

Employment of Heads of Department

AUGUST 2000

**Department of Public Service
and Administration**

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Keys to using this Handbook



Note



Important

Foreword

By Geraldine Fraser-Moleketi, Minister for the Public Service and Administration.

The new public service management framework was implemented with effect from 1 July 1999. In accordance with this framework, executing authorities have been granted extensive powers relating to the day to day management of their departments. These powers *inter alia* relate to appointment and other career incidents of public servants.

Whilst the amended Public Service Act, 1994 (referred to hereinafter as the Act), the Public Service Regulations, 1999 (PSR) and collective agreements have freed executing authorities from the bureaucratic stranglehold of the previous regulatory framework, it remains a huge challenge to effectively communicate and implement the basic requirements of the new framework.

Although the legal framework, information, examples and advice on the framework have been made available as part of the baseline implementation programme, there were nevertheless areas in which further development was required. Consequently executing authorities, Heads of Department, senior managers, human resource managers, line functionaries, administrators and other public servants did not and still do not have the time or in some cases the expertise to study all the relevant prescripts and correctly interpret the Act, PSR and collective agreements. As a result public servants of all levels had often approached the Department of Public Service and Administration (DPSA) for advice, assistance, clarification, etc. on matters which they could easily have resolved, if the relevant information was available and packaged in a concise, easy to use and understandable format.

With this in mind the Department of Public Service and Administration developed three concise, easy to understand handbooks to assist executing authorities, Heads of Department, line function and human resource managers, administrators and other public servants to manage the three areas more effectively. This first set of handbooks focuses on the management of –

- [a] employment of heads of department;
- [b] performance agreements (performance based pay for senior managers); and
- [c] performance of other categories of staff.

It is envisaged that these handbooks will provide a much needed information base and information sharing opportunities, both inside and outside the public service.

We are indebted to the Department for International Development in Southern Africa (DFIDSA) who responded to our call for assistance with this project and provided a consultant to facilitate the simplification, editing, information mapping, lay-out and publication of handbooks.

This project is one of a range of initiatives, by the DPSA, aimed at supporting managers in government. It is our sincere hope that these handbooks do enrich the work of managers in the public service and would therefore appreciate feedback regarding this publication.

1. Glossary of terms

Act	-	Public Service Act, 1994 (as amended)
DPSA	-	Department of Public Service and Administration
EA	-	Executing Authority
HoD	-	Head of a national department/provincial administration/ provincial department/organisational component as identified in Schedules 1, 2 and 3 of the Act.
KPA	-	Key Performance Area
MEC	-	Member of Executive Council
MPSA	-	Minister for the Public Service and Administration
OPSC	-	Office of the Public Service Commission
PA	-	Performance Agreement
PSC	-	Public Service Commission
PSCBC	-	Public Service Co-ordinating Bargaining Council
PSR	-	Public Service Regulations, 1999

2. Introduction

Introduction

In accordance with the new management framework EAs have been granted extensive powers relating to the day to day management of their departments. These powers *inter alia* relate to appointment and other career incidents of Heads of Department.

The basic requirements of the new framework

Whilst the amended Public Service Act, 1994 and the Public Service Regulations, 1999 have freed EAs from the bureaucratic stranglehold of the previous regulatory framework, it remains a huge challenge to effectively communicate the basic requirements of the new framework.

Purpose of this handbook

Many EAs do not have time to study the Act and Regulations, hence this handbook has been developed to provide the relevant information in a concise format and in simple language.

Unique conditions of service for HoDs

Since HoDs normally have no career progression or prolonged employment opportunities, they have unique conditions of service. These conditions of service are all explained in this handbook.

Information from appointment to termination

This handbook also provides information and examples on the management of all career incidents of HoDs, from appointment right through to termination of service.

Important – wording in this handbook

Statutory provisions referred to in this handbook do not necessarily reflect the precise wording or meaning of that provision and are for easy reference only.

In applying this handbook, it is important that the original statutory provision(s) be consulted and read in conjunction with this document.

