

# **PUBLIC SERVICE REGULATIONS, 2016**

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**CHAPTER 1**  
**GENERAL PROVISIONS**

**Short title and commencement**

1. These Regulations shall be called the Public Service Regulations, 2016, and shall come into operation on the date of publication in the *Government Gazette*.

**Interpretation**

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

(2) In these Regulations any word or expression bears the meaning which was assigned in the Act, unless the context indicates otherwise—

"**CDWP**" means the community development workers programme contemplated in regulation 107;

"**competency**" means the combination 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;

"**designated groups**" means designated groups as defined in section 1 of the Employment Equity Act;

"**Employment Equity Act**" means the Employment Equity Act, 1998 (Act No. 55 of 1998);

"**family member**", in relation to any person, means his or her parent, sister, brother, child or spouse—

- (a) including a person living with that person as if they were married to each other, namely a life partner;
- (b) whether such relationship results from birth, marriage or adoption;
- (c) including any other relative who resides permanently with that person; and
- (d) including any other relative who is of necessity dependent on such person;

**"financial year"** means a financial year as defined in section 1 of the Public Finance Management Act;

**"grade"** means the relative value of a particular job as reflected by the job weight, which is linked to a salary level in a salary scale used in the public service;

**"inherent requirements of the job"** means the competency, experience, qualifications and any other requirement that an employee needs in order to perform a job;

**"job"** means the functions according to which one or more posts of the same grade are created;

**"job weight"** means a numerical value assigned to reflect selected characteristics of a job as measured by a job evaluation and job grading system;

**"OSD"** means an occupation specific dispensation determined by the Minister in terms of regulation 42;

**"Public Service Charter"** means the charter as agreed upon in Public Service Co-ordinating Bargaining Council Resolution 1 of 2013;

**"sectoral bargaining council"** means a council established or deemed to be established by the Public Service Co-ordinating Bargaining Council in terms of section 37 of the Labour Relations Act;

**"SMS"** means the Senior Management Service consisting of employees who are incumbents of posts graded on level 13 or above, unless specifically excluded in terms of a determination or deemed determination by the Minister;

**"the Act"** means the Public Service Act, 1994 (promulgated under Proclamation 103 of 1994);

**"Treasury Regulations"** means the Treasury Regulations made in terms of section 76 of the Public Finance Management Act, as amended.

### **Repeal of regulations and saving**

3. (1) The Public Service Regulations, 2001 (published in Government Notice No. R. 1 of 5 January 2001), and all amendments thereto, made and in force under the Act, are hereby repealed.

(2) Anything done under the Public Service Regulations, 2001, which could be done under a provision of these Regulations, shall be deemed to have been done under that provision.

(3) Despite the repeal of the Public Service Regulations, 2001, by subregulation (1), the transitional arrangements shall be as set out in Annexure 1.

### **Deviations**

4. The Minister may—
- (a) under justifiable circumstances, authorise a deviation from any regulation; and
  - (b) if necessary, authorise a deviation contemplated in paragraph (a) with retrospective effect for purposes of ensuring equality.

## **Draft legislation affecting Public Service Act and Regulations**

5. An executive authority shall consult with the Minister before—
- (a) introducing in Parliament draft legislation directly or indirectly amending the Act or these Regulations; or
  - (b) making any subordinate legislation directly or indirectly amending these Regulations.

## **Communication with Minister and media**

6. (1) If a head of department wishes to communicate with the Minister on a matter that falls within the Minister's powers and duties, he or she shall communicate through the Director-General: Public Service and Administration, except in respect of any career incidents of that head of department which fall within the Minister's functions or delegated functions.

(2) An employee shall direct to his or her head of department any enquiry on a matter that falls within the Minister's functions.

(3) An employee, in his or her official capacity, may not communicate with the media unless so authorised by the head of department.

(4) A head of department shall establish a policy regulating communication by its employees with the media.

### **Decision-making in cases of conflict of interest**

7. (1) If a conflict of interest arises upon the performance of an act by a functionary in terms of these Regulations, that functionary shall refer such conflict to an independent panel for review.

(2) An independent panel consists of at least two persons, appointed by the relevant executive authority, and if the functionary is the relevant executive authority the panel shall be appointed by—

- (a) the President, in the case of the Department of Public Service and Administration;
- (b) the Minister, in the case of a national department or government component or the Office of the Premier; or
- (c) the relevant Premier, in the case of a provincial department or government component.

(3) The functionary shall act after considering the recommendation of the independent panel and if that functionary deviates from the panel's recommendations, he or she shall record the reasons for the deviation in writing.

### **Record-keeping of delegations and correction of acts and omissions**

8. (1) A head of a department shall keep a register of all delegations made in terms of section 42A of the Act in the format directed by the Minister.

(2) An executive authority shall keep copies of all documents relating to the correction of an act or omission in terms of section 5(7) of the Act.

## **Reporting, monitoring, evaluation and compliance**

**9.** (1) For purposes of reporting on and assessing compliance with the Act or reviewing the appropriateness and effectiveness of any regulation, determination or directive made under the Act, the executive authority or head of department shall submit to the Minister or the Director-General: Public Service and Administration, as the case may be, information and data on such matters with respect to the Act, in such format and on such date as directed by the Minister.

(2) A head of department shall introduce mechanisms to monitor and evaluate any provision of the Act for reporting to the Minister as contemplated in subregulation (1).

(3) An executive authority may not require or permit a head of department or any other employee to perform, or not to perform, any act in breach of these Regulations.

(4) A head of department may not require or permit any employee to perform, or not to perform, any act in breach of these Regulations.

(5) Any failure to comply with any provision of these Regulations shall be dealt with in accordance with section 16A of the Act.

## **Prescribed forms for human resource management and related practices**

**10.** (1) 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, unless discontinued, amended or replaced in terms of paragraph 5(b) of Annexure 1 of the Public Service Regulations, 2001 or subregulation (4).

(2) The Minister may issue official "Z" forms in relation to human resource management and related practices.

(3) An executive authority may, in consultation with the Minister, add any other areas to any "Z" form to address departmental specific requirements.

(4) A form contemplated in this regulation may be discontinued, amended or replaced by the Minister by notice in the *Gazette*.

**CHAPTER 2**  
**CONDUCT, FINANCIAL DISCLOSURE, ANTI-CORRUPTION AND ETHICS**  
**MANAGEMENT**

*Part 1*

***Code of Conduct***

**Adherence to Constitution and other laws**

11. An employee shall—
- (a) be faithful to the Republic and honour and abide by the Constitution and all other law in the execution of his or her official duties;
  - (b) put the public interest first in the execution of his or her official duties;
  - (c) loyally execute the lawful policies of the Government of the day in the performance of his or her official duties;
  - (d) abide by and strive to be familiar with all legislation and other lawful instructions applicable to his or her conduct and official duties; and
  - (e) co-operate with public institutions established under the Constitution and legislation in promoting the interest of the public.

**Relationship with public**

12. An employee shall—
- (a) promote the unity and well-being of the South African nation in performing his or her official duties;

- (b) serve the public in an unbiased and impartial manner in order to create confidence in the public service;
- (c) be polite, helpful and reasonably accessible in his or her dealings with the public;
- (d) have regard for the circumstances and concerns of the public in performing his or her official duties and in the making of decisions affecting them;
- (e) be committed through timely service to the development and upliftment of all South Africans;
- (f) not abuse his or her position in the public service to promote or prejudice the interest of any political party or interest group;
- (g) respect and protect the dignity of every person and his or her rights as contained in the Constitution; and
- (h) recognise the public's right of access to information, excluding information that is specifically protected by law.

### **Ethical conduct**

**13.** An employee shall—

- (a) not receive, solicit or accept any gratification, as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), from any employee or any person in return for performing or not performing his or her official duties;
- (b) not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties;
- (c) not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such

employee is in an official capacity a director of a company listed in schedule 2 and 3 of the Public Finance Management Act;

- (d) recuse herself or himself from any official action or decision-making process which may result in improper personal gain, and this shall immediately be properly declared by the employee;
- (e) immediately report to the relevant authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes a contravention of any law (including, but not limited to, a criminal offence) or which is prejudicial to the interest of the public, which comes to his or her attention during the course of his or her employment in the public service;
- (f) refrain from favouring relatives and friends in work-related activities and not abuse his or her authority or influence another employee, nor be influenced to abuse his or her authority;
- (g) not use or disclose any official information for personal gain or the gain of others;
- (h) not receive or accept any gift from any person in the course and scope of his or her employment, other than from a family member, to the cumulative value of R350 per year, unless prior approval is obtained from the relevant executive authority;
- (i) if he or she has permission in terms of section 30 of the Act to perform outside remunerative work, not—
  - (i) perform such work during official work hours; and
  - (ii) use official equipment or state resources for such work.
- (j) deal fairly, professionally and equitably with all other employees or members of the public, irrespective of race, gender, ethnic or social origin, colour,

sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language; and

- (k) refrain from party political activities in the workplace.

### **Performance of official duties**

**14.** An employee shall—

- (a) strive to achieve the objectives of his or her institution cost-effectively and in the interest of the public;
- (b) be creative in thought and in the execution of his or her official duties, seek innovative ways to solve problems and enhance effectiveness and efficiency within the context of the law;
- (c) be punctual in the execution of his or her official duties;
- (d) execute his or her official duties in a professional and competent manner;
- (e) co-operate fully with other employees to advance the interest of the public;
- (f) be honest and accountable in dealing with public funds and use the State's property and other resources effectively, efficiently, and only for authorised official purposes;
- (g) use the appropriate mechanisms to deal with his or her grievances or to direct representations;
- (h) be committed to the optimal development, motivation and utilisation of employees reporting to him or her and the promotion of sound labour and interpersonal relations;
- (i) avail himself or herself for training and development;

- (j) promote sound, efficient, effective, transparent and accountable administration;
- (k) give honest and impartial advice, based on all available relevant information , in the execution of his or her official duties;
- (l) honour the confidentiality of official matters, documents and discussions;
- (m) not release official information to the public unless he or she has the necessary approval;
- (n) when on official duty, dress and behave in a manner that is befitting of a public service employee;
- (o) not consume alcoholic beverages or any other non-medicinal substance with an intoxicating effect while on duty or shall not report for duty under such influence;
- (p) not misrepresent himself or herself or use the name or position of any other employee or person to unduly or improperly influence any decision making process or obtain any undue benefit; and
- (q) shall immediately report any non-compliance of the Act to the head of department.

### **Employees as candidates for elections**

**15.** (1) An employee who is issued with a certificate in terms of section 31(3) of the Electoral Act, 1998 (Act No. 73 of 1998), stating that he or she is a candidate in an election, shall, not later than the next working day, inform his or her head of department in writing thereof and submit a copy of the certificate.

(2) The employee shall be deemed to be on annual leave from the date following the date the certificate is so issued until, if he or she is—

- (a) elected and accepts election, the date immediately before the date he or she assumes office;
- (b) elected, but declines election, the date that he or she declines election; or
- (c) not elected, the date of the designation of representatives in terms of item 16 to Schedule 1A to the Electoral Act, 1998.

(3) If the employee has insufficient annual leave, he or she shall be deemed to be on unpaid leave for the period in question.

**Part 2**

**Financial Disclosure**

**Definitions**

**16.** In this Part, unless the context indicates otherwise—

**"designated employee"** means—

- (a) any member of the SMS;
- (b) any other person in terms of section 36(3) of the Public Finance Management Act approved or instructed by the relevant treasury to be the accounting officer of a department; or
- (c) any other employee or category of employees determined by the Minister;

**"form"** means a printed or electronic form contemplated in regulation 18;

**"interests"** means the financial interests listed in regulation 19;

**"register"** means the register of interests kept in terms of regulation 17; and

**"remuneration"** means any payment or benefit in cash or in kind.

**Register of designated employees' interests**

**17.** (1) The Director-General: Office of the Commission shall keep a register of designated employees' interests, who are members of the SMS.

(2) A head of department shall keep a register of any other designated employees' interests not contemplated in subregulation (1).

**Disclosure of designated employees' interests**

18. (1) SMS members, except for a head of department shall, not later than 30 April of each year, disclose to the relevant head of department, in a form prescribed for this purpose by the Minister, particulars of all his or her interests in respect of the period 1 April of the previous year to 31 March of the year in question.

(2) A head of department shall, not later than 30 April of each year, disclose to the relevant executive authority, in the form prescribed for this purpose by the Minister, particulars of all his or her interests in respect of the period 1 April of the previous year to 31 March of the year in question.

(3) Any other designated employee not contemplated in subregulations (1) and (2) shall submit to the relevant head of department, on a date and form directed by the Minister, particulars of all his or her interests for the period as may be directed by the Minister.

(4) Any person who assumes duty as a designated employee on or after 1 April in a year shall make such disclosure within 30 days after assumption of duty in respect of the period from 1 April to date of disclosure.

