

PUBLIC SERVICE REGULATIONS, 2001

(Government Notice No. R. 1 of 5 January 2001

as amended by

Government Notice No. R. 441 of 25 May 2001 with effect from 1 May 2001

Government Notice No. R. 753 of 7 June 2002 with effect from 7 June 2002

Government Notice No. R. 838 of 14 June 2002 with effect from 17 June 2002

Government Notice No. R. 840 of 21 June 2002 with effect from 21 June 2002

Government Notice No. R. 1346 of 1 November 2002 with effect from 1 January 2003

Government Notice No. R. 1225 of 29 August 2003 with effect from 29 August 2003

Government Notice No. R. 785 of 28 June 2004 with effect from 1 July 2004)

*{See Government Notice No. R. 832 of 16 July 2004 – commencement of regulations
B.2(b) and F(b) of Part III of Chapter 1 on 1 November 2004}*

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CHAPTER 1 GENERAL PROVISIONS

PART I. PRELIMINARY

A. SHORT TITLE AND COMMENCEMENT

- A.1 These regulations shall be called the Public Service Regulations, 2001, and shall come into operation on 1 January 2001, except regulations III B.2 (b) and III F.(b) of Chapter 1, which shall come into operation on a date determined by the Minister by notice in the Gazette.

[Regulation A.1 as amended by Government Notice No. R. 441 of 25 May 2001 with effect from 1 May 2001]

[See Government Notice No. R. 832 of 16 July 2004 regarding commencement of regulations III B.2 (b) and III F.(b) of Chapter 1 on 1 November 2004.]

B. INTERPRETATION

- B.1 These Regulations shall be read in conjunction with the Act.

- B.2 In these Regulations, unless the context indicates otherwise -

- (a) “**approved establishment**” means the posts that an executing authority has approved to carry out the core and support functions of the department;
- (b) “**competence**” means the blend of knowledge, skills, behaviour and aptitude that a person can apply in the work environment, which indicates a person’s ability to meet the requirements of a specific post;
- (c) “**CORE**” means Code of Remuneration, as defined in regulation III I.3 to I.5 of this Chapter;
- (d) “**departmental bargaining council**” means a bargaining council for a department as contemplated in item 20(b)(i) of Schedule 7 to the Labour Relations Act, or otherwise established in terms of the Labour Relations Act;
- (e) “**executing authority**” means the executing authority as defined in section 1(1) of the Act, except with regard to the appointment and other career incidents of a head of department, in which case it means the executing authority as contemplated in section 3B of the Act;
- (f) “**grade**” means the relative value of a particular job as reflected by the job weight, which is linked to a salary range in a salary scale used in the public service;
- (g) “**inherent requirements of a job**” means competencies that, according to evidence, an employee needs in order to carry out a job;
- (h) “**job**” means the basic duties, tasks, functions, competency requirements and responsibilities according to which one or more posts of the same grade are established;

- (i) **“job weight”** means a numerical value assigned to reflect selected characteristics of a job as measured by a job evaluation instrument;
- (j) **“level”** means salary range or grade;
- (k) **“medium-term expenditure framework”** means the medium-term expenditure framework published by the Ministry of Finance;
- (l) **“persons historically disadvantaged”** means persons or categories of persons who have suffered unfair discrimination in the past;
- (m) **“provincial bargaining council”** means a bargaining council for a provincial administration as contemplated in item 20(b)(ii) of Schedule 7 to the Labour Relations Act;
- (n) **“representativeness”** means the extent to which employment in an organisation broadly reflects the composition of the South African population, including composition according to race, gender and disability;
- (o) **“salary range”** means a set of salaries that form a part of a salary scale linked to a specific grade and, by extension, a set of job weights;
- (p) **“salary scale”** means a range of salaries from a minimum to a maximum for the public service, an occupation or a sector within the public service, with specific amounts denoted as the beginning and end of salary ranges or notches within salary ranges;
- (q) **“sectoral bargaining council”** means a council established by the Public Service Co-ordinating Bargaining Council or the President, in terms of section 37 of the Labour Relations Act, or a council deemed a sectoral council in terms of item 16 and 18 of Schedule 7 to the Labour Relations Act;
- (r) **“SMS”** means the employees referred to in regulation I B.1 of Chapter 4;
- (s) **“the Act”** means the Public Service Act, 1994 (promulgated under Proclamation 103 of 1994);
- (t) **“the Labour Relations Act”** means the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (u) **“the Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (v) **“the Treasury Regulations”** means the Treasury Regulations published in Government Notice No. R. 740 of 25 May 2002, as amended from time to time, and made under section 76 of the Public Finance Management Act; and [Regulation B.2(v) as amended by Government Notice No. R. 1225 of 29 August 2003 with effect from 29 August 2003]

any other word shall have the meaning assigned thereto in the Act.

C. STATUTORY AUTHORISATION

Section 41 of the Act authorises these Regulations.

D. SCOPE OF APPLICATION

These Regulations apply-

- (a) to all persons employed, and to institutions governed, in terms of the Act; and
- (b) subject to the provisions of the Act, to persons employed in the Services, the Agency or state educational institutions, only so far as they are not contrary to the laws governing their employment.

E. REPEAL OF REGULATIONS, SAVING AND TRANSITIONAL ARRANGEMENTS

- E.1 The Public Service Regulations, 1999 (published in Government Notice No. R. 679 of 1 July 1999), including all amendments thereof, and all other regulations made and in force under the Act, are hereby repealed.
- E.2 Anything done under the Public Service Regulations, 1999, which could be done under a provision of these Regulations, shall be deemed to have been done under that provision.
- E.3 Despite the repeal of the Public Service Regulations, 1999, by regulation I E.1, the transitional arrangements shall be as set out in Annexure 1.

F. MATTERS OF MUTUAL INTEREST

The Labour Relations Act and collective agreements shall regulate matters of mutual interest between employees and the State as employer.

G. EXCEPTIONAL CASES

If circumstances develop which justify deviation from the provisions and measures in a particular regulation in these Regulations concerning the career incidents of public servants, the Minister may under stated circumstances make determinations, issue directives or approve that alternative provisions and measures be applied.

H. COMMUNICATION WITH THE MINISTER AND THE MEDIA

- H.1 If a head of department needs to communicate with the Minister on a matter that falls within the Minister's powers and duties, she or he shall-
 - (a) communicate through the Director-General: Public Service and Administration; and
 - (b) conduct correspondence in any official language in which these Regulations have been published.
- H.2 An employee shall direct any enquiry on a matter that falls within the Minister's powers and duties to her or his head of department.
- H.3 A head of department shall submit for prior consultation to the Director-General: Public Service and Administration any draft legislation or draft subordinate legislation or policy document that impacts on the powers or duties of the Minister.

- H.4 A head of department shall establish a policy on how employees in her or his department may communicate with the printed or other public media.
- H.5 An employee, in her or his official capacity, shall not irresponsibly criticise Government policy at a public gathering or in a publication, or in the printed or other public media.

PART II. DELEGATIONS, AUTHORISATIONS AND RESPONSIBILITIES

A. PRINCIPLES

To enable a head of department to manage her or his department effectively and efficiently, the executing authority shall provide the head of department with appropriate powers and authority. For the same purpose, a head of department shall empower employees in the department by means of appropriate delegations and authorisations, where necessary.

B. DELEGATIONS AND AUTHORISATIONS

B.1 If these Regulations confer a power or impose a duty upon an executing authority or a head of department, she or he may, subject to the Act-

(a) delegate the power to an employee or authorise an employee to perform the duty; and

(b) set conditions for the exercise of the power or performance of the duty.

B.2 An executing authority shall record a delegation or authorisation in writing and may incorporate it in an employment contract for a head of department, as provided in regulation VII B.2.1.

B.3 The delegation of a power by an executing authority or head of department does not prevent her or him from exercising the power personally.

C. RESPONSIBILITIES

C.1 An executing authority shall uphold the principles and measures set out in these Regulations.

C.2 An executing authority may not require or permit a head of department or any other employee to engage in an activity or take a decision in breach of these Regulations.

C.3 A head of department shall-

(a) ensure that the employees within her or his department comply with these Regulations, collective agreements and any other statutory obligations; and

(b) deal immediately and effectively with any breach thereof.

C.4 An executing authority or head of department shall exercise her or his powers, perform her or his duties and carry out her or his obligations under these Regulations subject to the Labour Relations Act and the relevant collective agreements.

C.5 An executing authority and a head of department shall ensure that prior Treasury approval exists for any decision that involves expenditure from revenue.

D. CONFLICT OF INTEREST IN EMPLOYMENT ACTS OR DECISIONS

D.1 Where a possible conflict of interest arises in the making of any decision relating to employment, the executing authority or an employee to whom any power or duty has been delegated or assigned, shall perform the act or make the decision only after

considering a recommendation of an independent panel consisting of at least two persons.

- D.2 Where the executing authority or the employee to whom a power or duty has been delegated or assigned, deviates from the panel's recommendations, she or he shall record the reasons for the deviation in writing.
- D.3 An executing authority or employee shall not accept or seek material recompense of any kind from an employee or a prospective employee in return for performing an act or making a decision relating to employment.

E. HANDLING OF OFFICIAL INFORMATION AND DOCUMENTS

An employee shall not release official information to the public unless she or he has the necessary authority.

PART III . PLANNING, WORK ORGANISATION AND REPORTING

A. PRINCIPLES

An executing authority shall, in order to provide services with the best value for money, set measurable objectives for her or his department, optimally utilise the department's human and other resources and apply fair labour practices. Within available funds, she or he shall, based on the department's and the Government's service delivery objectives and mandates, plan to execute functions with an efficient and effective internal organisation and well developed human resources. To permit oversight by the public and legislatures, the executing authority shall publish an annual report giving key information on her or his department.

B. STRATEGIC PLANNING

B.1 An executing authority shall prepare a strategic plan for her or his department -

- (a) stating the department's core objectives, based on Constitutional and other legislative mandates, functional mandates and the service delivery improvement programme mentioned in regulation III C;
- (b) describing the core and support activities necessary to achieve the core objectives, avoiding duplication of functions;
- (c) specifying the functions the department will perform internally and those it will contract out;
- (d) describing the goals or targets to be attained on the medium term;
- (e) setting out a programme for attaining those goals and targets;
- (f) specifying information systems that-
 - (i) enable the executing authority to monitor the progress made towards achieving those goals, targets and core objectives;
 - (ii) support compliance with the reporting requirements in regulation III J and the National Minimum Information Requirements, referred to in regulation VII H; and
- (g) complying with the requirements in paragraphs 5.1 and 5.2 of the Treasury Regulations.

B.2 Based on the strategic plan of the department, an executing authority shall-

- (a) determine the department's organisational structure in terms of its core and support functions;
- (b) grade proposed new jobs according to the job evaluation system referred to in Part IV;
[Regulation B.2(b) in operation from 1 November 2004 – see regulation I/A.1 of Chapter 1 and Government Notice No. R. 832 of 16 July 2004]
- (c) define the posts necessary to perform the relevant functions while remaining within the current budget and medium-term expenditure framework of her or his department, and the posts so defined shall constitute the department's approved establishment; and

- (d) engage in the human resource planning in accordance with regulation III D with a view to meeting the resulting human resource needs.

B.3 In implementing the strategic plan, a head of department shall-

- (a) promote the efficient, economic and effective use of resources as to improve the functioning of the department; and
- (b) to that end, apply working methods such as the re-allocation, simplification and co-ordination of work, and eliminate unnecessary functions.

B.4 From 1 April 2004, an executing authority shall include a summary of the outcome of the process referred to in regulation III B.2 in the strategic plan of the department.

[Regulation B.4 as inserted by Government Notice No. R. 1225 of 29 August 2003 with effect from 29 August 2003]

C. SERVICE DELIVERY IMPROVEMENT PROGRAMME

C.1 An executing authority shall establish and sustain a service delivery improvement programme for her or his department-

- (a) specifying the main services to be provided to the different types of actual and potential customers, as identified by the department;
- (b) containing consultation arrangements with the department's actual and potential customers;
- (c) with due regard to the customer's means of access to the services and the barriers to increased access thereof, specifying the mechanisms or strategies to be utilised progressively to remove the barriers so that access to services is increased;
- (d) indicating standards for the main services to be provided;
- (e) containing arrangements as to how information about the department's services are to be provided; and
- (f) stipulating a system or mechanisms for complaints.

C.2 An executing authority shall publish an annual statement of public service commitment which will set out the department's service standards that citizens and customers can expect and which will serve to explain how the department will meet each of the standards.

D. HUMAN RESOURCE PLANNING

D.1 An executing authority shall-

- (a) assess the human resources necessary to perform her or his department's functions, with particular reference to-
 - (i) the number of employees required;
 - (ii) the competencies which those employees must possess; and

- (iii) the capacities (whether permanent or temporary) in which those employees shall be appointed;
- (b) assess existing human resources by race, gender and disability as well as by occupational category, organisational component and grade with reference to their-
 - (i) competencies;
 - (ii) training needs; and
 - (iii) employment capacities;
- (c) plan within the available budgeted funds, including funds for the remaining period of the relevant medium-term expenditure framework, for the recruitment, retention, deployment and development of human resources according to the department's requirements determined in terms of regulation III D.1(a), which plan must, as a minimum, include-
 - (i) realistic goals and measurable targets for achieving representativeness, taking into account regulation III D.2; and
 - (ii) targets for the training of employees per occupational category and of specific employees, with specific plans to meet the training needs of persons historically disadvantaged; and
- (d) address the position of employees affected by the abolition of unnecessary posts, and shall retrench employees only in accordance with the Labour Relations Act and collective agreements as the last resort.

D.2 An executing authority shall develop and implement an affirmative action programme, which shall contain, as a minimum, the following:

- (a) A policy statement that sets out the department's commitment to affirmative action, and how that policy will be implemented.
- (b) Numeric and time-bound targets for achieving representativeness.
- (c) Annual statistics on the appointment, training and promotion within each grade of each occupational category, of persons historically disadvantaged.
- (d) A plan for redressing numeric under-representativeness and supporting the advancement of persons historically disadvantaged.

D.3 An executing authority shall make the outcome of planning referred to in regulation III D.1 and of the affirmative action programme referred to in regulation III D.2 known within her or his department.

E. INFORMATION PLANNING AND REPORTING

E.1 A head of department shall establish-

- (a) an information plan for the department that supports-
 - (i) the planning process and objectives contemplated in regulation III B; and
 - (ii) compliance with Part I of Chapter 5;

- (b) an information infrastructure plan that supports the information plan; and
- (c) an operational plan that enables the implementation of the information infrastructure plan and information management.

E.2 A head of department shall submit a bi-monthly report on-

- (a) all information technology projects of the department to facilitate the co-ordination of such projects in the public service; and

- (b) compliance with Part I of Chapter 5.

