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OBJECTS AND REASONS

This Bill would alter the *Constitution* to make provision for the appointment or promotion, as the case may be, of persons who have been temporarily employed or acting in a post in the Public Service for a period of 3 years or more on the date immediately preceding 1st October, 2020.

Arrangement of Sections

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BARBADOS

A Bill entitled

An Act to alter the *Constitution* to make provision for the appointment or promotion, as the case may be, of persons who have been temporarily employed or acting in a post in the Public Service for a period of 3 years or more on the date immediately preceding 1st October, 2020.

ENACTED by the Parliament of Barbados in accordance with the provisions of section 49 of the *Constitution* as follows:

Short title

1. This Act may be cited as the *Public Service (Appointments) Act, 2020*.

Interpretation

2. In this Act,

“Chief Medical Officer” means a person who holds the office of Chief Medical Officer which is established in accordance with the *Public Service (General) Order, 2020 (S.I. 2020 No. 41)*;

“Director General” means the Director General, Human Resources, referred to in section 6A of the *Public Service Act, Cap. 29*;

“established office” has the meaning assigned to it by section 2 of the *Public Service Act, Cap. 29*;

“Medical Board” means a Board

(a) which is appointed by

(i) the Chief Medical Officer, in respect of an officer in the Public Service in Barbados; or

(ii) an agency which represents Barbados and is authorised to appoint a Medical Board, in respect of an officer in the Public Service who is serving outside of Barbados,

to determine whether the officer is physically or mentally fit to perform the duties of his office or any other office in the Public Service; and

(b) which comprises 2 or 3 registered medical practitioners;

“Medical Officer” means a person who holds the office of Medical Officer of Health which is established in accordance with the *Public Service (General) Order, 2020 (S.I. 2020 No. 41)*;

“public officer” or “officer” has the meaning assigned to it by section 2 of the *Public Service Act*, Cap. 29;

“Public Service” has the meaning assigned to it by section 2 of the *Public Service Act*, Cap. 29;

“temporary office” has the meaning assigned to it by section 2 of the *Public Service Act*, Cap. 29.

Alteration of Part 2 of Chapter VIII of the Constitution

3. Part 2 of Chapter VIII of the *Constitution* is hereby altered to the extent necessary to give effect to the provisions of this Act.

Appointment of persons employed in the Public Service for a period of 3 years or more

4. Notwithstanding the provisions of Part 2 of Chapter VIII of the *Constitution*, sections 13, 18, 19 and 20 of the *Public Service Act*, Cap. 29, the Recruitment and Employment Code of the *First Schedule* to the *Public Service Act* and paragraph 3 of the *Public Service (Qualifications) Order, 2016* (S.I. 2016 No. 92),

- (a) section 5(1) shall apply to any person who is not appointed to the Public Service and who has been employed in
 - (i) a temporary office;
 - (ii) an established office; or
 - (iii) a combination of a temporary office and an established office;
- (b) section 5(2) shall apply to any person who is a public officer and who has been acting in a post,

for 3 years or more immediately before 1st October, 2020.

Establishment of offices at 1st October, 2020

5.(1) Any person who at 1st October, 2020

(a) is not appointed to the Public Service; and

(b) has been employed in

(i) a temporary office; or

(ii) an established office;

(iii) a combination of a temporary office and an established office,

for 3 years or more immediately before 1st October, 2020 shall be entitled to be appointed to the office with effect from 1st October, 2020 and shall be deemed to be so appointed.

(2) A public officer who has been acting in a post for 3 years or more immediately before 1st October, 2020 shall be deemed to be appointed to the office with effect from 1st October, 2020.

(3) For the purposes of this Act and subject to subsections (1) and (2), where no vacancy or relevant office exists, a supernumerary office is deemed to be established.

(4) This section does not apply to the Police Force or the Prison Service.

Ineligibility for appointment under section 5

6.(1) A person shall not be eligible for appointment to an office under section 5 where the person

(a) is the subject of a disciplinary matter commenced pursuant to the provisions of the *Public Service Act*, Cap. 29 or any other relevant enactment;

(b) is the subject of an ongoing criminal matter;

- (c) has a conviction which may not have been expunged from his criminal record;
 - (d) is on medical leave for a period of at least 3 months accumulatively in any one calendar year and who has been processed by the Director General for referral to a Medical Officer or a Medical Board for examination;
 - (e) has in his personnel records a negative report or a report of conduct which contravenes the *Public Service Act*, Cap. 29 and any other relevant enactment.
- (2) Notwithstanding subsection (1), where, as the case may be,
- (a) a person is exonerated in respect of a disciplinary matter or a criminal matter; or
 - (b) a Medical Officer or a Medical Board examines a person who has been on medical leave for a period of at least 3 months accumulatively in any one calendar year and who was referred to a Medical Officer or a Medical Board by the Director General and the Medical Officer or the Medical Board deems that the person is fit for employment within the Public Service,

that person shall be retroactively appointed to the relevant office in accordance with the provisions of section 5.

- (3) Notwithstanding subsection (1) and paragraph 21(1) of the *Second Schedule* to the *Public Service Act*, Cap. 29, where a person has a criminal record and it has been expunged, that person shall be retroactively appointed to the relevant office in accordance with the provisions section 5.

Exceptions to sections 4 and 5

7.(1) Sections 4 and 5 shall not apply to temporary offices that were created in respect of a specific project; and the determination as to whether a temporary office is a project office shall be made by the Ministry responsible for the Public Service.

(2) Where an officer to whom section 4 or section 5 refers is prejudiced by the operation of either section, in respect of an appointment to an office by virtue of the provisions of either section, the Governor-General may appoint the officer to an office, the appointment of which results in the remedying of the prejudice.

Status of officers appointed pursuant to this Act

8. For the avoidance of doubt, notwithstanding that the persons to whom this Act applies were appointed by this Act and not by the Governor-General, acting in accordance with the advice of the Administrative, General and Professional Service Commission, the Judicial and Legal Service Commission and the Protective Services Commission, as the case may be, those persons are nonetheless public officers and are subject to the disciplinary procedure and other provisions of the *Constitution* and every statute relating to public officers to the same extent and in the same manner as public officers who are appointed by the Governor-General acting in accordance with the advice of the Administrative, General and Professional Service Commission, the Judicial and Legal Service Commission and the Protective Services Commission.

Commencement

9. This Act shall come into operation on the 1st day of October, 2020.