(5) The head of department or executive authority, as the case may be, shall ensure that the disclosure of interests by designated employees is submitted electronically to the Commission or the relevant authority as may be directed by the Minister in terms of subregulation (3), unless otherwise determined by the Minister.

(6) An executive authority shall submit to the Commission a copy of the form submitted to the executive authority in terms of—

(a) subregulation (2) not later than 31 May of the year in question; or

(b) subregulation (4), in so far as it relates to a head of department, not later than 30 days after it has been so submitted.

(7) A head of department shall submit to the Commission a copy of the form submitted to the head of department by a member of the SMS in terms of—

(a) subregulation (1) not later than 31 May of the year in question; or

(b) subregulation (4), in so far as it relates to a member of the SMS, excluding a head of department, not later than 30 days after it has been so submitted.

### **Details of interests to be disclosed**

**19.** The following details of interests shall be disclosed:

(a) Shares, loan accounts or any other form of equity in a registered 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) other forms of equity, loan accounts, and any other financial interests owned by an individual or held in any other corporate entity and its name.

(b) Income-generating assets:

(i) A description of the income-generating asset;

(ii) the nature of the income; and

(iii) the amount or value of income received.

(c) Trusts:

- (i) The name of the trust, trust reference or registration number as provided by the Master of the High Court, and the region where the trust is registered;
  - (ii) the purpose of the trust, and your interest or role in the trust; and
  - (iii) the benefits or remuneration received (these include fees charged for services rendered).
- (d) Directorships and partnerships:
  - (i) The name, type and nature of business activity of the corporate entity or partnership; and
  - (ii) if applicable, the amount of any remuneration received for such directorship or partnership.
- (e) Remunerated work outside the employee's employment in her or his department:
  - (i) The type of work;
  - (ii) the name, type and nature of business activity of the employer;
  - (iii) the amount of the remuneration received for such work; and
  - (iv) proof of compliance with section 30 of the Act must be attached.
- (f) Consultancies and retainerships:
  - (i) The nature of the consultancy or retainership of any kind;
  - (ii) the name, type and nature of business activity of the client concerned; and
  - (iii) the value of any benefits received for such consultancy or retainership.
- (g) Sponsorships:
  - (i) The source and description of direct financial sponsorship or assistance;

- (ii) the relationship between the sponsor and the employee;
  - (iii) the relationship between the sponsor and the department; and
  - (iv) the value of the sponsorship or assistance.
- (h) Gifts and hospitality from a source, other than a family member:
- (i) A description, value and source of a gift;
  - (ii) the relationship between the giver and the employee;
  - (iii) the relationship between the giver and the department; and
  - (iv) a description and the value of any hospitality intended as a gift in kind.
- (i) Ownership and other interests in immovable property:
- (i) A description and extent of the land or property;
  - (ii) the area in which it is situated;
  - (iii) the purchase price, date of purchase and the outstanding bond on the property; and
  - (iv) the estimated market value of the property.
- (j) Vehicles:
- (i) A description (make and model) of the vehicle;
  - (ii) the registration number of the vehicle; and
  - (iii) the purchase price, date of purchase and the outstanding amount owing on the vehicle.

### **Confidentiality of submitted forms and register**

**20.** (1) Subject to subregulation (3), only the following persons have access to a submitted form or the register:

- (a) The Minister;

- (b) the executive authority to whom the form is submitted;
- (c) the head of department to whom the form is submitted;
- (d) Commissioners of the Commission;
- (e) The Director-General: Office of the Public Service Commission;
- (f) The Director-General: Public Service and Administration;
- (g) The relevant designated ethics officer as contemplated in regulation 23; and
- (h) such other persons designated by the Minister, an executive authority, head of department or the chairperson of the Commission for purposes of record keeping and the effective implementation of this Part.

(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 his or her submitted form or an entry in the register in respect of that employee; or
- (b) another person who is permitted access in terms of subregulation (1) or to whom access is granted in accordance with subregulation (3).

(3) Any person, other than a person contemplated in subregulation (1), 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).

### **Conflict of interest**

**21.** (1) In so far as conflict of interest relates to members of the SMS:

- (a) The Commission shall verify the interests disclosed.

- (b) If the Commission is of the opinion that an interest of a SMS employee disclosed in terms of regulation 18 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 refer the matter back to the relevant executive authority.
- (c) Upon the referral, the executive authority shall consult with the employee concerned on appropriate steps to remove the conflict of interest.
- (d) If the employee, after the consultation referred to in subregulation (1)(c), fails to take the appropriate steps to remove the conflict of interest, the executive authority shall instruct the relevant authority to take disciplinary action against the employee.
- (e) An executive authority shall, within 30 days after such referral, report to the Commission by—
  - (i) stating whether any steps were taken; and
  - (ii) if steps were taken, giving a description of those steps or providing reasons if no steps were taken.

(2) In so far as conflict of interest relates to designated employees who are not members of the SMS:

- (a) The head of department shall verify the interests disclosed.
- (b) If the head of department is of the opinion that an interest of such designated employee disclosed in terms of regulation 18 conflicts or is likely to conflict with the execution of any official duty of that employee, he or she shall consult the employee concerned and, where possible, take appropriate steps to remove the conflict of interest.

- (c) If the employee, after the consultation referred to in subregulation (2)(b), fails to take the appropriate steps to remove the conflict of interest, the head of department shall take disciplinary action against the employee.
- (d) A head of department shall no later than 31 August of each year report to the Minister on—
  - (i) the number of cases identified in terms of subregulation (2)(b);
  - (ii) whether any steps were taken;
  - (iii) if steps were taken, a description of those steps; and
  - (iv) if no steps were taken, reasons thereof.

**Part 3*****Anti-corruption and ethics management*****Anti-corruption and ethics functions**

- 22.** A head of department shall—
- (a) analyse ethics and corruption risks as part of the department's system of risk management;
  - (b) develop and implement an ethics management strategy that prevents and deters unethical conduct and acts of corruption;
  - (c) establish a system that encourages and allows employees and citizens to report allegations of corruption and other unethical conduct, and such system shall provide for—
    - (i) confidentiality of reporting; and
    - (ii) the recording of all allegations of corruption and unethical conduct received through the system or systems;
  - (d) establish an information system that—
    - (i) records all allegations of corruption and unethical conduct;
    - (ii) monitors the management of the allegations of corruption and unethical conduct;
    - (iii) identifies any systemic weaknesses and recurring risks; and
    - (iv) maintains records of the outcomes of the allegations of corruption and unethical conduct; and

- (e) refer allegations of corruption to the relevant law enforcement agency and investigate whether disciplinary steps must be taken against any employee of the department and if so, institute such disciplinary action.

### **Designation of ethics officers**

**23.** (1) An executive authority shall designate such number of ethics officers as may be appropriate, for the department to—

- (a) promote integrity and ethical behaviour in the department;
- (b) advise employees on ethical matters;
- (c) identify and report unethical behaviour and corrupt activities to the head of department;
- (d) manage the financial disclosure system; and
- (e) manage the processes and systems relating to remunerative work performed by employees outside their employment in the relevant department.

(2) The head of department shall establish an ethics committee or designate an existing committee, chaired by a Deputy Director-General, to provide oversight on ethics management in the department.

### **Other remunerative work by employees**

**24.** An application by an employee to perform remunerative work outside his or her department shall be in accordance with the process determined by the Minister and in the form issued by the Minister.

**CHAPTER 3****PLANNING, ORGANISATIONAL ARRANGEMENTS AND SERVICE DELIVERY*****Part 1******Planning and reporting*****Strategic plan**

**25.** (1) An executive authority shall prepare a strategic plan for his or her department that —

- (a) states the department's core objectives based on constitutional and other legislative or functional mandates;
- (b) describes the core and support activities necessary to achieve the core objectives, avoiding duplication of functions;
- (c) describes the targets to be attained in the medium term;
- (d) sets out a programme for attaining those targets;
- (e) specifies information systems that—
  - (i) enable the executive authority to monitor the progress made towards achieving those targets and core objectives;
  - (ii) support compliance with the reporting requirements in regulation 31 and the information requirements, referred to in regulation 70; and
  - (iii) enable service delivery through the use of information and communication technology; and

(f) complies with the requirements in regulations 5.1 and 5.2 of the Treasury Regulations.

(2) Based on the strategic plan of the department, an executive authority shall—

(a) determine the department's organisational structure in terms of its core mandated and support functions—

(i) in the case of a national department or national government component, after consultation with the Minister and National Treasury; and

(ii) in the case of a provincial department or provincial government component, after consultation with the relevant Premier, the Minister and the relevant provincial treasury;

(b) define and create the posts necessary to perform the relevant functions of the department while remaining within—

(i) the current budget;

(ii) the Medium-Term Expenditure Framework of the department; and

(iii) the norms and standards determined by the Minister for post provisioning for occupations or categories of employees;

and the posts so defined and created shall constitute the department's approved establishment;

(c) grade proposed new jobs according to the job evaluation and job grading systems referred to in regulation 41(1), except where the grade of a job has been determined in terms of an OSD or directed by the Minister in terms of regulation 41(2)(d); and

(d) engage in human resource planning in accordance with regulation 26 to meet the resulting human resource needs.

(3) In implementing the strategic plan, a head of department shall—

- (a) promote the efficient, economic and effective use of resources so 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 and systems.

### **Human resource plan**

**26.** (1) An executive authority shall prepare and implement a human resource plan for his or her department.

(2) When preparing a human resource plan for his or her department, an executive authority shall—

- (a) assess the human resources necessary to perform his or her department's functions;
- (b) assess existing human resources by race, gender, disability, age and any other relevant criteria;
- (c) identify gaps between what is required under subregulation (2)(a) and what exists under subregulation(2)(b) and prioritise interventions to address the identified gaps;
- (d) consider the employment equity plan contemplated in regulation 27; and
- (e) consider the available budgeted funds, including funds for the remaining period of the relevant medium-term expenditure framework, for the

recruitment, retention, utilisation and development of human resources according to the department's requirements; and

(f) take into account any other requirements as may be directed by the Minister.

### **Employment equity plan**

**27.** An executive authority shall develop and implement an employment equity plan as contemplated in section 20 of the Employment Equity Act.

### **Human resource development plan**

**28.** (1) An executive authority shall prepare and implement a human resource development plan for his or her department taking into account the human resource plan contemplated in regulation 26.

(2) An executive authority shall monitor and evaluate the implementation of the plan contemplated in subregulation (1).

### **Assessment of efficiency and effectiveness**

**29.** An executive authority must assess the efficiency and effectiveness of a department in supporting that department's service delivery objectives using the assessment tools as may be directed by the Minister and submit the report to the Minister on such date and format as directed by the Minister.

## **Information and communication technology plan**

**30.** (1) A head of department shall establish and maintain an information and communication technology plan for the department that—

- (a) supports the planning process and objectives contemplated in regulations 25 and 38;
- (b) utilises an appropriate enterprise architecture methodology; and
- (c) complies with Chapter 6.

(2) A head of department shall monitor and evaluate the implementation of the plan contemplated in subregulation (1) through—

- (a) an implementation plan linked to the Medium-Term Expenditure Framework budget; and
- (b) an annual operational plan.

## **Annual report**

**31.** (1) The head of department shall include in the department's annual report, referred to in section 40(1)(d) of the Public Finance Management Act, such information pertaining to the public service as the Minister may direct, and in the format that the Minister may direct.

(2) An executive authority shall immediately after he or she has tabled the annual report in the relevant legislature in terms of section 65(1) of the Public Finance Management Act, submit it to the relevant treasury and the Minister, make it available on its website and, on request, make it available free of charge to any member of the media or the public.

**Part 2****Organisational and functional arrangements****Transfer of functions**

**32.** (1) If the Minister or the Premier of a province makes a determination in terms of section 3(4)(b) or (c) or 3A(b) of the Act regarding the transfer of functions between departments—

- (a) the relinquishing department shall transfer all concomitant resources to the receiving department;
- (b) the recipient department shall co-ordinate the transfer and ensure that the employees' terms and conditions for employment are, upon transfer, on the whole not less favourable than those on which such employees were employed by the relinquishing department;
- (c) the recipient department shall accept accountability for the functions from 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; and
- (e) the transfer of funds shall take place in accordance with the requirements of regulation 6.5 of the Treasury Regulations.

(2) The concomitant resources contemplated in subregulation (1)(a) includes all those employees or posts related to the performance of core or support functions, assets and tools of trade pertaining to the function to be transferred

identified in accordance with a determination issued in terms of section 3(4)(b) or (c) or 3A(b) of the Act.

(3) All affected employees shall be transferred in terms of section 14 of the Act.