[Regulation E as substituted by Government Notice R.1346 of 1 November 2002 with effect from 1 January 2003]

F. CREATION AND FILLING OF POSTS

Before creating a post for any newly defined job, or filling any vacancy, an executing authority shall-

- (a) confirm that she or he requires the post to meet the department's objectives;
- (b) in the case of a newly defined job, evaluate the job in terms of the job evaluation system;
[Regulation F.(b) in operation from 1 November 2004 – see regulation I/A.1 of Chapter 1 and Government Notice No. R. 832 of 16 July 2004]
- (c) in the case of a vacant post on grade 9 or higher, evaluate the job unless the specific job has been evaluated previously; and
- (d) ensure that sufficient budgeted funds, including funds for the remaining period of the medium-term expenditure framework, are available for filling the post.

G. ADDITIONAL EMPLOYMENT

An executing authority may, within the relevant budget, employ persons additional to the approved establishment where-

- (a) the incumbent of a post is expected to be absent for such a period that her or his duties cannot be performed by other personnel; or
- (b) a temporary increase in work occurs; or
- (c) it is necessary for any other reason to temporarily increase the staff of the department.

H. TRANSFER OF FUNCTIONS BETWEEN DEPARTMENTS

If the Minister or a premier of a province makes a determination regarding the transfer of functions between departments-

- (a) the relinquishing department shall transfer all concomitant resources, including personnel, to the receiving department;
- (b) the recipient department shall co-ordinate the transfer;
- (c) the recipient department shall accept accountability for the functions on the date of the transfer;

- (d) the accounting officer of the relinquishing department shall retain accountability for matters originating prior to the date of transfer;
- (e) the transfer of personnel shall take place with due regard to the requirements of the Labour Relations Act; and
- (f) the transfer of funds shall take place in accordance with the requirements of paragraph 6.5 of the Treasury Regulations.

I. JOB DESCRIPTIONS, JOB TITLES AND CORES

- I.1 For each post or group of posts, an executing authority shall establish a job description and job title that indicate, with appropriate emphasis on service delivery-
 - (a) the main objectives of the post or posts in question;
 - (b) the inherent requirements of the job; and
 - (c) the requirements for promotion or progression to the next salary range, in accordance with a relevant career path.
- I.2 At least once every three years, an executing authority shall review job descriptions and titles and, where necessary, redefine them to ensure that they remain appropriate and accurate.
- I.3 To assist an executing authority in designing a job and/or career path linked to the salary scale, the Minister shall determine-
 - (a) a code of remuneration (CORE) for an occupational category; and
 - (b) an occupational classification system.
- I.4 For each salary range in a CORE, the Minister may provide advice on -
 - (a) the possible job content;
 - (b) the necessary and desirable competencies for the job;
 - (c) indicators of those competencies; and
 - (d) desirable characteristics for employment and promotion within the occupational category.
- I.5 To assist in the analysis of public service employment, an executing authority shall link all posts in her or his department to a relevant CORE and an occupation listed in the occupational classification system.

J. MANAGERIAL REVIEW AND OVERSIGHT

- J.1 The executing authority shall-
 - (a) in terms of section 92(3)(b) or 133(3)(b) of the Constitution, include the information set out in regulation III J.2 or J.3 in the annual report, contemplated in sections 40(1)(d)(i) and (3) and 65(1)(a) and (2) of the Public Finance Management Act and paragraph 18.3.1 of the Treasury Regulations; and

[Regulation J.1(a) as amended by Government Notice No. R. 1225 of 29 August 2003 with effect from 29 August 2003]

- (b) in accordance with section 65(1)(a) of the Public Finance Management Act, within one month after the accounting officer for the department received its audit report, table in the relevant legislature that annual report, and simultaneously submit that annual report to the relevant treasury, the media and the public.

J.2 The first annual report, referred to in regulation III J.1, shall be tabled in the relevant legislature for the financial year ending 31 March 2001, and shall include the information set out in paragraph 1 of Annexure 1.

J.3 From 1 April 2001, the annual report shall include such information on planning, service delivery, organisation, job evaluation, remuneration, benefits, personnel expenditure, the utilisation of consultants, affirmative action, recruitment, promotions, termination of services, performance management, skills development, injury on duty, labour relations, leave and discharge due to ill-health, as the Minister determines. In this regulation 'consultant' means a natural or juristic person or a partnership who or which provides in terms of a specific contract on an ad hoc basis any of the following professional services to a department against remuneration received from any source:

- (a) the rendering of expert advice;
- (b) the drafting of proposals for the execution of specific tasks; and
- (c) the executing of a specific task which is of a technical or intellectual nature, but excludes an employee of a department.

[Regulation J.3 as substituted by Government Notice No. R. 753 of 7 June 2002 with effect from 7 June 2002]

J.4 The Minister shall determine from time to time the format in which the information referred to in regulation III J.3 is to be included in the annual report.

[Regulation J.4 as substituted by Government Notice No. R. 753 of 7 June 2002 with effect from 7 June 2002]

PART IV. JOB EVALUATION

A. PRINCIPLES

To ensure that work of equal value is remunerated equally, the public service shall increasingly use job evaluation-

- (a) to assist in achieving cost-effective work organisation; and
- (b) to determine appropriate remuneration.

B. RESPONSIBILITIES

B.1 The Minister shall determine-

- (a) a job evaluation system or systems that shall be utilised in the public service;
- (b) a range of job weights derived from the system or systems for each salary range in a salary scale; and
- (c) a job or category of jobs that an executing authority must evaluate.

B.2 The Minister may-

- (a) review the application of job evaluation in the public service;
- (b) issue directives on the application of the job evaluation system or systems;
- (c) evaluate any job; and/or
- (d) direct a department to take measures to enhance the quality of the system, including the re-evaluation of jobs, the restructuring of the component responsible for job evaluation and/or further training of employees responsible for job evaluation in the department.

B.3 An executing authority may evaluate or re-evaluate any job in her or his department.

PART V. COMPENSATION FOR EMPLOYEES

A. PRINCIPLES

- A.1 Remuneration in the public service shall aim, within fiscal constraints, to support-
- (a) efficient and effective service delivery and provide appropriate incentives for employees; and
 - (b) equal pay for work of equal value and other labour standards.
- A.2 In determining an employee's salary, an executing authority shall take into account-
- (a) relevant collective agreements;
 - (b) available funding;
 - (c) the results of job evaluation, if available;
 - (d) the employee's performance; and
 - (e) the need to recruit and retain personnel with appropriate competencies.

B. DETERMINATION OF SALARY SCALES AND ALLOWANCES

The Minister shall determine a salary scale or scales and allowances-

- (a) for employees who fall within the ambit of the Labour Relations Act, in the course of the relevant collective bargaining process; and
- (b) for other employees, by a determination.

C. GRADING AND REMUNERATION

- C.1 An executing authority shall determine the grade of a post to correspond with its job weight and set the commencing salary of an employee on the minimum notch of the salary range attached to the relevant grade, unless the salary proves inadequate under the criteria in regulation V C.3.
- C.2 If a job has a weight that applies to more than one salary range, the executing authority shall determine which of the relevant salary ranges to use.
- C.3 An executing authority may set the salary for a post or an employee above the minimum notch of the salary range indicated by the job weight-
- (a) if she or he has evaluated the job, but cannot recruit or retain an employee with the necessary competencies at the salary indicated by the job weight; and
 - (b) she or he shall record the reason why the salary indicated by the job weight was insufficient.
- C.4 If the job weight demonstrates that a filled post is overgraded or undergraded, an executing authority shall either effect changes to the work organisation or regrade the post according to the job weight and the relevant collective agreements, as provided in regulation V C.5 to C.7

- C.5 An executing authority may increase the salary of a post to a higher salary range in order to accord with the job weight, if-
- (a) the job weight as measured by the job evaluation system indicates that the post was graded incorrectly; and
 - (b) the department's budget and the medium-term expenditure framework provide sufficient funds.
- C.6 If an executing authority increases the salary of a post as provided under regulation V C.5, she or he may continue to employ the incumbent employee in the higher-graded post without advertising the post if the incumbent-
- (a) already performs the duties of the post;
 - (b) has received a satisfactory rating in her or his most recent performance assessment; and
 - (c) starts employment at the minimum notch of the higher salary range.
- C.7 The absorption of the incumbent employee in the higher-graded post as provided under regulation V C.6 shall take effect on the first day of the month following the month during which the executing authority approves that absorption.
- C.8 If an executing authority determines that the salary range of an occupied post exceeds the range indicated by the job weight, she or he shall-
- (a) if possible-
 - (i) redesign the job to equate with the job grade; or
 - (ii) transfer the incumbent to another job on the same salary range; and
 - (b) abide by relevant legislation and collective agreements.
- C.9 As far as possible, an executing authority shall set the salary of a part-time, seasonal or temporary employee proportional to the salary of an equally graded full-time employee.

D. OVERTIME

- D.1 The Minister shall determine rates of compensation for overtime through the collective bargaining process.
- D.2 An executing authority may compensate an employee for overtime work if-
- (a) the employee does not belong to the SMS, except in those cases mentioned in regulation V D.3;
 - (b) the department has a written policy on overtime;
 - (c) the executing authority has provided written authorisation in advance for the work; and
 - (d) except in exceptional circumstances, the monthly compensation for overtime constitutes less than 30 per cent of the employee's monthly salary.

[Regulations D.3 and D.4 deleted by Government Notice No. R. 1225 of 29 August 2003 with effect from 29 August 2003]

- D.5 An executing authority shall establish an overtime policy in accordance with collective agreements, which shall determine-
- (a) categories of employees that may not receive compensation for overtime due to the nature of their work and responsibilities;
 - (b) the circumstances under which a supervisor may authorise overtime work for an individual employee;
 - (c) if an employee shall receive payment or time off as compensation for authorised overtime;
 - (d) how much overtime an employee may work in a given period;
 - (e) how a supervisor should record authorisation for overtime; and
 - (f) other control measures, if necessary.

E. SERVICE BENEFITS, COMPENSATORY PRACTICES AND WORK FACILITY PRACTICES

- E.1 The Minister shall determine service benefits, compensatory practices, work facility practices and allowances for employees through the collective bargaining process or, for employees who fall outside the Labour Relations Act, directly.
- E.2 The Minister may make a determination regarding-
- (a) special daily allowances for visits abroad by employees; and
 - (b) the application of a service benefit, compensatory practice, work facility practice or allowance.
- E.3 Subject to the terms of a relevant collective agreement, an executing authority may provide the cash equivalent of benefits received by permanent employees to employees on fixed-term contracts, other than heads of department.

F. LEAVE

A head of department shall -

- (a) encourage an employee to fully utilise her or his vacation leave in the year earned;
- (b) record all leave taken by an employee accurately and in full; and
- (c) ensure that an employee does not abuse sick leave.

G. INFORMATION ON REMUNERATION

- G.1 At least on an annual basis, the Minister shall publish and issue to departments the salary scale or scales used in the public service.
- G.2 In dealing with personnel matters and the remuneration of an individual employee, a head of department shall respect the employee's right to privacy.

G.3 In the week before an employee's salary pay day, a head of department shall provide her or him with the following information in writing:

- (a) The department's name and address.
- (b) The employee's name.
- (c) The employee's job title and occupational category in terms of the CORE.
- (d) The employee's salary notch.
- (e) Any other form of compensation that the department pays directly to the employee on a monthly basis.
- (f) The period for which payment is made.
- (g) The amount and purpose of any deductions.
- (h) The actual amount paid to the employee.

PART VI. WORKING ENVIRONMENT

A. PRINCIPLES

The working environment should support effective and efficient service delivery while, as far as reasonably possible, taking employees' personal circumstances, including disability, HIV (*Human Immunodeficiency Virus*, hereinafter referred to as HIV) and AIDS (*Acquired Immune Deficiency Syndrome*, hereinafter referred to as AIDS) and other health conditions into account.

[Regulation A as substituted by Government Notice No. R. 840 of 21 June 2002 with effect from 21 June 2002]

B. WORKING HOURS

A head of department shall determine-

- (a) the work week and daily hours of work for employees; and
- (b) the opening and closing times of places of work under her or his control, taking into account-
 - (i) the needs of the public in the context of the department's service delivery improvement programme; and
 - (ii) the needs and circumstances of employees, including family obligations and transport arrangements.

C. EMERGENCY WORK

A head of department may require an employee to perform work outside normal working hours if the work must be performed without delay owing to circumstances which are beyond the control of the head of department and for which she or he could not reasonably have been expected to make provision.

D. HEALTH AND SAFETY

A head of department shall establish and maintain a safe and healthy work environment for employees of the department.

E. HIV/AIDS AND RELATED DISEASES

E.1 Occupational exposure

A head of department shall-

- (a) identify units or employees within the department that, due to the nature of their work, are at high risk of contracting HIV and other related diseases, and take reasonable steps to reduce the risk of occupational exposure to HIV and such diseases;
- (b) take all reasonable steps to facilitate timely access to voluntary counselling and testing and post-exposure *prophylaxis* in line with prevailing guidelines and protocols for employees who have been exposed to HIV as a result of an occupational incident; and

- (c) if the testing referred to in paragraph (b) indicates that an employee has become HIV-positive as a result of the occupational incident, ensure that the employee is assisted to apply for compensation in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993).

E.2 Non-discrimination

A head of department shall-

- (a) ensure that no employee or prospective employee is unfairly discriminated against on the basis of her or his HIV status, or perceived HIV status, in any employment policy or practice; and
- (b) take appropriate measures to actively promote non-discrimination and to protect HIV-positive employees and employees perceived to be HIV-positive from discrimination.

E.3 HIV testing

A head of department shall-

- (a) encourage voluntary counselling and testing for HIV and other related health conditions and, wherever possible, facilitate access to such services for employees in the department; and
- (b) ensure that no employee or prospective employee of the department is required to take a HIV test unless the Labour Court has declared such testing as justifiable in terms of the Employment Equity Act, 1998 (Act No. 55 of 1998).

E.4 Confidentiality and disclosure

All employees shall treat information on an employee's HIV status as confidential and shall not disclose that information to any other person without the employee's written consent.

E.5 Health promotion programme

A head of department shall-

- (a) introduce appropriate education, awareness and prevention programmes on HIV/AIDS and other sexually transmitted infections for the employees in the department and, where possible, their families, and as far as possible, integrate those programmes with programmes that promote the health and well-being of employees;
- (b) create mechanisms within the workplace to encourage openness, acceptance, care and support for HIV-positive employees. Such mechanisms should preferably form part of a comprehensive employee assistance programme or health promotion programme;
- (c) designate a member of the SMS with adequate skills, seniority and support to implement the provisions contained in regulation VI E within the department, and ensure that the member so designated is held accountable by means of her or his performance agreement for the implementation of the provisions;

- (d) allocate adequate human and financial resources to implement the provisions of regulation VI E, and, where appropriate, form partnerships with other departments, organisations and individuals who are able to assist with health promotion programmes;
- (e) establish a HIV/AIDS committee for the department with adequate representation and support from all relevant stakeholders, including trade union representatives, to facilitate the effectiveness of the provisions of regulation VI E; and
- (f) ensure that the health promotion programme includes an effective internal communication strategy.

