
	ACT	
3	Education Act, 2010 .....	155

## GOVERNMENT NOTICE

18	Statement of Objects and Reasons of the Education Act, 2010 .....	205
----	--	-----

Published by the Authority of His Majesty the King  
Price: M35.00

## ACT NO. 3 OF 2010

## Education Act, 2010

## ARRANGEMENT OF SECTIONS

## Sections

## PART I – PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Purpose and objectives of the Act

## PART II – ADMINISTRATION OF THE ACT

4. Administration of the Act
5. Procedure for computing the age of a child
6. Compulsory attendance

## PART III – REGISTRATION OF SCHOOLS

7. Registration
8. Application
9. Requirements for registration of schools
10. Consideration of application by the Minister
11. Certificate of registration
12. Classification of Schools
13. Funding of Schools
14. Reclassification of a school
15. Premises in which a school may operate
16. Grounds for cancellation of registration and closure of a school
17. Closing of a school temporarily

## PART IV – SCHOOL SUPERVISION

18. Inspectorate of schools
19. Inspection

---

**PART V – MANAGEMENT OF SCHOOLS**

20. School principals
21. Duties of a principal
22. Suspension of a principal
23. School boards
24. Meetings of the Board
25. Responsibilities of the school board

**PART VI – EDUCATIONAL SECRETARIES**

26. Educational secretaries
27. Secretariat for Government controlled schools

**PART VII – EDUCATION ADVISORY COUNCIL**

28. Education Advisory Council
29. Functions of the Education Advisory Council
30. Vacancies in the Education Advisory Council
31. Meetings of the Education Advisory Council
32. Standing Committee of the Education Advisory Council

**PART VIII – TEACHING SERVICE**

33. Administration of the Teaching Service
34. Entry into the Teaching Service
35. Teaching Council
36. Functions of the Teaching Council
37. Vacancies in the Teaching Council
38. Meetings of the Teaching Council
39. Standing Committee of the Teaching Council
40. Employment of teachers

**PART IX – TEACHING SERVICE COMMISSION**

41. Composition of the Teaching Service Commission
42. Functions of the Teaching Service Commission
43. Acts of the Teaching Service Commission not to be invalidated by vacancies or absence of members
44. Secretary to the Teaching Service Commission

45. Meetings of the Teaching Service Commission
46. Report of the Teaching Service Commission
47. Tenure of office
48. Improper influence
49. Privileged communication
50. Consent to prosecution
51. Remuneration and allowances of members

#### PART X - APPOINTMENT OF TEACHERS

52. Appointment of a teacher other than a teacher paid by the Government
53. Terms and conditions of service of teachers
54. Secondment of teachers
55. Whole time of teacher at disposal of school
56. Private employment and private interest

#### PART XI - CONDUCT OF TEACHERS

57. Codes of practice

#### PART XII - SETTLEMENT OF DISPUTES

58. Legal representation
59. Conciliation Board
60. Arbitration
61. Teaching Service Tribunal

#### PART XIII - RETIREMENT OF TEACHERS

62. Retirement of teachers on permanent and pensionable terms
63. Retirement on medical grounds

#### PART XIV - TEACHERS' FORMATIONS

64. Right of Association
65. Representation of teachers

## PART XV – MISCELLANEOUS

- 66. Power of delegation
- 67. Penalties
- 68. Regulations

## PART XVI – TRANSITIONAL

- 69. Continuation of educational secretaries
- 70. Continuation of functions
- 71. Repeals

## Education Act, 2010

An act to make provision for education and for related matters.

Enacted by the Parliament of Lesotho.

### PART I – PRELIMINARY

#### Short title and commencement

1. This Act may be cited as the Education Act 2010 and shall come into operation on the date of publication in the Gazette.

#### Interpretation

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

“appointing authority” in relation to a teacher in the public school is the Commission, in the case of a teacher in an independent school is a school board;

“board” means a school board as established under section 23;

“Chief Education Officer” means an officer in the Ministry of Education who is in charge of the teaching service;

“Chief Inspector” means the head of the inspectorate as established under section 18;

“church” means any religious body registered under the Societies Act 1966<sup>1</sup>;

“Commission” means the Teaching Service Commission established under section 144 of the Constitution;

“Conciliation Board” means a board established under section 59;

“Constitution” means the Constitution of Lesotho 1993;

“Council on Higher Education” means the Council on Higher

Education established by Higher Education Act 2004<sup>2</sup>;

“disciplinary action” means a formal or informal action taken by management against a teacher who fails to conform with the rules and regulations governing teachers or has committed any other misconduct;

“dispute of interest” means a dispute over employment matters to which a teacher or employer does not have a right.

“dispute of right” means a dispute arising from a breach or contravention of law, contract of employment.

“Education Advisory Council” means the Education Advisory Council established under section 28;

“Educational Secretary” means a person appointed as such under section 26;

“employer” means the Government of Lesotho represented by ministries, departments and agencies, in a case where a teacher is employed by the Commission or in a case where a teacher is employed by a school board it means the school board;

“Government Controlled Schools Secretary” means a person appointed as such under section 27;

“grievance” means a feeling of dissatisfaction or injustice which a teacher encounters in the workplace and formally brought to the attention of the employer;

“head of department” means a teacher who is in charge of a department under his or her supervision;

“handicapped” means physically or mentally disabled or both, including sensory disabilities, whether singular or multiple;

“independent school” means a school other than a public school which is allowed to determine its own admission criteria;

“learner” means a person enrolled in a school to receive fulltime tuition;

“learning center” means a designated place for the provision of basic literacy and numeracy skills for out-of-school learners;

“Minister” means the Minister responsible for education;

“Ministry” means the Ministry responsible for education;

“parent” means a parent who in law or by virtue of an order of a competent court has the custody or control of a learner, or a legal guardian, or in the absence of such parent or legal guardian, the person with whom the learner resides and to whom the parent or guardian has entrusted, in writing, the custody or control of such learner, or if the learner has no parent or legal guardian, the person with whom the learner resides and who has the actual custody or control of such learner;

“prescribe” unless the context otherwise requires, means prescribe by regulations;

“principal” means a teacher in charge of a school;

“Principal Secretary” means the Principal Secretary responsible for education;

“proprietor” in relation to a school means any person, community, church, society or corporation by whom or by which a school is established or to whom or to which an established school is transferred, and in the case of a community-based, religion-based and non-governmental organisations means an organ or office stipulated as such by the institution;

“public school” means a state-funded school wholly managed in terms of government regulations and manned by teachers who are in the Teaching Service;

“school” means any registered school, special school, pre-primary school, primary school, secondary school, high school, combined jun-



ior school, combined basic education school, combined junior college, class, part time class, night school, formal and distance learning post, or any other institution for imparting instruction but does not include -

- (a) an institution or organisation which provides education which is wholly of a religious character;
- (b) an institution owned or maintained by a religious body for the purpose of training persons for the ordained ministry or for admission to religious order; or
- (c) a training institution owned by Government, a Ministry or Government Department.

