

## CLAUSE-BY-CLAUSE SUMMARY OF THE PUBLIC SERVICE REGULATIONS, 2016 (THE REGULATIONS)

1 Technical amendments have been effected to chronologically re-number the regulations to make them easier to refer to, the use of clear and unambiguous language was used to avoid and address interpretational issues and definitions were updated or new ones provided to align with the Public Service Act, 1994, as amended.

### 2 **Chapter 1: General Provisions**

(a) *Short title and commencement (regulation 1)*

Reference to the Public Service Regulations shall refer to the 2016 version and shall be effective from the date of indicated in the *Government Gazette*.

(b) *Definitions (regulation 2)*

The definitions contained in the Public Service Act, 1994 apply to the Regulations and any other definitions not contained therein have been defined for purposes of the Regulations;

(c) *Repeal of regulations and savings (regulation 3)*

This clause specifically repeals the Public Service Regulations, 2001 but preserves the actions i.e directives and determinations that can still be done in terms of Public Service Regulations, 2016 thereby preventing a carry through of legal instruments that are not in accordance with these Regulations while preserving those actions that were made previously and which may still be made under the current legislative framework.

(d) *Deviations (regulation 4)*

Section 41(1)(d) permits the Minister to make regulations regarding the designation or establishment of one or more authorities vested with the power to authorise a deviation from any regulation. The Public Service Regulations, 2016 retains the provisions of Public Service Regulations, 2001 by providing that the Minister is empowered to deal with and approve deviations. As the Minister is responsible for making regulations, it is deemed prudent that the Minister retain the power to pronounce on a deviation thereto.

(e) *Draft Legislation affecting the Public Service Act and Regulations (regulation 5)*

The Public Service Regulations, 2016 expands on the Public Service Regulations, 2001 as, over time, the Department of Public Service and Administration has encountered challenges whereby other pieces of legislation which directly or indirectly affect the Public Service Act and Regulations, have been processed through the legislative process without the Minister being made aware of same. This regulation seeks to ensure that the Minister is made aware of these legislative proposals.

(f) *Communication with Minister and media (regulation 6)*

The status quo of the Public Service Regulations, 2001 remains in so far as this sub heading is concerned, except for the relocation of regulation H.5, part I, chapter 1 of the Public Service Regulations, 2001 to the code of conduct for employees and regulation H.3, part I, chapter 1 of the Public Service Regulations, 2001 has been captured in regulation 5 as set out in paragraph (e) above.

(g) *Decision-making in cases of conflict of interest (regulation 7)*

Public Service Regulations, 2016 retain the status quo of the Public Service Regulations, 2001 in so far as this sub heading is concerned except-

(aa) The regulations seek to clarify who appoints the

independent panel to advise on conflicts; and  
(bb) Regulation D.3, part II, chapter 1 of Public Service Regulations, 2001 has been relocated to the code of conduct for employees.

(h) *Record-keeping of delegations and correction of acts and omissions (regulation 8)*

(aa) For the proper implementation of Section 42A of the Public Service Act, which requires any delegation of power in terms of the Public Service Act to be in writing, and in the interest of ensuring a consistent approach to the keeping of delegations, the Public Service Regulations, 2016 empowers the Minister to determine a format of the register of delegations for utilisation in the public service;

(bb) Section 5(7) of the Public Service Act provides that a functionary may correct any act or omission made by that functionary in terms of the Public Service Act if that act or omission was based on an error of fact or law or fraud and the Minister is required to prescribe the manner in which the relevant executive authority must keep such records. The Regulations seek to require the relevant executive authority to keep copies of all documents relating to the correction of an act or omission in terms of section 5(7) of the Act.

(i) *Reporting, monitoring, evaluation and compliance (regulation 9)*

This clause gives effect to section 41(1)(c) which requires the Minister to make regulations regarding the reporting on and assessment of compliance with the Act, including for the purposes of reviewing the appropriateness and effectiveness of regulations, determinations and directives. The Minister is empowered to request information and data in such a format and on such a date as he or she may deem appropriate.

A head of department is required to introduce mechanisms to monitor and evaluate any provision of the Act (including regulations, determinations and directives).

An executive authority or a head of department may not issue instructions that are contrary to provisions of the Act.