### **Feasibility study for establishment of government components and specialised service delivery units**

**33.** (1) A feasibility study for the establishment of a government component referred to in section 7A(1) of the Act or a specialised service delivery unit referred to in section 7B(1) of the Act shall as a minimum contain the following:

- (a) An institutional option assessment to determine whether a government component or specialised service delivery unit is the appropriate organisational form; and
- (b) a business case for the preferred organisational form.

(2) An institutional option assessment referred to in subregulation (1)(a) shall contain the following:

- (a) Existing service delivery, operational and funding challenges in the department that require a different mode of service delivery, and how these would be overcome;
- (b) measures on how service delivery and access to services would be improved;
- (c) measures on how government policy and its strategic objectives would be best achieved by the proposed organisational form;
- (d) the nature of the functions that would be performed and how the functions would be performed more efficiently and effectively;

- (e) potential service delivery, operational and funding risks if the organisational form is not changed; and
- (f) whether the establishment of a government component or specialised service delivery unit is the most appropriate organisational form.

(3) A business case referred to in subregulation (1)(b) for the government component or service delivery unit shall contain the following:

- (a) Powers and duties that the head of the government component or specialised service delivery unit shall have in order to address service delivery challenges and to implement government policy and achieve the strategic objectives;
- (b) information regarding financial accountability arrangements and management decision-making powers, delegations and authorisations that would be required for sharing of resources, including but not limited to supply chain management;
- (c) reporting requirements of the head of the government component or the specialised service delivery unit to the executive authority and the head of the relevant department;
- (d) participation of the head of the government component or specialised service delivery unit in relevant management or consultative forums of the relevant department;
- (e) if an advisory board is required, the role and functions, composition, appointment procedures, remuneration and any other matter for its effective functioning;
- (f) measures for funding and for trading activities if required;
- (g) measures to ensure the financial viability and sustainability;
- (h) the cost and budgetary implications and a proposed budget;

- (i) proposed organisational structure;
- (j) envisaged service delivery outputs, measurable indicators and targets;
- (k) transitional arrangements and an implementation plan;
- (l) the draft notice contemplated in section 7A(4) of the Act or the draft protocol contemplated in section 7B (4) of the Act; and
- (m) any other matter necessary for its effectiveness and efficiency.

### **Inter-departmental assessment committee**

**34.** (1) An inter-departmental assessment committee shall be established by the Minister to assess the institutional options and the business cases of government components and service delivery units and inform the Minister of its recommendations.

(2) The committee shall consist of—

- (a) a maximum of four employees of the Department of Public Service and Administration designated by the Minister, one being designated as chairperson by the Minister;
- (b) a maximum of four employees designated by the Minister of Finance; and
- (c) in the case of—
  - (i) a national government component or specialised service delivery unit within a national department, two employees designated by the relevant executive authority; or
  - (ii) a provincial government component, one employee representing the relevant Provincial Treasury and one employee representing the relevant Office of the Premier, designated by the relevant Premier; or

- (iii) a specialised service delivery unit within a provincial department, one employee representing the relevant Provincial Treasury and one employee representing the relevant provincial department, designated by the relevant executive authority.

(3) The relevant executive authority shall submit the institutional option assessment and the business case to the Minister who shall refer it to the committee.

(4) The committee shall upon receipt of the institutional option and the business case from the Minister, assess them and inform the Minister and the executive authority of the relevant national department or the relevant Premier of a province, of its recommendations.

(5) The committee shall at its first meeting appoint a deputy chairperson who shall act as chairperson when the chairperson is unable to perform his or her function.

(6) If both the chairperson and deputy chairperson are absent from a meeting or unable to perform their functions, the members present must elect a person from among themselves to preside at that meeting.

(7) The committee shall determine the procedure for calling meetings and the procedure to be followed at meetings.

(8) A minimum of 50% of the members of the committee shall constitute a quorum for a meeting of the committee.

(9) On an equality of votes in any meeting of the committee, the chairperson has a casting vote in addition to a deliberative vote.

**Organisational functionality assessment**

**35.** An executive authority shall conduct an organisational functionality assessment, as directed by the Minister, to assess the effectiveness of a department's internal systems and processes and submit the report to the Minister on such date and format as directed by the Minister.

**Part 3****Service delivery****Operations management framework**

**36.** An executive authority shall establish and maintain an operations management framework which shall include—

- (a) an approved service delivery model;
- (b) a list of all core mandated services provided by the department;
- (c) mapped business processes for all services;
- (d) standard operating procedures for all services;
- (e) service standards for all services;
- (f) a service delivery charter referred to in regulation 37; and
- (g) a service delivery improvement plan referred to in regulation 38.

**Service delivery charter**

**37.** (1) An executive authority shall publish on its website annually a service delivery charter which sets out the department's service standards that members of the public can expect and which will serve to explain how the department will meet each of the standards.

(2) The service delivery charter referred to in subregulation (1) shall include—

- (a) the name, contact details, telephone numbers and addresses of the service delivery facility;

- (b) the type of facility and services offered at the service delivery facility;
- (c) the fee payable for the services offered;
- (d) the operating hours of the service delivery facility; and
- (e) a compliments, complaints and redress mechanism.

(3) The service delivery facility contemplated in subregulation (2) shall include—

- (a) the head office, provincial, regional and local offices of a department; and
- (b) any service delivery point where public services are obtained.

### **Service delivery improvement plan**

**38.** An executive authority shall establish and maintain a service delivery improvement plan aligned to the strategic plan contemplated in regulation 25 for his or her department—

- (a) specifying the main services to be improved to the different types of actual and potential service recipients as identified by the department;
- (b) containing consultation arrangements with the department's actual and potential service recipients;
- (c) with due regard to the service recipient'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 identified for improvement;
- (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.

**CHAPTER 4**  
**EMPLOYMENT MATTERS**

*Part 1*

*Creation of posts, job descriptions, job evaluation and job grading*

**Job descriptions, job titles, systems of occupational classification and remuneration and OSDs**

**39.** (1) For each post or group of posts, an executive authority shall establish a job description and job title that indicate, with appropriate emphasis on service delivery—

- (a) the main objectives, activities and functions of the post or posts in question; and
- (b) the inherent requirements of the job.

(2) At least once every 60 calendar months, an executive authority shall review job descriptions and titles and, where necessary, redefine them to ensure that they remain appropriate and accurate.

(3) To assist an executive authority in designing a job and career path linked to a salary scale, the Minister shall determine—

- (a) a system of remuneration for an occupational category, for which an OSD has not been determined; and
- (b) an occupational classification system.

(4) An executive authority shall link all posts in his or her department as contained in a remuneration system as contemplated in subregulation

(3)(a) to an occupation listed in the occupational classification system referred to in subregulation 3(b), except in the case of posts determined in terms of an OSD, in which case the classification indicated in the OSD shall be utilised.

(5) The Minister may determine norms and standards on the main objectives and inherent requirements of jobs or categories of jobs.

### **Creation and filling of posts**

**40.** Before creating a post for any new job, or filling any vacancy, an executive authority shall—

- (a) confirm that he or she requires the post to meet the department's objectives taking into account the norms and standards determined by the Minister for post provisioning for occupations or categories of employees;
- (b) in the case of a new job, evaluate the job in terms of the job evaluation and job grading system referred to in regulation 41(1), except in the case of jobs determined in terms of an OSD, or jobs graded by the Minister in terms of regulation 41(2)(d), in which case the grade indicated in the OSD or as determined by the Minister shall be utilised;
- (c) in the case of a vacant post not determined in terms of an OSD or graded by the Minister in terms of regulation 41(2)(d), evaluate the job unless the specific job has been evaluated in the last 60 calendar months; 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.

## **Job evaluation and job grading systems**

**41.** (1) The Minister shall determine—

- (a) a job evaluation and job grading system or systems that shall be utilised in the public service to ensure work of equal value is remunerated equally; and
- (b) a range of job weights derived from the system or systems for each salary level in a salary scale.

(2) The Minister may—

- (a) issue directives on the application of a job evaluation or job grading system or systems;
- (b) review the application of job evaluation in the public service;
- (c) determine a job or category of jobs that an executive authority must evaluate; and
- (d) issue directives that direct the evaluation and grading of any job or category of jobs.

(3) An executive authority may evaluate or re-evaluate any job in his or her department, except—

- (a) jobs evaluated and graded by the Minister in terms of subregulation (2)(d); or
- (b) jobs determined in terms of an OSD.

## **Occupation specific dispensations**

**42.** The Minister may, subject to section 3(5) and 5(6) of the Act, determine an occupational specific dispensation for a specific occupational category or categories that includes—

- (a) a unique salary scale;
- (b) centrally determined grades and job descriptions; and
- (c) career progression opportunities based on competencies, experience and performance.

### **Grading of posts**

**43.** (1) This regulation does not apply to any job determined in terms of an OSD contemplated in regulation 42.

(2) An executive authority shall—

- (a) determine the grade of a post to correspond with—
  - (i) the evaluation of the job by the Minister in terms of regulation 41(2)(d) on a date determined by the Minister;
  - (ii) jobs determined in terms of regulation 42; or
  - (iii) if the job was not so evaluated or determined by the Minister, the evaluation of the job by the executive authority in terms of regulation 41(3); and
- (b) set the commencing salary of an employee on the minimum notch of the salary level attached to the relevant grade, unless a higher salary is awarded in terms of regulation 44.

(3) An executive authority shall set the salary of a permanent or temporary employee employed in a part-time capacity proportional to the salary of an equally graded full-time employee.

(4) If an executive authority intends to evaluate jobs or implement job evaluation results that will affect the grade of an occupation or the salary level

within an occupation where such occupation is utilised by more than one department then he or she shall do so in consultation with the Minister and the Minister of Finance.

### **Setting of higher salary**

**44.** (1) Subject to subregulation (2) to (4) an executive authority may set the salary of an employee above the minimum notch of the salary level indicated by the job weight—

- (a) if he or she has evaluated the job;
- (b) if he or she requires to retain or recruit an employee with the necessary competencies; and
- (c) he or she shall record the reason why the higher salary was awarded.

(2) The setting of a higher salary notch, as contemplated in subregulation (1) to retain an employee (herein called the "counter offer") shall only take place on the first day of the month following the date of approval, if—

- (a) the employee has received an employment offer (herein called the "external offer") from any other body or organ of state;
- (b) the department has verified the validity and content of the external offer;
- (c) the counter offer made is limited to the salary notch closest to the external offer; and
- (d) the counter-offer shall not exceed the salary level of the post.

(3) The setting of a higher salary notch, as contemplated in subregulation (1) to recruit an employee shall only take place on the first day of the month following the date of approval if—

- (a) the executive authority has complied with the process contemplated in regulation 64;
- (b) the employee occupied an equally graded post immediately before the date of appointment;
- (c) the higher salary shall not exceed that of the employee immediately prior to appointment; and
- (d) the higher salary shall not exceed the salary level of the post, unless such employee has been awarded a higher salary attached to the grade of the post in terms any other provision of the Act.

(4) If an employee is awarded a higher salary notch or a higher salary level in terms of subregulation (1) to (3), he or she shall not be disqualified from progression to a higher notch or grade if he or she meets the requirements for such progression.

### **Undergraded posts**

**45.** (1) If the job weight demonstrates that a post is undergraded and the department's budget and the medium-term expenditure framework—

- (a) provides for sufficient funds, an executive authority shall increase the grade of the post to a higher salary level; or
- (b) does not provide for sufficient funds, an executive authority shall redesign the job to equate with the grade of the post prior to regrading.

(2) If an executive authority increases the grade of a filled post as provided under subregulation (1) (a), he or she shall 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 his or her most recent annual moderated and approved performance assessment in the post and where the incumbent has not yet been assessed, his or her performance shall first be assessed to determine whether the performance is satisfactory;
- (c) meets the inherent requirements of the post; and
- (d) has been in the post for at least twelve calendar months.

(3) The higher salary applicable to the incumbent employee in the higher-graded post as provided under subregulation (2) shall take effect on the first day of the month following the month of approval by the executive authority in terms of subregulation (1).

(4) If the incumbent of a higher graded post continues to be employed in terms of subregulation (2), his or her commencing salary shall be set at the minimum notch of the higher salary level or at such salary that he or she received prior to the regrading, whichever is the higher.

(5) If an incumbent employee is not continued to be employed in the upgraded post as provided for in subregulation (2), an executive authority shall—

- (a) redesign the job to equate with the grade of the post before it was regraded;
- or
- (b) transfer the incumbent to another suitable post of an equivalent grade to the post that he or she occupied before it was regraded.

(6) Any transfer of an employee in terms of subregulation (5)(b) shall—

- (a) not alter the place of work of the employee without his or her consent; and
- (b) be effected by no later than the first day of the month following the month of the approval by the executive authority in terms of subregulation (5).