“special school” means a school in which learners who may require education different from that offered in schools receive special education;

“teacher” means a person employed in a school for purposes of instruction either on a full time or part time basis and who has been registered in accordance with section 34;

“Teaching Council” means the body established under section 35;

“teachers’ formation” means any body, union, association or organisation registered under the Societies Act 1966, Companies Act 1967<sup>3</sup> or the Labour Code Act 1992<sup>4</sup> as amended whose entire membership is composed of teachers;

“Teaching Service” means the service established under section 144 of the Constitution;

“Teaching Service Department” means the department of the Ministry of Education charged with the responsibility of administering the teaching service;

“Tribunal” means the Teaching Service Tribunal established under section 61.

### Purpose and objectives of the Act

3. This Act seeks to -
- (a) make provision for free and compulsory education at primary level;
  - (b) align the education laws with decentralisation of services;
  - (c) make provision for education for all in accordance with the provisions of section 28 of the Constitution; and
  - (d) clarify roles and responsibilities of persons tasked with the administration of education.

### PART II - ADMINISTRATION OF THE ACT

#### Administration of the Act

4. (1) The Minister may take measures which are desirable to -
- (a) make provision for free primary education to all learners from the age of six, save in regard to independent schools;
  - (b) make provision for free education at all other levels of learning;
  - (c) make education services provided by the Ministry available within reasonable distance from every habitation; and
  - (d) decentralise educational services in consultation with the Minister responsible for local government.
- (2) The Minister, Principal Secretary, Teaching Service Commission, proprietors of schools, teachers and school boards shall promote the education of the people of Lesotho and in particular -

- (a) ensure that a learner is provided with opportunities and facilities to enable him or her to develop physically, mentally, morally, spiritually and socially in a healthy, normal manner and in the conditions of freedom and dignity;
  - (b) ensure, as soon as circumstances permit, that a learner who is physically, mentally or otherwise handicapped is given the special treatment, education and care required by his or her condition;
  - (c) ensure that the learner is free from any form of discrimination in accessing education and is availed all educational opportunities provided;
  - (d) act in the best interests of the learner and his or her education at all times; and
  - (e) act in a democratic, transparent and accountable manner in the management of the education system.
- (3)
- (a) A learner, whether enrolled in an independent or public school shall not be suspended or expelled from school without the consent of the school board;
  - (b) Where in the opinion of the principal the suspension has to be of immediate effect, the principal may effect such suspension and seek the concurrence of the school board within five working days;
  - (c) Where a parent is dissatisfied with the suspension or expulsion of a learner, he or she may appeal to the Minister;
  - (d) The Minister's decision shall be final.
- (4) A learner shall not be subjected to cruel, inhuman and degrading punishment.

(5) A parent shall be involved in the development of the disciplinary policies of the school.

(6) A parent of a learner from the age of six to an age determined by the Minister shall -

- (a) enrol the learner in an independent or public school;
- (b) cause the learner to receive full time education appropriate for his or her age, ability and aptitude by regular attendance at school; and
- (c) provide the learner with the full opportunity and guidance to complete primary education.

#### **Procedure for computing the age of a child**

5. (1) For the purpose of this Act, the age of a learner, upon admission, shall be computed as the number of years completed on the 30th of June of the school year.

(2) A birth certificate, a baptismal certificate and in their absence, an infancy medical record, or a declaration by a parent or guardian shall be treated as proof of the age of a learner.

(3) If the admitting authority has reason to disbelieve a declaration by the parent or guardian, the authority shall determine the learner's age after making an inquiry in such manner as may be prescribed.

#### **Compulsory attendance**

6. (1) A parent shall enrol a learner in a primary school at the age of six years or in the year in which he or she will be six years of age by the 30th of June of that calendar year, and the learner shall stay in school until he or she reaches such age as may be prescribed by the Minister.

(2) Where a learner is enrolled at a school, the learner shall attend that school on each day, and for such parts of each day, as instruction is provided at the school for the learner.

(3) Sub-section (2) does not apply to a learner -

- (a) in respect of whose absence from school a parent has provided, either orally or in writing, a reason acceptable to the principal of the school for the absence of the learner;
- (b) where a principal of a school at which a learner is enrolled has given notice, in writing, to a parent of the learner that the learner is not to attend school for a period specified in the notice on the grounds that the learner is suffering from an infectious or contagious disease; or
- (c) suffering from a disability or disease which prevents him or her from attending school.

(4) Where a principal of a school has given notice under subsection (3)(b) in relation to a learner, he or she shall readmit the learner to the school upon the production of a certificate signed by a medical practitioner certifying that the learner is fit to return to the school.

(5) Subject to this section, where a learner fails to attend school regularly in accordance with sub-section (2), each parent of the learner is guilty of an offence and liable on conviction to -

- (a) do such community service as the court may determine; or
- (b) a fine of not less than M1,000 or imprisonment for a term of not less than one year or both.

### PART III - REGISTRATION OF SCHOOLS

#### Registration

7. (1) A school shall be registered in accordance with this Act and a person shall not operate a school unless it is so registered.

(2) Where a school provides independent instruction to learners, other than those normally registered with that school, in addition to other education, such instruction shall be deemed to be a separate school and shall also be registered as such.

(3) The Minister shall register schools according to the following categories -

- (a) pre-school, which provides up to four years of early childhood education;
- (b) junior school, which provides pre-school and primary school education;
- (c) primary school, which provides up to seven years of primary education;
- (d) basic education school, which provides primary and junior secondary education;
- (e) secondary school, which provides three years of post-primary education;
- (f) high school, which provides up to five years of post-primary education;
- (g) junior college, which provides up to seven years of post-primary education; or
- (h) learning center for out-of-school basic education.

(4) A proprietor of a registered school shall have a physical address in Lesotho which shall be shown on the certificate of registration.

(5) A person who contravenes the provisions of sub-section (1) or (2) commits an offence and is liable on conviction,

- (a) in the case of a natural person, to a fine of not less than M3,000 or imprisonment for a period of not less than three years or both;

- (b) in the case of a society, church, corporation or board to a fine of not less than M5, 000.

### **Application**

8. A person who wishes to -

- (a) open a new school;
- (b) upgrade or downgrade an existing school;
- (c) change the form of a school;
- (d) add new classes to an existing school; or
- (e) transfer a school site,

shall make an application to the Minister in such form and following such a procedure as may be prescribed.

### **Requirements for registration of schools**

9. (1) An application under section 8 for registration of a school shall be in writing and include particulars of -

- (a) the name and address, in Lesotho, of the prospective school proprietor;
- (b) the name, designation and address of a person nominated by the proprietor for the service of notices under this Act;
- (c) the constitution of the school which guides the method of management of the affairs of the school consistent with this Act;
- (d) the proposed category of the school in accordance with section 7(3) of this Act and the prospective target population to be served by the school;

- (e) proof of title to land on which the school is to be operated or sublease agreement of premises to which proof of title is attached;
- (f) the buildings and facilities to be used by, or available to the school or plans for such buildings and facilities; and
- (g) the financial position at the time of the application and means by which it is proposed to finance the continued operation of the school.