(j) *Prescribed forms for human resource management and related practices (regulation 10)*

The current legislative framework retained the prescribed “z” forms from the pre-1994 dispensation. This clause seeks to allow continuity thereof with the further proviso that the Minister may repeal, amend and issue new forms. The power to issue new forms is hereby introduced. Executive authorities may also tailor the “z” form to meet departmental specific requirements subject to the approval of the Minister.

3 **Chapter 2: Conduct, financial disclosure, anti-corruption and ethics management**

(a) *Part 1: Code of conduct (regulations 11 to 15)*

The code of conduct, issued in terms of section 41(1)(v) of the Public Service Act, has been revised to ensure that the grammar thereof and other technical amendments have been dealt with.

Regulation 13(c) of the Public Service Regulations, 2016 introduces a prohibition on employees conducting business with an organ of state or being a director of a public or private company conducting business with an organ of state. This provision was aligned with section 8 of the Public Administration Management Act, 2014.

A transitional measure is introduced to deal with an employee who is conducting business with, or who is or a director of a company conducting business with, the organ of state to require such employees to withdraw from such practice or resign. Failure to do so will result in non-compliance with the Act and be dealt with in terms of section 16A and 16B of the Public Service Act.

(b) *Part 2: Financial disclosure (regulations 16 to 21)*

The provisions on financial disclosure have been refined to provide for the submission of the financial disclosure form electronically and to provide for the disclosure of vehicles.

(c) *Part 3: Anti-corruption and ethics function (regulations 22 to 24)*

This part is new and places obligations on a head of department to assess risk in the area of ethics and corruption and to develop and implement strategies to mitigate such risk and where necessary, report such corruption to law enforcement authorities as well as to take disciplinary steps. As part of the strategy to deal with corruption an obligation is placed on executive authorities to designate such suitably qualified ethics officers to promote and advise on ethical behaviour as well as to monitor unethical and corrupt activities in the department. Existing employees must be utilised to provide this support hence there is no requirement to create additional structures or posts.

Provision is also made to allow the Minister to prescribe a form for the request by employees to perform outside remunerative work as contemplated in section 30 of the Public Service Act. This will ensure consistency throughout the public service.

A transitional provision has also been inserted for all approvals and deemed approvals to terminate within six months of the coming into operation of the Minister determining the process and form contemplated in regulation 24 of the Regulations.

#### 4 Chapter 3: Planning, organisational arrangements and service delivery

(a) *Part 1: Planning and reporting (regulations 25 to 31)*

This part of chapter 3 provides for the various plans that a department must have i.e a strategic plan, human resource plan, employment equity plan and an information and communication technology plan. There is a further provision enabling the Minister to issue directives to assess and report on the efficiency and effectiveness of the department in supporting the department's service delivery objectives as well as a regulation dealing with the department's annual report.

Generally the status quo of the Public Service Regulations, 2001 has been retained with little change. The Public Service Regulations, 2016-

- (aa) aligns the provisions with regard to the grading of posts to the regulations relating to grading which is fully explained below;
- (bb) allows the Minister to issue directives to elucidate the human resource plan;
- (cc) on the employment equity plan and the human resource development plan, have been put in separate regulations from the human resource plan regulation to emphasise the separate requirement;
- (dd) on information management planning, have been expanded to information and communication technology planning;
- (ee) The regulation relating to the annual report has been amended to remove the list of areas which the Minister may direct on for inclusion in the Annual Plan. It is

envisaged that the Minister will issue the relevant directive on the areas to be reported upon, other than those that are prescribed by the Public Finance Management Act, 1999, and the format of such report.

(b) *Part 2: Organisational and functional arrangements*

(aa) *Transfer of functions (regulation 32)*

The regulations have been redrafted to the extent that the concomitant resources that are required to be transferred together with a function that is transferred has been clarified to include, employees supporting such function and assets and tools of trade pertaining to the function. This was deemed necessary to regulate as these issues emerged from difficulties and challenges experienced during the recent macro organisations of the State.

(bb) *Feasibility study for the establishment of government components and specialised service delivery units (regulations 33 and 34)*

The Public Service Amendment Act, 2007 introduced two further organisational forms in the public service namely, government components and service delivery units. Shortly thereafter regulations were introduced to allow for the creation of these institutions. The Regulations seek to refine the current regulations and in so doing the following provisions were inserted-

- (i) In the case of a specialised service delivery unit the relevant executive authority of the province may designate a representative to be part of the assessment committee;
- (ii) The provision requires at least 50% of the members to be present at a meeting to form a quorum.