3. Delegation of powers

Background	<p>The <i>Public Service Act, 1994</i> entrusts –</p> <ul style="list-style-type: none">• The President with the power to undertake and manage the appointment and other career incidents of Heads of Department of National Departments and organisational components• Premiers with the power to deal with the appointment and other career incidents of a head of a provincial administration and Provincial Heads of Department.	Section 3(B)(l) of the Act.
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Delegation of powers	<p>The Act further stipulates that the President/Premier may delegate:</p> <ul style="list-style-type: none">• The power to appoint a HoD as well as• Any other power regarding the other career incidents of HoDs.	Section 3(B)(4) of the Act.
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Assumption that EAs have been delegated power	<p>The President has delegated his powers to the Deputy President and Ministers.</p> <p>This handbook has been drafted on the assumption that EAs have been awarded the power to manage the career incidents of HoDs. The position at Provincial level may differ from Province to Province.</p> <p>Attached at Annexure 1 is a copy of the letter to the Deputy President and Ministers. These delegated powers may be used by Premiers to guide them in the delegation of their powers for managing the appointment and other career incidents of HoDs at provincial level.</p> <p>Powers not delegated: Deployment of HoDs in terms of section 3 B of the Act</p>	Section 3(B)(4) of the Act. Letter of President dated 8 October 1999.
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4. Advertising

Background The original power to recruit vests in the EA, which implies that a department has discretion to advertise or re-advertise a vacancy.

Determining requirements for employment An EA must determine the composite requirements for employment in the relevant post on the basis of the inherent requirements thereof. PSR Part VII/C.

Procedure An EA must:

Step	Action
1.	Record the inherent requirements of a job.
2.	Comply with statutory requirements for appointment of employees.
3.	Draft the contents of the advertisement.

Policy The advertising process must comply with the following: PSR Part VII/C.

- Any vacant post of HoD must be advertised nationally inside and outside the Public Service.
- An EA shall ensure that the vacant post is advertised in such a way that, as far as possible, the entire pool of potential applicants is reached, especially those historically disadvantaged.

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4. Advertising, Continued

Content of the advertisement

An advertisement should preferably contain the following particulars:

- Inherent requirements of the post
- Job title
- Core functions of the post
- Basic salary and benefits (all inclusive remuneration package)
- Duties and responsibilities of the post
- Contact person to whom enquiries can be addressed
- Closing date
- Notification that it is a term contract appointment and an indication of the contract period
- Notification that the HoD will have to enter into an employment contract and to sign an annual PA in terms of which the HoD's future salary adjustments will be determined
- Notification that the HoD will be required to disclose her/his financial interests in accordance with the prescribed regulation and form.
- Details of the place of work.

Filling a post without advertising

An EA may fill a vacant post without advertising, if the post is filled in terms of section 3B of the Act (deployment by the President/a Premier).

PSR Part VII/C.

Outside help

An EA may use an appropriate agency or selection consultant to assist in part or all of the advertising/selection process as long as she/he ensures that the advertising and selection procedures comply with the prescribed principles and procedures.

PSR Part VII/C.

5. Re-advertising vacancies

When a vacancy may be re-advertised

The re-advertisement of a vacancy should be done for good reasons and in exceptional circumstances only. These include:

- No suitable candidate could be found. This is subject to a fair process of selection having been applied
- The operational requirements (or job contents) for the vacancy have changed drastically since the vacancy was advertised
- A long delay in finalising the selection process due to various unforeseen departmental circumstances, resulting in candidates no longer being available
- The exposure of the initial advertisement having been found to be too limited, not reaching all potential candidates.



Note:

The department should invite candidates who responded to the initial advertisement to apply again should they still wish.

6. Selection

Background

The pre-selection and shortlisting of candidates should be based on a process and methods agreed to by the assigned selection committee.

Selection process

- The selection process commences after the closing date of the advertisement.
 - For ease of reference, applications should be scheduled alphabetically indicating e.g. the surname, initials, gender, rae, occupation, qualifications and experience.
 - The pre-selection and shortlisting, based on identified criteria, should be done in consultation with the EA.
 - It is of utmost importance for departments to verify the track record and qualifications of short listed candidates, especially the one nominated.
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Shortlisting

During the pre-selection and shortlisting candidates can be eliminated by using legends related to the advertised requirements for the post such as:

- lack of specific knowledge, competencies or high level skills
 - lack of identified managerial skills
 - lack of proven high level communication skills
 - candidate does not comply with requirements with regard to educational qualifications.
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Responsibility for notification for interview

The EA's office shall arrange a date and venue for interviews and notify both panel members and candidates.