### **Overgraded posts**

**46.** (1) If the job weight demonstrates that a filled post is overgraded an executive authority shall—

- (a) redesign the job to equate with the grade of the post before it was regraded;  
or
- (b) reduce the grade of the post in line with the job weight and transfer the incumbent to another suitable post of an equivalent grade to the post that he or she occupied before it was regraded.

(2) Any transfer of an employee in terms of subregulation (1)(b) shall—

- (a) not alter the place of work of the employee without his or her consent; and
- (b) take place by the first day of the month following the month of approval by the executive authority of the grading of the post.

**Part 2****Remuneration and other benefits****Information on remuneration**

**47.** (1) The Minister shall publish and issue to departments the salary scale or scales used in the public service.

(2) In dealing with remuneration related information of an individual employee, a head of department and other employees of the department working with such information, shall respect the employee's right to privacy.

(3) In the week before an employee's salary pay day, a head of department shall provide him or her 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 systems of occupational classification and remuneration or OSD;
- (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; and
- (h) the actual amount paid to the employee.

## Leave

**48.** A head of department shall—

- (a) encourage an employee to fully utilise his or her annual leave entitlement in the leave cycle;
- (b) ensure that all leave taken by an employee is recorded accurately and in full; and
- (c) ensure that an employee does not abuse sick leave.

## Overtime

**49.** (1) An executive authority shall compensate an employee, other than a member of the SMS, for overtime work if—

- (a) the department has an approved written policy on overtime;
- (b) the executive authority has provided written authorisation in advance for the work; and
- (c) the monthly compensation for overtime constitutes less than 30 percent of the employee's monthly salary or the limitation determined by the Minister, whichever is the lesser.

(2) An overtime policy contemplated in subregulation (1) shall be established by the executive authority in accordance with applicable collective agreements, which shall determine—

- (a) categories of employees that may not receive compensation for overtime due to the nature of their duties;
- (b) the circumstances under which overtime work for an individual employee may be authorised;

- (c) how much overtime an employee may work in a given period;
- (d) how authorisation for overtime is recorded; and
- (e) other control measures, if necessary.

### **Suggestions, improvements and innovations**

**50.** If an employee makes a suggestion, improvement or innovation of exceptional value to the department or the public service as a whole or has exceptional ability, a special qualification or has rendered meritorious service, other than the service recognised in terms of the department's performance incentive scheme, 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 innovation; and
- (b) the executive authority may, only as provided for in a directive issued by the Minister, reward the employee through—
  - (i) a non-monetary reward;
  - (ii) a non-pensionable cash award not exceeding 20 per cent of the employee's pensionable annual salary; or
  - (iii) such a non-monetary reward and a cash award.

**Part 3****Working environment****Working hours**

**51.** Subject to any collective agreements and the Code of Good Practice on Arrangement of Working Time issued in terms of section 87 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), 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 of the department, taking into account—
  - (i) the needs of the public with due regard to the department's service delivery improvement plan; and
  - (ii) the needs and circumstances of employees, including family obligations and transport arrangements.

**Emergency work**

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

## **Health and safety**

**53.** A head of department shall establish and maintain a safe and healthy work environment for employees of the department and a safe and healthy service delivery environment for members of the public.

## **Employee health and wellness**

**54.** Every department shall have a policy that promotes the health and well-being of employees.

## **HIV and AIDS and other diseases**

**55.** (1) A head of department shall, as far as it is reasonable, ensure that the management of HIV and AIDS is mainstreamed for employees and the public to access appropriate services in line with the department's mandate and manage other diseases, injuries, and conditions of employees to ensure efficient, effective and sustainable delivery of services.

(2) In respect of 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 or any other diseases and take reasonable steps to reduce the risk of occupational exposure to HIV or any other disease;
- (b) take all reasonable steps to—

- (i) facilitate timely access to voluntary counselling and testing of an employee who has been exposed to HIV as a result of his or her employment;
  - (ii) prevent HIV or any other diseases in the workplace;
  - (iii) provide access to HIV treatment and sustained health and wellness for employees; and
  - (iv) provide post-exposure prophylaxis in line with prevailing guidelines and protocols for employees who have been exposed as a result of an occupational incident;
- (c) if any testing taken in paragraph(b)(i) 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).

(3) In respect of non-discrimination, a head of department shall—

- (a) ensure that no employee or prospective employee is unfairly discriminated against on the basis of his or her HIV or health status, or perceived HIV or health status, in any employment policy or practice; and
- (b) take appropriate measures to actively promote non-discrimination and all forms of stigmatisation in the workplace and to protect employees living with HIV or other diseases from such discrimination and stigmatisation.

(4) In respect of HIV testing and TB Screening, a head of department shall—

- (a) take reasonable steps to facilitate development and implementation of regular, free, voluntary, and confidential HIV counselling and testing for employees in the department;

- (b) take all reasonable steps to facilitate TB screening as well as support to complete treatment for eligible employees; and
- (c) ensure that no employee or prospective employee of the department is compelled to take a HIV test unless the Labour Court has declared such testing as justifiable in terms of the Employment Equity Act.

(5) In respect of confidentiality and disclosure, all employees shall treat information on an employee's HIV status or any other medical disease or condition as confidential and shall not disclose that information to any other person without the employee's written consent.

(6) In respect of a health promotion programme, a head of department shall—

- (a) introduce appropriate education, awareness and prevention programmes on HIV and AIDS or any other diseases for the employees in the department and, as far as possible, integrate those programmes with programmes that promote the health, productivity and well-being of employees;
- (b) create mechanisms within the workplace to encourage openness, acceptance, care and support for employees with HIV or any other diseases through a comprehensive employee health and wellness programme or health promotion programme for the department;
- (c) allocate adequate human and financial resources to implement the provisions of this regulation, and, where appropriate, form partnerships with other departments, organisations and individuals who are able to assist with health promotion programmes;
- (d) establish a HIV and AIDS and employee health and wellness 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 this regulation; and

- (e) ensure that the health promotion programme includes an effective internal communication strategy.

### **Workplace environment management**

**56.** A head of department shall introduce appropriate measures for the institutionalisation of the Public Service Charter in his or her department.

**Part 4*****Appointments and other employment matters*****General conditions for appointment**

- 57.** (1) An executive authority—
- (a) shall not appoint any person—
    - (i) under the age of 15 years of age; or
    - (ii) under the minimum school-leaving age in terms of any law.
  - (b) shall determine the health requirements for incumbency of a post in any case where it is part of the inherent requirements of the post;
  - (c) shall subject an employee or a candidate for employment to personnel suitability checks as directed by the Minister;
  - (d) shall ensure that each person upon appointment, is provided with written particulars of employment, including the terms and conditions of his or her service; and
  - (e) shall not, with due regard to section 10(a) of the Act, appoint a temporary employee permanently or vice versa without complying with regulations 65 and 67.

(2) An executive authority may, unless otherwise authorised by the Act, within the available budget and at a salary level linked to a grade determined through job evaluation or as determined in an OSD, employ persons additional to the establishment, where—

- (a) the incumbent of a post is expected to be absent for such a period that his or her duties cannot be performed by other employees;

- (b) a temporary increase in work occurs or it is necessary for any other reason to temporarily increase the staff of the department;
- (c) an employee's post has been abolished and he or she cannot be transferred into another post; or
- (d) an employee is part of a development programme as contemplated in regulation 58.

(3) Before making a decision on an appointment of a person additional to the establishment, an executive authority shall—

- (a) satisfy himself or herself that the person qualifies in all respects for the position and that his or her claims in his or her application for the position have been verified; and
- (b) record that verification in writing.

(4) The employment of a person additional to the establishment in terms of subregulation (2)(a) or (b) shall not exceed 12 consecutive calendar months unless otherwise directed by the Minister.

(5) An appointment shall take effect after approval by the relevant executive authority.

(6) An appointment shall take effect on the date of an employee's assumption of duty. If an employee assumes duty on the first working day of the month and this day is not the first day of the month, the first day of the month is deemed to be his or her date of assumption of duty.

### **Developmental programmes**

**58.** An executive authority may appoint persons who are part of a developmental programme, including but not limited to, internships, learnerships and

apprenticeships, on such terms and conditions that shall be determined by the Minister.

### **Utilisation of unpaid voluntary workers**

**59.** An executive authority may utilise unpaid voluntary workers under the following conditions:

- (a) The voluntary worker shall not in any way assist in carrying on or conducting the business of the department;
- (b) the terms and conditions as agreed between the volunteer and the department shall be recorded in writing;
- (c) the period of volunteerism per voluntary worker shall not exceed twelve consecutive calendar months;
- (d) a department may compensate a voluntary worker for actual expenses incurred in performing the volunteer work in accordance with departmental policies and such compensation shall not be construed as remuneration;
- (e) a voluntary worker shall perform work in a department under the supervision of an employee; and
- (f) such other conditions that the Minister may direct.

### **Re-appointment of former employees**

**60.** (1) An executive authority shall not re-appoint a former employee if that employee left the public service—

- (a) earlier on the condition that he or she would not accept or seek re-appointment; or

(b) due to ill health and cannot provide sufficient evidence of recovery.

(2) Notwithstanding subregulation (1)(a) and subject to regulation 61, an executive authority may appoint such former employee in a post if—

(a) no other suitable candidate could be recruited in terms of these Regulations;

(b) the appointment is made for a fixed term not exceeding three years; and that term may be extended only once for a further term not exceeding three years; and

(c) the employee has not been previously appointed in terms of this regulation.

(3) Notwithstanding subregulation (1)(a) and subject to regulation 61, an executive authority may appoint such former employee additional to the establishment if—

(a) the appointment is made for a period not exceeding the period contemplated in regulation 57(4); and

(b) the employee may not be appointed more than twice in terms of this regulation.

### **Prohibition on re-employment of former employees dismissed for misconduct**

**61.** (1) A former employee dismissed in terms of section 17(2)(d) of the Act for misconduct listed below shall not be re-appointed in the public service for the applicable period from the date of dismissal in relation to the kind of misconduct indicated in the table below:

	<b>ACT OF MISCONDUCT</b>	<b>PERIOD OF PROHIBITION</b>
1.	(a) The offering or receipt of any undue gratification or the facilitation of such offering or receipt; or (b) Committing theft or fraud; or	Five years

	(c) Conducting business with any organ of state or being a director of a public or private company conducting business with an organ of state; or (d) Misconduct resulting from a criminal conviction where an employee has been sentenced for two or more years imprisonment, without the option of a fine.	
2.	(a) Sexual harassment; or (b) Unfair discrimination against others on the basis of race, gender, disability, sexuality or other grounds prohibited by section 9(3) of the Constitution.	Four years
3.	(a) Financial misconduct as contemplated in section 81 or 82 of the Public Finance Management Act; or (b) Misconduct resulting from a criminal conviction where an employee has been sentenced for less than two years imprisonment, without the option of a fine.	Three years
4.	Contravention of any provision of regulations 10 to 13 of Chapter 2 of these Regulations other than misconduct referred to in items 1 to 3.	One year

(2) If an employee is dismissed for more than one act of misconduct, the prohibition on re-appointment shall run concurrently.

(3) An employee who is deemed to have been dismissed in terms of section 17(3)(a) of the Act and who is not reinstated in terms of section 17(3)(b), shall not be re-appointed in the public service for a period of one year after the effective date of his or her deemed dismissal.

## Secondments

**62.** (1) A secondment in terms of section 15(2) or (3) of the Act may only take place if—

- (a) the employee or person being seconded has the necessary competency;
- (b) the period of secondment does not exceed 12 calendar months, unless due to operational reasons determined otherwise by the Minister; and

(c) an agreement has been concluded between the receiving and seconding department, organ of state, other government or any other body.

(2) The recipient department, organ of state, other government or any other body in terms of section 15(2) or (3) of the Act shall bear the inclusive costs of secondment, unless the seconding department, organ of state, other government or any other body agree otherwise.

(3) If an employee is seconded upon his or her request in terms of section 15(3)(b)(i) of the Act, the relevant executive authority may bind him or her to continued employment in the relevant department or another department immediately after the secondment for a period not exceeding the period of the secondment.

#### **Direction to perform other functions or to act in another post**

**63.** (1) An employee directed to perform other functions in terms of section 32(1) of the Act shall perform the functions so directed for a period not exceeding 12 consecutive calendar months.

(2) An employee directed to act in another post in terms of section 32(2) should have the necessary competency for the post to which he or she is appointed to act.

(3) The period and other conditions of, and compensation for, so acting shall be subject to any applicable determination made in terms of section 3(5) of the Act, including any applicable deemed determination in terms of section 5(6) of the Act.

## **Determination of requirements for employment**

**64.** (1) An executive authority shall determine and record composite requirements for employment in any post on the basis of the main objectives, core functions and the inherent requirements of the job.

(2) An executive authority shall—

- (a) ensure that the requirements for employment do not unfairly discriminate against any person; and
- (b) comply with any statutory requirement for the appointment of employees.