(cc) *Organisational functionality assessment (regulation 35)*

As part of monitoring and evaluation the regulation 35 of the Public Service Regulations, 2016 requires an executive authority to conduct an organisational functionality assessment to assess the effectiveness of a department's internal systems and processes and report same to the Minister. The regulation further permits the Minister to develop a tool and prescribe same for use in the public service as well as to determine the way the reports are managed and submitted to the DPSA.

(c) *Part 3: Service delivery (regulations 36 to 38)*

These regulations seek to institutionalise the operations management framework, the service delivery charter and the service delivery improvement plan within departments. In the Public Service Regulations, 2001 all these areas were contained in regulation C, part III of chapter 1 under an all-encompassing heading "Service delivery improvement programme". The revised regulations favour a more structured approach.

(aa) The provisions in respect of the operations management framework seek to improve the effectiveness and efficiency of service delivery in departments through implementation of specified tools as detailed in the proposed regulation 36;

(bb) Regulation 37 elucidates the requirements of a service delivery charter in terms of the services offered by the institution; and

(cc) Regulation 38 follows the sequence of the two processes above to provide that institutions must establish and maintain a service delivery improvement plan informed by the strategic plan and other key factors.

5 **Chapter 4: Employment matters**

(a) *Part 1: Creation of posts , job descriptions, job evaluation and job grading (regulations 39 to 46)*

(aa) The concept of occupational specific dispensations (OSDs) emanated from the various collective agreements that were entered into. The principle in the OSDs is that these jobs are centrally determined and therefore not subjected to job evaluation by departments. The Public Service Regulations, 2016 has been aligned to the OSD collective agreements.

(bb) Reference to the Code of Remuneration (CORE) has been deleted to allow the Minister to determine a system of remuneration, which may be the CORE or a system which is different to the CORE. This allows flexibility on the system to be used in the public service.

(cc) Regulation 40 of the Public Service Regulations, 2016 creates an additional requirement that executive authorities must take into account post provisioning norms and standards determined by the Minister before creating a post. It is envisaged that these post provisioning norms and standards will take into account the size of the department, the responsibilities of units, the number of supervisors versus subordinates etc.

(dd) provision for OSDs for specific categories of jobs have been inserted to the extent that same must be determined in terms of collective bargaining processes and contain specific criteria, as is currently the practice.

(ee) The regulations further provide that if executive authorities intend grading transversal jobs, then such job evaluation must be done with the concurrence of the Minister. The intention is to remove disparities that exist in salaries of similar jobs.

(ff) Setting of higher salary (*regulation 44*)

(i) In Public Service Regulations, 2001 the relevant executive authority has been able to offer higher salaries to employees for purposes of recruitment and retention.

(ii) This provision has allowed employees to be remunerated on salary levels that exceed the weight of the job. Over time this practice has contributed to the burgeoning wage bill and disparities between employees performing similar functions. The recent amendments to the Employment Equity Act requires employers to put measures in place to remove disparities in salaries.

(iii) In pursuance of curtailing the wage bill and conforming to the Employment Equity Act, the provisions contained in the Public Service Regulations, 2001 have been amended to limit the offer of higher salaries and to prevent salaries exceeding the salary level of the grade equated with a job.

(gg) Undergraded posts (*regulation 45*)

(i) The majority decision in the Constitutional Court case of *South African Police Service v Public Servant's Association (CCT68/05/2006)* found that an executive authority should not have a discretion on whether or not to absorb an employee if the post is upgraded. This led to an amendment of the Public Service Act to the extent that the Minister may in terms of section

41(1)(b)(vii) make regulations regarding the position of employees not absorbed into a post upon its regrading. Without unfairly disadvantaging employees, the regulations have been revised to the extent that where posts are graded and the job evaluation result indicates that the post should be upgraded, executive authorities are obliged to absorb the incumbents of the post in the event that the incumbent meets the prescribed requirements as set out in regulation 45(2) of the Public Service Regulations, 2016.