(2) A registered school shall have a physical address in Lesotho at which court process and other processes shall be served.

#### **Consideration of application by the Minister**

10. On receiving an application in accordance with section 8, the Minister may make such inquiry as he or she considers necessary and may -

- (a) register the school in respect of which the application is made;
- (b) approve the upgrading, downgrading, change of form of school, transfer of a school site or addition of new classes to an existing school; or
- (c) refuse to register the school upon satisfaction that section 9 has not been complied with and provide reasons therefor.

#### **Certificate of registration**

11. (1) On registering a school, the Minister shall -
- (a) issue a proprietor a certificate of registration in the prescribed form;
  - (b) issue an identification number of the school;



- (c) maintain a record containing the name and address of a proprietor; and
- (d) cause the particulars of such registration to be published in the Gazette.

(2) A proprietor shall display a copy of the certificate issued by the Minister under sub-section (1) in a conspicuous place in the premises specified in the certificate.

(3) The Minister shall issue a certificate of registration to a proprietor of any school that is currently functioning and has been registered with the Ministry prior to the commencement of this Act and cause to be published in the Gazette a list of such schools.

(4) The Minister shall cause to be published in the Gazette at the end of each school year, an updated list of schools registered with the Ministry under this Act.

(5) The Minister may delegate the power to approve registration of schools to such other person as he or she may find appropriate.

(6) The Minister shall cause the delegation in terms of sub-section (5) to be published in the Gazette.

(7) Upon the Minister issuing a certificate of registration, a school becomes a body corporate with perpetual succession and a power to sue and be sued in its corporate name and to hold property.

#### **Classification of schools**

12. The Minister shall classify schools in accordance with the following categories -

- (a) public schools -
  - (i) whose admission requirements comply with such public policy as determined by the Minister and are bound by Government rules and regulations;

- (ii) which are funded by the Government and charge such fees as approved by the Minister; and
  - (iii) whose teachers are in the Teaching Service;
- (b) independent schools -
- (i) whose admission policy is determined by its governing bodies;
  - (ii) which are managed in terms of their own constitution approved by the Minister upon registration of the school or upon application to change the classification of such a school;
  - (iii) which are free to leverage fees determined by their school boards; and
  - (iv) may receive such conditional subvention or grants as the Minister may decide in consultation with the Minister responsible for finance;
- (c) special schools which -
- (i) fall under the category of either public or independent schools;
  - (ii) obtain services of licensed practitioners to provide non-educational services that enhance the quality of life of special learners;
  - (iii) provide a specialized curriculum approved by the Minister to accommodate the needs of special learners; and
  - (iv) are entitled to receive such public funds as may be determined by the Minister responsible for finance.

### Funding of schools

13. (1) The Minister may, after consultation with the Minister responsible for finance, provide -

- (a) grants-in-aid to educational institutions, including schools that provide educational services, educational management services and educational supervision services, which grants shall be managed in accordance with regulations made under this Act; and
- (b) bursaries or scholarships to qualified learners in independent and special schools in Lesotho and outside Lesotho as he or she may find appropriate.

(2) The Minister shall determine the nature and level of funding of schools in accordance with the classification provided for in section 12.

(3) The Minister may, by regulations, provide for the collection, safekeeping, expending and accounting of all funds in public schools.

(4) A board of a public school may, subject to guidelines issued by the Minister, authorise the use of funds for any school purpose, except for funds earmarked by the Principal Secretary for a specific purpose.

(5) The Minister may withhold grants-in-aid to a school until it has complied with the provisions of this Act, and communicate this to the affected school board.

### Reclassification of a school

14. (1) A school may be reclassified in the register of schools -

- (a) upon the application to the Minister by a proprietor to have the school reclassified; or
- (b) if the Minister so decides in the public interest.

(2) Notwithstanding the reclassification of a school, the proprietorship may not change.

(3) A community-based, religion-based or non-governmental organisation by which a school is established or to which an established school is transferred shall designate a person for the purpose of liaison with the Minister.

#### **Premises in which a school may operate**

15. (1) A person shall not operate a school or add new classes to an existing school in any premises other than the premises specified in the certificate of registration.

(2) A teacher shall not teach in any premises other than the premises approved by the Minister.

(3) A person who contravenes the provisions of this section commits an offence and is liable on conviction -

- (a) in the case of a natural person, to a fine of not less than M2,000 or imprisonment for a period of not less than three years or to both; and
- (b) in the case of a society, church, corporation or board, to a fine of not less than M10,000.

#### **Grounds for cancellation of registration and closure of a school**

16. (1) The Minister may cancel the registration of a school, and cause such a school to be closed on the basis of absence of one or more of the requirements as provided for under section 9, of which he or she would have been entitled to refuse registration of the school under section 10(c).

(2) In addition to the powers of the Minister provided for under sub-section (1), the Minister may cancel registration of a school and cause such a school to be closed -

- (a) if the proprietor has committed an offence against this Act subsequent to the registration of the school;
- (b) if it appears to the Minister that a proprietor is not managing the school satisfactorily or that the education of

the pupils is not being promoted in the proper manner;

- (c) if the school is opened or operated contrary to the provisions of this Act;
- (d) if the school is conducted in a manner detrimental to the interests of peace, order and good governance;
- (e) if the school is conducted in a manner detrimental to the physical, mental or moral welfare of the learners;
- (f) where a school remains closed for a continuous period of six months including school holidays;
- (g) where it is economically not viable for Government or the proprietor to maintain such a school;
- (h) where a proprietor has applied for removal of the name of his or her school from the register and the reasons given satisfy the Minister; or
- (i) in the public interest.

(3) If a proprietor of a school does not comply with section 9 the Minister may, except where the public interest requires otherwise, cause to be served upon the proprietor, a notice stating full particulars specified under section 9, for the proposed cancellation of registration of such school from the register and any measures to be taken by such proprietor to remedy such conditions within the time specified in the notice.

(4) If the Minister intends to exercise the power conferred by subsection (1), he or she shall give the proprietor a hearing.

(5) A proprietor of a school in respect of which the Minister has cancelled registration under sub-section (1), who fails to close the school within the time specified by the Minister or who re-opens the school without the written approval of the Minister, commits an offence and is liable on conviction to a fine of not less than M2,000 or imprisonment for a term of not less than two years.

### Closing of a school temporarily

17. (1) If a school is to be closed temporarily for any reason other than during school holidays, the proprietor shall make a written request to the Minister for that purpose.

(2) Where an inspector reports to the Minister -

- (a) that health arrangements at a school are inadequate and it is a health hazard to the learners and staff of the school;
- (b) that an emergency situation has arisen due to a natural disaster or otherwise, whereby the lives of the learners and staff of such school are endangered; or
- (c) that no meaningful learning by enrolled learners is taking place at the school,

the Minister may, having regard to such report, direct the appropriate authority of the school that the school be closed temporarily until such time that measures are taken to remedy such condition or adequate steps are taken to normalise the situation.