[Regulation E as inserted by Government Notice No. R. 840 of 21 June 2002 with effect from 21 June 2002]

F. MONITORING AND EVALUATION

A head of department shall introduce appropriate measures for monitoring and evaluating the impact of the health promotion programme among the employees of the department.

[Regulation F as inserted by Government Notice No. R. 840 of 21 June 2002 with effect from 21 June 2002]

PART VII. PROCEDURES FOR APPOINTMENT, PROMOTIONS AND TERMINATION OF SERVICE

A. PRINCIPLES

Employment practices shall ensure employment equity, fairness, efficiency and the achievement of a representative public service. Affirmative action shall be used to speed up the creation of a representative and equitable public service and to give practical support to those who have been previously disadvantaged by unfair discrimination to enable them to fulfil their maximum potential. Employment practices should maximise flexibility, minimise administrative burdens on both employer and employee, and generally prevent waste and inefficiency.

B. CONDITIONS FOR APPOINTMENT

B.1 General

An executing authority-

- (a) may appoint employees on a permanent or temporary basis, either full-time or part-time;
- (b) may, where the employment is temporary, appoint an employee under a special contract, on a casual basis or on a sessional basis;
- (c) may not appoint any person under the age of 16 years;
- (d) shall determine the health requirements for incumbency of a post, in any case where it is in the requirements of the post;
- (e) may appoint a casual employee for a period not exceeding 12 months;
- (f) shall require an employee to be subjected to security clearance only where the duties attached to the post are such as to make security clearance necessary; and
- (g) shall ensure that each employee upon appointment, is provided with a written contract of employment, including the terms and conditions of her or his service.

B.2 Employment contracts for heads of department

B.2.1 The contract to be concluded between an executing authority and a head of department in terms of section 12(2) of the Act shall be as set out in Part 1 of Annexure 2 of these Regulations. In addition to the matters contemplated in section 12(4)(a) to (c) of the Act, the contract may specify the main delegations or authorisations to the head of department in terms of regulation II B.1 necessary in order to manage her or his department in terms of section 7(3)(b) of the Act, and a provision stating that delegation or authorisation be added to or removed from the contract.

B.2.2 An executing authority shall provide the Minister with a copy of the contract as soon as possible after the conclusion thereof.

B.3 Re-appointment of former employees

B.3.1 An executing authority may not re-appoint a former employee where-

- (a) the former employee left the public service earlier on the condition that she or he would not accept or seek re-appointment;
- (b) the original grounds for termination of service militate against re-appointment; or
- (c) the former employee left the public service due to ill health and cannot provide recent and conclusive evidence of recovery.

B.4 Secondments

- B.4.1 An executing authority may, with the agreement of the employee concerned, second the employee to another department in the public service for a particular service or for a period of time.
- B.4.2 The recipient department shall bear the inclusive costs of secondment, unless both departments agree otherwise, or, the Treasury approves another arrangement.
- B.4.3 The provision in regulation VII B.4.2 also applies to secondments made in terms of section 15 of the Act to other governments and international organisations.

B.5 Acting in higher posts

- B.5.1 A head of department may only compensate an employee for acting in a higher vacant post in terms of a determination of the Minister made through the collective bargaining process.
- B.5.2 A head of department may also compensate an employee for acting in a post due to the actual incumbent of the post acting in a higher vacant post, provided that no more than two employees may simultaneously be compensated as a result of a single vacancy.
- B.5.3 An employee shall not act in a higher vacant post for an uninterrupted period exceeding 12 months.
- B.5.4 For the purposes of regulation VII B.5.3, any uninterrupted period acted in a higher vacant post immediately before 1 July 1999, shall be taken into account where the employee continues so acting on that date.

C. RECRUITMENT

C.1 Determination of requirements for employment

- C.1.1 An executing authority shall determine composite requirements for employment in any post on the basis of the inherent requirements of the job.
- C.1.2 An executing authority shall-
 - (a) record the inherent requirements of a job;
 - (b) ensure that the requirements for employment do not discriminate against persons historically disadvantaged; and
 - (c) comply with any statutory requirement for the appointment of employees.

C.2 Advertising

- C.2.1 An executing authority shall ensure that vacant posts in the department are so advertised as to reach, as efficiently and effectively as possible, the entire pool of potential applicants, especially persons historically disadvantaged.
- C.2.2 An advertisement for a post shall specify the inherent requirements of the job, the job title and core functions.
- C.2.3 Any vacant post in the SMS shall be advertised nationwide.
- C.2.4 An executing authority shall advertise any other vacant post within the department as a minimum, but may also advertise such post-
- (a) elsewhere in the public service; or
 - (b) outside the public service either nationwide or locally.
- C.2.5 An executing authority may fill a vacant post without complying with regulations VII C.2.3 and C.2.4 if-
- (a) the department can fill the post from the ranks of supernumerary staff of equal grading;
 - (b) the department can absorb into the post an employee who was appointed under an affirmative action programme, if she or he meets the requirements of the post;
 - (c) the department plans to fill the post as part of a programme of laterally rotating or transferring employees to enhance organisational effectiveness and skills; or
 - (d) the post is filled in terms of section 3B of the Act.
- C.2.6 An executing authority may utilise an appropriate agency to identify candidates for posts, as long as the advertising and selection procedures comply with regulations VII C and D.
- C.2.7 The Minister may issue directives regarding the manner in which vacancies must be advertised within the public service.

D. SELECTION

- D.1 An executing authority shall appoint a selection committee to make recommendations on appointments to posts. The selection committee shall consist of at least three members who are employees of a grading equal to or higher than the grading of the post to be filled or suitable persons from outside the public service or in which both such an employee or employees and such a person or persons are represented. However-
- (a) the chairperson of the selection committee, who shall be an employee, shall be of a grading higher than the post to be filled; and
 - (b) in the event that the manager of the component within which the vacant post is located, is graded lower than the vacant post, such a manager may be a member of the selection committee.

- D.2 A selection committee constituted for the appointment of a head of department shall include, in the case of-
- (a) a head of a national department, at least three Ministers; and
 - (b) a head of a provincial administration or provincial department, at least three members of the Executive Council of the relevant province.
- D.3 A selection committee shall, where possible, include adequate representation of historically disadvantaged persons.
- D.4 Employees of a grading which is lower than the grading of the post to be filled may provide secretarial or advisory services during the selection process, but shall not form part of the selection committee.
- D.5 The selection committee shall make a recommendation on the suitability of a candidate after considering only-
- (a) information based on valid methods, criteria or instruments for selection that are free from any bias or discrimination;
 - (b) the training, skills, competence and knowledge necessary to meet the inherent requirements of the post;
 - (c) the needs of the department for developing human resources;
 - (d) the representativeness of the component where the post is located; and
 - (e) the department's affirmative action programme.
- D.6 A selection committee shall record the reasons for its decision with reference to the criteria mentioned in regulation VII D.5.
- D.7 When an executing authority does not approve a recommendation of a selection committee, she or he shall record the reasons for her or his decision in writing.
- D.8 Before making a decision on an appointment or the filling of a post, an executing authority shall-
- (a) satisfy herself or himself that the candidate qualifies in all respects for the post and that her or his claims in her or his application for the post have been verified; and
 - (b) record in writing that verification.

E. PROBATION

- E.1 Employees who are employed for a period not exceeding one year, do not serve a probationary period.
- E.2 A supervisor of a probationer shall ensure that-
- (a) the probationer, at the commencement of the probationary period, knows the performance and other requirements for obtaining confirmation of probation;
 - (b) the probationer, on a quarterly basis, receives written feedback on her or his performance and compliance with other requirements;

- (c) if necessary, the probationer receives training, counselling or other assistance to meet the requirements for confirmation;
- (d) the probationer receives written confirmation of appointment at the end of the probationary period if she or he has been found suitable for the relevant post; and
- (e) when dismissal as a result of poor performance is considered, the probationer is afforded the opportunity to state her or his case, during which process the probationer may be assisted by a personal representative, including a colleague or a trade union representative.

F. PROMOTION

- F.1 An executing authority may promote an employee to a vacant post on the approved establishment of the department if-
- (a) sufficiently budgeted funds, including funds for the remaining period of the relevant medium-term expenditure framework are available for filling the vacancy; and
 - (b) the vacancy has been advertised and the candidate selected in accordance with regulations VII C and D.
- F.2 A promotion may not take effect before the first day of the month following the month during which the executing authority approved it.
- F.3 No employee has any right to promotion to a vacant post until the promotion has been approved in writing by the executing authority.

G. TERMINATION OF SERVICE

G.1 Retirement age

An employee shall retire at the age and in the circumstances specified in section 16 of the Act.

G.2 Resignation

- G.2.1 An executing authority shall prescribe the manner in which an employee shall submit her or his resignation.
- G.2.2 An executing authority shall record the reasons given by the employee for her or his resignation.
- G.2.3 An employee may resign from the public service, and for that purpose, unless otherwise agreed with the executing authority, shall -
- (a) in the case of any employee paid monthly, give at least one month's written notice of resignation;
 - (b) in the case of any casual employee who has been employed for less than four weeks; give at least one week's notice of resignation or

- (c) in the case of any casual employee who has been employed for more than four weeks, give at least two weeks' notice.

G.2.4 An employee who is to become a candidate in an election of the members of the National Assembly or of any provincial legislature, or who is to be nominated as a permanent delegate to the National Council of Provinces, must resign from the public service beforehand.

G.3 **Ill-health**

G.3.1 An executing authority may on the basis of medical evidence, consider the discharge of an employee in terms of section 17(2)(a) of the Act on account of ill-health. To this end, an executing authority may require an employee to undergo a medical examination by a registered physician.

G.3.2 A discharge on account of ill health shall occur with due regard to item 10 of Schedule 8 to the Labour Relations Act.

G.4 **Operational requirements**

G.4.1 An executing authority may discharge employees for operational reasons if the discharge complies with-

- (a) sections 17(2)(b) and (c) of the Act and sections 189 and 190 of the Labour Relations Act; and
- (b) any applicable collective agreement that determines benefits for employees to be so discharged.

G.4.2 If an executing authority transfers personnel to an entity outside the public service, she or he shall comply with section 197 of the Labour Relations Act.

G.4.3 If personnel is transferred from an entity outside the public service to a department, the executing authority shall comply with section 197 of the Labour Relations Act.
[Regulation G.4.3 inserted by Government Notice No. R. 785 of 28 June 2004 with effect from 1 July 2004]

G.5 **Termination of probation**

When the services of an employee on probation are terminated in terms of section 13 of the Act, due regard must be had to item 8 of Schedule 8 to the Labour Relations Act.

H. **EMPLOYEE RECORDS**

A head of department shall keep a record of each employee and of each post on the approved establishment in accordance with the National Minimum Information Requirements as issued by the Minister.

PART VIII. PERFORMANCE MANAGEMENT AND DEVELOPMENT

A. PRINCIPLES

Departments shall manage performance in a consultative, supportive and non-discriminatory manner in order to enhance organisational efficiency and effectiveness, accountability for the use of resources and the achievement of results. Performance management processes shall link to broad and consistent plans for staff development and align with the department's strategic goals. The primary orientation of performance management shall be developmental but shall allow for effective response to consistent inadequate performance and for recognising outstanding performance. Performance management procedures should minimise the administrative burden on supervisors while maintaining transparency and administrative justice.

B. SYSTEMS FOR PERFORMANCE MANAGEMENT AND DEVELOPMENT

- B.1 An executing authority shall determine a system for performance management and development for employees in her or his department other than employees who are members of the SMS, consistent with the principles in regulation VIII A. This system shall be fully implemented by all departments with effect from 1 April 2001 taking into account the provisions of paragraph 4 of Annexure 1.
- B.2 For each employee other than an employee who is a member of the SMS, an executing authority shall designate in writing-
- (a) the period in respect of which performance is to be assessed, the "performance cycle".
 - (b) an annual date for assessment of performance; and
 - (c) the supervisor responsible for monitoring, supervising and assessing the employee's performance.
- B.3 The supervisor shall-
- (a) as far as possible, meet on a regular basis with the employee to discuss the basic objectives of her or his component and the employee's role in the success or failure in achieving those objectives;
 - (b) before the assessment cycle commences or within one month after appointment or promotion to a post; explain the performance assessment procedure to the employee and
 - (c) inform the employee of the criteria used for her or his performance assessment.
- B.4 The employee's supervisor shall monitor the employee's performance on a continuous basis and give the employee feedback on her or his performance-
- (a) at least four times a year-
 - (i) orally, if the employee's performance is satisfactory; and
 - (ii) in writing, if the employee's performance is unsatisfactory;

- (b) at least twice during the six months preceding the employee's annual formal performance assessment date; and
- (c) in writing, on the annual formal performance assessment date.

C. PERFORMANCE ASSESSMENT

- C.1 An executing authority may establish separate performance assessment instruments for different occupational categories or levels of work; but when assessing an individual employee, a single assessment instrument shall be used in order to assist in deciding on probation, rewards, promotion and skills development of the employee.
- C.2 Assessment shall be based only on the information contained in the designated performance assessment instrument. However, where an appeal is lodged against an assessment, the information furnished in connection with the appeal, must also be considered.
- C.3 Before utilising a performance management and development system referred to in regulation VIII B.1, an executing authority shall-
 - (a) pilot the system on groups of employees in all occupational categories sufficient to enable reasonable validity; and
 - (b) consult with employee organisations in her or his department.

D. OUTCOME AND COMMUNICATION OF ASSESSMENT RESULTS

- D.1 The employee's supervisor shall inform the employee in writing of the outcome of the assessment and if the employee's performance is unsatisfactory, of the reasons for that assessment.
- D.2 An employee who is not satisfied with the outcome of her or his assessment, may refuse to sign it.
- D.3 The employee's supervisor must clearly identify the appeals route for an employee who is not satisfied with the outcome of her or his assessment.
- D.4 At any appeal against the outcome of her or his assessment, the employee may be assisted by a fellow employee or a representative of her or his trade union.
- D.5 An executing authority shall not communicate the outcome of an employee's performance assessment to a person not employed in her or his department unless if the employee has consented thereto in writing.

E. MANAGING UNSATISFACTORY PERFORMANCE

In the case of unsatisfactory performance, an executing authority shall-

- (a) provide systematic remedial or developmental support to assist the employee to improve her or his performance;
- (b) if the performance is so unsatisfactory as to be poor and the desired improvement cannot be effected, consider steps to discharge the individual for unfitness or incapacity to carry out her or his duties.

F. INCENTIVES FOR GOOD PERFORMANCE

F.1 If the departmental budget and the medium-term expenditure framework provide adequate funds, a head of department may establish a financial incentive scheme for employees or any category of those employees.

