GOVERNMENT NOTICE

DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

NO. R. 2016

DRAFT PUBLIC ADMINISTRATION MANAGEMENT REGULATIONS
ON CONDUCTING BUSINESS WITH THE STATE AND THE
DISCLOSURE OF FINANCIAL INTERESTS IN THE PUBLIC SERVICE,
2016

The Minister for the Public Service and Administration has, under section 18 of
the Public Administration Management Act, 2014, and with effect from
……………… 2016, made the regulations set out in the Schedule.
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PART 1
GENERAL PROVISIONS

1. Short Title and Commencement

(1) These Regulations are called the Regulations on Conducting Business with the State and the Disclosure of Financial Interests in the Public Service, 2016 and will come into operation on a date determined by the Minister by notice in the Gazette.

(2) Different dates may in terms of subsection (1) be determined for different provisions of these Regulations.

2. Interpretation

(1) These Regulations must be read in conjunction with the Act.

(2) In these Regulations, unless the context indicates otherwise –

(a) any term defined in the Act bears the same meaning unless defined otherwise in paragraph (b);

(b) “Act” means the Public Administration Management Act, 2014 (Act 11 of 2014);

“executive authority” means the executive authority referred to in paragraphs (a) to (e) of the definition of ‘executive authority in section 1 of the Act;

“Commission” means the Public Service Commission established in terms of Section 196(1) of the Constitution;

“specified employee” means –

(i) a member of the SMS;

(ii) a special adviser;
(iii) any other category of employees specified by the Minister by notice in the Gazette;

"director" means a director of a public or private company but does not include an employee who, in an official capacity, is a director of a company listed in Schedule 2 and 3 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"head of institution" means the incumbent of a post mentioned in Column 2 of Schedule 1, 2 or 3 of the Public Service Act, 1994 (Proclamation 103 of 1994) and includes any employee acting in that post.

"institution" means a national or provincial department or a national or provincial government component;

"register" means the register of interests kept in terms of regulation 6;

"partner" means any person other than a spouse who lives with an employee as if they were married to each other;

"remuneration" means any payment or benefit in cash or in kind; and

"SMS" means the Senior Management Service as defined in the Public Service Regulations promulgated under the Public Service Act, 1994 excluding the head of an institution;

"special adviser" means a person appointed in terms of section 12A of the Public Service Act.

3. Application

These Regulations apply only to the public service as contemplated in section 8 of the Public Service Act.
PART 2
CONDUCTING BUSINESS WITH THE STATE

4. Policy on conducting business with the State

(1) In order to give effect to sections 8, 9 and 16(d), (e) and (f) of the Act, every head of institution must –

(a) develop and maintain a policy on conducting business with the institution;

(b) keep a register of –

   (i) entities that conduct business with the institution and make that list publicly available; and

   (ii) persons who are engaged in supply chain management on behalf of the institution;

   (iii) employees that have been dismissed for a contravention of section 8(2).

(c) report to the executive authority of the institution on the following –

   (i) the development or amendment of the policy referred to in paragraph (a), including a copy of the policy or the amendments;

   (ii) confirmation that a register is kept as contemplated in paragraph (b) and made publicly available;

   (iii) any directions made by the Commission and steps taken to comply with those directions or reasons for not complying;

   (iv) any prosecution or disciplinary action initiated and their status;

(2) The policy on conducting business with the institution must –

(a) prohibit its employees and special advisers from –

   (i) conducting business directly or indirectly with the State;
(ii) being a director of a public or private company conducting business with the State;

(b) contain measures to ensure that the institution’s supply chain management policy does not conduct business with an employee appointed in the public administration including a special adviser or a person performing a similar function in a municipality;

(c) determine procedures for informing its employees and special advisers on the names of the entities that conduct business with the institution;

(d) include an obligation on its employees and special advisers to immediately disclose any financial interest in an entity that intends to conduct business with the institution;

(e) determine procedures and rules to prevent conflicts of interest in respect of its employees and special advisers with financial interests in an entity conducting business with the institution.