(3) Where a school is to be closed temporarily for a good cause other than for reasons provided for above, the appropriate authority shall, before such closure, obtain prior approval from the Minister through a district education officer.

## PART IV - SCHOOL SUPERVISION

### Inspectorate of schools

18. (1) There is established an inspectorate of schools.

(2) The head of the inspectorate is the Chief Inspector who is an officer in the Public Service.

(3) The inspectorate is composed of the Chief Inspector and other inspectors who are officers in the Public Service.

- (4) The functions of an inspector are to -
- (a) inspect the work of schools each year and report on trends, achievements and on the general implementation of policies;
  - (b) provide support and advice for schools;
  - (c) by the third month of the year following the end of the calendar year, submit to the Minister an annual report on the performance of the education system for his or her submission to Parliament;
  - (d) provide detailed reports to the Minister, from time to time, on important national priorities as determined by the Minister;
  - (e) monitor the effectiveness of teacher training, including teachers on probation;
  - (f) monitor the effect and effectiveness of testing and examinations;
  - (g) identify in-service development priorities and monitoring of effectiveness of related training;
  - (h) provide advice and participate in the Ministry's policy formulation;
  - (i) use a whole-school-team approach to inspection to ensure evaluation of overall school performance and of individual teachers;
  - (j) appraise the performance of a principal of a school;
  - (k) give advice to the Minister on such matters as may be specified in the Minister's request; and
  - (l) inspect and report on such schools, or class of schools as may be specified by the Minister.

- (5) In order to facilitate inspection of schools -
- (a) a proprietor or any other person who for the time being is in charge of a school shall allow school inspectors to enter and inspect the school premises at any reasonable time; and
  - (b) a principal of such school shall produce any books, records or registers kept in connection with the school and furnish any information the inspectors may demand with regard to the care and tuition of learners, the names and qualifications of staff members or any other relevant matter.

### Inspection

19. (1) Where, in the course of an inspection, an inspector discovers a breach of discipline committed by a teacher, the inspector may recommend, in writing, to the principal or head of department as the case may be that disciplinary action be taken against the teacher and such principal or head of department shall take appropriate action accordingly.

(2) Where in the course of an inspection an inspector obtains evidence that a member of the school board is incompetent to carry out his or her duties according to this Act, he or she may recommend to the Minister that he or she withdraw approval of such member subject to giving such a person a hearing.

(3) A person who obstructs or resists an inspector in the performance or exercise of any power or duty imposed or conferred by or under this Act, is guilty of an offence and is liable on conviction to a fine of not less than M1,000 or to imprisonment for a period of not less than one year or both.

(4) Where in the course of inspection, a teacher is found to be incompetent, negligent or underperforming, in carrying out his or her duties, an inspector may recommend demotion or dismissal of such teacher to the appointing authority.

(5) An inspector may bring charges of breach of discipline against a teacher before the principal or head of department as the case may be.



(6) An inspector may recommend transfer of a teacher to the appointing authority.

## PART V – MANAGEMENT OF SCHOOLS

### School principals

20. (1) A school shall have a principal.

(2) A principal of a public school shall be appointed by the appointing authority on such terms and conditions as may be specified by the Minister in consultation with the Minister responsible for finance and for a period not exceeding five years.

(3) A principal of an independent school shall be appointed by the appointing authority on such terms and conditions as may be determined by the proprietor.

(4) A person appointed as principal shall, at the time of appointment, be registered as a teacher under the Teaching Service.

(5) The terms and conditions of appointment of a principal in an independent school shall be determined by the proprietor of such school in consultation with the Minister.

(6) A principal who is already permanently appointed upon the coming into effect of this Act shall have the option to either retain his or her position or be appointed under sub-section (2).

(7) A principal is subject to the disciplinary code of teachers.

### Duties of a principal

21. A principal -

- (a) is responsible for the organisation, management and day-to-day running and leadership of a school;
- (b) is the chief accounting officer of the school and is responsible to the school board for the control and use

of school funds;

- (c) shall maintain or cause records of income and expenditure of the school to be maintained;
- (d) shall prepare an annual budget for a school and submit it to the school board for its approval;
- (e) shall maintain or cause management records of a school to be maintained as provided for in the regulations made by the Minister under this Act;
- (f) shall ensure that meaningful teaching and learning takes place at the school;
- (g) is responsible for discipline of teachers under his or her supervision in line with the disciplinary code of conduct.
- (h) shall maintain and enforce discipline in the school which he or she is heading;
- (i) shall, within two months of the commencement of a new school year, provide accurate statistical returns as may be stipulated in the regulations;
- (j) shall, within three months of the end of each school year, submit a financial statement of the school to the school board for its approval; and
- (k) shall perform other duties as may be prescribed by the Minister or delegated to him or her by the school board.

### **Suspension of a principal**

22. The appointing authority may, pending institution of disciplinary hearing, suspend a principal of a school where, in the opinion of the appointing authority, the principal's conduct is detrimental to the welfare of the learners enrolled in the school, subject to giving the principal a hearing.

## School boards

23. (1) A school shall be governed by a school board.

(2) A school board consists of the following nine members appointed by the proprietor and approved by the Minister -

- (a) two members nominated by a proprietor, one of whom is the chairperson;
- (b) three members nominated by parents, one of whom is the vice-chairperson;
- (c) one teacher nominated by the teachers in that particular school;
- (d) a gazetted chief or his or her representative under whose jurisdiction the school falls;
- (e) a member of the local council or his or her representative under whose jurisdiction the school falls; and
- (f) the principal of the relevant school who is the secretary of the board and an ex-officio member.

(3) The Minister shall prescribe minimum requirements for a person to be appointed as a board member.

(4) The Minister may, if he or she has reason to believe that the nominated candidate is not suitable, disapprove such nomination and he or she shall disapprove the renomination of a person whose appointment has been terminated under sub-section (5).

(5) Subject to giving a board member a hearing, the Minister may, in writing, terminate an appointment of such member if the member fails to carry out his or her functions efficiently.

(6) A member of a board whose appointment has been terminated under sub-section (5) shall not be eligible for appointment to another board for a period of three years.

(7) A member may resign from his or her position.

(8) Except in the case of a chairperson of a board whose tenure of office is four years, the tenure of office of an appointed member of a board is three years and is eligible for reappointment.

(9) Where the tenure of appointed board members expires and new members have not been appointed, the chairperson and the secretary of the outgoing board may exercise basic functions of the board for a further period of three months.

### **Meetings of the Board**

24. (1) A school board shall meet at least four times in a year.

(2) A chairperson shall preside at all meetings of a board and in his or her absence, a vice chairperson shall preside.

(3) Decisions of a board shall be by the majority decision of the members present and in the event of votes being equal, the person presiding has a casting vote.