F.2 To establish a departmental financial incentive scheme, a head of department shall-

- (a) in writing determine the nature, rules and control measures of the scheme in advance;
- (b) communicate the nature and rules of the scheme equitably to all employees; and
- (c) ensure that employees who implement the quality and quantity control measures of the scheme are not entrusted with the implementation of that scheme in relation to themselves.

G. SUGGESTIONS, IMPROVEMENTS AND INNOVATIONS

If an employee makes a suggestion, improvement or invention of exceptional value to the department or the public service as a whole-

- (a) the State shall have the right of use of any such suggestion, improvement or invention; and
- (b) the executing authority may reward the employee through-
 - (i) any non-monetary reward;
 - (ii) a non-pensionable cash award not exceeding 20 per cent of the employee's pensionable annual salary or, with the Minister's approval, a non-pensionable cash award in excess of 20 per cent of the employee's annual salary; or
 - (iii) such a non-monetary reward as well as such a cash award.

PART IX. TRAINING AND EDUCATION

A. PRINCIPLES

Employees should have ongoing and equitable access to training geared towards achieving an efficient, non-partisan and representative public service. Training should support work performance and career development. It should become increasingly driven by needs, and link strategically to broader human resource management practices and programmes aimed at enhancing employment equity and representativeness.

B. INSTITUTIONAL ARRANGEMENTS

B.1 The Minister may oversee or ensure the participation of the public service in any institution aimed at promoting training in the public service, subject to the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).

B.2 Subject to the provisions of the Act and these Regulations and State or Provincial Tender Board prescripts, training may be provided internally or externally.

B.3 A supervisor shall provide training opportunities for employees under her or his supervision and control in accordance with the departmental training plan.

B.4 A head of department shall ensure that sufficient funds are available for the training of employees at all grades.

B.5 A member of the SMS shall avail herself or himself to train employees in the public service or to present training.

C. TRAINING DIRECTED BY THE MINISTER

C.1 The Minister may issue directives regarding the training of employees or categories of employees in the public service.

C.2 The Minister shall, where appropriate, ensure that every institution responsible for training in the public service and the training offered in the public service gains accreditation from the South African Qualifications Authority.

C.3 The department or training institution offering any training directed by the Minister shall issue certificates in respect of such training when completed successfully. All departments shall recognise those certificates.

D. OCCUPATIONAL SPECIFIC COMPETENCIES AND TRAINING

An executing authority shall determine the required competencies of and prescribe training for, various occupational categories or specific employees in her or his department.

E. TRAINING ASSISTANCE

E.1 If it will make a contribution to the performance of the work of her or his department, a head of department may grant any financial or other assistance for any study, training or research where-

(a) she or he has asked an employee to undertake the study, training or research; or

(b) the employee has requested any such assistance.

- E.2 A head of department may grant any financial or other assistance for part-time or full-time activities at either local or international institutions. She or he may also grant assistance for studies and training through training interventions such as short courses, congresses, symposia, seminars, conferences, workshops, lectures and study tours.
- E.3 A head of department may-
- (a) grant bursaries for higher education to both serving and prospective employees, but may allocate bursaries for general education and further education and training only to serving employees; and
 - (b) not require contractual service in recompense for assistance received in respect of general education or further education and training.
- E.4 A head of department may defray any genuine expenses associated with study, research or training, but need not cover the full expenses.
- E.5 A serving employee shall retain her or his salary, which shall count as part of the financial assistance from her or his department during any study, research or training.
- E.6 Subject to the Treasury Regulations, a head of department may waive the whole or any part of any study debts.
- E.7 Where a head of department provides a bursary for higher education to an employee or prospective employee-
- (a) the bursary holder must enter into a contract with the department in terms of which she or he-
 - (i) in the case of a bursary holder who undertakes full-time study, will redeem the bursary by serving the department on the basis of one year for each year of study or any part thereof; or
 - (ii) in the case of a bursary holder who undertakes part-time study, will redeem the bursary by serving the department for at least one year after attaining the relevant qualification; and
 - (b) a bursary holder who undertakes full-time study, shall commence serving the department after she or he has met all the requirements for the attainment of the relevant qualification.
- E.8 An employee who fails to complete the relevant qualification shall redeem any obligation in terms of the contract either through service, or repayment of the bursary amount, plus interest at a rate determined by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act.
- E.9 In the case of an employee who studies or undergoes training for short periods, a head of department may, as a precondition for providing assistance, require the employee to enter into a contract with the department in terms of which she or he will serve the department for a commensurable period.
- E.10 For the purpose of regulation IX E-
- (a) **“further education and training”** means further education and training as defined in section 1 of the Further Education and Training Act, 1998 (Act No. 98 of 1998);

- (b) **“general education”** means the compulsory school attendance phase as referred to in section 3 of the South African Schools Act, 1996 (Act No. 84 of 1996); and
- (c) **“higher education”** means higher education as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997).

PART X. LABOUR RELATIONS

A. PRINCIPLES

If an executing authority has the authority to act on behalf of the State as employer, she or he shall manage negotiations, conclude collective agreements and resolve labour disputes in accordance with the Labour Relations Act. She or he shall not sign an agreement with fiscal implications unless she or he has an unambiguous mandate.

B. IMPLEMENTATION OF COLLECTIVE AGREEMENTS

If a collective agreement signed by an authorised representative of the State as employer applies to a department, the department's executing authority shall implement and enforce it.

C. MANDATING AND MANAGEMENT OF NEGOTIATIONS

C.1 An executing authority may enter into an agreement on a matter of mutual interest only if-

- (a) she or he has responsibility for managing collective bargaining on behalf of the State as employer in that forum;
- (b) she or he has authority to deal with the matter concerned; and
- (c) she or he meets the fiscal requirements contained in regulation X D.

C.2 Collective bargaining shall be regulated by the Labour Relations Act.

C.3 In the Public Service Co-ordinating Bargaining Council, which deals only with matters transverse to the public service, the Minister shall manage negotiations on behalf of the State as employer.

C.4 In a sectoral bargaining council, which deals with matters transverse to a sector in the public service-

- (a) if one executing authority manages the sector, she or he has responsibility for managing collective bargaining; or
- (b) if more than one executing authority manages the sector, Cabinet shall nominate one of the executing authorities to manage collective bargaining.

C.5 An executing authority shall provide the Minister with a copy of any collective agreement concluded in the bargaining council of her or his department or sector.

D. MATTERS WITH FISCAL IMPLICATIONS

Subject to regulation X C, an executing authority shall enter into an agreement in the appropriate bargaining council on any matter that has financial implications only if-

- (a) she or he has a realistic calculation of the costs involved in both the current and the subsequent fiscal year;

- (b) the agreement does not conflict with the Treasury Regulations; and
- (c) she or he can cover the cost-
 - (i) from her or his departmental budget;
 - (ii) on the basis of a written commitment from Treasury to provide additional funds; or
 - (iii) from the budgets of other departments or agencies with their written agreement and Treasury approval.

PART XI. TRANSFORMATION AND RESTRUCTURING OF THE PUBLIC SERVICE

A. APPLICABLE PRESCRIPTS

The transformation and restructuring of the public service shall take place during the period set out in regulation XI B in accordance with this Part and the determinations made and the directives issued by the Minister in terms of section 3(3)(c) and (e) of the Act.

B. TIME PERIOD

The transformation and restructuring referred to in regulation XI A shall be completed not later than 16 June 2003, but if the directives, referred to in that regulation, have not been fully implemented by 16 June 2003, that date is extended to 16 September 2003.

C. CONFLICT WITH OTHER PARTS

If any conflict arises between a provision of this Part and the provision of any other Part of these Regulations, the provision of this Part shall prevail.

[Part XI as inserted by Government Notice No. R. 838 of 14 June 2002 with effect from 17 June 2002.]

CHAPTER 2

CODE OF CONDUCT FOR THE PUBLIC SERVICE

A. PURPOSE

- A.1 In order to give practical effect to the relevant constitutional provisions relating to the public service, all employees are expected to comply with the Code of Conduct provided for in this Chapter.
- A.2 The Code should act as a guideline to employees as to what is expected of them from an ethical point of view, both in their individual conduct and in their relationship with others. Compliance with the Code can be expected to enhance professionalism and help to ensure confidence in the public service.

B. INTRODUCTION

- B.1 The need exists to provide direction to employees with regard to their relationship with the legislature, political and executive office-bearers, other employees and the public and to indicate the spirit in which employees should perform their duties, what should be done to avoid conflicts of interests and what is expected of them in terms of their personal conduct in public and private life.
- B.2 Although the Code of Conduct was drafted to be as comprehensive as possible, it is not an exhaustive set of rules regulating standards of conduct. However, heads of department, by virtue of their responsibility in terms of section 7(3)(b) of the Act for the efficient management and administration of their departments and the maintenance of discipline, are, *inter alia*, under a duty to ensure that the conduct of their employees conform to the basic values and principles governing public administration and the norms and standards prescribed by the Act. Heads of department should also ensure that their staff are acquainted with these measures, and that they accept and abide by them.
- B.3 The primary purpose of the Code is a positive one, *viz.* to promote exemplary conduct. Notwithstanding this, an employee shall be guilty of misconduct, and may be dealt with in accordance with the relevant collective agreement if she or he contravenes any provision of the Code of Conduct or fails to comply with any provision thereof.

C. CODE OF CONDUCT

C.1 RELATIONSHIP WITH THE LEGISLATURE AND THE EXECUTIVE

An employee-

- C.1.1 is faithful to the Republic and honours the Constitution and abides thereby in the execution of her or his daily tasks;
- C.1.2 puts the public interest first in the execution of her or his duties;
- C.1.3 loyally executes the policies of the Government of the day in the performance of her or his official duties as contained in all statutory and other prescripts;

C.1.4 strives to be familiar with and abides by all statutory and other instructions applicable to her or his conduct and duties; and

C.1.5 co-operates with public institutions established under legislation and the Constitution in promoting the public interest.

C.2 RELATIONSHIP WITH THE PUBLIC

An employee-

C.2.1 promotes the unity and well-being of the South African nation in performing her or his official duties;

C.2.2 will serve the public in an unbiased and impartial manner in order to create confidence in the public service;

C.2.3 is polite, helpful and reasonably accessible in her or his dealings with the public, at all times treating members of the public as customers who are entitled to receive high standards of service;

C.2.4 has regard for the circumstances and concerns of the public in performing her or his official duties and in the making of decisions affecting them;

C.2.5 is committed through timely service to the development and upliftment of all South Africans;

C.2.6 does not unfairly discriminate against any member of the public on account of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language;

C.2.7 does not abuse her or his position in the public service to promote or prejudice the interest of any political party or interest group;

C.2.8 respects and protects every person's dignity and her or his rights as contained in the Constitution; and

C.2.9 recognises the public's right of access to information, excluding information that is specifically protected by law.

C.3 RELATIONSHIPS AMONG EMPLOYEES

An employee-

C.3.1 co-operates fully with other employees to advance the public interest;

C.3.2 executes all reasonable instructions by persons officially assigned to give them, provided these are not contrary to the provisions of the Constitution and/or any other law;

C.3.3 refrains from favouring relatives and friends in work-related activities and never abuses her or his authority or influences another employee, nor is influenced to abuse her or his authority;

C.3.4 uses the appropriate channels to air her or his grievances or to direct representations;

C.3.5 is committed to the optimal development, motivation and utilisation of her or his staff and the promotion of sound labour and interpersonal relations;

C.3.6 deals fairly, professionally and equitably with other employees, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language; and

C.3.7 refrains from party political activities in the workplace.

C.4 PERFORMANCE OF DUTIES

An employee-

C.4.1 strives to achieve the objectives of her or his institution cost-effectively and in the public's interest;

C.4.2 is creative in thought and in the execution of her or his duties, seeks innovative ways to solve problems and enhances effectiveness and efficiency within the context of the law;

C.4.3 is punctual in the execution of her or his duties;

C.4.4 executes her or his duties in a professional and competent manner;

C.4.5 does not engage in any transaction or action that is in conflict with or infringes on the execution of her or his official duties;

C.4.6 will recuse herself or himself from any official action or decision-making process which may result in improper personal gain, and this should be properly declared by the employee;

C.4.7 accepts the responsibility to avail herself or himself of ongoing training and self development throughout her or his career;

C.4.8 is honest and accountable in dealing with public funds and uses the public service's property and other resources effectively, efficiently, and only for authorised official purposes;

C.4.9 promotes sound, efficient, effective, transparent and accountable administration:

C.4.10 in the course of her or his official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest;

C.4.11 gives honest and impartial advice, based on all available relevant information, to higher authority when asked for assistance of this kind; and

C.4.12 honours the confidentiality of matters, documents and discussions, classified or implied as being confidential or secret.

C.5 PERSONAL CONDUCT AND PRIVATE INTERESTS

An employee-

C.5.1 during official duties, dresses and behaves in a manner that enhances the reputation of the public service;

- C.5.2 acts responsibly as far as the use of alcoholic beverages or any other substance with an intoxicating effect is concerned;
- C.5.3 does not use her or his official position to obtain private gifts or benefits for herself or himself during the performance of her or his official duties nor does she or he accept any gifts or benefits when offered as these may be construed as bribes.
- C.5.4 does not use or disclose any official information for personal gain or the gain of others; and
- C.5.5 does not, without approval, undertake remunerative work outside her or his official duties or use office equipment for such work.

**CHAPTER 3
FINANCIAL DISCLOSURE OF
MEMBERS OF THE SENIOR MANAGEMENT SERVICE AND CERTAIN OTHER
EMPLOYEES**

A. DEFINITIONS

In this Chapter, unless the context indicates otherwise-

“designated employee” means-

- (a) any member of the SMS; or
- (b) any other person in terms of section 36(3) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), approved or instructed by the relevant treasury to be the accounting officer of a national department, organisational component, provincial administration or provincial department;

“register” means the Register of Designated Employees’ Interests kept in terms of regulation B.(a) of this Chapter;

“registrable interests” means the financial interests listed in regulation D of this Chapter;

“remuneration” means receipt of benefits in cash or in kind;

“submitted form” means a form submitted by a designated employee to the relevant executing authority in terms of regulation C of this Chapter, or any copy thereof.

B. REGISTER AND FUNCTIONS OF DIRECTOR-GENERAL: OFFICE OF THE PUBLIC SERVICE COMMISSION

The Director-General: Office of the Public Service Commission shall-

- (a) keep a register for the purposes of this Chapter, called the Register of Designated Employees’ Interests, in a format approved by the Commission; and
- (b) perform such other functions in relation to the implementation of this Chapter as the Commission may require.