5. **Duty to report contraventions of section 8(2) of the Act**

(1) The executive authority must-

(a) report any alleged contravention of section 8(2) by a head of institution within 30 days of becoming aware of the allegation to –

(i) the President or the relevant Premier as the case may be;

(ii) the Commission;

(iii) the South African Police Services if the executive authority has reason to believe that an offence has been committed; and

(b) initiate an investigation into the alleged contravention for the purposes of a disciplinary enquiry.

(2) The head of institution must –

(a) report any contravention of section 8(2) of the Act by a specified employee within 30 days of becoming aware of the allegation to –
(i) the Commission; and

(ii) the South African Police Services if the head has reason to believe that an offence has been committed; and

(b) initiate an investigation into the alleged contravention for the purposes of a disciplinary enquiry.

(3) The executive authority must submit a composite report summarising all the information included in the reports referred to in subregulations (1) and (2) to the Minister on or before 1 October each year.

PART 3
DISCLOSURE OF FINANCIAL INTERESTS

6. Register of specified employees’ interests

In order to give effect to sections 8 and 9 of the Act –

(a) the Director-General: Office of the Public Service Commission must keep a register of the financial interests of specified employees who are members of the SMS and special advisers; and

(b) a head of institution must keep a register of the financial interests of any other specified employees.

7. Disclosure of specified employees’ interests

(1) A member of the SMS and a special adviser must disclose that member’s or adviser’s financial interests to the relevant head of institution –

(a) in respect of the period 1 April of the previous year to 31 March;

(b) no later than 30 April of each year; and

(c) in the form of Annexure A.
(2) A specified employee, other than a member of the SMS or a special adviser, must disclose that employee’s financial interests to the relevant head of institution –

(a) in respect of a period prescribed by the Minister by notice in the Gazette for the category of employee to which the employee belongs;

(b) no later than the annual date prescribed in that notice; and

(c) in the form of Annexure A.

(3) Any person, who assumes duty as a specified employee on or after the required date of disclosure, must disclose that person’s financial interests 30 days from assuming duty in respect of the period from the relevant date of disclosure to the date of assuming duty.

(4) The head of an institution must ensure that the disclosures made in terms of sub-regulation (2) and (3) are submitted in an electronic form to -

(a) in respect of members of the SMS and special advisers the Director General: Office of the Public Service Commission; and

(b) in respect of all specified employees –

(i) the relevant executive authority; and

(ii) the Director General: Public Service and Administration.

(5) The head of an institution must submit the disclosures referred to in subregulation (4) electronically by no later than 30 days after the required date of disclosure in terms of this regulation.

8. **Obligation to make a full disclosure**

(1) A specified employee must make a full disclosure of the employee’s financial interests by completing the form in Annexure A.

(2) To the extent that the form in Annexure A does not include a request for information on a particular type of financial interest or benefit, the specified employee is nevertheless obliged to disclose that interest or benefit in the form.
(3) Should a possible conflict of interest arise in respect of a specified employee’s responsibilities, the employee must immediately notify the relevant executive authority or head of institution of that conflict and abstain from any participation in any activity in which the conflict of interest exists. Regulations 7(5) and 10 apply to the disclosure of any conflict referred to in sub regulations (1) and (2) with the changes required by context.

9. **Confidentiality of submitted forms and registers**

(1) Subject to subregulation (3), only the following have access to a form submitted in terms of regulation 7 or the registers contemplated in regulation 6:

   (a) The persons referred to in regulation 7(4) and any other person designated by these persons to keep records or implement this Part;

   (b) The Commissioners of the Commission and any person designated by the chairperson of the Commission to keep records or implement this Part;

   (c) Persons appointed to initiate and conduct disciplinary proceedings in terms of these Regulations;

   (d) The South African Police Services and the National Prosecuting Authority charged with investigating or prosecuting an alleged offence; and

   (e) A court of law.