(4) Five members of a board form a quorum.

(5) A chairperson of a school board shall cause representatives of parents and teachers in a board that he or she chairs, to meet with their respective constituencies at least twice a year and provide reports of such meetings.

### **Responsibilities of the school board**

25. A school board shall -

- (a) manage and administer the school for which it has been constituted;
- (b) oversee the management and the proper and efficient running of the school;
- (c) in a public school, recommend to the appointing authority the appointment, promotion, demotion or

transfer of a teacher;

- (d) in an independent school, appoint, promote demote or transfer a teacher;
- (e) recommend to the appointing authority or proprietor, as the case may be, disciplinary action against a principal or head of department;
- (f) on the advice of the inspector of schools or a district education officer, recommend to the appointing authority the promotion or demotion of a teacher;
- (g) liaise with the relevant local authority on matters related to the development of the school;
- (h) submit, within six months from the end of each school year, an audited statement of accounts of the school to the proprietor and the Principal Secretary.

#### PART VI – EDUCATIONAL SECRETARIES

##### **Educational Secretaries**

26. (1) A proprietor who has more than twenty schools shall establish an educational secretariat which shall be headed by an educational secretary appointed by the proprietor and approved by the Minister.

(2) The Minister shall prescribe minimum requirements for a person to be appointed as the educational secretary.

(3) Every educational secretary shall have a secretariat under his or her supervision consisting of staff appointed by the proprietor.

(4) The functions of an educational secretary are to -

- (a) organise, co-ordinate and supervise the educational work of the proprietor that appointed him or her;
- (b) liaise with the Ministry responsible for education on

matters of management of schools; and

- (c) perform such other duties as may be assigned to him or her by the Minister.

(5) The Minister may withdraw his or her approval of appointment of an educational secretary if the educational secretary does not carry out his or her work satisfactorily.

(6) The Minister may provide an educational secretary with an annual subvention that is dependent on the number of learners enrolled in schools for which he or she is responsible.

(7) An educational secretary shall provide the Principal Secretary with such annual plans and reports as may be prescribed.

(8) An educational secretary shall cause the subvention funds referred to in sub-section (6) to be accounted for in accordance with the Finance Act 1988<sup>5</sup>.

(9) Failure by an educational secretary to account for a subvention may, in the discretion of the Minister, lead to the suspension of future subventions.

(10) The tenure of office of an educational secretary is five years.

(11) An educational secretary who is already appointed upon the coming into effect of this Act shall have the option to either retain his or her position or be appointed under sub-section (1).

#### **Secretariat for Government Controlled Schools**

27. (1) There is established a Government Controlled Schools Secretariat headed by Secretary for Government Controlled Schools.

(2) The Government Controlled Schools Secretary shall be appointed by the Minister on such terms and conditions as he or she thinks fit.

(3) The function of the Government Controlled Schools Secretary is to supervise the administration of Government schools and community schools.

(4) The Minister shall establish an office under the Government Controlled Schools Secretariat which is responsible for independent schools and the promotion of public private partnerships for purposes of the achievement of education for all.

#### PART VII - EDUCATION ADVISORY COUNCIL

##### Education Advisory Council

28. (1) There is established the Education Advisory Council.
- (2) The Council is appointed by the Minister and consists of -
- (a) the Principal Secretary who is the chairperson;
  - (b) two representatives of higher learning institutions nominated by the Council for Higher Education one of whom shall be the vice-chairperson as the Minister may determine;
  - (c) three senior officials of the Ministry nominated by the Principal Secretary, one of whom shall be the secretary as the Minister may determine;
  - (d) three representatives of the proprietors;
  - (e) three representatives of teachers nominated by teacher formations designated under section 65(1);
  - (f) two members with competence in educational development;
  - (g) two members representing the industry and business nominated by chamber of business or commerce; and
  - (h) two members with competence in special education.
- (3) A member other than the Principal Secretary holds office for a period of three years and is eligible for renomination or reappointment.

(4) If a member fails to attend three consecutive meetings without reasonable excuse to the chairperson, the Minister may, upon notification of the said absenteeism, dismiss him or her and the nominating authority shall nominate a substitute to fill the vacancy.

### Functions of the Education Advisory Council

29. (1) The Council shall advise the Minister on -
- (a) school curriculum and curriculum materials;
  - (b) teachers' management and their terms and conditions of service;
  - (c) the funding of schools;
  - (d) the establishment and development of schools;
  - (e) quality assessment; and
  - (f) such matters relating to the provision of education as the Council may determine or the Minister may refer to it for consideration.
- (2) The Council -
- (a) may, from time to time, make to the Minister such recommendations as it may think desirable with respect to any matter considered by the Council;
  - (b) shall report to the Minister from time to time or as required by the Minister on any matter considered by the Council;
  - (c) may establish temporary committees; and
  - (d) shall exercise such other functions as are provided for in this Act.



### Vacancies in the Education Advisory Council

30. (1) The office of a member of the Advisory Council, other than an ex-officio member, becomes vacant -
- (a) if he or she resigns by notice, in writing, through the Council to the Minister;
  - (b) If he or she becomes insolvent;
  - (c) If circumstances arise which, if he or she were not a member of the body that nominated him or her, would disqualify him or her from appointment as such;
  - (d) If he or she is absent from four consecutive meetings of the Advisory Council without the leave of the chairperson; or
  - (e) If he or she is convicted of an offence involving moral turpitude.

### Meetings of the Education Advisory Council

31. (1) The Council shall meet at least two times in a year.
- (2) Every meeting of the Council shall be presided over by the chairperson or, in his or her absence, the vice chairperson.
- (3) A decision of the Council is that of the majority of members present and voting, and in the event of an equality of votes, the person presiding has a casting vote.
- (4) Nine members form a quorum.
- (5) The Council may regulate its own procedure at its meetings.
- (6) The Minister shall pay members of the Council such sitting allowance as he or she may determine in consultation with the Minister responsible for finance.

### Standing Committee of the Education Advisory Council

32. (1) There is established a Standing Committee of the Council as the Council may determine.

(2) The Standing Committee shall perform such functions as the Council may, from time to time, assign to it.

## PART VIII - TEACHING SERVICE

### Administration of the Teaching Service

33. (1) The Teaching Service established under section 144 of the Constitution of Lesotho shall be administered by the Teaching Service Department of the Ministry.

(2) The Minister may, subject to the concurrence of the Minister responsible for Finance, create or abolish any office in the Teaching Service.

(3) The Teaching Service Department shall perform such secretarial duties of the Teaching Service Commission as the Minister may prescribe.

### Entry into the Teaching Service

34. A person seeking to become a teacher shall first register as a teacher under the terms and conditions to be prescribed by the Minister.

### Teaching Council

35. (1) There is established a Teaching Council.