(3) An executive authority shall not employ a foreign national, unless—

- (a) in the case of a permanent appointment, he or she is a permanent resident; or
- (b) in the case of a temporary appointment, he or she is a permanent resident or he or she has been issued with an appropriate permit in terms of the Immigration Act, 2002 (Act No. 13 of 2002).

## **Advertising**

**65.** (1) An executive authority shall ensure that vacant posts in the department are advertised, as efficiently and effectively as possible, to reach the entire pool of potential applicants, including designated groups.

(2) An advertisement for a post shall as a minimum specify the job title, salary scale, core functions, place of work, inherent requirements of the job, including any other requirements prescribed in these Regulations.

(3) A vacant post in the SMS shall be advertised nationwide.

(4) An executive authority shall advertise any other vacant post, as a minimum, within the department, but may also advertise such post—

- (a) in the public service;
- (b) locally; or
- (c) nationwide.

(5) When advertising outside the department, the department shall also advertise in the public service vacancy circular issued by the Department of Public Service and Administration.

(6) An advertisement for a post shall not unfairly discriminate against or prohibit any suitably qualified person or employee from applying.

(7) A funded vacant post shall be advertised within six months after becoming vacant and be filled within twelve months after becoming vacant.

(8) An advertisement contemplated in subregulation (4) may be utilised to create a pool of potential employees for a period of not more than 6 months from the date of advertisement to fill any other vacancy in the relevant department if—

- (a) the job title, core functions, inherent requirements of the job and the salary level of the other vacancy is the same as the post advertised; and
- (b) the selection process contemplated in regulation 67 has been complied with.

(9) With due regard to the criteria in regulation 67(5)(b) to (f), an executive authority may fill a vacant post without complying with subregulations (3) and (4) if—

- (a) the department can fill the post from the ranks of employees who have been declared in excess and are on a salary level linked to the grade of that post;

- (b) the department can appoint into the post an employee who was appointed under an affirmative action measure as contemplated in section 15 of the Employment Equity Act;
- (c) the post is to be filled through a transfer of an employee in terms of section 12(3) or 14 of the Act; or
- (d) the post falls within an occupation or category of employees as directed by the Minister.

### **Filling of posts in Office of executive authorities and Deputy Ministers**

**66.** (1) An executive authority may only fill vacancies in the Office of an executive authority or a Deputy Minister by means of:

- (a) an appointment in terms of section 9 of the Act for—
  - (i) the term of office of the incumbent executive authority or Deputy Minister which will terminate at the end of the first month after the month in which the term of that executive authority or Deputy Minister terminates for any reason; or
  - (ii) a period not exceeding three years;
- (b) a transfer in terms of section 14 of the Act, provided that the employment status of the transferred employees as permanent or temporary, as the case may be, shall remain unaffected by the transfer.

(2) Subject to the appointment criteria in regulation 67(5)(b) to (d), an executive authority may fill a post in the Office of the executive authority or a Deputy Minister in that executive authority's portfolio, in terms of subregulation (1) without complying with regulations 65(1); (3) and (4).

(3) Subregulation (1) shall not be construed as preventing the secondment in terms of section 15(2) or (3) of the Act of a person or an employee or an assignment in terms of section 32 of the Act of an employee to perform the functions of a post in the office of an executive authority or a Deputy Minister.

## **Selection**

**67.** (1) An executive authority shall appoint a selection committee to make a recommendation on the appointment to a post. The selection committee shall consist of at least three members who are employees of a grade equal to or higher than the grade of the post to be filled or suitable persons from outside the public service. However—

- (a) the chairperson of the selection committee, who shall be an employee, shall be of a grade higher than the post to be filled; and
- (b) in the event that the head of the component within which the vacant post is located, is graded lower than the vacant post, such a head may be a member of the selection committee.

(2) A selection committee constituted for the appointment of—

- (a) the head of a national department or national government component, shall be chaired by the executive authority responsible for the portfolio in which the vacancy exists and include at least two other executive authorities of a national department and a national head of department;
- (b) the head of the Presidency, shall be chaired by a Minister in the Presidency and include at least two other executive authorities of a national department and a national head of department;

- (c) the head of the Office of the Commission, shall be chaired by the chairperson of the Commission and include at least the Minister and one other executive authority of a national department and the head of a national department;
- (d) the head of the Office of the Premier, shall include at least three members of the Executive Council of the relevant province and the head of any national department and shall be chaired by a member of the Executive Council of the relevant province;
- (e) the head of a provincial department or provincial government component, shall be chaired by the relevant member of the Executive Council and include at least two other members of the Executive Council of the relevant province and the head of the Office of the Premier of the province;
- (f) a Deputy Director-General of a national department, shall be chaired by the executive authority responsible for the portfolio in which the vacancy exists and include at least two Deputy Ministers and the relevant head of department;
- (g) a Deputy Director-General of the Office of the Commission, shall be chaired by the chairperson of the Commission and include at least two Deputy Ministers and the head of the Office of the Commission; and
- (h) a Deputy Director-General of—
  - (i) the Office of the Premier, shall be chaired by a member of the Executive Council and include at least two other members of the Executive Council of the relevant province and the head of the Office of the Premier; and
  - (ii) a provincial department, shall be chaired by the relevant member of the Executive Council and include at least two other members of the

Executive Council of the relevant province and the head of the relevant provincial department.

(3) A selection committee shall, where possible, include adequate representation of designated groups.

(4) Any suitably qualified employee may provide secretarial or advisory services during the selection process.

(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 inherent requirements of the post;

(c) the department's employment equity plan as contemplated in regulation 27; and

(d) in respect of candidates applying for posts from salary level 9 and above—

(i) the level of understanding of the relevant departmental mandates;

(ii) the ability to identify problems and find innovative solutions; and

(iii) the ability to work in a team.

(6) A selection committee shall record the reasons for its recommendation with reference to the criteria mentioned in subregulation (5).

(7) If the selection committee is unable to recommend a suitable person for appointment from those who applied in terms of subregulation (5), the executive authority may, after that selection process has been completed, approve the head-hunting of one or more persons with the requisite competencies and subject such person or persons to the same selection process as those who applied.

(8) If an executive authority does not approve a recommendation of a selection committee, he or she shall record the reasons for his or her decision in writing.

(9) Before making a decision on an appointment or the filling of a post, an executive authority shall—

- (a) satisfy herself or himself that the candidate qualifies in all respects for the post and that his or her claims in his or her application for the post have been verified as directed by the Minister; and
- (b) record that verification in writing.

### **Probation**

**68.** (1) Persons or employees who are appointed to the public service for a period exceeding one year shall serve a probationary period of 12 calendar months, excluding the number of days for which leave has been taken by him or her during the period of probation or any extension thereof .

(2) An executive authority may require an employee appointed to another equally graded post to not serve the probation contemplated in subregulation (1).

(3) An employee who is continued to be employed in terms of regulation 45(2) is not required to serve probation in the higher graded post, provided that if he or she was on probation immediately before the upgrade, he or she shall remain on probation.

(4) An employee who is seconded to a department, any other organ of state, another government or any other body for a stated period shall, if on

probation at the time of the secondment, continue to serve his or her probation at that department, any other organ of state, another government or any other body.

(5) An employee who is transferred in terms of section 14 of the Act to—

- (a) an equally graded post shall, if on probation at the time of the transfer, continue to serve his or her probation in the new post; or
- (b) a higher graded post shall serve a probationary period of 12 calendar months from date of transfer.

(6) A supervisor of a probationer shall ensure that—

- (a) the probationer, at the commencement of the probationary period, is made aware of the performance and other requirements for obtaining confirmation of probation;
- (b) the probationer, on a quarterly basis, receives written feedback on his or her performance and compliance with other requirements;
- (c) if necessary, the probationer receives training, counselling or other assistance to meet the requirements for confirmation of probation; and
- (d) the probationer receives written confirmation of appointment or transfer at the end of the probationary period if he or she has met the requirements for confirmation of probation .

(7) The period of probation of an employee shall be extended—

- (a) by a period equivalent to the delay by the employee for signing his or her performance agreement or an agreement of a similar nature, on the due date as required in terms of regulation 72 (1); or
- (b) by the period required to comply with all other conditions to which his or her appointment is subject.

## Resignation

**69.** (1) An employee may resign from the public service, and for that purpose, shall—

(a) in the case of any employee who has been employed for one year or more, give at least four weeks' notice of resignation;

(b) in the case of an employee who has been employed for more than six months but not more than a year, give at least 2 weeks' notice of resignation;

(c) in the case of any employee who has been employed for six months or less, give at least one week's notice.

(2) Subject to section 16B(6) of the Act, the executive authority and the employee may agree to a period of notice shorter or longer than the applicable period referred to in subregulation (1).

(3) An executive authority shall stipulate the manner in which an employee shall submit his or her resignation.

(4) An executive authority shall conduct and record an exit interview with an employee who has resigned and record the reasons given by the employee for his or her resignation.

(5) An employee who has submitted his or her resignation to the executive authority may only withdraw his or her resignation with the written approval of the executive authority, which approval shall be made no later than the last working day.

(6) If notice of resignation is given in terms of subregulation (1), the executive authority may require the employee to return all official equipment and

documents, vacate his or her office and leave the department's premises before the expiry of the notice period on a day stipulated by the executive authority and not to perform any duties for the remaining notice period.

(7) If the executive authority acts in terms of subregulation (6), the benefits of the employee shall remain unaffected.

### **Employee records**

**70.** A head of department shall keep a record of each employee and of each post on the establishment in accordance with the information requirements as issued by the Minister.

**Part 5****Performance Management****Systems for performance management and development**

**71.** (1) An executive authority shall approve and implement a system for the performance management of employees, other than employees who are members of the SMS, in his or her department.

(2) An executive authority shall approve the department's performance management system in the financial year prior to the cycle in which the system is to be implemented, and any deviation from the provisions of the system during the cycle may be approved by the executive authority only if such deviation is not to the detriment of any employee.

(3) An executive authority may establish separate performance management systems for different occupational categories or levels of work.

(4) The cycle for performance management shall be linked to a financial year.

(5) A system or systems contemplated in subregulation (1) or (3) shall, subject to any determination by the Minister, provide for—

- (a) dimensions of performance assessment;
- (b) a weighting for the key result areas and competency requirements;
- (c) monitoring the employee's performance on a continuous basis with oral feedback on his or her performance at least quarterly if the employee's performance is satisfactory and in writing if the employee's performance is unsatisfactory;

- (d) a written mid-cycle performance assessment of the employee's performance and a written annual performance assessment. The annual assessment shall reflect the performance of the employee for the entire period of the cycle;
- (e) arrangements and structures for the purpose of performance moderation to ensure equity and consistency in the application of the employee performance management system; and
- (f) approval of the annual performance assessments referred to in paragraph (e) by 30 November of the financial year following the year of the assessments.

(6) An executive authority may use a single assessment instrument to assist in deciding on an employee's probation and performance.

(7) Heads of department shall ensure that accurate records of all performance assessments and the outcomes thereof are kept.

(8) An employee acting in a higher position shall be assessed at the level of his or her post that he or she occupied at the time immediately prior to the acting position. Regardless of whether or not the employee was remunerated for so acting, the performance incentives shall be calculated at the lower level.

### **Performance agreements and assessments**

**72.** (1) An employee shall enter into a performance agreement or an agreement of similar nature within three calendar months of his or her date of appointment and thereafter within two months of the beginning of each financial year. This agreement may be reviewed from time to time.

(2) If, during the performance cycle, an employee is appointed, seconded or transferred to another post or position at the same salary level, a new

performance agreement or agreement of a similar nature shall be entered into for the new post or position and the performance assessment shall take both periods of work in the cycle into consideration.

(3) A performance agreement or an agreement of a similar nature shall include at least the following:

- (a) a personnel number, job title, post grade as well as a clear description of the main objectives of the employee's job and the relevant outputs or key responsibility areas and competency requirements;
- (b) a workplan containing the outputs, activities and resource requirements; and
- (c) a personal development plan that identifies the employee's competency and developmental needs in terms of the inherent requirements of the job as well as methods to improve these.

(4) If both the employee and his or her supervisor do not sign the performance agreement or an agreement of similar nature due to a dispute relating to the content of the agreement, a person shall be appointed within one month after the expiry of the period stipulated in subregulation (1), to consider the dispute. Such person shall be appointed in the following manner:

- (a) in the case of a dispute involving a head of a national department, the appointment shall be made by the President, provided that the person so appointed, shall be an executive authority, a Deputy Minister or an employee who is a member of the SMS;
- (b) in the case of a dispute involving a head of the Office of the Premier or a provincial department, the appointment shall be made by the relevant Premier, provided that the person so appointed, shall be an executive

authority, a Deputy Minister or an employee who is a member of the SMS;  
and

(c) in the case of other employees, the appointment shall be made by the relevant executive authority, provided that the person so appointed, shall be an employee.

