



**MINISTRY: PUBLIC SERVICE AND ADMINISTRATION  
REPUBLIC OF SOUTH AFRICA**

Private Bag X884, Pretoria, 0001, Tel: (012) 314 7911, Fax: (012) 328 6529  
Private Bag X9148, Cape Town, 8000, Tel: (021) 465 5491/2/3, Fax: (021) 465 5484

TO ALL EXECUTING AUTHORITIES OF NATIONAL DEPARTMENTS,  
PROVINCIAL ADMINISTRATIONS, PROVINCIAL DEPARTMENTS  
AND ORGANISATIONAL COMPONENTS

**PARTICIPATION OF PUBLIC SERVICE EMPLOYEES AS CANDIDATES IN THE  
2004 ELECTIONS AND POSITION OF NON-ELECTED FORMER EMPLOYEES**

- 1.1 All national and provincial departments were informed (per circular, 1/3/8/P, dated 14 January 2004), that the Public Service Regulations do not permit the employment of employees once they have become candidates for election to the National Assembly or a provincial legislature, or once they have been nominated as permanent delegates to the National Council of Provinces. Such employees are required to resign from the public service beforehand (regulation G.2.4 of Part VII of Chapter 1 of the Public Service Regulations, 2001; a copy of the circular can be found at [www.dpsa.gov.za](http://www.dpsa.gov.za) under employment practice).
- 1.2 Heads of department must ensure that all employees are informed of the content of this circular.

***Effective date of resignation***

2. An employee who is issued a certificate in terms of section 31(3) of the Electoral Act, 1998, stating that he or she is a candidate in the relevant election (herein referred to as a "candidacy certificate") must resign from the public service **with effect from** a date not later than the date that the certificate is issued. For purposes of elucidating and supplementing Public Service Regulation 1/VII/G.2.4 and in respect of the elections to be held on 14 April 2004, I hereby issue a directive, in terms of section 3(3)(e) of the Public Service Act, 1994, that an executing authority, or the employee to whom the power in question was delegated, **must** for purposes of the effective date of such resignation accept a shorter period of notice from an employee than is required by Public Service Regulation 1/VII/G.2.3.

***Constitution and limitations regarding candidacy***

- 3.1 The Constitution provides that an employee of a national department, organisational component, provincial administration or provincial department (herein referred to as a "public service employee") is not eligible to be a member of the National Assembly or a provincial legislature (sections 47(1)(a)

and 106(1)(a)). The Constitution however also provides that a public service employee who is not so eligible, may be a candidate for the National Assembly or a provincial legislature, **subject to any limits or conditions established by national legislation**, including subordinate legislation made in terms thereof (sections 47(2) and 106(2) and the definition of “subordinate legislation” in section 239).

The Public Service Regulations only prohibits a public service employee to remain an employee after he or she becomes a candidate for election to a legislature from the date on which the candidacy certificate is issued **and** not from an earlier date such as the date on which his or her name is placed on the list of a political party or from the date that a political party submits its list of candidates for the election to the chief electoral officer (e.g. in the forthcoming election 27 February 2004 was the cut-off date).

One of the basic values and principles governing public administration in the Constitution is that services must be provided impartially, fairly, equitably and without bias (section 195(1)(d)). The public service code of conduct directs that employees may not abuse their position in the public service to promote or prejudice the interest of any political party and must refrain from party political activities in the workplace (Public Service Regulation 2/C.2.7 and C.3.7). The limitation imposed by the Public Service Regulations on a public service employee becoming a candidate for election to a legislature should be viewed in the light of these provisions.

### ***Reinstatement upon non-election***

- 4.1 In pursuance of the constitutional values underlying the country as a democratic state, the constitutional right of every adult citizen to stand for public office and the stipulations of sections 47 and 106 of the Constitution and for purposes of further supplementing Public Service Regulation 1/VII/G.2.4, I hereby issue, in terms of section 3(3)(e) of the Public Service Act, 1994, the following directive:
- (a) Any employee who resigns in accordance with Public Service Regulation 1/VII/G.2.4 to be a candidate, but is not elected to the National Assembly or a provincial legislature in the election to be held on 14 April 2004, **must**, if he or she so requests, be reinstated in the post he or she occupied in the relevant national department, provincial administration, provincial department or organisational component immediately before his or her resignation took effect. Such reinstatement also applies to a person who is so elected, but does not accept such election, and requests to be so reinstated. If a request for reinstatement, contemplated in this paragraph, is received, the relevant executing authority, or an employee authorised by that authority, does not have any discretion to deny the request, but is obliged to reinstate the person in question.
  - (b) A request to be so reinstated must be submitted in writing to the relevant executing authority not later than the first normal working day following the date on which the person is designated or not from the list of candidates of the relevant political party as a representative of the National Assembly or a provincial legislature according to the allocation of seats to that party following the declaration of the election results in terms of section 57 of the Electoral Act, 1998 (herein referred to as “the membership date”). The relevant executing

authority, or an employee authorised by that authority, may approve a later date than the membership date as the date on which a request for reinstatement must be submitted. Any date so approved must be a date before the first sitting of the National Assembly or relevant provincial legislature for which the person was a candidate.