(2) The Teaching Council is appointed by the Minister and consists of -

(a) the Principal Secretary who is the chairperson;

(b) the Chief Education Officer-Teaching Service who is the secretary;

(c) the Chief Inspector;

- (d) two representatives of principals nominated by designated principal formations;
- (e) five teachers nominated by designated teachers' formations;
- (f) two representatives of student teachers nominated by teacher training institutions;
- (g) one representative nominated by proprietors;
- (h) the Secretary for Government Controlled Schools; and
- (i) a legal practitioner.

(3) Members of the Council may elect a vice-chairperson from among themselves.

(4) A member of the Teaching Council, other than an ex-officio member, holds office for a period of four years and is eligible for reappointment.

#### **Functions of the Teaching Council**

36. The functions of the Teaching Council are to -

- (a) register and remove teachers from the register;
- (b) regulate the teaching profession;
- (c) develop and manage a professional code of conduct for teachers; and
- (d) advise the Minister in matters related to the teaching profession.

#### **Vacancies in the Teaching Council**

37. The office of a member of the Teaching Council, other than an ex-officio member, shall become vacant -

- (a) if he or she resigns by notice in writing through the Council to the Minister;
- (b) if he or she becomes insolvent;
- (c) if circumstances arise which, if he or she were not a member of the body that nominated him or her, would disqualify him or her from appointment as such;
- (d) if he or she is absent from three consecutive meetings of the Teaching Council without the leave of the chairperson of the Council; or
- (e) if he or she is convicted of an offence involving moral turpitude.

#### **Meetings of the Teaching Council**

38. (1) The Teaching Council shall meet at least twice in a year.
- (2) Every meeting of the Teaching Council shall be presided over by the chairperson or, in his or her absence, the vice-chairperson.
- (3) A decision of the Teaching Council is that of the majority of members present and voting, and in the event of an equality of votes, a person presiding has a casting vote.
- (4) Eight members shall form a quorum.
- (5) The Minister shall pay members of the Teaching Council a sitting allowance as may be determined by the Minister in consultation with the Minister responsible for finance.

#### **Standing Committee of the Teaching Council**

39. (1) There is established a standing committee of the Teaching Council as the Council may determine.
- (2) The standing committee shall perform such functions as the Teaching Council may, from time to time, assign to it.

## Employment of teachers

40. (1) Upon the coming into operation of this Act -
- (a) a person shall not teach in any school unless he or she is registered with the Teaching Service;
  - (b) a proprietor shall not allow a person to teach in a school unless such person is registered with the Teaching Service.
- (2) Notwithstanding the provisions of sub-section (1), a teacher already in employment upon the coming into operation of this Act may be allowed to teach for a period not exceeding thirty days or such other additional period as the Minister may determine by notice published in the Gazette within which he or she can register with the Teaching Service in accordance with this Act.
- (3) A person who contravenes the provisions of this section, commits an offence and is liable on conviction to a fine of not less than M1,000 or to imprisonment for a period of not less than one year or to both.

## PART IX - TEACHING SERVICE COMMISSION

### Composition of the Teaching Service Commission

41. (1) The Teaching Service Commission consists of five members who have rendered distinguished service in educational and professional spheres, of whom -
- (a) three shall be appointed by the Minister and at least two of whom are women;
  - (b) two shall be nominated by proprietors as follows -
    - (i) one member nominated by the proprietor who has the highest number of learners in registered public schools; and
    - (ii) one member nominated by the proprietor who

has the second highest number of learners in registered public schools;

and these shall be appointed by the Minister.

(2) The Minister shall designate one member appointed under sub-section (1)(a) to be the Chairperson and one of the members nominated under sub-section (1)(b) to be the Vice-Chairperson.

(3) If the office of the Chairperson of the Commission is vacant or if the person holding the office is for any reason unable to perform the functions of his or her office, those functions shall be performed by the Vice-Chairperson until a person has been appointed to, and has assumed the functions of that office, or until a person holding that office has resumed those functions.

(4) The Minister may, if he or she has reason to believe that a nominated candidate is not suitable to advance the interests of the Commission, disapprove such nomination.

(5) Where a nomination has not been approved in terms of sub-section (4), the nominating authority shall provide a name of another person for nomination as a member.

#### **Functions of the Teaching Service Commission**

42. (1) The functions of the Commission are to appoint, promote, demote, transfer and remove from office teachers whose salaries are paid by Government.

(2) The Commission may advise the Minister on any matter related to the Teaching Service as it may find necessary or as the Minister may request.

#### **Acts of the Teaching Service Commission not to be invalidated by vacancies or absence of members**

43. Subject to the provisions of section 45(3), as to the quorum, nothing which is determined by the Commission under this Act or any other written law shall be or deemed to be invalid by reason only of the fact that the full number

of members of the Commission had not been appointed, or that any member of the Commission was absent from the Commission, or that there was any vacancy in the number of members at the time such a decision was made.

#### **Secretary to the Teaching Service Commission**

44. (1) The director of the Teaching Service Department is the secretary of the Commission.

(2) The Secretary shall maintain complete records of every teacher in the Teaching Service.

#### **Meetings of the Teaching Service Commission**

45. (1) The Commission shall meet at such time and place as it deems expedient for the transaction of its business.

(2) The Chairperson shall preside at a meeting of the Commission and, in his or her absence, the Vice-Chairperson shall preside.

(3) At a meeting of the Commission three members form a quorum.

(4) The Commission may determine its own procedure at its meetings.

(5) The person presiding at a meeting of the Commission has a casting vote in the event of equality of votes.

(6) The proceedings of the Commission shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

#### **Report of the Teaching Service Commission**

46. (1) The Commission shall as soon as practicable after the 31st day of March and not later than the 1st day of June each financial year, prepare a report on matters that it has dealt with during the preceding financial year, and also from time to time, prepare such special reports as are required by the Minister or seem desirable to the Commission.

(2) A report prepared by the Commission pursuant to sub-section (1) shall be submitted to the Minister and the Minister shall table it before parliament.

### Tenure of office

47. (1) The Chairperson of the Commission holds office for a period of five years.

(2) A member of the Commission, other than the Chairperson, holds office for a period of three years.

(3) Subject to this section, the office of a member of the Commission becomes vacant -

- (a) at the expiration of the three or five years from the date of his or her appointment or nomination;
- (b) if he or she resigns office by notice in writing addressed to the Minister;
- (c) if he or she becomes a public officer;
- (d) if he or she becomes a member of the National Assembly or of Senate or a member of a local authority;
- (e) if he or she takes an active part in politics; or
- (f) if circumstances arise that, if he or she was not a member of the Commission, would cause him or her to be disqualified for appointment or nomination as such.

(4) A member of the Commission may be removed from office by the Minister for inability to discharge the functions of his or her office, whether arising from illness or any other cause, for misbehaviour or in the public interest.

(5) Where a member is absent or otherwise unable to perform his or her duties, the Minister may appoint a person to act in that position for the



period of the absence or inability of the member to perform his or her duties.

### **Improper influence**

48. (1) A person who, otherwise than in the course of his or her duty, directly or indirectly influences or attempts to influence any decision of the Commission, commits an offence and is liable on conviction to a fine of not less than M2,000 or to imprisonment for a period of not less than two years or both.