(5) The person appointed to consider the dispute in terms of subregulation (4) shall within one month of his or her appointment consider the dispute and recommend a performance agreement or an agreement of similar nature to be signed, in the case of a head of department, to the President, Premier or executive authority, as the case may be, and in the case of other employees to the head of department.

(6) The relevant employee and his or her supervisor shall sign the performance agreement or an agreement of similar nature, as recommended in subregulation (5), within two weeks of receipt thereof, failing which the agreement shall be deemed to have been signed from the date of the recommendation.

(7) No employee shall qualify for performance rewards as contemplated in regulation 73(1), including pay progression, if he or she has not signed a performance agreement or an agreement of similar nature within the period contemplated in subregulation (1).

(8) The supervisor and the employee shall ensure that annual performance assessments are finalised by 31 July of the financial year following the year of the assessment.

(9) The head of department shall ensure that the outcomes of the annual performance assessments are implemented by 31 December of the financial year following the year of the assessment.

(10) An employee who is appointed to act in a higher position or seconded for three months or longer, must amend the relevant parts as contemplated in subregulation (3) of her or his performance agreement or agreement of similar nature to include the new roles and responsibilities.

(11) If an employee, who is not a member of the SMS, is appointed to act in an SMS post for a period longer than three months, he or she must amend his or her performance agreement or workplan to include the new roles and responsibilities. In this instance the performance agreement and workplan shall be developed and managed in terms of the departmental performance management system for non-SMS employees.

(12) If an employee is absent with permission for a continuous period of three months or longer, the affected employee shall be regarded as having performed satisfactorily as contemplated in regulation 71(3)(c) for that period of absence within the performance cycle.

(13) An employee must be assessed by his or her supervisor for each performance cycle.

(14) An executive authority shall inform the employee of the outcome of his or her performance assessment.

(15) Based on the outcome of the performance assessment an executive authority—

- (a) may reward performance in terms of regulation 73;
- (b) may, where appropriate, provide training and development for employees;
- (c) shall manage poor performance.

## Rewarding performance

**73.** (1) Each executive authority shall establish a performance incentive scheme to reward employees or any category of employees within the limits determined by the Minister as contemplated in subregulation (3).

(2) A head of department shall establish a written departmental performance incentive scheme—

- (a) determining the nature, rules and control measures of the scheme;
- (b) communicating the nature and rules of the performance incentive scheme to all employees;
- (c) ensuring 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; and
- (d) including provisions for the introduction of non-financial incentives, if deemed appropriate.

(3) The Minister shall from time to time determine a percentage of a department's remuneration budget that shall not be exceeded for the purpose of granting performance rewards.

(4) The Minister shall from time to time determine the maximum percentage performance reward to be granted to an employee or categories of employees.

**Part 6**

**Training**

**Institutional arrangements regarding education, training and development**

**74.** (1) The Minister may oversee or ensure the participation of employees in any institution aimed at promoting training in the public service.

(2) A head of department shall ensure that sufficient budgeted funds are available for the training and development of employees and shall provide training and development opportunities for employees in his or her department.

**Training directed by Minister**

**75.** The Minister may issue directives regarding—

- (a) the training of employees or categories of employees in the public service;
- (b) the registration of such training and the bodies providing such training in terms of the applicable legislation; and
- (c) the utilisation of training budgets.

**Occupational specific competencies and training**

**76.** An executive authority shall determine the training required for various occupational categories or specific employees in his or her department.

## Training assistance

**77.** (1) For purposes of enhancing the performance of the work of the department, a head of department may grant financial or other assistance for any study, training or research where—

- (a) an employee undertakes the study, training or research on the initiative of the department; or
- (b) the employee has requested any such assistance and the study, training or research is related to the employer's skills requirements.

(2) A head of department may grant financial or other assistance to employees for part-time or full-time activities at either local or international institutions. The head of department may also grant assistance for studies and training through training interventions such as short courses, congresses, symposia, seminars, conferences, workshops, lectures and study tours.

(3) A head of department may—

- (a) grant bursaries for higher education to employees or other persons in terms of a human resources development plan contemplated in regulation 28;
- (b) allocate bursaries for general education and continuing education and training to employees; and
- (c) require contractual service in recompense for assistance received in respect of general education or continuing education and training.

(4) A head of department may defray any reasonable actual expenses associated with study, research or training.

(5) An employee shall retain his or her salary, which shall count as part of the financial assistance from his or her department during any study, research or training.

(6) Subject to the Treasury Regulations, a head of department may waive the whole or any part of any study debts.

(7) Where a head of department provides a bursary for higher education to an employee or any other person the bursary holder must enter into a contract with the department in terms of which he or she, in the case of a bursary holder who undertakes—

(a) full-time study, shall redeem the bursary by serving the relevant department or any other department on the basis of one year for each year of study or any part thereof; or

(b) part-time study, shall redeem the bursary by serving the relevant department or any other department for at least one year after attaining the relevant qualification.

(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.

(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 he or she shall serve the department for a commensurate period.

(10) For the purpose of this regulation—

- (a) **"continuing education and training"** means continuing education and training as defined in section 1 of the Continuing Education and Training Act, 2006 (Act No. 16 of 2006);
- (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 7****Labour matters****Mandating and management of negotiations**

**78.** (1) Collective bargaining shall be regulated by the Labour Relations Act.

(2) An executive authority may enter into a collective agreement on a matter of mutual interest only if that authority—

- (a) is responsible for managing collective bargaining on behalf of the State as employer in that forum;
- (b) has authority to deal with the matter concerned; and
- (c) meets the fiscal requirements contained in regulation 79.

(3) In the Public Service Co-ordinating Bargaining Council, which deals only with matters transverse to the public service, the Minister is responsible for negotiations on behalf of the State as employer.

(4) In a sectoral bargaining council which deals with matters transverse to a sector in the public service—

- (a) if the sector consists of only one department, the executive authority of that department is responsible for collective bargaining on behalf of the State as employer; or
- (b) if the sector consists of more than one department, the Cabinet shall nominate one of the departments' executive authorities to be responsible for collective bargaining on behalf of the State as employer.

### **Matters with fiscal implications**

**79.** An executive authority shall enter into a collective agreement in the appropriate bargaining council on any matter that has financial implications only if—

- (a) he or she 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) he or she can cover the cost—
  - (i) from his or her departmental budget;
  - (ii) on the basis of a written commitment from the Treasury to provide additional funds; or
  - (iii) from the budgets of other departments or agencies with their written agreement and Treasury approval.

### **Summoning witnesses**

**80.** (1) If a chairperson of a disciplinary hearing—

- (a) is of the opinion that a person may be able to give material information concerning the subject of the hearing; or
- (b) reasonably suspects or believes that a person possesses, has custody or controls any document or object which has any bearing on the subject of the hearing,

the chairperson may summon that person to appear before the chairperson at the time and place specified in the summons, to testify or to produce such document or object.

(2) A summons to a person to appear before the chairperson of the hearing or to produce a document or object shall be signed by the chairperson and be served on such person by delivering it to him or her or by sending it by registered post to him or her.

(3) A chairperson of a disciplinary hearing may call upon and administer an oath to or accept an affirmation from any person present at the hearing who was summoned to testify at the hearing.

(4) A person who calls upon a witness to testify is responsible for the travel, subsistence and other reasonable costs for that witness.

(5) A department is responsible for the travel, subsistence and other reasonable costs for a person summoned by the chairperson to testify at a hearing, in accordance with the rates determined by the Minister.

(6) Notwithstanding subregulation (4) or (5), no witness fee shall be paid to a person who, at the time of the hearing, is employed by a department.

## **CHAPTER 5**

### **SENIOR MANAGEMENT SERVICE**

#### **Establishment of SMS**

- 81.** A SMS is hereby created to—
- (a) promote a public service management culture of excellence based on the values and principles in section 195(1) of the Constitution and the provisions of the Act;
  - (b) facilitate co-operation amongst management structures of departments;
  - (c) transfer organisational, managerial, professional and strategic expertise across the public service; and
  - (d) provide an organised network for the dissemination of policy, strategy and expertise.

#### **Composition of SMS**

**82.** The number of members of the SMS per department and their functions shall be determined by the executive authority in terms of regulations 25(2) and 26.

#### **Conflict between this Chapter and other Chapters**

**83.** If any conflict arises between a provision of this Chapter and a provision of any other Chapter of these Regulations, the provisions of this Chapter shall prevail.

## **Handbook for SMS**

**84.** The Minister may include any or all of the determinations, directives, guidelines and provisions applicable to the SMS in a Handbook contemplated in section 42 of the Act.

## **Advertising of posts**

**85.** 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.

## **Competency-based selection**

**86.** 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.

## **Employment contracts**

**87.** (1) A head of department shall within one month of his or her date of appointment conclude a contract of employment as set out in Annexure 2.

(2) Any other person appointed to the SMS shall within one month of his or her date of appointment conclude a contract of employment, which shall be based on the provisions set out in Annexure 3 or 4, as the case may be.

### **Performance management and development**

**88.** The Minister shall develop and approve a system for performance management and development for members of the SMS or categories of the SMS.

### **Determination of conditions of service**

**89.** (1) The Minister shall, in terms of section 3(5) of the Act, annually make determinations regarding the total cost-to-employer package applicable to members of the SMS. Such determinations shall be implemented with effect from 1 April of each year.

(2) Any determination made by the Minister in terms of subregulation (1) shall consider any relevant advice of the panel established in terms of regulation 98(2).

### **Training and development**

**90.** (1) The Minister shall oversee the development of programmes and assist executive 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.

(2) 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.

(3) A member of the SMS shall avail himself or herself to train employees.

## **Ethics and conduct**

**91.** Members of the SMS shall—

- (a) display the highest possible standards of ethical conduct;
- (b) set an example to those employees reporting to them and maintain high levels of professionalism and integrity in their interaction with political office-bearers and the public;
- (c) ensure that they minimise conflicts of interest and that they put the public interest first in the performance of their functions; and
- (d) avoid any conflict of interest that may arise in representing the interests of his or her department and being a member of a trade union, as defined in section 213 of the Labour Relations Act.

**Misconduct and incapacity**

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

**CHAPTER 6****INFORMATION MANAGEMENT AND ELECTRONIC GOVERNMENT****Acquisition, management and use of information and communication  
technology resources**

**93.** The head of department shall ensure that the acquisition, management and use of information and communication technologies by the department—

- (a) enhances 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) improves the productivity of the department;
- (c) promotes an environmentally friendly public service; and
- (d) ensures cost-efficiency for the department.

**Information security standards**

**94.** (1) The Minister shall, subject to any other laws to the contrary and after consultation with relevant Ministers, issue information security standards for the public service.

(2) Any person working with public service information resources shall comply with the information security standards issued in terms of subregulation (1).

### **Information security vigilance**

**95.** (1) A head of department shall ensure the maintenance of information security vigilance at all times in the department.

(2) When non-compliance with the information security standards referred to in regulation 94(1) comes to the knowledge of an employee of a department, he or she shall report it immediately to the head of department or an employee designated for this purpose by that head.

### **Incident reports**

**96.** A head of department shall regularly, on the basis of the threat posed by an incident, submit to the Director-General: State Security Agency, the Auditor-General and such other authorities as the head considers appropriate—

- (a) an incident report of every instance of non-compliance with the information security standards referred to in regulation 94(1); and
- (b) a plan on how incidents of non-compliance will be corrected and how to prevent similar incidents in future.

### **Minimum interoperability standards**

**97.** (1) The Minister shall issue Minimum Interoperability Standards (herein referred to as the "MIOS") for the public service.

(2) The MIOS shall include provision for standards and specifications for—

- (a) interconnectivity;

- (b) data integration; and
- (c) information access.

(3) Any new information and communication technology system developed or acquired or any upgrade of any existing information and communication technology system in the public service shall comply with the MIOS.

(4) A head of department shall—

- (a) include compliance with the MIOS in the project approval procedure; and
- (b) ensure compliance to the MIOS in the acquisition or use of information and communication technology.

**CHAPTER 7**  
**ADVISORY BODIES TO MINISTER FOR PUBLIC SERVICE AND**  
**ADMINISTRATION**

**Establishment of advisory bodies**

**98.** (1) An Advisory Body is hereby established to advise the Minister on the functions mentioned in section 3(1)(a) to (i) of the Act.

(2) The Minister may once every three years establish an additional Advisory Body to advise the Minister on the conditions of service of members of the SMS.

**Function of advisory body**

**99.** (1) An Advisory Body established in terms of regulation 98 shall advise the Minister on any matter as provided for upon request by the Minister from time to time and in such manner as the Minister directs.

(2) Any advice to the Minister must include the minority view of any member of the Advisory Body.