C. DISCLOSURE OF DESIGNATED EMPLOYEES’ INTERESTS

- C.1 Every designated employee shall, not later than 30 April of each year, disclose to the relevant executing authority, on the form determined for this purpose by the Commission, particulars of all her or his registrable interests in respect of the period 1 April of the previous year to 31 March of the year in question.
- C.2 Any person who became a designated employee from 1 May 2001 only, shall make such disclosure in respect of the period 1 April 2000 to 31 March 2001, not later than 31 May 2001.
- C.3 Any person who assumes duty as a designated employee after 1 April in a year shall make such disclosure within 30 days after assumption of duty in respect of the period of 12 months preceding her or his assumption of duty.
- C.4 Every executing authority shall submit to the Commission a copy of the form submitted to the executing authority in terms of-

- (a) regulation C.1 of this Chapter not later than 31 May of the year in question;
- (b) regulation C.2 of this Chapter not later than 30 June 2001; or
- (c) regulation C.3 of this Chapter not later than 30 days after it has been so submitted.

D. KINDS OF INTERESTS TO BE DISCLOSED

The following kinds of financial interests are registrable interests:

- (a) Shares and other financial interests in private or public companies and other corporate entities recognised by law;
- (b) directorships and partnerships;
- (c) remunerated work outside the public service;
- (d) consultancies and retainerships;
- (e) sponsorships;
- (f) gifts and hospitality from a source other than a family member; and
- (g) ownership and other interests in land an property, whether inside or outside the Republic.

E. DETAILS OF REGISTRABLE INTERESTS TO BE DISCLOSED

The following details of registrable interests shall be disclosed:

- (a) Shares and other financial interests in private or public companies and other corporate entities recognised by law:
 - (i) The number, nature and nominal value of shares of any type in any public or private company and its name; and
 - (ii) the nature and value of any other financial interests held in a private or public company or any other corporate entity and its name.
- (b) Directorships and partnerships:
 - (i) The name, and type of business activity, of the corporate entity or partnership; and
 - (ii) if applicable, the amount of any remuneration received for such directorship or partnership.
- (c) Remunerated work outside the public service:
 - (i) The type of work;
 - (ii) the name, and type of business activity, of the employer; and
 - (iii) the amount of the remuneration received for such work.
- (d) Consultancies and retainerships:

- (i) The nature of the consultancy or retainership of any kind;
 - (ii) the name, and type of business activity, of the client concerned; and
 - (iii) the value of any benefits received for such consultancy or retainership.
- (e) Sponsorships:
- (i) The source and description of direct financial sponsorship or assistance; and
 - (ii) the value of the sponsorship or assistance.
- (f) Gifts and hospitality from a source other than a family member:
- (i) A description and the value and source of a gift with a value in excess of R350;
 - (ii) a description and the value of gifts from a single source which cumulatively exceed the value of R350 in the 12 month period contemplated in regulation C of this Chapter; and
 - (iii) hospitality intended as a gift in kind.
- (g) Ownership and other interests in land and property, whether inside or outside the Republic:
- (i) A description and extent of the land or property;
 - (ii) the area in which it is situated; and
 - (iii) the value of the interest.

F. CONFIDENTIALITY OF SUBMITTED FORMS AND REGISTER

- F.1 Subject to regulation F.3 of this Chapter only the following persons have access to a submitted form or the register:
- (a) The executing authority to whom the form is submitted and the staff designated by the executing authority for purposes of record-keeping of the original form and submission of a copy of the form to the Commission;
 - (b) commissioners of the Commission;
 - (c) the Director-General: Office of the Public Service Commission; and
 - (d) such other persons designated by an executing authority or the chairperson of the Commission for purposes of the effective implementation of this Chapter.
- F.2 No person who has access to a submitted form or the register may, except when a court so orders, disclose any information in that form or register to anyone other than-
- (a) a designated employee in respect of her or his submitted form or an entry in the register in respect of that employee; or

- (b) another person who is permitted access in terms of regulation F.1 of this Chapter or to whom access is granted in accordance with regulation F.3 of this Chapter.

F.3 Any person, other than a person contemplated in regulation F.1 of this Chapter, may only be given access to a submitted form or the register in terms of section 11 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

F.4 Any employee who contravenes regulation F.2 of this Chapter is guilty of misconduct.

G. CONFLICT OF INTERESTS

G.1 If the Commission is of the opinion that a registrable interest of a designated employee disclosed in terms of regulation C of this Chapter conflicts or is likely to conflict with the execution of any official duty of that employee, it shall verify the information regarding that interest and consult with the employee in question.

G.2 If, after such verification and consultation, the Commission is of the opinion that there is such conflict or that such conflict is likely to occur, it shall refer the matter to the relevant executing authority.

G.3 Upon the referral, the executing authority shall consult with the employee concerned and take the appropriate steps, including, but not limited to-

- (a) the institution of disciplinary action; or
- (b) the granting of a waiver to the employee in respect of a future conflict of interest.

G.4 An executing authority shall, within 30 days after such referral, report to the Commission by-

- (a) stating whether any steps were taken; and
- (b) if steps were taken, giving a description of those steps or, if no steps were taken, giving the reasons therefor.

H. FAILURE TO DISCLOSE INTERESTS

Any designated employee who-

- (a) fails to disclose an interest in terms of regulation C of this Chapter; or
- (b) when disclosing an interest in terms of regulation C of this Chapter, wilfully provides incorrect or misleading details,

is guilty of misconduct.

[Chapter 3 as substituted by Government Notice No. R. 441 of 25 May 2001 with effect from 1 May 2001.]

CHAPTER 4
SENIOR MANAGEMENT SERVICE

PART I. ESTABLISHMENT OF SMS

A. PRINCIPLES

To ensure the effective management of each department falling under her or his control, or to execute specialist functions, an executing authority shall create an appropriate number of posts at senior management level. The persons occupying those posts shall be managed as a public service-wide pool of scarce resources to be utilised in the best interests of the public service. The conditions of service of the persons occupying those posts shall accord with their positions as high-level managers or specialists, while employment practices shall be fair and take into account the need to redress the imbalances of the past. Only the finest candidates shall be appointed to those posts and steps shall be taken to retain and develop persons so appointed as a corporate resource.

B. COMPOSITION OF SMS AND GRADING OF POSTS

B.1 The SMS shall consist of employees-

(a) who immediately before 1 January 2001 were remunerated on grade 13 and higher; and

(b) appointed to the SMS on or after 1 January 2001 in the capacities referred to in regulation II B of this Chapter .

B.2 The number of members of the SMS per department and their functions shall be determined by the executing authority through the processes of planning and work organisation as contemplated in Parts III and IV of Chapter 1.

B.3 The grading of SMS posts shall be determined through the job evaluation system determined by the Minister.

C. FLEXIBLE EMPLOYMENT PRACTICES WITHIN FRAMEWORK OF UNIFORM NORMS AND STANDARDS

C.1 Executing authorities shall appoint and utilise members of the SMS within a framework of uniform norms and standards.

C.2 The Act, these Regulations and the directives issued and determinations made by the Minister under the Act and these Regulations constitute the framework of uniform norms and standards applicable to members of the SMS.

C.3 These Regulations apply to members of the SMS, unless otherwise indicated. If any conflict arises between a provision of this Chapter and the provision of any other Chapter of these Regulations, the provisions of this Chapter shall prevail.

D. HANDBOOK FOR SMS

The Minister may include any or all of the determinations, directives, guidelines and provisions applicable to the SMS in a Handbook for the SMS.

PART II. RECRUITMENT, SELECTION AND APPOINTMENT

A. PRINCIPLES

The recruitment, selection and appointment of persons to the SMS, shall take place in accordance with section 11 of the Act. Posts shall as far as possible be filled through open competition. Selection shall increasingly be competency-based so as to enhance the quality of appointment decisions.

B. EMPLOYMENT CAPACITIES

- B.1 Persons newly appointed to the SMS shall be employed in a permanent or temporary capacity in posts on the fixed establishment.
- B.2 Where persons are appointed to the SMS in a temporary capacity, it shall be for a fixed term or for a specific project.

C. ADVERTISING OF POSTS AND EMPLOYMENT EQUITY

The Minister may issue directives on how SMS posts are to be advertised and the application forms to be utilised; and targets to be achieved in promoting a SMS that is broadly representative of the South African people, including representation according to race, gender and disability.

D. COMPETENCY-BASED SELECTION

The Minister may issue directives on the desired managerial and leadership competencies of members of the SMS and the selection processes for the filling of SMS posts.

E. NURTURING OF TALENT TO SUSTAIN SMS

The Minister may introduce programmes to identify and nurture talented individuals for possible appointment to SMS posts.

F. EMPLOYMENT CONTRACTS

- F.1 A person newly appointed to the SMS, other than a head of department, shall conclude a contract of employment, which shall be based on the provisions of the contract set out in Part 2 or 3 of Annexure 2, as the case may be.
- F.2 The employment contract of a head of department shall comply with the requirements set out in regulation VII B.2 of Chapter 1.

PART III. PERFORMANCE MANAGEMENT AND DEVELOPMENT

A. PRINCIPLES

The performance of a person appointed to a post in the SMS shall be managed in accordance with a performance agreement. Such an agreement shall be linked to the department's strategic goals and shall comply with the criteria prescribed in this Part.

B. PERFORMANCE MANAGEMENT AND DEVELOPMENT

- B.1 A person newly appointed to the SMS shall enter into a performance agreement.
- B.2 Such performance agreement shall-
- (a) assist a member of the SMS to define her or his key responsibilities and priorities;
 - (b) encourage improved communication between that member and the person she or he reports to; and
 - (c) enable the person that member reports to, to assess her or his work and provide appropriate support.
- B.3 The Minister may issue directives on performance management and development for members of the SMS.
- B.4 The Minister may issue separate directives on performance management and development for heads of departments.

PART IV. CONDITIONS OF SERVICE

A. PRINCIPLES

- A.1 The remuneration of members of the SMS shall aim to-
- (a) support efficient and effective service delivery;
 - (b) provide appropriate incentives linked to the performance management and development system
 - (c) ensure equal pay for work of equal value in line with job evaluation and grading.
- A.2 In determining a remuneration package of a member of the SMS or the grade of a SMS post, an executing authority shall take into account-
- (a) available funding;
 - (b) the results of the job evaluation system;
 - (c) the need to recruit and retain personnel with the required competencies; and
 - (d) the determinations and directives of the Minister applicable to the SMS.

B. DETERMINATION OF CONDITIONS OF SERVICE

- B.1 The Minister shall annually make determinations regarding the conditions of service of members of the SMS. Such determinations shall be implemented with effect from 1 January of each year.
- B.2 Any determination or directive issued by the Minister in regard to the conditions of service of members of the SMS, shall take into account the advice of the panel established in terms of regulation IV C.1.1 of this Chapter.
- B.3 The Minister shall make known an intended determination in terms of regulation IV B.1 of this Chapter, for comment in the public service before its implementation.

C. PANEL FOR REVIEW OF CONDITIONS OF SERVICE OF MEMBERS OF SMS

C.1 ESTABLISHMENT OF PANEL

- C.1.1 The Minister shall once every three years appoint a panel to inquire into conditions of service of members of the SMS and to advise her or him accordingly.
- C.1.2 The Minister shall announce the names of the members of the panel, their terms of reference and terms of office by a notice in the *Gazette*.

C.2 CONSTITUTION OF PANEL

- C.2.1 The panel shall consist of such number of persons as determined by the Minister.
- C.2.2 Persons shall be appointed to the panel on the basis of their knowledge of, or a vested interest in, matters relating to the functions of the panel.
- C.2.3 A member of the panel shall serve in a part-time capacity.

C.2.4 The Minister shall designate one member as chairperson and another as deputy chairperson of the panel.

C.2.5 If the chairperson is absent or for any reason is unable to act as chairperson, the deputy chairperson shall act as the chairperson of the panel.

C.3 REMUNERATION OF MEMBERS

C.3.1 Members of the panel who are appointed on the basis of their knowledge of matters relating to the functions of the panel must be remunerated on the basis of and according to the scales approved by the National Treasury.

C.4 MEETINGS OF PANEL

C.4.1 The panel shall meet at a time and place determined by the chairperson of the panel.

C.4.2 The decision of a majority of members of the panel present at a meeting of the panel shall constitute a decision of the panel, and in the event of an equality of votes on any matter, the person presiding at the meeting concerned shall have a casting vote in addition to that person's deliberative vote.

C.5 ADMINISTRATION OF PANEL

C.5.1 The Director-General of the Department of Public Service and Administration shall designate such employees of that Department as may be necessary to perform the work incidental to the functions of the panel.

C.5.2 The expenditure incidental to the exercise or performance of the functions of the panel shall be defrayed from moneys appropriated by Parliament for that purpose.

PART V. MOBILITY AND CAREER PROGRESSION

A. PRINCIPLES

The SMS shall be actively managed across the public service to ensure that operational requirements are met and to maximise the potential of members of the SMS. Executing authorities shall remain responsible for the utilisation and development of members of the SMS under their control and managing their careers, but the Minister shall assist executing authorities in that responsibility.

B. DEPLOYMENT OF MEMBERS OF SMS

- B.1 The Minister may, on her or his own initiative or at the request of an executing authority, facilitate-
- (a) the transfer of a member of the SMS from one post or position to another post or position or from one department to another department in accordance with section 14 of the Act; or
 - (b) the transfer and secondment of a member of the SMS in accordance with section 15 of the Act.
- B.2 A vacant post in the SMS that is to be filled through a transfer in terms of section 14 of the Act, is not required to be advertised in terms of regulation VII C.2.3 of Chapter 1.
- B.3 The personal circumstances of a member of the SMS shall be taken into account before she or he is transferred or seconded in terms of regulation V B.1 of this Chapter

PART VI. TRAINING AND DEVELOPMENT

A. PRINCIPLES

The Minister shall oversee the development of programmes and assist executing authorities in equipping members of the SMS for their responsibilities. The programmes to be developed shall be based on the competencies required of members of the SMS in terms of both their current and future responsibilities.

B. STANDARD TRAINING PROGRAMMES

The Minister shall-

- (a) identify the generic managerial and leadership training needs of members of the SMS;
- (b) arrange that standard courses and programmes be developed on the basis of those training needs; and
- (c) continuously evaluate those courses and programmes with due regard to their relevance and value for money.

C. TRAINING ASSISTANCE

The Minister may provide such assistance and guidance to executing authorities as she or he may deem necessary in order to promote the effective utilisation and development of members of the SMS.

PART VII. ETHICS AND CONDUCT

A. PRINCIPLES

Members of the SMS shall-

- (a) display the highest possible standards of ethical conduct;
- (b) set an example to their subordinates and maintain high levels of professionalism and integrity in their interaction with political office-bearers and the public; and
- (c) ensure that they minimise conflicts of interest and that they put the public interest first in the performance of their functions.

B. PROMOTION OF ETHICAL CONDUCT

- B.1 The Minister may, on the advice of the Commission, issue directives to promote ethical conduct amongst members of the SMS and to supplement the Code of Conduct contemplated in Chapter 2 and the Financial Disclosure Framework contemplated in Chapter 3.
- B.2 The Minister may provide such guidance and assistance to members of the SMS as she or he may deem necessary to minimise conflicts of interest and to promote professional conduct.

