POWERS OF AN EXECUTIVE AUTHORITY IN TERMS OF THE PUBLIC SERVICE ACT, 1994
OUTLINE OF PRESENTATION

- Objective of the Public Service Regulatory Framework
- Statutory Frameworks
- Public Service Act, 1994
- Public Service Regulations, 2016
- Who is and executive authority?
- Authority of the MPSA
- Powers of an executive authority
- Appointment and career incidents of HODs
- Powers of HODs
- Special Advisers
- Exercise of powers and delegations
OBJECTIVES OF THE PS REGULATORY FRAMEWORK

• Improve service delivery through-
  • Devolving management powers and functions to executive authorities
  • Establish a culture of service delivery and accountability
  • Develop efficient and effective management
  • Strengthen compliance with PSA
  • Enable easier day-to-day administration within the public service
  • Ensure equal work for equal work
  • Democratize the work place
STATUTORY FRAMEWORK

• The Constitution of the RSA, 1996
  ❑ Provides for the basic values and principles governing public administration (s 195)-
  ❑ Defines the role of PSC (s 196)
  ❑ Requires the terms and conditions of employment in the public service to be regulated by national legislation (s 197(2))
  ❑ Provides for a framework of uniform norms and standards applying in the public service (s 197(4))

• Public Service Act, 1994
  - Public Service Regulations, 2016 determinations and directives by the MPSA
  - Collective Agreements

• Public Service Commission Act 1997

• Public Finance Management Act, 1999 and its regulations;

• The BCEA and the LRA.
PUBLIC SERVICE ACT 1994 (PSA)

• National legislation and a framework of norms and standards envisaged in the Constitution have been established through the Public Service Act, 1994 (PSA)

• Applies to all employees appointed in terms of the PSA in the national and provincial sphere;

• Applies to members of the services, educators or members of the Intelligence Services unless the laws governing their employment says otherwise or unless specifically excluded from the provisions of the Public Service Act (s 2(2) of the PSA)

• PSA provides for -
  - collective bargaining in the public service
  - Appointments and Transfers
  - Powers of MPSA and Executive Authorities
  - Powers of HoD’s
PUBLIC SERVICE REGULATIONS, 2016

- Contains norms and standards, matters required to be prescribed in terms of the PSA or required to be regulated in terms of section 41 of the PSA;
- PSR, 2016 effective from 1 August 2016;
- PSR also provides for a Code of Conduct for the public service:
  - Its purpose is to enhance professionalism and to ensure citizen confidences in the public service;
  - Prohibits employees from doing business with the an organ of state;
  - Public service employees are expected to comply with the Code as it explains what is expected from then from a ethical point of view both in their individual basis and in their relationship with the legislature and the executive, the public and amongst themselves.
EXECUTIVE AUTHORITY IN TERMS OF THE PSA

• The PSA defines an Executive Authority in relation to—
  (a) the Presidency or a national government component within the President’s portfolio, means the President;
  (b) a national department or national government component within a Cabinet portfolio, means the Minister responsible for such portfolio;
  (c) the Office of the Commission, means the Chairperson of the Commission;
  (d) the Office of the Premier or a provincial government component within a Premier’s portfolio, means the Premier of that province; and
  (e) a provincial department or a provincial government component within an Executive Council portfolio, means the MEC responsible for such portfolio.
• “Minister” is defined specifically to mean the Minister for the Public Service and Administration (MPSA) in so far as the PSA provisions refer thereto.

• The MPSA is responsible for establishing norms and standards through the PSR, determinations and directives;

• The MPSA is responsible for the proper implementation of collective agreements that are concluded in the Public Service Co-ordinating Bargaining Council (PSCBC) & relevant sectoral bargaining councils;

• In terms of the PSA any determination of any conditions of service must be made with the concurrence of the MPSA, the Minister of Finance, the Ministers responsible for the educators and the services and such other Ministers that the Cabinet may designate (s 2(2A)(b)).
POWERS OF EXECUTIVE AUTHORITIES

• Executive authorities have the following powers in terms of s3(7) of the PSA—
  ➢ determining the internal organisation of the department, incl structure and establishment;
  ➢ Transfer of functions within the department;
  ➢ HR planning;
  ➢ Creation and abolition of posts within the department;
  ➢ Employment of persons additional to the establishment;
  ➢ Recruitment, appointment, performance management, transfer, dismissal and other career incidents of employees (individual capacity) within the department.
APPOINTMENT AND CAREER INCIDENTS OF HODs

• HOD’s are appointed in terms of S12 of the Public Service Act

➢ The power of appointment and career incidents (incl transfer or secondment) of an HOD in a national department or national government component vests with the President; and

➢ The power of appointment and career incidents (incl transfer or secondment) of an HOD in a provincial department or provincial government component vests with the relevant Premier.

➢ Power to discipline and effect a sanction imposed on a HOD ito s16A and 16B must be read with s12(1) and therefore vests with the President as executive authority iro HOD’s (not delegated).

➢ All disciplinary action taken against an HOD arising from the non-compliance of the PSA must be reported to the MPSA.
POWERS OF HODs

• In terms of s7 of the PSA, the HOD is responsible for the efficient management and administration of the department- incl effective utilisation of staff (incl acting arrangements of staff in posts other than the HOD post as well as leave), training of staff, discipline of employees, labour relations matters and proper use and care of state property;

• HOD’s are also responsible for the exercise of delegated powers.
APPOINTMENT OF SPECIAL ADVISERS

• Section 12A of the PSA authorises an executive authority to appoint special advisers;

• Cabinet determined that the maximum number of special advisors per Minister shall be equivalent of 2 full time persons;

• Their contract of employment must be linked to the term of office of the relevant executive authority;

• No special advisers may be appointed for a Deputy Minister;

• The dispensation approved by the Cabinet for special advisers must be adhered to.
EXERCISE OF POWERS

• Section 42A of the PSA provides for the delegation of powers—
  • President may delegate powers conferred by section 12 of the PSA (relates to the HOD) to the Deputy President or a Minister;
  • Premier of a province may delegate powers conferred by section 12 of the PSA (relates to the HOD) to a MEC;
  • executive authority may delegate to the HOD;
  • HOD may delegate powers conferred by the PSA or sub delegate powers delegated to him/her.
DELEGATIONS

- The National Development Plan, 2030 advocates for greater and more consistent delegation supported by systems of support and oversight.

- The delegation approach in the NDP is implemented in three phases:
  - Phase 1 - The Cabinet approved the Principles of Public Administration and Financial Delegations and minimum levels of delegations in terms of the PSA on 7 August 2013. These Principles were aimed at promoting a more stable political and administrative interface by providing clear lines of accountability from EA to HoD and from HoD to other performer levels.
  - Phase 2 - The MPSA issued the Directive on Public Administration and Management Delegations, 2014, on 4 August 2014 to provide HoDs with greater delegations for the things they are responsible for.
  - Phase 3 - The MPSA issued the Guide on Administrative and Operational Delegations, 2017 on 24 February 2017 to provide principles and a toolkit for assessing and developing discretionary decision-making at an operational level at all tiers (HQ, Region, District, Institution).
Dankie / Thank you / Ngiyathokoza
Enkosi / Ngiyabonga / Ke a leboga
Ke a leboha / Ndi a livhuwa
Ndza khensa