- (c) Such reinstatement will be effective from the date immediately following the date of resignation from the public service in accordance with Public Service Regulation 1/VII/G.2.4 (herein referred to as “the reinstatement date”).
- (d) Subject to paragraph (f), the person so reinstated will be entitled to all remuneration and other conditions of service with effect from the reinstatement date as if he or she has not resigned. This entitlement includes, but is not limited to, employment without a break in service despite the person’s resignation.
- (e) The person so reinstated must resume his or her duties not later than the first normal working day following the membership date, referred to in paragraph (b). The relevant executing authority, or an employee authorised by that authority, may approve a later date than the membership date as the first working day of the person so reinstated. Any date so approved must be a date before the first sitting of the National Assembly or relevant provincial legislature for which the person was a candidate.
- (f) The person so reinstated must be granted annual leave for the working days falling in the period from the date following the effective date of his or her resignation to the date immediately preceding his or her resumption of duties, referred to in paragraph (e). If the person has insufficient annual leave days’, either capped leave or unpaid leave must be granted.
- (g) Leave payouts in respect of a person who resigned in accordance with Public Service Regulation 1/VII/G.2.4 may only be made if the person is elected and when it is known that the person has accepted such election.
- (h) Steps (i.e. the submission of an exit form to the GEPF) regarding the pension benefit of a person who resigned in accordance with Public Service Regulation 1/VII/G.2.4 may only be taken if the person is elected and when it is known that the person has accepted such election.
- (i) The post occupied by a person immediately before his or her resignation in accordance with Public Service Regulation 1/VII/G.2.4 may only be filled if the person is elected and when it is known that the person accepted such election.

4.2 Departments are strongly advised to manage the process on Persal as follows:

- (a) All resignations in accordance with Public Service Regulation 1/VII/G.2.4 should be effected immediately from the effective date of resignation.
- (b) All reinstatements in terms of the directive referred to in paragraph 4.1, should be effected by a withdrawal of service termination (i.e. function 4.7.3).

***Members of SAPS, SANDF, NIA, SASS, Correctional Services and Educators***

- 5.1 The provisions of the Public Service Act, 1994, and regulations made thereunder, are also applicable to persons employed, in terms of their own respective employment legislation-
- (a) in the South African Police Service (SAPS), the South African National Defence Force (SANDF), the National Intelligence Agency (NIA), the South African Secret Service (SASS) and the Department of Correctional Services; and
  - (b) as educators in departments under the Employment of Educators Act, 1998,
- to the extent that they are not contrary to the provisions of their employment legislation (section 2(2) and (3) of the Public Service Act, 1994).
- 5.2 In view of the absence of contrary provisions in the respective employment legislation for educators, members of the SANDF and the Department of Correctional Services, the requirement in the Public Service Regulations that employees who intend to become candidates in 2004 elections, must resign beforehand, also applies to these categories of employees. The directives contained in paragraphs 2 and 4.1 above, which elucidate and/or supplement Public Service Regulation 1/VII/G.2.4, also apply to such educators and employees of the SANDF and the Department of Correctional Services.
- 5.3 Employees of SAPS, NIA and SASS are also specifically disallowed by their respective employment legislation from becoming candidates in elections and such employees will also have to resign before becoming a candidate. Whether such employees will be entitled to reinstatement as provided for in the directives contained in paragraphs 2 and 4.1 above, will depend on the relevant prescripts applicable in terms of their respective employment legislation.
6. Enquires can be directed to Adv E van Schoor (tel 012-314 7047) or Mr D Maree (tel 012-314 7218).

*G. J. Fraser-Moleketi*  
**GJ Fraser-Moleketi**  
 Minister

Date: 12/03/04

- Cc** *Chairperson and Chief Electoral Officer of the Independent Electoral Commission*  
*All heads of national departments, provincial administrations, provincial departments and organisational components*  
*All political parties registered for 2004 elections*