PART VIII. EMPLOYER-EMPLOYEE RELATIONS

A. PRINCIPLES

Employer-employee relations for the SMS shall aim to protect the rights and interests of its members in a manner appropriate to their positions as high-level employees.

B. CONFLICT OF INTEREST

A member of the SMS shall avoid any conflict of interest that may arise in representing the interests of her or his department and being a member of a trade union, as defined in section 213 of the Labour Relations Act. The Minister may take such steps as she or he may deem appropriate to assist members of the SMS to avoid such conflict.

C. PROFESSIONAL ASSOCIATION

The Minister may establish an association for members of the SMS to promote their professional interests.

D. MISCONDUCT AND INCAPACITY

The Minister may, subject to the Labour Relations Act, issue directives to establish misconduct and incapacity procedures for members of the SMS.

PART IX. EXIT MANAGEMENT

A. PRINCIPLES

Executing authorities shall give consideration to the termination of service of members of the SMS in a manner that is fair to the individuals concerned and takes into account the public interests. The Minister may assist executing authorities to act accordingly.

B. PROCEDURES AND BENEFITS

The Minister may issue directives and provide guidelines to executing authorities on the procedures to be followed and benefits to be paid when terminating the services of members of the SMS.

**CHAPTER 5
ELECTRONIC GOVERNMENT REGULATIONS**

PART I. UNDERLYING ELECTRONIC GOVERNMENT VALUE

A. PRINCIPLES

Departments shall manage information technology effectively and efficiently. The Batho Pele principle of offering equal access to services, increase in productivity and lowering of cost, shall inform the acquisition, management and use of information technology. Information technology shall be used as a tool to leverage service delivery by the public service and shall therefore not be acquired for its own sake.

B. OBLIGATION REGARDING ACQUISITION AND MANAGEMENT OF INFORMATION RESOURCES

The head of department shall ensure that the acquisition, management and use of information technology by the department improve-

- (a) direct or indirect service delivery to the public, including, but not limited to, equal access by the public to services delivered by the department;
- (b) the productivity of the department; and
- (c) the cost-efficiency of the department.

PART II. INFORMATION SECURITY

A. PRINCIPLES

As the public service gears itself for the electronic government mode of service delivery, the need for a different breed of information security in the public service becomes imperative. This is as a result of possibilities of integrated government services that will rely heavily on the information security of each and every component of the electronic government value chain. Security breaches to the integrated Government services can cause crippling effects on the service delivery by the public service, with major inconveniences to the users of services. The strategic and critical value of public service information and hence the protection thereof, needs appropriate legal recognition.

B. MINIMUM INFORMATION SECURITY STANDARDS

- B.1 The Minister shall, in consultation with the Minister of Intelligence, issue Minimum Information Security Standards (herein referred to as the MISS) for the public service in the form of a handbook called the Handbook on Minimum Information Security Standards.
- B.2 Any person working with Public Service information resources shall comply with the MISS.
- B.3 A head of department may request exemption from a provision of the MISS. The request shall be submitted to the Minister. The Minister shall, in consultation with the Minister of Intelligence, grant the request for exemption if the exemption is considered necessary for the effective functioning of the relevant department or a part thereof.

C. COMPLIANCE CERTIFICATION

An entity designated by the Minister, in consultation with the Minister of Intelligence shall from time to time certify every department for compliance with the MISS.

D. INFORMATION SECURITY VIGILANCE

- D.1 A head of department shall ensure the maintenance of information security vigilance at all times in the department.
- D.2 When a non-compliance with the MISS comes to the knowledge of an employee of a department, she or he shall report it immediately to the head of department or an employee designated for this purpose by that head.
- D.3 Every time a change and/ or modification is made to a Public Service Information system, the system shall be certified for compliance to the MISS.

E. EXEMPTION AND INCIDENT REPORTS

A head of department shall regularly, on the basis of the threat posed by the incident, submit to the Director-General: National Intelligence Agency, the Auditor-General and such other authorities as the head considers appropriate-

- (a) an incident report of every non-compliance with the MISS;
- (b) a plan on how incidents of non-compliance will be corrected and how to prevent similar incidents in future; and
- (c) an exemption report of all exemptions granted under regulation B.3 of this Part and all deviations from the MISS because of such exemptions.

PART III. INTEROPERABILITY

A. PRINCIPLES

Building and continuously adapting minimum interoperability standards is necessitated by the quick obsolescence of information communication technologies, expensive nature of information communications technology products and services, and a myriad of non-compatible information communications technology products in the market. If interoperability is not carefully managed these factors can result in the public service investing in obsolete, expensive, and non-compatible information communications technology products and services that impede effective service delivery. Mandatory compliance by all departments with minimum interoperability standards for the public service is essential for seamless and integrated service delivery.

B. MINIMUM INTEROPERABILITY STANDARDS

B.1 The Minister shall, after consultation with the Government Information Technology Officer Council (herein referred to as the "GITO Council"), issue Minimum Interoperability Standards (herein referred to as the "MIOS") for the public service in the form of a handbook called the Handbook on Minimum Interoperability Standards.

B.2 The MIOS shall include provision for standards and specifications for-

- (a) interconnectivity;
- (b) data integration; and
- (c) information access regarding browsers and viewers.

C. COMPLIANCE

C.1 The following systems shall comply with the MIOS:

- (a) every part of any new information system developed or acquired for the public service or any upgrade of any existing information system in the public service; and
- (b) every legacy system that is part of electronic service delivery in the public service.

C.2 A head of department shall include compliance with the MIOS in the project approval procedure for the department. The MIOS shall be used in the audit and review of every project of a department.

D. REVIEW OF MIOS

For the purpose of recommending to the Minister new standards or the amendment or repeal of existing standards, the GITO Council shall from time to time review the MIOS.

[Chapter 5 as inserted by Government Notice R.1346 of 1 November 2002 with effect from 1 January 2003]

TRANSITIONAL ARRANGEMENTS

1. The annual report for the financial year ending on 31 March 2001, referred to in regulation III J.2 of Chapter 1, shall include the following information:
 - (a) Planning and service delivery
 - (i) The core mandates, functions and objectives of the department.
 - (ii) The service standards for core objectives and the results achieved in meeting standards.
 - (b) Organisation
 - (i) The department's organisational structure and approved establishment.
 - (ii) The number of employees and of vacancies, per component, grade and nature of employment.
 - (iii) The employment number of persons additional to the approved establishment.
 - (c) Job evaluation
 - (i) By CORE, occupation and grade, the number of posts evaluated, upgraded and downgraded.
 - (ii) The number of employees promoted as a result of posts that were upgraded, according to race, gender and disability.
 - (iii) The number of employees whose remuneration exceeds the grade determined by job evaluation and the reasons for each deviation, by CORE and occupation.
 - (d) Remuneration
 - (i) The percentage of the budget excluding transfer payments, expenditure on land and buildings, as well as miscellaneous payments spent on total personnel costs, administrative expenditure and professional and special services.
 - (ii) The personnel costs in intervals of R20 000, by race, gender, disability, CORE and occupation.
 - (iii) The percentage of total personnel costs spent on the SMS.
 - (iv) The costs of overtime, allowances and benefits as a percentage of total personnel costs.
 - (e) Affirmative action, recruitment, promotions and termination of services
 - (i) The progress made in implementing the affirmative action programme contemplated in regulation III D.2 of Chapter 1.

- (ii) The number of employees recruited per grade and occupation, indicated according to race, gender and disability.
 - (iii) The number of employees promoted per grade and occupation, indicated according to race, gender and disability.
 - (iv) The number of employees per grade and occupation, whose services were terminated, indicated according to race, gender and disability.
 - (v) The number, occupations and grades of foreign appointees.
- (f) Performance management and skills development
- (i) Employees who received rewards for performance, indicated according to grade, CORE, occupation, race, gender and disability.
 - (ii) The targets for training in the training plan, and the progress made in attaining those targets.
 - (iii) The allocation for training in the departmental budget, and the actual amounts spent on each training target, indicated according to race, gender, disability and occupation in each grade in each CORE.
 - (iv) The number, (i) externally and (ii) internally, and the type of training programmes implemented.
 - (v) The number and nature of incidents of injury, illness and death occurring in the course of official duty or in the work environment.
- (g) The number and subject matter of collective agreements entered into.
- (h) Sick leave
- (i) The average number of days' sick leave taken by employees in the department, indicated according to their grades and occupation.
 - (ii) The total number of days' sick leave taken by employees in a department.
 - (iii) The estimated cost to the department of the leave so taken.
 - (iv) The number of employees who took more than 15 continuous days' sick leave in the year under review.
- (i) The number of employees discharged due to ill-health.

2. Despite regulation VII.C of Chapter 1-

- (a) all vacancies advertised before 1 July 1999 in respect of posts to be filled on or after that date, shall be filled in accordance with the provisions, prescripts and requirements applicable and in force immediately before that date; and

[Paragraph 2(b) deleted by Government Notice No. R. 1225 of 29 August 2003 with effect from 29 August 2003]

3. Despite regulation VII. E of Chapter 1, departments shall continue until 31 March 2001 to use form Z187 for the purpose of providing written feedback to probationers on a quarterly basis.

4. Despite Part VIII of Chapter 1 and subject to any collective agreement, the system for personnel evaluation, merit assessment and personal profiles, including any merit awards and the award of higher salary notches, shall continue to apply until 31 December 2000, unless a department is ready for implementation at an earlier date, in which case the performance management system can be implemented at any date between 1 July 1999 and 1 April 2001.
5. Subject to any collective agreement, the official forms in use immediately before 1 July 1999 in relation to public service matters and identified by the prefix "Z" shall continue in use in relation to those matters -
 - (a) in so far as their use is not inconsistent with the provisions of these Regulations or any collective agreement; and
 - (b) until a date to be determined by the Minister by notice in the Gazette. Such a determination may be made from time to time in respect of any one or more of those forms.
6. Any form contemplated in paragraph 5 may be amended by the Minister by notice in the Gazette.
[Paragraph 6 as amended by Government Notice No. R. 441 of 25 May 2001 with effect from 1 May 2001]

EMPLOYMENT CONTRACT PRESCRIBED IN TERMS OF SECTION 12 OF THE PUBLIC SERVICE ACT, 1994 (PROCLAMATION NO 103 OF 1994), FOR HEADS OF DEPARTMENT

ENTERED INTO BY AND BETWEEN

The Government of the Republic of South Africa, herein represented by _____
(full name of political office-bearer) in the capacity of Executing Authority
of _____ (indicate portfolio) (hereinafter referred to as the Employer)

and

_____ (full name) as head of department (herein after
called the Employee.)

WHEREBY IT IS AGREED AS FOLLOWS:

1. Appointment

1.1 The Employer hereby appoints the Employee, who agrees and accepts appointment as Head of Department of _____ (name of Office, Department, Organisational Component or Provincial Department) in terms of section 12 of the Public Service Act, 1994 (hereinafter referred to as the Act) for a period of ___ years (___ calendar months) commencing on _____ and terminating on _____ .

1.2 In terms of this Contract-

1.2.1 the Employee shall serve the Employer as Head of the _____ (name of Office, Department, Organisational Component or Provincial Department) at such place as may from time to time be directed by the Employer;

1.2.2 the Employee will be responsible for the efficient management and administration of _____ (name of Office, Department, Organisational Component or Provincial Department) as contemplated in section 7(3)(b) read with section 7(4) of the Act and as set out in the Performance Agreement referred to in clause 7.

1.2.3 the Employee is also responsible for the exercise of the powers and the performance of the functions entrusted to a head of department in general or to the incumbent of Head of Department of _____ (name of Office, Department, Organisational Component or Provincial Department) in particular, by or in terms of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), the Act or any other law;

1.2.4 the employment of the Employee is subject to –

- a security clearance of _____ (state confidential, secret, top secret)
- a probationary period of 12 months, subject to section 13(2) of the Act; and
- the submission by the Employee of original certificates of her/his academic and professional qualifications, service certificates and proof of SA citizenship.

1.2.5 any matters arising out of this contract, which are not specifically provided for herein, shall be dealt with in accordance with the provisions of the Act, the Public Service Regulations, 2001, (hereafter referred to as the Regulations) and any other legal provisions applicable to the Employee.

[Paragraph 1.25 as amended by Government Notice No. R. 441 of 25 May 2001 with effect from 1 May 2001]

2. Remuneration

- 2.1 The remuneration that the Employee shall receive from the date of assuming duty as stated in clause 1 above, is that specified in Appendix A.
- 2.2 The salary and benefits will be payable in 12 equal monthly instalments.
- 2.3 The general conditions of service and benefits specified in Appendix A, will be as stipulated and provided for in terms of the Act and the Regulations. The parties to this Contract accept that the general conditions of service and benefits in Appendix A may be changed from time to time by means of determinations and directives by the Minister for the Public Service and Administration.
- 2.4 Subject to section 7(4)(b) of the Act, the Employee will also qualify for participation in other benefits and special privileges normally bestowed on a Head of Department as far as this is arranged accordingly in this Contract or other applicable prescripts.
- 2.5 When required to perform official duties away from her/his headquarters, the Employee shall travel at the Employer's expense and shall be paid a subsistence allowance in accordance with the prescribed provisions.

3. Deployment during the contract period and re-appointment on expiry of the Contract

The Employee acknowledges that she/he familiarised herself/himself with the provisions of section 3B and 12 of the Act.

4. Termination of employment

- 4.1 The term of office of the Employee may be terminated in the following ways:
- 4.1.1 On reaching the prescribed (or earlier optional) retirement age .
 - 4.1.2 On completing a term or extended term of office.
 - 4.1.3 Premature retirement at own request of Employee.
 - 4.1.4 Discharge in terms of any of the subsections of section 17 of the Act.
 - 4.1.5 Re-determination of original term or extended term of office by the Employer.
 - 4.1.6 Voluntary resignation.
 - 4.1.7 Death.

- 4.2 Pension and other payable benefits are directly linked to the specific section of the Act which is utilised, as regulated by the Government Employees Pension Fund Law, 1996, the regulations promulgated thereunder as applicable to a Head of Department and the Regulations.
- 4.3 Subject to the provisions of sections 16(5) and 12(1) or (2) of the Act, and the *Labour Relations Act*, 1995, either party may, after consultation and agreement, terminate the Contract before the expiry of an original term of office or an extended term of office, by giving to the other party three months' notice of termination, which notice shall -
- 4.3.1 be given in writing; and
- 4.3.2 be given on or before the last day of a month and take effect on the first day of the succeeding month.
- 4.4 Should notice of termination be given as contemplated in clause 4.3, the Employer has the right to require the Employee to vacate the office occupied by her/him and to leave the premises of the Department before the expiry of the three months notice period on a day stipulated by the Employer and not to present herself/himself for duty any time thereafter.
- 4.5 Should the Employer invoke the provisions of clause 4.4, the Employee will still be entitled to all such benefits as contained in the relevant prescripts.
- 4.6 In the case of inefficiency and misconduct, the Employer may deal with her/him, in accordance with the relevant labour legislation and any directive issued by the Minister.