- (ii) In the event that such employee does not meet the requirements, executive authorities are required to transfer such employees to a suitable posts to accord with the lower grade equivalent to the employee's salary level prior to the re-grade or to redefine the post to down grade same to retain the status quo.
- (iii) This amendment has been effected to remove the discretion from executive authorities on whether an employee should be absorbed or not and to prevent employees from being placed additional to the establishment where absorption is not possible. The practice has been that employees not absorbed have been placed additional to the establishment thereby raising concern that such employees have no functions to perform despite retaining their salaries and may possibly be discharged through operational requirements in terms of section 17 of the Public Service Act.

(hh) Overgraded posts (*regulation 46*)

The status quo remains in respect of posts that have been downgraded in that employees occupying posts which have been downgraded are required to be

retained in the post only if the executive authority redesigns the post to enhance it or, if the post is not redesigned then such employee must be transferred to a post with a grade that accords with the employee's salary before the regrading. This provision takes cognisance of section 34 of the Public Service Act which provides that salaries of employees may not be reduced without an employee's consent except in terms of section 38 (wrongly granted remuneration may be corrected), an Act of Parliament or a collective agreement.

(b) *Part 2 : Remuneration and other benefits (regulations 47 to 50)*

(aa) This part deals with the information that must be provided to employees regarding their salaries taking into account the provisions of section 33 of the Basic Conditions of Employment Act, 1997.

(bb) The provisions on leave and overtime have been retained as is with no further amendment;

(cc) The provisions on the cap on the monthly compensation for overtime of 30% has been retained to avoid departments incurring exorbitant expenditure in relation to overtime.

(dd) Section 37(2)(c) of the Public Service Act provides that an executive authority may, only if allowed by regulation and to the extent prescribed therein, grant an employee of the relevant department special advancement in salary within the salary level of the salary scale applicable to him or her or grant him or her a salary in accordance with a higher salary level or any other reward, if he or she has exceptional ability or special qualifications or has rendered meritorious service and it is in the public interest. Regulation 50 of

the Public Service Regulations, 2016 gives effect to section 37(2)(c) and retains the status quo of regulation G/part VII/ chapter 1 of the Public Service Regulations, 2001 to allow the Minister to issue a directive on rewarding employees as contemplated in the Public Service Act.

(c) *Part 3: Working environment (regulations 51 to 56)*

Part 3 of the Public Service Regulations, 2016 deals with the working hours of departments in line with prevailing legislation, circumstances under which emergency work may be required to be performed, health and safety and health and wellness. While refinements have been made to clarify the provisions the content thereof remains fundamentally unaltered.

(d) *Part 4: Appointments and other employment matters (regulations 57 to 71)*

(aa) *General conditions of employment (regulation 57)*

The age of employment has been amended to align with section 43 of the Basic Conditions of Employment Act.

(bb) *Appointment additional to the establishment (regulation 57(2))*

The provisions relating the employment of persons additional to the establishment (not in posts) have been refined to limit the circumstances under which person may be so appointed and to link the compensation of such employees to equally graded jobs. In Public Service Regulations, 2001 the appointment of persons additional to the establishment was subject to much contention as regulation G/part III/ chapter 1 provided that an executive authority could employ a person additional to the establishment if it was necessary for any other reason to temporarily increase the staff of the department. The recent

amendments to the Labour Relations Act, 1997 saw the introduction of provisions which sought to curtail the appointment of temporary employees without justifiable reason. To align with the Labour Relations Act and to further curtail the appointment of employees additional to the establishment where no rationality exists the provisions have been re-drafted in regulation 57(2) of the Public Service Regulations, 2016. A further limitation on the period of appointment additional to the establishment to 12 months has been introduced. However, mindful of the need by certain departments to require such appointment for longer periods, a discretion has been given to the Minister to direct a longer period should the need arise on a case by case basis.

(cc) *Developmental programmes (regulation 58)*

Cognisant of the undertaking by the State to provide developmental programmes to skill persons for employment, this provision has been introduced to allow the Minister to determine terms and conditions for persons employed as interns, learners, trainees etc.

(dd) *Unpaid voluntary workers (regulation 59)*

The concept of unpaid voluntary workers was introduced in the Public Service Amendment Act, 2007 which requires the Minister to make regulations for such workers (section 41(1)(b)(iii)). While the use of voluntary workers is not a foreign concept, the matter was previously unregulated, which created challenges for departments. Regulation 59 of the Public Service Regulations, 2016 sets parameters under which such workers are utilised and compensated. While there is provision for the Minister to direct other conditions should the need arise, specific provision be inserted to ensure that these workers are not regarded as employees. The insertion of regulation 59(a) has been

aligned with the definition of employee in section 1 of the Basic Conditions of Employment Act, 1997 and a further provision has been inserted that ensures that the compensation of actual expenses received by a volunteer is not misconstrued as remuneration.