(2) No person who has access to a form submitted in terms of regulation 7(1) or the register, may, unless a court so orders, disclose any information in that form or register to anyone other than –

   (a) the specified employee who submitted the form or whose details are entered in the register; or

   (b) any other person permitted access in terms section 11 of the Promotion of Access to Information Act, 2000 (Act 2 of 2000).

(3) The information provided in terms of subregulation (2)(b) must be in accordance with the Protection of Personal Information Act. 2013 (Act 4 of 2013).
10. **Conflict of interest**

(1) In so far as members of the SMS and special advisers are concerned-

(a) the Commission must verify the financial interests disclosed in terms of regulation 7(1);

(b) If the Commission is of the opinion that such an interest conflicts or is likely to conflict with the member’s or adviser’s execution of any official duty, refer its opinion to the relevant head of institution.

(2) Upon referral in terms of subregulation (1)(b) in respect of a member, the relevant head of institution must consult with the member within 30 days and take the following steps:

(a) Institute disciplinary steps; or

(b) Require the member to take steps to remove the conflict of interest, failing which the head of institution must institute proceedings against the member; or

(c) Take any other appropriate step to remove the conflict of interest.

(3) Upon referral in terms of subregulation (1)(b) in respect of a special adviser, the relevant executive authority must consult with the adviser within 30 days and take the following steps:

(a) Require the adviser to take steps to remove the conflict of interest; or

(b) If the adviser fails to take steps to remove the conflict of interest, terminate the appointment of the adviser; and

(c) Within 90 days of the relevant date of disclosure, report to the Commission on –

(i) what steps were taken in terms of paragraphs (a) or (b);

(ii) the outcome, if any, of the steps taken; or

(iii) if no steps were taken, the reasons why they were not taken.
(4) In so far as specified employees, who are not members of the SMS or special advisers, are concerned –

(a) The head of institution must verify the interests disclosed;

(b) If the head of institution is of the opinion that an interest of a specified employee disclosed in terms of regulation 7 conflicts or is likely to conflict with the execution of any official duty of that employee, the head of institution must consult the employee on any steps that the head of institution may require the employee to take to remove the conflict;

(c) If the employee, after the consultation referred to in subregulation (2)(b), fails to take the steps required to remove the conflict of interest, the head of institution must take disciplinary action against the employee.

(5) In so far as specified employees who are not members of the SMS or special advisers are concerned, the head of institution must no later than 90 days after the relevant date of disclosure report to the institution’s executive authority and the Minister on –

(a) the number of cases identified in terms of subregulation (2)(b);

(b) whether any steps were taken;

(c) if steps were taken, a description of those steps; and

(d) if no steps were taken, the reasons.
11. Employees currently conducting business with the State\(^1\)

(1) An employee or special adviser, who at the time of the coming into effect of section 8, conducts business with the State or is a director of a company which conducts business with the State must –

(a) within one month, disclose that the employee or adviser is conducting business with the State or is a director of a company that conducts business with the State;

(b) within six months –

(i) cease conducting business with the State or resign as an employee or adviser; or

(ii) resign as a director of a company that conducts business with the State or resign as an employee or adviser;

(c) if the employee or adviser does not resign within the 6-month period, the employee must submit proof that the employee has ceased conducting business or has resigned as a director of a company that conducts business with the State within a month of doing so.

(2) If the employee fails to comply with subregulation (1)(b) or (c), the head of institution must report the contravention of section 8(2) of the Act to the South African Police Services and institute disciplinary action against the employee.

(3) Notwithstanding regulation 7(1)(a), (2)(a) and (3), the period required in respect of the disclosure of gifts or hospitality received by a specified employee or that

\(^1\) This transitional provision may not be necessary if the Public Service Regulations have introduced a similar provision beforehand. It may nevertheless be necessary to include this transitional provision in respect of special advisers because the code of conduct for public service employees does not apply to special advisers.
employee’s spouse or partner is five years prior to the first relevant date of disclosure.