(2) Nothing in sub-section (1) shall be deemed to make unlawful the giving of a reference or testimonial to any applicant for any teaching position or supplying of any information or assistance requested by the Commission.

(3) A person who, in connection with the performance by the Commission of its functions, wilfully gives to the Commission any information which he knows to be false by reason of omission of any particular material, commits an offence and is liable on conviction to a fine of not less than M2,000 or to imprisonment for a period of not less than two years or both.

### **Privileged communication**

49. (1) A member or officer of the Commission and any other person who, without the written permission of the Minister, knowingly publishes or discloses to any person, otherwise than in the performance of his or her official functions, the contents of any document, communication or information whatsoever which has come to his or her notice in the course of his or her duties in relation to the Commission, commits an offence and is liable on conviction to a fine of not less than M2,000 or to imprisonment for a period of not less than two years or both.

(2) A person who knows of any information which to his or her knowledge has been disclosed in contravention of sub-section (1) and publishes or communicates it to any person otherwise than for the purpose of any prosecution under this Act or in the course of his or her official duty commits an offence and is liable on conviction to a fine of not less than M2,000 or to imprisonment for a period of not less than two years or to both.

### **Consent to prosecution**

50. A prosecution in respect of an offence under section 48 shall not be instituted except with the consent of the Director of Public Prosecutions.

### **Remuneration and allowances of members**

51. A member of the Commission shall be paid such remuneration and allowances as may be determined by the Minister in consultation with the Minister responsible for finance.

## **PART X - APPOINTMENT OF TEACHERS**

### **Appointment of a teacher other than a teacher paid by the Government**

52. The power to appoint, promote, demote, transfer or remove from office a teacher other than a teacher whose salary is paid by the Government vests in a school board.

### **Terms and conditions of service of teachers**

53. (1) Notwithstanding any other law, the terms and conditions of service, including leave, salary entitlement, allowances and terminal benefits of a teacher paid by the Government shall be prescribed by the Minister.

(2) In the case of a teacher appointed by a school board, the terms and conditions of service including leave, salary entitlement, allowances and terminal benefits shall be determined by the school board.

(3) Salaries and terms of service of teachers serving in independent schools referred to in section 12(b) shall be in compliance with the provisions of the Labour Code Act, 1992 as amended.

### **Secondment of teachers**

54. (1) The power to second a teacher in the Teaching Service vests in the appointing authority.

(2) Sub-section (1) does not apply to a teacher whose salary is not paid by the Government.

### Whole time of teacher at disposal of school

55. (1) A teacher shall, at all times, give undivided attention to responsibilities entrusted upon him or her at the school to which he or she is posted.

(2) A teacher shall not claim as of right additional remuneration in respect of any official duty or work any proper authority may require him or her to perform.

### Private employment and Private interest

56. (1) A teacher shall not, while on leave or otherwise, without first having obtained the approval of the Minister -

- (a) be employed in any other occupation outside the Teaching Service; or
- (b) accept any money, fee, gratuity or reward for services rendered otherwise than in the Teaching Service.

(2) Nothing in this section shall be construed as preventing a teacher from -

- (a) becoming a member or minor shareholder of an incorporated company or of a company or society of persons registered under any law; or
- (b) receiving royalty payment or fees for rendering professional services as may be prescribed by the Minister.

(3) If the Minister has reason to believe that a teacher has any financial interest (including loans and shares) in any undertaking, being an interest which, in the opinion of the Minister, is incompatible with the true and proper discharge of his or her duties as a teacher, the Minister shall cause the appointing authority to make such inquiries as the Minister may deem necessary and where the Minister ascertains that such financial interest exists, the Minister shall inform such teacher in writing of particulars regarding such interest and require such teacher to dispose of all interest of a nature specified by the appointing authority.

(4) The Minister may, by notice published in the Gazette, exempt a teacher or a group of teachers and any kind of interest or employment, from the provisions of this section, and such an exemption may be absolute or may be subject to conditions specified in the notice. The Minister may at any time vary or cancel such exemption.

## PART XI - CONDUCT OF TEACHERS

### Codes of practice

57. (1) The Minister may from time to time and after consultation with such persons or bodies which, in the Minister's opinion, are representative of the interest concerned -

- (a) prepare and publish codes of practice for the purpose of providing practical guidance in respect of this act including the following codes:
  - (i) code of conduct which shall primarily be a guide to teachers in the conduct of their relationships and dealings with their employers and the general public;
  - (ii) grievance code which shall prescribe the procedure to be followed in handling teachers' grievances;
  - (iii) disciplinary code which shall be followed in instituting disciplinary action against a teacher who has committed a misconduct;
  - (iv) code on dispute resolution which shall prescribe the procedure to be followed to resolve any dispute emanating from the workplace; or
- (b) revise any code referred to in paragraph (a).

(2) The Minister shall avail the codes made under this Act to the teachers and the public within fifteen days of the laying of the codes or the revision thereof.

(3) Failure on the part of teachers to follow any provision contained in the code of conduct issued under this section constitutes a misconduct rendering the teacher liable to proceedings and sanctions as set out in the code of conduct.

(4) A teacher who is a party in any proceedings under sub-section (1)(a)(ii) and (iii) may be represented by another teacher from his or her school or formation if the teacher is a member of a teachers' formation.

(5) The right to representation under sub-section (4) does not include the right to be represented by a legal practitioner.

(6) In all criminal and civil proceedings a code shall be admissible in evidence, and if a provision of such a code appears to the court conducting the proceedings to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.

(7) The principal may, having regard to -

- (a) the safety and security of persons or school funds or property;
- (b) the process of investigations; and
- (c) other circumstances,

suspend a teacher, on full pay, pending a disciplinary inquiry.

## PART XII - SETTLEMENT OF DISPUTES

### Legal representation

58. In any proceedings under this Part, a party to a dispute may be represented by a legal practitioner.

### Conciliation Board

59. (1) There is established a Conciliation Board which shall conciliate disputes of interest.

(2) The Commission shall nominate one of its members to constitute the Conciliation Board.

(3) Where the Commission is a party to a dispute the Minister shall assign a person to constitute the Conciliation Board.

(4) The decision of the Conciliation Board shall not be binding on the parties.

### Arbitration

60. (1) Disputes of right may be resolved by arbitration.

(2) A matter involving a dispute of right shall not be referred to arbitration unless the parties have agreed.

(3) All disputes involving essential services shall be resolved by arbitration unless the parties agree otherwise.

(4) The decision of the arbitration shall be final and binding on the parties but reviewable in the courts of law.

(5) A teacher who contradicts sub-section (1) shall be dealt with in accordance with the disciplinary code.

### Teaching Service Tribunal

61. (1) There is established a Teaching Service Tribunal which shall deal with appeals instigated by either a teacher, registered teachers' formation or employer arising from a grievance and disciplinary action.