These regulations ensure that voluntary workers cannot be regarded as employees of the State.

(ee) Re-appointment of former employees (*regulation 60*)

The provisions in this regard have remained unchanged except that former employees employed additional to the establishment are subject to the limitation of 12 months at a time.

(ff) *Prohibition on re-employment of former employees dismissed for misconduct (regulation 61)*

Section 17(4) of the Public Service Act requires the Minister to prescribe periods after which employees dismissed for misconduct, may be re-appointed in the public service. To give effect to this provision, regulation 61 was introduced in the Public Service Regulations, 2016. The most serious misconduct creates a maximum prohibition period of five years while the least serious is a minimum of one year.

(gg) *Secondments (regulation 62)*

The Public Service Regulations, 2016, while retaining the provisions of the Public Service Regulations, 2001, have removed the redundant provisions to avoid repeating the provisions of the Public Service Act.

The regulations limit the period of secondment to 12 calendar months with the latitude for the Minister to determine a longer period if such extension is for operational reasons. The limitation on secondments has been introduced to avoid employees being absent from the posts in which they have been appointed for excessive periods thereby compromising the work for

which they have been appointed and recognising that the absenteeism places an additional burden on other employees to perform the duties of the employee while on secondment.

(hh) *Direction to perform other functions or act in another post (regulation 63)*

Section 32 of the Public Service Act requires the Minister to prescribe conditions under which an employee may be directed to perform other functions or appointed to act in another post. In pursuance thereof and recognising that the Minister has issued a determination for SMS members and for non-SMS regarding the acting allowance payable, the regulations have deleted those provisions already regulated by the determinations. The Public Service Regulations, 2016 further provides that an employee appointed to act must have the necessary competencies (as per the definitions in regulation 2) to perform such additional duties.

(ii) *Determination of requirements for employment (regulation 64)*

The provisions in relation to the appointment of foreign nationals have been clarified to conform to the Public Service Act, wherein only foreign nationals with a permanent residency certificate may be appointed permanently in the public service while all other foreign nationals may be appointed temporarily provided that they have obtained a work permit.

(jj) *Advertising (regulation 65)*

The Public Service Regulations, 2016 have introduced the following -

- a requirement that all vacant posts advertised outside the department must also be advertised in the vacancy circular of the

Department of Public Service and Administration;

- a prohibition on adverts unfairly discriminating against or precluding suitable candidates from applying;
- a pool may be created for a period of 6 months from a single advertisement process whereby similar non SMS posts need not be re-advertised;
- an executive authority may fill vacant posts without advertising under certain circumstances set out in regulation 65(9).

*(kk) Filling of posts in the Office of an executive authority and Deputy Minister (regulation 66)*

The provisions allowing the filling of posts in the office of an executive authority and a Deputy Minister without following an open advertisement process have been retained. These posts may not be filled on a permanent basis unless the filling of the post was done through a transfer of a permanent employee in terms of section 14 of the Public Service Act.

*(ll) Selection (regulation 67)*

These provisions have been amended to prescribe minimum norms in relation to selection panels as provided for in section 3(1) of the Public Service Act. The chairperson of the selection panel for the appointment of the head of department and DDG of the Commission shall be the Chairperson of the Commission and not the Minister as is currently provided for in the Public Service Regulations, 2001. The provisions regarding a head hunting process have been provided for that has been aligned to the Executive Protocol document. It must be noted that head hunting is only permissible in instances where the normal recruitment process is completed and no

suitable candidate was identified. The executive authority must approve a head hunting process.

(mm) *Probation (regulation 68)*

Section 13 of the Public Service Act requires the Minister to prescribe periods of probation for different categories of employees. Regulation 68 of the Regulations provides-

- for persons and employees appointed to the public service for periods of more than 12 calendar months, a probationary period of 12 months must be served;
- for employees appointed to a lateral post, the executive authority has a discretion on probation up to a maximum of 12 months;
- for employees absorbed into higher graded posts, no probation is required unless the employee was on probation at the time of absorption then in that event, such probation shall continue;
- for persons seconded to an institution, he or she shall continue on probation, if he or she was on probation at the time of secondment;
- for employees transferred to lateral posts in terms of section 14 of the Public Service Act , probation is only applicable if the employee was on probation at the time of transfer; and
- for employees transferred to higher posts in terms of section 14 of the Public Service Act, such employee must serve a probation of 12 months.