(3) An Advisory Body is an ad hoc body and its members shall serve in a part-time capacity.

**Composition and appointment of advisory body**

**100.** (1) An Advisory Body may consist of up to five persons appointed in writing by the Minister.

(2) The members of an Advisory Body shall be persons with knowledge or experience in one or more matters related to the Advisory Body to which they are appointed.

(3) In appointing members to an Advisory Body, the Minister shall endeavour that the Advisory Body, where possible, includes adequate representation of designated groups.

### **Disqualification of members of advisory body**

**101.** A person may not be appointed as a member of an Advisory Body if he or she—

- (a) is not a citizen or a permanent resident of the Republic;
- (b) is not a fit and proper person;
- (c) has been convicted of a criminal offence, whether in the Republic or elsewhere, and was sentenced to imprisonment without the option of a fine, unless it has been established that such a person was granted amnesty in respect of an offence of which he or she was convicted and such an offence was politically motivated; or
- (d) has been disqualified under any law from practising his or her profession.

### **Term of office and vacating office of members of advisory body**

**102.** (1) The members of an Advisory Body shall, subject to subregulations (3) to (5), hold office for a period of not more than three years with effect from the date of their appointment.

(2) The members of an Advisory Body shall at the expiry of their term of office be eligible for re-appointment for not more than one consecutive term.

(3) A member of an Advisory Body shall vacate his or her office if that member—

- (a) has been absent from more than three consecutive meetings of an Advisory Body without the permission of the Chairperson, which permission may not be unreasonably withheld;
- (b) is disqualified under any law from practising his or her profession;
- (c) is convicted of a criminal offence without the option of a fine;
- (d) is determined no longer to be a fit and proper person;
- (e) gives one month's written notice to the Minister, unless the Minister approves a shorter period; or
- (f) ceases to be a citizen or a permanent resident of the Republic.

(4) If the Minister vacates office for any reason, a member of an Advisory Body shall vacate his or her office at the end of the first month after the month in which the Minister vacates office unless the new incumbent Minister determines that the member shall continue in office for the remainder of that member's term.

(5) A member of an Advisory Body shall vacate his or her office if the Minister terminates his or her membership for a reason that is justified.

### **Allowances and disbursement to members of advisory body**

**103.** (1) A member of the Advisory Body shall be remunerated according to the scales determined, from time to time, by the National Treasury in terms of the Treasury Regulations.

(2) A member of an Advisory Body shall be compensated for subsistence, travel and other expenses in terms of the applicable policies of the Department of Public Service and Administration.

### **Chairperson of advisory body**

**104.** (1) The Minister shall, from among the members, appoint a chairperson.

(2) The chairperson of an Advisory Body may resign as such without terminating his or her membership of an Advisory Body, in which case a new chairperson shall be appointed in terms of subregulation (1).

### **Meetings of advisory body**

**105.** (1) Following a request of the Minister in terms of regulation 99(1), an Advisory Body shall meet as determined by the chairperson.

(2) When the chairperson is absent or unable to perform his or her functions, the Minister must designate another member to act as chairperson. The member so acting is entitled to the remuneration applicable to the chairperson for the duration of the acting period.

(3) An Advisory Body must determine the procedure for calling meetings and the procedures to be followed at meetings.

(4) The majority of the members of an Advisory Body constitute a quorum for a meeting of an Advisory Body.

**Resources for advisory body**

**106.** (1) The Director-General: Public Service and Administration shall, in consultation with the Minister, designate employees in that Department to provide administrative services to an Advisory Body.

(2) If an Advisory Body requires professional services, the Director-General: Public Service and Administration may, with the approval of the Minister, designate employees in the Department to provide such services or, if unavailable, procure such services in accordance with applicable supply chain management prescripts.

(3) Subject to any law regulating access to information, the Department of Public Service and Administration, the National School of Government and the Centre for Public Service Innovation must provide an Advisory Body with such information an Advisory Body may require to perform its functions.

(4) The expenses of an Advisory Body shall be paid from the budget of the Department of Public Service and Administration and other funds received from other sources approved by the Minister.

**CHAPTER 8**  
**COMMUNITY DEVELOPMENT WORKERS PROGRAMME**

**Framework for community development workers programme**

**107.** The Minister shall, after consultation with the Minister of Co-operative Governance and Traditional Affairs, approve a framework for a community development worker programme to regulate the CDWP in accordance with the objectives set out in regulation 108 (herein called the CDWP framework).

**Objectives of CDWP**

- 108.** (1) The objectives of the CDWP are to—
- (a) assist with improving service delivery and accessibility of services to the public;
  - (b) assist with inter-governmental coordination both between government line departments and the three spheres of government;
  - (c) facilitate community development and stronger interaction and partnerships between government and communities; and
  - (d) support participatory democracy.
- (2) The CDWP may achieve the objectives contemplated in subregulation (1) by—
- (a) regularly communicating governmental and other information to communities in an accessible way;

- (b) providing feedback to government regarding community experiences of service and governance;
- (c) providing early warnings to government of any obvious reduction in service standards or performance that could lead to the collapse or significant impairment of the overall service function;
- (d) reporting any corruption or irregularity that is encountered within any sphere of government, government department, community organisation or private company;
- (e) facilitating government assistance to community projects where required and appropriate;
- (f) facilitating community interaction with public works programmes;
- (g) assisting communities to engage with and provide input into integrated development plans and other programmes of government;
- (h) assisting in the coordination of inter-departmental programmes and programmes that involve more than one sphere of government;
- (i) maintaining communication with community based organisations and initiatives of civil society;
- (j) promoting the principles of Batho Pele and community participation;
- (k) improving community linkages to relevant public entities, non-governmental organisations and private donors;
- (l) monitoring and reporting significant trends within communities related to health, social development and livelihood security as well as the impact of associated development projects;
- (m) performing such other functions consistent with the objectives of the CDWP as may be determined by the CDWP Framework.

**ANNEXURE 1****TRANSITIONAL ARRANGEMENTS**

(1) All approvals and deemed approvals granted to employees in terms of section 30 of the Act prior to the coming into effect of the determination contemplated in regulation 24 shall terminate with effect from 6 months after the commencement thereof.

(2) An employee, who at the time of the coming into effect of these Regulations, conducts business with an organ of state or is a director of a company which conducts business with an organ of state, other than an employee who is in his or her official capacity a director of company listed in schedule 2 or 3 of the Public Finance Management Act, shall—

- (a) within one month, disclose that the employee is conducting business with an organ of state or is a director of a company that conducts business with the organ of state;
- (b) within six months-
  - (i) cease conducting business with the organ of the state or resign as an employee;
  - (ii) resign as a director of a company that conducts business with an organ of state or resign as an employee;
- (b) if the employee does not resign within the six month period, the employee must submit proof that the employee has ceased conducting business or has resigned as a director of a company that conducts business with an organ of the state within a month of doing so.

(3) The members of the Advisory Body employed on a full-time basis immediately prior to the coming into operation of these Regulations shall continue to be employed on a full-time basis until the expiry of his or her term.

**ANNEXURE 2**

**EMPLOYMENT CONTRACT AS PRESCRIBED IN TERMS OF SECTION 12 OF  
THE PUBLIC SERVICE ACT, 1994, FOR HEADS OF DEPARTMENT**

**ENTERED INTO BY AND BETWEEN**

The Government of the Republic of South Africa, herein represented by

\_\_\_\_\_

\_\_\_\_\_ (full name of Executive Authority or her/his  
delegate) in the capacity of \_\_\_\_\_ (indicate  
portfolio or post) (herein referred to as "the Employer")

**AND**

\_\_\_\_\_ (full name) and

\_\_\_\_\_ (identity number) in the capacity of

\_\_\_\_\_ (indicate post) (herein referred to as the "Employee")

**WHEREBY IT IS AGREED AS FOLLOWS:—**

## 1. APPOINTMENT

1.1 The Employer hereby appoints the Employee, who agrees and accepts such appointment as Head of Department of \_\_\_\_\_  
(National Department/Office of the Premier/Provincial Department, National/Provincial Government Component) in terms of section 12 of the Public Service Act, 1994, as amended (herein referred to as "the Act") for a period of \_\_\_\_\_ years/months commencing on \_\_\_\_\_ (herein referred to as the "commencement date") and terminating on \_\_\_\_\_ .

1.2 The Employee—

(a) serves the Employer as Head of the

\_\_\_\_\_

(National/Provincial Department, National/Provincial Government Component, or the Office of a Premier) at such place as may from time to time be directed by the Employer;

(b) is responsible for the efficient management and administration of

\_\_\_\_\_ National/Provincial Department, National/Provincial

Government Component, or the Office of a Premier) as provided in section 7 the Act and as set out in the performance agreement referred to in clause 7;

(c) responsible for the exercise of the powers and the performance of the duties entrusted to a head of department in general or to the incumbent of Head of Department of

\_\_\_\_\_ (National/Provincial

Department, National/Provincial Government Component, or the Office of a

Premier) in particular, by or in terms of the Constitution of the Republic of South Africa, 1996, the Act or any other applicable law;

- 1.3 The employment of the Employee is subject to—
- (a) a security clearance of \_\_\_\_\_ (state confidential, secret, top secret) being obtained;
  - (b) a probationary period as prescribed in the regulations made under the Act (herein referred to as the Regulations); and
  - (c) the submission by the Employee of original certificates of her/his academic and professional qualifications, service certificates, proof of SA citizenship, valid work permit or permanent residency.

1.4 Any matter arising out of this Contract, which is not specifically provided for herein, must be dealt with in accordance with the provisions of the Act and regulations, determinations and directives issued thereunder and any other legal provisions applicable to the Employee.

## **2. REMUNERATION**

2.1 The Employee is paid an annual all-inclusive flexible remuneration package of R \_\_\_\_\_ from the commencement date, which consists of the following:

- (a) a basic salary consisting of R \_\_\_\_\_ calculated as \_\_\_\_ % of the inclusive flexible remuneration package;

- (b) the Employer's contribution to the Government Employees Pension Fund (herein referred to as "the GEPF") (R\_\_\_\_\_), if applicable, calculated as \_\_\_\_\_ % on the basic salary; and
- (c) a flexible portion of R \_\_\_\_\_, calculated as the inclusive flexible remuneration package minus the basic salary and minus the Employer's contribution to the GEPF (if applicable), 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 The Employee is paid a monthly non-pensionable head of department allowance calculated at 10% of the Employee's all inclusive remuneration package as may be determined from time to time.

2.3 The annual remuneration and benefits is payable in 12 equal monthly instalments.

2.4 The general conditions of service and benefits are as provided for in terms of the Act and the Government Employees Pension Law, 1996 and the rules thereunder (if applicable). The parties to this Contract accept that the general conditions of service and benefits may be changed from time to time in terms of the Act or any other applicable law.

### **3. TRANSFER DURING CONTRACT PERIOD AND RE-APPOINTMENT ON EXPIRY OF CONTRACT**

3.1 The Employee specifically accepts that the provisions of section 12 of the Act will be applicable.

3.2 If the Employee was in a permanent position in a department immediately before appointment as head of department, he or she relinquishes his or her permanent status on accepting appointment as head of department.

### **4. TERMINATION OF EMPLOYMENT**

4.1 The Employee's employment in the public service terminates on—

- (a) completing the term or extended term of office, which is regarded as retirement by section 16(3) of the Act;
- (b) retirement in terms of any other provision of section 16 of the Act;
- (c) dismissal in terms of section 17 of the Act;
- (d) resignation after serving the required notice period; or
- (e) death.

4.2 Pension and other payable benefits shall be paid in accordance with the applicable prescripts.

4.3 If the Employee gives notice of resignation as contemplated in clause 4.1(d), the executive authority may require the employee to return all official

equipment, vacate his or her office and leave the department's premises before the expiry of the notice period on a day stipulated by the executive authority and not to perform any duties until the end of the notice period.

4.4 The invoking of clause 4.3 shall not affect the Employee's benefits.

4.5 In the case of incapacity and misconduct, the Employer shall deal with the Employee, in accordance with the relevant labour legislation and any directive issued by the Minister.

## **5. EXTENSION OF TERM OF OFFICE AND TRANSFER**

5.1 The Employer must in writing confer with the Employee at least four calendar months before the expiry of the term contemplated in clause 1.1 whether he or she proposes to retain the Employee in service for any extended period not exceeding five years or not. If the Employee is so informed of such intention to retain him or her in service for an extended term, he or she shall in writing inform the Employer, within one calendar month from the date of that communication, of his or her acceptance or not of such extended term.

5.2 If agreement is reached that the Employee's term of office is extended, this contract shall be amended through an addendum indicating the new term of office and changes (if any) in remuneration and duties of the Employee.

5.3 If the Employer does not renew the contract period beyond the initial term as stated in clause 1, the Employee shall be entitled to the applicable pension and other benefits (if any).