(2) The Tribunal consists of -

(a) a chairperson who shall be a legal practitioner of not less than five years standing and shall be appointed by the Minister after consultation with the Judicial Service Commission; and

(b) two other members -

- (i) one of whom shall have experience of not less than ten years in administration and teachers' affairs, appointed by the Minister after consultation with the Teaching Service Commission; and
  - (ii) the other shall have experience in human resource management and shall be appointed by the Minister in consultation with the Minister responsible for public service.
- (3) The Minister shall publish the names of members of the Tribunal in the Gazette.
- (4) A member of the Tribunal holds office for a term of not less than five years.
- (5) Two members of the Tribunal form a quorum.
- (6) At a meeting of the Tribunal the chairperson has a deliberative vote and in the case of an equality of votes, a casting vote.
- (7) The Tribunal shall -
- (a) regulate its own procedure; and
  - (b) in the absence of the chairperson, appoint one of its members to act as chairperson.
- (8) The Tribunal shall have a secretariat whose officers shall be in the Public Service.
- (9) Members of the Tribunal shall receive such sitting allowance as the Minister may, after consultation with the Minister responsible for finance, determine.

### PART XIII - RETIREMENT OF TEACHERS

#### Retirement of teachers on permanent and pensionable terms

62. (1) Subject to the provisions of this section and the Teachers'

Pensions Act 1994<sup>6</sup>, a teacher retires from the Teaching Service on attaining the age of sixty-five years.

(2) A teacher may, on or at any time after attaining the age of fifty-five years, subject to three months' notice in writing being given to him or her, be required to retire by the appointing authority.

(3) Subject to sub-section (2), a teacher may, at any time before or after attaining the age of fifty-five, give written notification to the appointing authority, of his or her intention to be retired from the Teaching Service -

(a) if the notification is given at least six calendar months prior to the date on which he or she attains the said age, be so retired on attaining that age; or

(b) if the notification is not given at least six calendar months prior to the date on which he or she attains the said age, be retired at the end of six months from the date on which the notification is received.

(4) If, in the opinion of the school board, it is in the public interest to retain a teacher in his or her post beyond the age of sixty-five years, the board may, request the Appointing Authority that the teacher be retained for a further period not exceeding five years.

#### **Retirement on medical grounds**

63. The appointing authority may require a teacher to retire if the teacher is certified, in writing, by a medical board appointed by the Principal Secretary responsible for health, to be suffering from an illness which prevents him or her from performing his or her duties efficiently and the illness is likely to be permanent.

### **PART XIV - TEACHERS' FORMATIONS**

#### **Right of association**

64. (1) A teacher has a right to form or become a member of any teacher formation.

(2) A teachers' formation representing more than 40% of practis-



ing teachers may apply for recognition to the Minister.

### **Representation of teachers**

65. (1) The Minister shall designate professional teacher's formations which may submit nominees to represent them in bodies established under this Act.

(2) The teachers' formations designated under sub-section (1) shall be designated for a period of three years.

## **PART XV- MISCELLANEOUS**

### **Power of delegation**

66. (1) The Minister may, in writing, delegate to the Principal Secretary or any person for the time being holding or acting in any position or office in the Public Service, Teaching Service or Local Government Service any of his or her powers, duties, responsibilities and functions under this Act except the power to delegate.

(2) A delegation under this section shall be revocable at will and shall not prevent the exercise of any power by the Minister himself or herself.

### **Penalties**

67. Notwithstanding any penalty imposed under this Act, a court may, where circumstances warrant, impose a penalty less than that stipulated by the Act.

### **Regulations**

68. The Minister may make regulations for the carrying into effect the principles and provisions of this Act, and in particular such regulations as may -

- (a) prescribe the terms and conditions of service of teachers;
- (b) define roles of proprietors and of the Ministry;
- (c) prescribe the forms to be used in carrying out the provisions of this Act;

- (d) regulate the number and determine the admission criteria of learners to be admitted in a school;
- (e) regulate the number of the teaching staff to be engaged in a school;
- (f) prescribe the subjects or curriculum to be taught, and the syllabus to be followed in respect of such subjects;
- (g) prescribe the type and amount of fees which a school may charge, including fees that should be rendered for specific services that are provided by the Ministry;
- (h) prescribe requirements and educational qualifications for a person to be registered with the Teaching Service; and
- (i) prescribe anything which is to be prescribed under this Act.

#### PART XVI - TRANSITIONAL

##### **Continuation of educational secretaries**

69. The educational secretaries appointed under section 24 of the Education Act, 1995<sup>7</sup> shall continue to hold office as if appointed under this Act.

##### **Continuation of functions**

70. All bodies and offices established or otherwise given functions under the Education Act 1995 as amended, shall continue to operate until such time that the Minister has approved or appointed bodies, officers and persons under this Act.

##### **Repeals**

71. The following are repealed -

- (a) Education Act 1995

(b) Rectification of Errors (No. 3) Act 1996

(c) Education (Amendment) Act 1997.

**NOTE**

1. Act. No. 20 of 1966
2. Act. No. 7 of 2004
3. Act. No. 30 of 1967
4. Act No. 24 of 1992 as amended by Act No. 5 of 2006
5. Act No. 6 of 1988
6. Act No. 9 of 1994
7. Act No. 10 of 1995

- (b) Junior-school which provides pre-school and primary school education;
  - (c) Primary school which provides up to seven years of primary education;
  - (d) Basic Education school which provides primary and junior secondary education;
  - (e) Secondary school which provides three years of post-primary;
  - (f) High school which provides up to five years of post-primary education;
  - (g) Junior college which provides up to seven years of post-primary education in; and
  - (h) Learning post for out-of-school basic education.
7. The Bill provides that all schools are to be managed by School Boards and no longer the Management and Advisory Committees.
8. The Bill provides for the appointment of principals in public schools, for a contractual period of five years.
9. The Bill establishes several offices charged with different responsibilities namely:
- (a) Inspectorate of Schools whose purpose is to strengthen supervision at school level with a view to improving quality and in addition an inspector may bring charges of breach of discipline against a teacher before the principal or head of department;
  - (b) Education Advisory Council whose task is to advise the Minister on matters relating to provision of education and is chaired by the Principal Secretary;
  - (c) Teaching Council whose function is to advise the Minister in matters related to the teaching profession, and regulates the teaching profession. The Teaching Council is chaired by the

Principal Secretary;

- (d) Conciliation Board whose purpose is to conciliate disputes of interest;
  - (e) Arbitration whose purpose is to resolve disputes of right; and
  - (f) Teaching Service Tribunal whose function is to deal with appeals instigated by either a teacher or employer.
10. The Teaching Service Commission is charged with the responsibility to appoint, promote, transfer and remove from office teachers whose salaries are paid by Government and may advise the Minister on any matter related to the Teaching Service. The head of the Teaching Service Department shall become the secretary of the Commission and is charged with responsibility of maintaining complete records of each teacher in the Teaching Service.