The Public Service Regulations, 2016 further provides for the extension of probation in certain circumstances.

(nn) *Resignation (regulation 69)*

- Section 16B(6) of the Public Service Act

requires the Minister to prescribe periods for notice of resignation;

- The period of resignation have been aligned to the provisions of the Basic Conditions of Employment Act, 1997;
- The Public Service Regulations, 2016 allows for an executive authority, with the consent of the employee, to approve a shorter period provided that no notice of a disciplinary hearing was given to the employee;
- Exit interviews are required to be conducted when employees resign;
- An employee may withdraw his or her resignation with the approval of the executive authority provided that the approval is obtained before the last working day of the employee;
- An executive authority may require an employee who has resigned to return all official work tools and not perform any duties during his or her notice period provided that the employee's benefits remain unaffected.

(oo) *Employee Records (regulation 70)*

This provision remains unchanged and requires a head of department to keep a record of each employee and the posts on the establishment as required by the information requirements issued by the Minister.

(e) *Part 5: Performance Management (regulations 71 to 73)*

Following the undertakings by the employer during the collective bargaining process, amendments were effected to the performance management system, which system is applicable to employees who are not members of the SMS.

(aa) *System for performance management and development (regulation 71)*

More detail and guidance is provided to executive authorities in the development of the system. The Minister is empowered to issue directives to elucidate these requirements further.

(bb) *Performance agreements and assessments (regulation 72)*

The period for the signing of performance agreements and the content of performance agreements have been prescribed to ensure consistency. The process to deal with disagreements in the concluding of the performance agreement has also been set out. A consequence of non-compliance, in addition to disciplinary processes, is that performance rewards and pay progression may be withheld.

In instances where an employee is appointed to act for periods longer than 3 months, the performance agreement must be amended to reflect the additional responsibilities which shall be considered during the assessment of the employee.

The outcomes of assessments are also detailed therein to place an obligation on the relevant executive authority to act in accordance therewith.

(cc) *Rewarding performance (regulation 73)*

An executive authority is required to develop a written performance incentive scheme to reward good performance. However such scheme is subject to the limitation set by the Minister (currently 1,5% of the department's annual remuneration budget) and the limitation set by the Minister in relation to an employee or certain categories of employees.

(f) *Part 6: Training (regulations 74 to 77)*

The Public Service Regulations, 2016 seeks to clarify and expand upon the existing Public Service Regulations, 2001. The Minister may direct on the training of employees in the public service, the registration of such training and the utilisation of training budgets for such training. In addition departments are authorised to provide financial assistance to employees and prospective employees within the parameters contained in regulation 77 of the Public Service Regulations, 2016.

(g) *Part 7: Labour matters (regulations 78 to 80)*

The provisions relating to the mandating and management of negotiations and matters with fiscal implications remain unaffected.

Section 16B(3) of the Public Service Act requires the Minister to make regulations regarding the summoning of witnesses by chairpersons of disciplinary hearings. Regulation 80 of the Public Service Regulations, 2016 therefore provides for the summoning of witnesses by the chairperson under prescribed instances. The nature of the summons to appear and the service thereof is also regulated. The witness fees are payable by the party who requests the witness to testify and includes travel, subsistence and any other reasonable costs as determined by the Minister. Should the witness be summoned at the instance of the Chairperson, such costs will be borne by the relevant department. No employee will be entitled to witness fees.

6 **Chapter 5: Senior management service** *(regulations 81 to 92)*

The provisions of this chapter shall prevail over the provisions contained elsewhere in the Regulations.

The content of this chapter has been amended to the extent that the Minister may issue determinations on annual cost of living adjustments for SMS to align with PSCBC resolution 9 of 2000.

7 **Chapter 6: Information management and electronic government** (*regulations 93 to 97*)

This chapter retained the status quo except that reference to the Minimum Information Security Standards (MISS) has been removed as the MISS is administered by the Minister of State Security and not the Minister for Public Service and Administration. Reference to the MISS has been replaced by providing that the Minister may, after consultation with relevant ministers, issue information security standards for the public service that are not inconsistent with any other laws.