5.4 If the Employee is transferred in terms of section 12(3) of the Act, the Parties shall either amend this contract through an addendum or sign a new contract.

## **6. CONDUCT**

6.1 The Employee undertakes to the Employer that he or she—

- (a) shall not, without the applicable consent and during his or her employment or at any time, 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;
- (b) shall not, during his or her employment or at any time thereafter, use any record so defined and obtained as a result of his or her 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;
- (c) will—
  - (i) if so requested by the Employer during his or her employment or on the termination of his or her employment, submit to the Employer any record so defined and in the Employee's possession as a result of his or her employment; and

- (ii) not retain any copies of or extracts from such record, except with the written consent of the Employer; and
- (d) will comply with the prescribed Code of Conduct as contained in the Regulations.

6.2 The parties agree that clause 6.1 (a) and (b) is severable from this Contract and shall remain in effect when this Contract terminates for whatever reason.

**7. PERFORMANCE AGREEMENTS**

The Employee must enter into a performance agreement with the Employer as prescribed in the Regulations and directives issued by the Minister for the Public Service and Administration under the Act and the Regulations.

**8. OTHER DUTIES OF HEAD OF DEPARTMENT**

Any other specific duties of the head of department:

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## **9. GENERAL**

### **9.1 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, obligations, assets or interests of each other.

### **9.2 Interpretation of Contract**

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

### **9.3 Jurisdiction of courts**

- (a) 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.
- (b) It shall not be a breach of this 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.

### **9.4 Variation**

- (a) This 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.

- (b) 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.

### 9.5 **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.

## 10. **NOTICE AND DOMICILIUM**

10.1 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 his or her domicile 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 domicile.

10.2 All notices to be given in terms of this Contract will—

- (a) be given in writing; and
- (b) be hand delivered or sent by prepaid registered post or by telefax; and
- (c) if hand delivered, be presumed to have been received on the date of delivery; or
- (d) if sent by prepaid registered post, be presumed to have been received within three business days of posting unless the contrary is proved; or
- (e) 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 (PRESIDENT/PREMIER OR DELEGATE ON BEHALF OF THE GOVERNMENT)**

2. ....

**SIGNED** by the Employee at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_

**AS WITNESSES:**

1. ....

**EMPLOYEE (HEAD OF DEPARTMENT)**

2. ....

**ANNEXURE 3**

**PERMANENT EMPLOYMENT CONTRACT IN ACCORDANCE WITH CHAPTER 5  
OF THE PUBLIC SERVICE REGULATIONS, 2016, 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 Executive Authority or her/his  
delegate) in the capacity of \_\_\_\_\_ (indicate  
portfolio or post) (herein referred to as "the Employer")

**AND**

\_\_\_\_\_ (full name) \_\_\_\_\_

(identity number) as member of the SMS in the \_\_\_\_\_ capacity of

\_\_\_\_\_ (indicate post) (herein referred to as the  
"Employee")

**WHEREBY IT IS AGREED AS FOLLOWS:****1. APPOINTMENT**

1.1 The Employer hereby appoints the Employee, who agrees and accepts appointment as a member of the SMS in terms of section 9 of the Public Service Act, 1994, as amended (herein referred to as "the Act") in the post of \_\_\_\_\_ commencing on \_\_\_\_\_ (herein referred to as "the commencement date"). The Employee's employment and conditions of service shall be governed by the Act, the Public Service Regulations, 2016 (herein referred to "the Regulations") and any other legal provisions applicable to the Employee.

1.2 In terms of this Contract—

- (a) the Employee shall serve the Employer in \_\_\_\_\_ (National/Department/Office of the Premier/Provincial Department, National/Provincial Government Component) at such place as may from time to time be directed by the Employer;
- (b) 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.

1.3 The employment of the Employee is subject to—

- (a) a security clearance of \_\_\_\_\_ (state confidential, secret or top secret) being obtained;

- (b) a probationary period as prescribed in the Regulations; and
- (c) the submission by the Employee of original certificates of her/his academic and professional qualifications, service certificates and proof of SA citizenship or permanent residency.

1.4 The Employee may be required to perform other duties or to work at other places.

1.5 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 and the regulations, determinations and directives issued thereunder and any other legal provisions applicable to the Employee.

## **2. REMUNERATION**

2.1 The Employee shall be paid an inclusive flexible remuneration package of R \_\_\_\_\_ from the commencement date, which shall consist of the following—

- (a) a basic salary consisting of R \_\_\_\_\_ calculated as \_\_\_\_\_% of the inclusive flexible remuneration package;
- (b) the Employer's contribution to the Government Employees Pension Fund (herein referred to as "the GEPF"), (R \_\_\_\_\_) , calculated as \_\_\_\_\_ % on the basic salary; and
- (c) a flexible portion of R \_\_\_\_\_, calculated as the inclusive flexible remuneration package minus the basic 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 GEPF is compulsory. The rate of contribution for the Employee and Employer shall be as determined by the GEPF.

2.3 The annual salary and benefits will be payable in 12 equal monthly instalments.

2.4 The general conditions of service and benefits will be as provided for in terms of the Act, the Government Employees Pension Law, 1996, the rules thereunder and any other legal provisions applicable to the Employee. The parties to this Contract accept that the general conditions of service and benefits may be changed from time to time by means of determinations and directives by the Minister for the Public Service and Administration.

### **3. TERMINATION OF EMPLOYMENT**

3.1 The Employee's employment in the public service terminates on—

- (a) retirement in terms of section 16 of the Act;
- (b) dismissal in terms of section 17 of the Act;
- (c) resignation after serving the required notice period; or
- (d) death.

3.2 Pension and other payable benefits shall be paid in accordance with the applicable prescripts.

3.3 If the Employee gives notice of resignation as contemplated in clause 3.1(c), the executive authority may require the employee to return all official equipment, vacate his or her office and leave the department's premises before the expiry of the notice period on a day stipulated by the executive authority and not to perform any duties until the end of the notice period.

3.4 The invoking of clause 3.3 shall not affect the Employee's benefits.

3.5 In the case of incapacity and misconduct, the Employer shall deal with the Employee, 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 he or she—

- (a) shall not, without the applicable consent and during his or her employment or at any time, 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;
- (b) shall not, during his or her employment or at any time thereafter, use any record so defined and obtained as a result of his or her 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;

(c) shall—

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

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

(d) shall comply with the prescribed Code of Conduct as contained in the Regulations.

4.2 The parties agree that clause 4.1 (a) and (b) is severable from this Contract and shall remain in effect when this Contract terminates for whatever reason.

## **5. PERFORMANCE AGREEMENTS**

The Employee shall enter into a performance agreement with the Employer as prescribed in the Regulations and directives issued by the Minister for the Public Service and Administration under the Act and the Regulations.

## **6. OTHER DUTIES OF EMPLOYEE**

Any other specific duties:

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## **7. GENERAL**

### **7.1 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.

### **7.2 Interpretation of Contract**

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

### **7.3 Jurisdiction of courts**

- (a)* 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.
- (b)* It shall not be a breach of this 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.

#### 7.4 **Variation**

- (a) This 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.
- (b) 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 Law).

#### 7.5 **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.

### **8. NOTICE AND DOMICILIUM**

8.1 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 his or her 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.

8.2 All notices to be given in terms of this Contract shall—

- (a) be given in writing; and
- (b) be delivered or sent by prepaid registered post or by telefax; and
- (c) if delivered, be presumed to have been received on the date of delivery; or
- (d) if sent by prepaid registered post, be presumed to have been received within three business days of posting unless the contrary is proved; or
- (e) 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. ....



**ANNEXURE 4**

**EMPLOYMENT CONTRACT FOR A FIXED TERM OR A SPECIFIC PROJECT IN  
ACCORDANCE WITH CHAPTER 5 OF THE PUBLIC SERVICE REGULATIONS,  
2016, 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 Executive Authority or her/his  
delegate) in the capacity of \_\_\_\_\_ (indicate  
portfolio or post) (herein referred to as "the Employer")

**AND**

\_\_\_\_\_ (full name) and -

\_\_\_\_\_ (identity number) as member of the SMS in the  
capacity of \_\_\_\_\_ (indicate post) (herein referred to  
as the "Employee")

**WHEREBY IT IS AGREED AS FOLLOWS:****1. APPOINTMENT**

1.1 The Employer hereby appoints the Employee, who agrees and accepts appointment as a member of the SMS in terms of section 9 of the Public Service Act, 1994, as amended (herein referred to as "the Act") in the post of \_\_\_\_\_ for a period of \_\_\_\_\_ years/calendar months commencing on \_\_\_\_\_ and terminating on \_\_\_\_\_.

The employee's employment and conditions of service shall be governed by the Act, the Public Service Regulations, 2016 (herein referred to "the Regulations") and any other legal provisions applicable to the Employee.

1.2 In terms of this Contract—

- (a) the Employee shall serve the Employer in \_\_\_\_\_ (National Department/Office of the Premier/Provincial Department, National/Provincial Government Component), at such place as may from time to time be directed by the Employer;
- (b) 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.

1.3 The employment of the Employee is subject to—

- (a) a security clearance of \_\_\_\_\_ (state confidential, secret or top secret) being obtained;
- (b) a probationary period as prescribed in the Regulations; and
- (c) the submission by the Employee of original certificates of her/his academic and professional qualifications, service certificates, proof of SA citizenship, valid work permit or permanent residency.

1.4 The Employee may be required to perform other duties or to work at other places.

1.5 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 and the regulations, determinations and directives issued thereunder and any other legal provisions applicable to the Employee.

## **2. REMUNERATION**

2.1 The Employee shall be paid an inclusive flexible remuneration package of R \_\_\_\_\_ from the commencement date, which shall consist of the following—

- (a) a basic salary consisting of R \_\_\_\_\_ calculated as \_\_\_\_\_ % of the inclusive flexible remuneration package;
- (b) the Employer's contribution to the Government Employees Pension Fund (herein referred to as "the GEPF"), (R \_\_\_\_\_), (if applicable), calculated as \_\_\_\_\_ % on the basic salary; and

(c) a flexible portion of R \_\_\_\_\_, calculated as the inclusive flexible remuneration package minus the basic salary and minus the Employer's contribution to the GEPF (if applicable), 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 The annual salary and benefits will be payable in equal monthly instalments.

2.3 The general conditions of service and benefits will be as provided for in terms of the Act, the Government Employees Pension Law, 1996, the rules thereunder (if applicable) and any other legal provisions applicable to the Employee.

2.4 The parties to this Contract accept that the general conditions of service and benefits may be changed from time to time by means of determinations and directives by the Minister for the Public Service and Administration.

### **3. TERMINATION OF EMPLOYMENT**

3.1 The Employee's employment terminates on—

- (a) expiry of the term or extended term;
- (b) dismissal in terms of section 17 of the Act;
- (c) resignation after serving the required notice period;
- (d) death.

3.2 Pension and other payable benefits shall be paid in accordance with the applicable prescripts.

3.3 If the Employee gives notice of resignation as contemplated in clause 3.1(c), the executive authority may require the employee to return all official equipment, vacate his or her office and leave the department's premises before the expiry of the notice period on a day stipulated by the executive authority and not to perform any duties until the end of the notice period.

3.4 The invoking of clause 3.3 shall not affect the Employee's benefits.

3.5 In the case of incapacity and misconduct, the Employer shall deal with the Employee, 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 he or she—

- (a) shall not, without the applicable consent and during his or her employment or at any time, 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;
- (b) shall not, during his or her employment or at any time thereafter, use any record so defined and obtained as a result of his or her 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;

(c) shall—

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

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

(d) shall comply with the prescribed Code of Conduct as contained in the Regulations.

4.2 The parties agree that clause 4.1 (a) and (b) is severable from this Contract and shall remain in effect when this Contract terminates for whatever reason.

## **5. PERFORMANCE AGREEMENTS**

The Employee shall enter into a performance agreement with the Employer as prescribed in the Regulations and directives issued by the Minister for the Public Service and Administration under the Act and Regulations.

## **6. OTHER DUTIES OF EMPLOYEE**

Any other specific duties:

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## **7. GENERAL**

### **7.1 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.

### **7.2 Interpretation of Contract**

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

### **7.3 Jurisdiction of courts**

- (a) 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.
- (b) It shall not be a breach of this 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.

#### 7.4 Variation

- (a) This 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.
- (b) 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 Law).

#### 7.5 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.

### 8. NOTICE AND DOMICILIUM

8.1 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 his or her 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.

8.2 All notices to be given in terms of this Contract shall—

- (a) be given in writing; and
- (b) be delivered or sent by prepaid registered post or by telefax; and
- (c) if delivered, be presumed to have been received on the date of delivery; or
- (d) if sent by prepaid registered post, be presumed to have been received within three business days of posting unless the contrary is proved; or
- (e) 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. ....