5. **Renewal and extension of term of office**

- 5.1 The Employer shall in writing confer with the Employee at least two calendar months prior to the expiry of the term contemplated in clause 1 (*supra*) whether she/he proposes to retain the Employee in service for any extended period not exceeding five years (60 calendar months), or not. If the Employee is so informed of such intention to retain her/him in service for an extended term, she/he shall in writing inform the Employer, within one calendar month from the date of that communication, of her/his acceptance or not of such extended employment.
- 5.2 In the event that agreement is reached that the Employee shall enter into a further Contract on termination or completion of her/his Contract, the continued service of the Employee will be recognised under the new Contract so as to avoid any break of service and any accrued or *pro rata* entitlement will be carried forward into the new Contract.
- 5.3 Should the Employer not renew the Contract period beyond the initial period as stated in Clause 1 above, the Employee shall be entitled to the pension and other benefits directly linked to the specific section of the Act which is utilised.

6. **Conduct**

- 6.1 The Employee undertakes to the Employer that she/he—
- 6.1.1 shall not, without the applicable consent and during her/his employment or at any time thereafter, disclose any record, as defined in section 1 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), that must or may be refused upon a request for access to a record of a public body in terms of that Act, whether or not that Act is in force;

6.1.2 shall not, during her/his employment or at any time thereafter, use any record so defined and obtained as a result of her/his employment, to the detriment of the State, except if it is used in the exercise or protection of any right, or legitimate expectation, conferred by law;

6.1.3 shall-

(a) if so requested by the Employer during her/his employment or on the termination of her/his employment, submit to the Employer any record so defined and in the Employee's possession as a result of her/his employment; and

(b) not retain any copies of or extracts from such record, except with consent of the Employer; and

6.1.4 shall comply with the prescribed Code of Conduct.

6.2 The Employee -

6.2.1 acknowledges that she/he has carefully considered the provisions of the clause;

6.2.2 agrees that this clause is, after taking all relevant circumstances into account, reasonable and necessary for the proper protection of the interests of the Employer and the Government of the Republic of South Africa and that if she/he should at any time dispute the reasonableness of this clause, then the onus of proving such unreasonableness will be upon her/him; and

6.2.3 acknowledges that she/he entered into this Contract freely and voluntarily and that no circumstances exist and/or existed for her/him alleging either now or at any future time that she/he was at a disadvantage in agreeing to the restraints set out in this clause or was other than in an equal bargaining position with the Employer in agreeing to such restraints.

7. **Additional terms and conditions**

The Employer and the Employee hereby agree to the following additional terms and conditions as contemplated in section 12(4) of the Act (delete if not applicable):

7.1 The Employee shall enter into an annual performance agreement with the Employer, linked to a specific financial year, which shall include at least the following:

7.1.1 Salary increases will be based on the performance of the Employee. Performance will be assessed in accordance with her/his responsibilities and key performance areas contained in her/his performance agreement and the extent to which the Employee complied therewith, as well as any directives which the Minister for the Public Service and Administration may issue. Salary increases for the Employee will be based on individual consultation. The Employee along with the Employer have the responsibility to consult regarding her/his salary increase and cash bonus within the restrictions of the budget based on the performance of the Employee. The salary increase and cash bonus of the Employee shall be based on determinations, directives and guidelines issued by the Minister for the Public Service and Administration.

7.1.2 An annual performance agreement provided for in terms of paragraph 7.1 above linked to a specific financial year, stating clear performance areas/criteria/deliverables of the Department and the Employee must be entered into for the duration of this Contract. As performance agreements are linked to financial years, it should be entered into at the latest on 30 April every year for the duration of this Contract. The Employee should enter into her/his first

performance agreement not later than three months after assumption of duty. In terms of the Public Service Regulations VII B.2, the Employer shall record delegations and/or authorisation in the performance agreement.

7.1.3 The performance agreement shall be revised if, at any time during its term, the work or environment of the Department is so altered (whether as a result of Government or management decision or otherwise) that the contents of it are no longer appropriate.

7.1.4 This Contract is directly linked to the performance agreement referred to in 7.1 *supra*. In the event that the Employee does not perform satisfactorily in relation to the requirements of her/his performance agreement, the Employee acknowledges that the Employer may deal with her/him, in accordance with the procedure contained in the relevant labour legislation and any other directives issued by the Minister.

7.1.5 _____

7.2 Any other particular duties of the head of department:

7.3 The grounds upon, and the procedures according to which, the services of the head of department may be terminated before the expiry of his or her term of office or extended term of office, as the case may be:

8. General

8.1 Good faith

In the implementation of this Contract, the parties undertake to observe the utmost good faith and they warrant in their dealing with each other that they will neither do anything nor refrain from doing anything that might prejudice or detract from the rights, assets or interests of each other.

8.2 Applicability of the Act

Any matters arising from this Contract, which are not specifically provided for herein, shall be dealt with in accordance with the provisions of the *Act*, as amended, the aforesaid Regulations and other relevant legislation.

8.3 Interpretation of Agreement

The interpretation of this Contract shall be governed by the laws and legal principles applicable in the Republic of South Africa.

8.4 Jurisdiction of courts

8.4.1 The Employee submits to the jurisdiction of the Courts of the Republic of South Africa in the event of any legal proceedings arising from the provisions of this Contract.

8.4.2 It shall not be a breach of the Contract if a party to this Contract is prevented from or hindered in the performance or observance of its obligations hereunder by any Act of Parliament or other action of the State or by any cause or event outside the control of that party.

8.5 Variation

8.5.1 The Contract constitutes the whole of the agreement between the parties to this Contract relating to the subject matter of this Contract, and save as otherwise provided, no amendment, alteration, addition or variation of any right, term or condition of this Contract will be of any force or effect unless reduced to writing and signed by the parties to this Contract.

8.5.2 The parties agree that there are no other conditions, warranties or representations, whether oral or written and whether expressed or implied or otherwise, save those contained in this Contract, Act, the Regulations and other relevant legislation (e.g. Government Employees Pension Fund Law).

8.6 Waiver

No waiver of any of the terms and conditions of this Contract will be binding for any purpose unless expressed in writing and signed by the party giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party in exercising any right, power or privilege precludes any other or further exercise thereof or the exercise of any other right, power or privilege.

9. **Notice and Domicilium**

9.1 The parties choose as their respective *domicilium citandi et executandi* for the purpose of legal proceedings and for the purpose of giving or sending any notice provided for or necessary in terms of this Contract, the following addresses-

	Employer	Employee
Physical address	_____	_____
Postal address	_____	_____
Telefax Number	_____	_____

provided that a party reports any change of her or his *domicilium* to any other physical address, postal address or telefax number by written notice to the other party. Such change of address will be effective seven days after receipt of notice of the change of *domicilium*.

9.2 All notices to be given in terms of this Contract will -

- 9.2.1 be given in writing; and
- 9.2.2 be delivered or sent by prepaid registered post or by telefax; and
- 9.2.3 if delivered, be presumed to have been received on the date of delivery; or
- 9.2.4 if sent by prepaid registered post, be presumed to have been received within three business days of posting unless the contrary is proved; or
- 9.2.5 if sent by telefax, be presumed to have been received on the first business day following the date of sending of the telefax unless the contrary is proved.

SIGNED by the Employer at _____ on the ____ day of _____

AS WITNESSES:

1. _____

**EMPLOYER (EXECUTING AUTHORITY
ON BEHALF OF THE GOVERNMENT)**

2. _____

SIGNED by the Employee at _____ on the ____ day of _____

AS WITNESSES:

1. _____

EMPLOYEE (HEAD OF DEPARTMENT)

2. _____

PERMANENT EMPLOYMENT CONTRACT IN ACCORDANCE WITH PART II OF CHAPTER 4 OF THE PUBLIC SERVICE REGULATIONS, 2001 FOR MEMBERS OF THE SENIOR MANAGEMENT SERVICE

ENTERED INTO BY AND BETWEEN

The Government of the Republic of South Africa, herein represented by _____
(full name of Executing Authority or her/his delegate) in the capacity of _____
(indicate portfolio or post) (hereinafter referred to as the Employer)

and

_____ (full name) as member of the SMS in the capacity
as (indicate post) (hereinafter called the Employee.)

WHEREBY IT IS AGREED AS FOLLOWS:

1. Appointment

1.1 The Employer hereby appoints the Employee, who agrees and accepts appointment as member of the SMS in terms of section 9 of the Public Service Act, 1994 (hereinafter referred to as the Act) commencing on the day of _____. The employee's employment and conditions of service shall be governed by the Act, the Public Service Regulations, 2001 (hereinafter referred to the Regulations) and any other legal provisions applicable to the Employee.

[Paragraph 1.1 as amended by Government Notice No. R. 441 of 25 May 2001 with effect from 1 May 2001]

1.2 In terms of this Contract-

1.2.1 the Employee shall serve the Employer in _____
(name of Office, Department, Organisational Component or Provincial Department) at such place as may from time to time be directed by the Employer or any other officer duly authorised thereto in this respect;

1.2.2 the Employee will be responsible for the responsibilities and key performance areas set out in the Performance Agreement referred to in clause 5 and shall comply with any statutory obligations applicable to the position;

1.2.3 the employment of the Employee is subject to –

- a security clearance of _____ (state confidential, secret or top secret);
- a probationary period of 12 months, subject to section 13(2) of the Act; and
- the submission by the Employee of original certificates of her/his academic and professional qualifications, service certificates and proof of SA citizenship.

- 1.2.4 the Employee may be required to perform other duties or to work at other places that may reasonably be required by the Employer; and
- 1.2.5 any matter arising, which are not specifically provided for herein, shall be dealt with in accordance with the provisions of the Act, the Regulations, and any other legal provisions applicable to the Employee.

2. **Remuneration**

- 2.1 The remuneration that the Employee shall receive as from the date of assuming duty as stated in clause 1 above, is that specified in Appendix A.
- 2.2 The salary and benefits will be payable in 12 equal monthly instalments.
- 2.3 The general conditions of service and benefits specified in Appendix A, will be as stipulated and provided for in terms of the Act and the Regulations. The parties to this Contract accept that the general conditions of service and benefits in Appendix A may be changed from time to time by means of determinations and directives by the Minister for the Public Service and Administration.
- 2.4 When required to perform official duties away from her/his headquarters, the Employee shall travel at the Employer's expense and shall be paid a subsistence allowance in accordance with the prescribed provisions.

3. **Termination of employment**

- 3.1 The contract of employment may be terminated under the following circumstances:
 - 3.1.1 On reaching the prescribed (or earlier optional) retirement age.
 - 3.1.2 Premature retirement of own request by the Employee.
 - 3.1.3 Discharge in terms of section 17 of the Act.
 - 3.1.4 Voluntary resignation.
 - 3.1.5 Death.
- 3.2 Pension and other payable benefits are directly linked to the specific section of the Act which is utilised, as regulated by the Government Employees Pension Fund Law, 1996, the regulations promulgated thereunder as applicable to members of the SMS, and the Regulations.
- 3.3 Should notice of termination be given in cases contemplated in clause 3.1.3, the Employer has the right to require the Employee to vacate the office occupied by her/him and to leave the premises of the Department before the expiry of the notice period on a day stipulated by the Employer and not to present herself/himself for duty any time thereafter.
- 3.4 Should the Employer invoke the provisions of clause 3.3, the Employee will still be entitled to all such benefits as contained in the relevant prescripts.
- 3.5 In the case of inefficiency and misconduct, the Employer may deal with her/him, in accordance with the relevant labour legislation and any directive issued by the Minister.

4. **Conduct**

- 4.1 The Employee undertakes to the Employer that she/he-
- 4.1.1 shall not, without the applicable consent and during her/his employment or at any time thereafter, disclose any record, as defined in section 1 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), that must or may be refused upon a request for access to a record of a public body in terms of that Act, whether or not that Act is in force;
 - 4.1.2 shall not, during her/his employment or at any time thereafter, use any record so defined and obtained as a result of her/his employment, to the detriment of the State, except if it is used in the exercise or protection of any right, or legitimate expectation, conferred by law;
 - 4.1.3 shall-
 - (c) if so requested by the Employer during her/his employment or on the termination of her/his employment, submit to the Employer any record so defined and in the Employee's possession as a result of her/his employment; and
 - (d) not retain any copies of or extracts from such record, except with consent of the Employer; and
 - 4.1.4 she/he shall comply with the prescribed Code of Conduct.
- 4.2 The Employee-
- 4.2.1 acknowledges that she/he has carefully considered the provisions of the clause;
 - 4.2.2 agrees that this clause is, after taking all relevant circumstances into account, reasonable and necessary for the proper protection of the interests of the Employer and the Government of the Republic of South Africa and that if she/he should at any time dispute the reasonableness of this clause, then the onus of proving such unreasonableness will be upon her/him; and
 - 4.2.3 acknowledges that she/he entered into this Contract freely and voluntarily and that no circumstances exist and/or existed for her/him alleging either now or at any future time that she/he was at a disadvantage in agreeing to the restraints set out in this clause or was other than in an equal bargaining position with the Employer in agreeing to such restraints.

5. **Additional terms and conditions**

- 5.1 The Employee shall enter into an annual performance agreement with the Employer, linked to a specific financial year, which shall include at least the following:
- 5.1.1 Salary increases will be based on the performance of the Employee. Performance will be assessed in accordance with her/his responsibilities and key performance areas contained in her/his performance agreement and the extent to which the Employee complied therewith, as well as any directives which the Minister for the Public Service and Administration may issue. Salary increases for the Employee will be based on individual consultation. The Employee along with the Employer have the responsibility to consult annually regarding her/his salary increase and cash bonus within the restrictions of the budget based on the performance of the Employee. The salary increase and cash bonus of the Employee, shall be based on determinations, directives and guidelines issued by the Minister for the Public Service and Administration.

5.1.2 An annual performance agreement provided for in terms of clause 5.1 above linked to a specific financial year, stating clear performance areas/criteria/deliverables of the Department and the Employee must be entered into. As performance agreements are linked to financial years, it should be entered into at the latest on 30 April every year. The Employee should enter into her/his first performance agreement not later than three months after assumption of duty.

5.1.3 The performance agreement shall be revised if, at any time during the period, the work or environment of the Department (Unit, Directorate, Branch, Component) is so altered (whether as a result of Government or management decision or otherwise) that the contents of it are no longer appropriate.

5.1.4 This Contract is directly linked to the performance agreement referred to in clause 5.1 *supra*. In the event that the Employee does not perform satisfactorily in relations to the requirements of her/his performance agreement, the Employee acknowledges that the Employer may deal with her/him, in accordance with the procedure contained in the relevant labour legislation and any other directives issued by the Minister.