8 **Chapter 7: Advisory bodies to the Minister for Public Service and Administration** (*regulations 98 to 106*)

Section 3(3) of the Public Service Act provides that the Minister may establish by regulation one or more bodies to advise the Minister on any matter contained in section 3(1) of the Public Service Act.

In October 2011 the Minister amended the Public Service Regulations, 2001 and provided for one advisory body to advise on matters relating section 3(1) of the Public Service Act. In July 2012 a further amendment was effected by the Minister whereby two advisory bodies were established, one to advise on matters relating to section 3(1)(a), (b), (c), (d), (h) and (i) and the other to advise on matters relating to section 3(1)(e), (f) and (g).

In addition to these bodies the Public Service Regulations, 2001 also provides that the Minister may establish an *ad hoc* body to advise in respect of conditions of service for members of the SMS. During the revision of the Public Service Regulations it was deemed prudent that the advisory body to advise of matters relating to section 3(1) be limited to one given the reduced budget of the Department of Public Service and Administration and the cost containment measures introduced. The *ad hoc* committee to assist the Minister in respect of the SMS conditions of service is also provided for in addition hereto, should the need arise.

The provisions have also been amended to provide that the members of the body serve in a part-time capacity. Transitional measures are provided for persons employed on a full time basis at

the time of coming into effect of the revised regulations to the extent that their term will remain unaffected. The term of office, administrative matters and allowances payable are contained in the Public Service Regulations, 2016.

9 **Chapter 8: Community development workers** (*regulation 107 to 110*)

The community development workers (CDW) programme was conceptualised in the President's State of the Nation Address in 2003. Community development workers have since been employed in the public service with its key priority being service delivery. In the circumstances it has become necessary to regulate the CDW programme through the Public Service Regulations.

Chapter 8 allows the Minister, after consulting with the Minister of Cooperative Governance and Traditional Affairs, to determine a framework for the CDW programme. The purpose and the objectives of the CDW programme are articulated in Public Service Regulations, 2016.

The CDWP is envisaged to improve the effectiveness and efficiency of the public service and its service delivery to the public as envisaged in section 3(1) (i) of the Public Service Act.

10. **Transitional Arrangements** (*Annexure 1*)

Transitional arrangements have been provided for in the following areas-

(a) *Outside remunerative work*

Section 30 of the Public Service Act requires employees to seek the prior permission of an executive authority to perform outside remunerative work. Section 30 further provides that should the executive authority not consider the request within 30 days, the approval is deemed to be granted.

Regulation 24 of the Regulations provides that the Minister may determine the process and form for the request.

The transitional measure seeks to terminate all approvals

within 6 months of such determination contemplated in regulation 24 of the Public Service Regulations, 2016, whereafter further approval will be required to be sought in terms of section 30 and dealt with in terms of the determination contemplated in by the Minister.

(b) Doing business with an organ of state

The Code of Conduct contained in Chapter 2 prohibits employees from doing business with an organ of state and being a director of a company that does business with an organ of state.

The transitional provision is to deal with employees who are doing such business with an organ of state at the time of effecting the revised Code of Conduct. The transitional measure is to require the employee to cease to do business with the organ of state and provide proof thereof to the employer, failing which they must resign.

(c) Advisory body members

The Public Service Regulations, 2001 provides that persons appointed to the advisory body are currently appointed on a full time basis. The Public Service Regulations, 2016 proposes that such person be appointed on a part-time basis. It is therefore necessary to provide a mechanism to deal with the persons appointed on a full time basis at the time of coming into effect of these regulations. The transitional provision allows for such person to be continued to be employed on a full time basis until termination of their contracts.

11. **Prescribed head of department contract** (*Annexure 2*)

The contract for heads of department are prescribed herein in terms of section 12 of the Public Service Act.

12. **Contract for members of the Senior Management Services who are employed permanently** (*Annexure 3*)

This contract is provided for guidance to departments and the

provisions thereof will form the basis of the employment contract.

13. **Contract for members of the Senior Management Services who are employed temporarily** (*Annexure 4*)

This contract is provided for guidance to departments and the provisions thereof will form the basis of the employment contract.