5.1.5 _____

5.2 Any other particular duties:

6. General

6.1 Good faith

In the implementation of this Contract, the parties undertake to observe the utmost good faith and they warrant in their dealing with each other that they will neither do anything nor refrain from doing anything that might prejudice or detract from the rights, assets or interests of each other.

6.2 Applicability of the Act

Any matters arising from this Contract, which are not specifically provided for herein, shall be dealt with in accordance with the provisions of the Act, as amended, the aforesaid Regulations and other relevant legislation.

6.3 Interpretation of Agreement

The interpretation of this Contract shall be governed by the laws and legal principles applicable in the Republic of South Africa.

6.4 Jurisdiction of courts

6.4.1 The Employee submits to the jurisdiction of the Courts of the Republic of South Africa in the event of any legal proceedings arising from the provisions of this Contract.

6.4.2 It shall not be a breach of the Contract if a party to this Contract is prevented from or hindered in the performance or observance of its obligations hereunder by any Act of Parliament or other action of the State or by any cause or event outside the control of that party.

6.5 Variation

6.5.1 The Contract constitutes the whole of the agreement between the parties to this Contract relating to the subject matter of this Contract, and save as otherwise provided, no amendment, alteration, addition or variation of any right, term or condition of this Contract will be of any force or effect unless reduced to writing and signed by the parties to this Contract.

6.5.2 The parties agree that there are no other conditions, warranties or representations, whether oral or written and whether expressed or implied or otherwise, save those contained in this Contract, the Act, the Regulations, and other relevant legislation (e.g. Government Employees Pension Fund Law).

6.6 Waiver

No waiver of any of the terms and conditions of this Contract will be binding for any purpose unless expressed in writing and signed by the party giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party in exercising any right, power or privilege precludes any other or further exercise thereof or the exercise of any other right, power or privilege.

7. **Notice and Domicilium**

7.1 The parties choose as their respective *domicilium citandi et executandi* for the purpose of legal proceedings and for the purpose of giving or sending any notice provided for or necessary in terms of this Contract, the following addresses-

	Employer	Employee
Physical address	_____	_____
Postal address	_____	_____
Telefax Number	_____	_____

provided that a party reports any change of her or his *domicilium* to any other physical address, postal address or telefax number by written notice to the other party. Such change of address will be effective seven days after receipt of notice of the change of *domicilium*.

7.2 All notices to be given in terms of this Contract will-

7.2.1 be given in writing; and

- 7.2.2 be delivered or sent by prepaid registered post or by telefax; and
- 7.2.3 if delivered, be presumed to have been received on the date of delivery; or
- 7.2.4 if sent by prepaid registered post, be presumed to have been received within three business days of posting unless the contrary is proved; or
- 7.2.5 if sent by telefax, be presumed to have been received on the first business day following the date of sending of the telefax unless the contrary is proved.

SIGNED by the Employer at _____ on the ____ day of _____

AS WITNESSES:

1. _____

**EMPLOYER (EXECUTING AUTHORITY
ON BEHALF OF THE GOVERNMENT
OR HER/HIS DELEGATE)**

2. _____

SIGNED by the Employee at _____ on the ____ day of _____

AS WITNESSES:

1. _____

EMPLOYEE (AS MEMBER OF THE SMS)

2. _____

EMPLOYMENT CONTRACT FOR A FIXED TERM OR A SPECIFIC PROJECT IN ACCORDANCE WITH PART II OF CHAPTER 4 OF THE PUBLIC SERVICE REGULATIONS, 2001 FOR MEMBERS OF THE SENIOR MANAGEMENT SERVICE

ENTERED INTO BY AND BETWEEN

The Government of the Republic of South Africa, herein represented by _____ (full name of Executing Authority or her/his delegate) in the capacity of _____ (indicate portfolio or post) (hereinafter referred to as the Employer)

and

_____ (full name) as member of the SMS in the capacity of (indicate post) (hereinafter called the Employee.)

WHEREBY IT IS AGREED AS FOLLOWS:

1. Appointment

1.1 The Employer hereby appoints the Employee, who agrees and accepts appointment as member of the SMS in terms of section 9 of the Public Service Act, 1994 (hereinafter referred to as the Act) for a period of _____ years (___ calendar months) commencing on the _____ day of _____ and terminating on the _____ day of _____. The Employee's employment and conditions of service shall be governed by the Act, the Public Service Regulations, 2001 (hereinafter referred to the Regulations) and any other legal provisions applicable to the Employee.
[Paragraph 1.1 as amended by Government Notice No. R. 441 of 25 May 2001 with effect from 1 May 2001]

1.2 In terms of this Contract-

- 1.2.1 the Employee shall serve the Employer in _____
(name of Office, Department, Organisational Component or Provincial Department) at such place as may from time to time be directed by the Employer or any other officer duly authorised thereto in this respect;
- 1.2.2 the Employee will be responsible for the responsibilities and key performance areas set out in the Performance Agreement referred to in clause 5 and shall comply with any statutory obligations applicable to the position;
- 1.2.3 the employment of the Employee is subject to –
- a security clearance of _____ (state confidential, secret or top secret)
 - a probationary period of 12 months, unless the Employee is employed for a period not exceeding 12 months and subject to section 13(2) of the Act; and
 - the submission by the Employee of original certificates of her/his academic and professional qualifications, service certificates and proof of South African citizenship.
- 1.2.4 the Employee may be required to perform other duties or to work at other places that may reasonably be required by the Employer; and
- 1.2.5 any matter arising, which are not specifically provided for herein, shall be dealt with in accordance with the provisions of the Act, the Regulations and any other legal provisions applicable to the Employee.

2. Remuneration

- 2.1 The remuneration that the Employee shall receive as from the date of assuming duty as stated in clause 1 above, is that specified in Appendix A.
- 2.2 The salary and benefits will be payable in 12 equal monthly instalments.
- 2.3 The general conditions of service and benefits specified in Appendix A, will be as stipulated and provided for in terms of the Act and the Regulations. The parties to this Contract accept that the general conditions of service and benefits in Appendix A may be changed from time to time by means of determinations and directives by the Minister for the Public Service and Administration.
- 2.4 When required to perform official duties away from her/his headquarters, the Employee shall travel at the Employer's expense and shall be paid a subsistence allowance in accordance with the prescribed provisions

3. Termination of employment

- 3.1 The term of office of the Employee may be terminated in the following ways:
- 3.1.1 On completing a term or extended term of office.
 - 3.1.2 Discharge in terms of section 17 of the Act.
 - 3.1.3 Death.
- 3.2 Pension and other payable benefits are directly linked to the specific section of the Act which is utilised, as regulated by the Government Employees Pension Fund Law, 1996, the regulations promulgated thereunder as applicable to member of the SMS, and the Regulations.

- 3.3 Subject to the provisions of the Act, and the *Labour Relations Act, 1995*, either party may, after consultation and agreement, terminate the Contract before the expiry of an original term of office or an extended term of office, by giving to the other party one months' notice of termination, which notice shall -
- 3.3.1 be given in writing; and
- 3.3.2 be given on or before the last day of a month and take effect on the first day of the succeeding month.
- 3.4 Should notice of termination be given as contemplated in clause 3.3, the Employer has the right to require the Employee to vacate the office occupied by her/him and to leave the premises of the Department before the expiry of the notice period on a day stipulated by the Employer and not to present herself/himself for duty any time thereafter.
- 3.5 Should the Employer invoke the provisions of clause 3.4, the Employee will still be entitled to all such benefits as contained in the relevant prescripts.
- 3.6 In the case of inefficiency and misconduct, the Employer may deal with her/him, in accordance with the relevant labour legislation and any directive issued by the Minister.

4. **Conduct**

- 4.1 The Employee undertakes to the Employer that she/he-
- 4.1.1 shall not, without the applicable consent and during her/his employment or at any time thereafter, disclose any record, as defined in section 1 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), that must or may be refused upon a request for access to a record of a public body in terms of that Act, whether or not that Act is in force;
- 4.1.2 shall not, during her/his employment or at any time thereafter, use any record so defined and obtained as a result of her/his employment, to the detriment of the State, except if it is used in the exercise or protection of any right, or legitimate expectation, conferred by law;
- 4.1.3 shall-
- (e) if so requested by the Employer during her/his employment or on the termination of her/his employment, submit to the Employer any record so defined and in the Employee's possession as a result of her/his employment; and
- (f) not retain any copies of or extracts from such record, except with consent of the Employer; and
- 4.1.4 she/he shall comply with the prescribed Code of Conduct.
- 4.2 The Employee-
- 4.2.1 acknowledges that she/he has carefully considered the provisions of the clause;
- 4.2.2 agrees that this clause is, after taking all relevant circumstances into account, reasonable and necessary for the proper protection of the interests of the Employer and the Government of the Republic of South Africa and that if she/he should at any time dispute the reasonableness of this clause, then the onus of proving such unreasonableness will be upon her/him; and

4.2.3 acknowledges that she/he entered into this Contract freely and voluntarily and that no circumstances exist and/or existed for her/him alleging either now or at any future time that she/he was at a disadvantage in agreeing to the restraints set out in this clause or was other than in an equal bargaining position with the Employer in agreeing to such restraints.

5. Additional terms and conditions

5.1 The Employee shall enter into an annual performance agreement with the Employer, linked to a specific financial year, which shall include at least the following:

5.1.1 Salary increases will be based on the performance of the Employee. Performance will be assessed in accordance with her/his responsibilities and key performance areas contained in her/his performance agreement and the extent to which the Employee complied therewith, as well as any directives which the Minister for the Public Service and Administration may issue. Salary increases for the Employee will be based on individual consultation. The Employee along with the Employer have the responsibility to consult annually regarding her/his salary increase and cash bonus within the restrictions of the budget based on the performance of the Employee. The salary increase and cash bonus of the Employee shall be based on the determinations, directives and guidelines issued by the Minister for the Public Service and Administration.

5.1.2 An annual performance agreement provided for in terms of clause 5.1 linked to a specific financial year, stating clear performance areas/criteria/deliverables of the Department and the Employee must be entered into for the duration of this Contract. As performance agreements are linked to financial years, it should be entered into at the latest on 30 April every year. The Employee should enter into her/his first performance agreement not later than three months after assumption of duty.

5.1.3 The performance agreement shall be revised if, at any time during the period, the work or environment of the Department (Unit, Directorate, Branch, Component) is so altered (whether as a result of Government or management decision or otherwise) that the contents of it are no longer appropriate.

5.1.4 This Contract is directly linked to the performance agreement referred to in clause 5.1. In the event that the Employee does not perform satisfactorily in relation to the requirements of her/his performance agreement, the Employee acknowledges that the Employer may deal with her/him, in accordance with the procedure contained in the relevant labour legislation and any other directive issued by the Minister.

5.1.5 _____

5.2 Any other particular duties:

6. General

6.1 Good faith

In the implementation of this Contract, the parties undertake to observe the utmost good faith and they warrant in their dealing with each other that they will neither do anything nor refrain from doing anything that might prejudice or detract from the rights, assets or interests of each other.

6.2 Applicability of the Act

Any matters arising from this Contract, which are not specifically provided for herein, shall be dealt with in accordance with the provisions of the Act, as amended, the aforesaid Regulations and other relevant legislation.

6.3 Interpretation of Agreement

The interpretation of this Contract shall be governed by the laws and legal principles applicable in the Republic of South Africa.

6.4 Jurisdiction of courts

6.4.1 The Employee submits to the jurisdiction of the Courts of the Republic of South Africa in the event of any legal proceedings arising from the provisions of this Contract.

6.4.2 It shall not be a breach of the Contract if a party to this Contract is prevented from or hindered in the performance or observance of its obligations hereunder by any Act of Parliament or other action of the State or by any cause or event outside the control of that party.

6.5 Variation

6.5.1 The Contract constitutes the whole of the agreement between the parties to this Contract relating to the subject matter of this Contract, and save as otherwise provided, no amendment, alteration, addition or variation of any right, term or condition of this Contract will be of any force or effect unless reduced to writing and signed by the parties to this Contract.

6.5.2 The parties agree that there are no other conditions, warranties or representations, whether oral or written and whether expressed or implied or otherwise, save those contained in this Contract, the Act, the Regulations and other relevant legislation (e.g. Government Employees Pension Fund Law).

6.6 Waiver

No waiver of any of the terms and conditions of this Contract will be binding for any purpose unless expressed in writing and signed by the party giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party in exercising any right, power or privilege precludes any other or further exercise thereof or the exercise of any other right, power or privilege.

7. **Notice and Domicilium**

7.1 The parties choose as their respective *domicilium citandi et executandi* for the purpose of legal proceedings and for the purpose of giving or sending any notice provided for or necessary in terms of this Contract, the following addresses-

	Employer	Employee
Physical address	_____	_____
Postal address	_____	_____
Telefax Number	_____	_____

provided that a party reports any change of her or his *domicilium* to any other physical address, postal address or telefax number by written notice to the other party. Such change of address will be effective seven days after receipt of notice of the change of *domicilium*.

7.2 All notices to be given in terms of this Contract will -

7.2.1 be given in writing; and

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7.2.3 if delivered, be presumed to have been received on the date of delivery; or

7.2.4 if sent by prepaid registered post, be presumed to have been received within three business days of posting unless the contrary is proved; or

7.2.5 if sent by telefax, be presumed to have been received on the first business day following the date of sending of the telefax unless the contrary is proved.

SIGNED by the Employer at _____ on the ___ day of _____

AS WITNESSES:

1. _____

**EMPLOYER (EXECUTING AUTHORITY
ON BEHALF OF THE GOVERNMENT
OR HER/HIS DELEGATEE)**

2. _____

SIGNED by the Employee at _____ on the ____ day of _____

AS WITNESSES:

1. _____

EMPLOYEE (AS MEMBER OF THE SMS)

2. _____

TERMS AND CONDITIONS OF EMPLOYMENT

1. **Position**

2. **Remuneration**

2.1 The Employee shall be paid an inclusive flexible remuneration package of R _____ which shall consist of the following:

- (a) a core salary consisting of R _____ calculated as _____% of the inclusive flexible remuneration package;
- (b) the Employer's contribution to the GEPF (R _____), calculated as _____% on the core salary; and
- (c) a flexible portion of R _____, calculated as the inclusive flexible remuneration package minus the core salary and minus the Employer's contribution to the GEPF, and may be structured by the Employee in terms of the rules contained in the SMS Handbook for the structuring of the flexible portion.

2.2 Membership of the Government Employees Pension Fund is compulsory. The rate of contribution for the Employee and Employer shall be as prescribed.

3. **Hours of Work**

The Employee shall faithfully and diligently work a minimum of 8 hours per day and follow the office hours of the department.

4. **Other**

Other conditions of service are as specified in the SMS handbook.