Selection committee

An EA shall appoint a selection committee to make recommendations on appointments.

PSR Part VII/D.

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6. Selection, Continued

Composition of the selection committee

A selection committee for the appointment of a HoD shall include the following:

PSR Part VII/D.

For a head of a...	The committee shall include...
national department/organisational component	at least three Ministers.
provincial administration or provincial department	at least three members of the Executive Council of that province.

Chairperson of Committee

The EA of the specific department acts as chairperson of the selection committee.

Secretarial services

Employees graded lower than that of the post to be filled may provide secretarial or advisory services during the selection process/interview but shall not form part of the selection committee.

Committee's recommendation

Criteria

The selection committee shall make a recommendation on the suitability of a candidate after considering *only*:

- information based on selection methods that are free from any bias or discrimination (i.e. using a scoring grid which provides space to rate each individual according to the weighted inherent requirements of the post), and
- the training, skills, competence and knowledge necessary to meet the inherent requirements of the post.

PSR Part VII/D.

Record

During the selection process, care should be taken that all candidates are provided equal opportunities. This implies that they must be evaluated against the same requirements and criteria implying that they be asked the same questions and be subjected to the same testing.

A selection committee shall record the reasons for its decision. These records together with all the information on the pre-selection process should be filed properly so that any queries can be responded to. The appointment of the successful candidate should only be approved after consultation with the MPSA (who is responsible for informing Cabinet). The latter requirement does not apply at provincial level.

7. Appointments

Term of appointment	According to a Cabinet decision, HoDs of national departments/organisational components must as a general rule be appointed for a period of three years or such shorter or longer period as may be approved by the relevant EA. This must not exceed five years, as stipulated in the Act.	Section 12 of the Act. Cabinet minutes dated 1/9/99.
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Serving employees	<p>A serving employee who is appointed to the post of HoD, will automatically lose his/her status as a permanent employee.</p> <p>Her/his accrued pension and other benefits will, however, only be payable on the date that his/her term expires.</p>
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Provincial HoDs	Section 7 read with amendments to section 12 of the Act changed the permanent employment status of serving Provincial Heads of Department with effect from 1 July 1999, to that of a five year term of office (contract).	Section 7 of the Act.
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The President's appointments	<p>Certain appointments are made only by the President.</p> <p>The President as head of the national executive:</p> <ul style="list-style-type: none">• is Commander in Chief of the Defence Force and must therefore appoint the Military Command of the Defence Force.• must appoint the National Commissioner of the Police Service.• must appoint the head of each Intelligence Service established in terms of the Constitution.	<p>Section 202(1) of the Constitution.</p> <p>Section 209(2) of the Constitution.</p> <p>Section 209(2) of the Constitution.</p>
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7. Appointments, Continued

Role of EA and MPSA

- As regards national departments, the MPSA must be consulted on the selected candidate.
- The MPSA is further responsible for obtaining Cabinet's concurrence on the appointment. To facilitate this process national EA's must provide the MPSA with a Cabinet Memorandum containing all relevant information - see Annexure 2.
- The Cabinet Memorandum should be sent to the MPSA at least a week before Cabinet's next meeting under cover of a letter containing the information indicated at Annexure 3.
- Following Cabinet's concurrence the relevant EA is responsible for issuing an appointment letter to the successful candidate which should include the following:
 - Provisions of the Act in accordance with which the appointment is effected (Section 12 of the Act) and probation period
 - Term of contract and salary per annum
 - Indicate need to sign an employment contract and enter into a PA
 - Date of assumption of duty
 - Requirement to disclose financial interests within one month after appointment.
- The employment contract to be concluded by the EA and the HoD will be as set out in Annexure 2 of the Public Service Regulations.
- Should any candidate require reasons why she/he was not appointed, it will be the responsibility of the relevant EA to provide such reasons.

Letter of President dated 8 October 1999.

Cabinet Minutes dated 4 August 1999.

PSR Annexure 2.

Security clearance

The relevant EA must require the appointee to be subjected to security clearance. In this respect the measures contained in the Minimum Information Security Standards, issued by the National Intelligence Agency must be complied with.

PSR Part VII/B.

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7. Appointments, Continued

Date of appointment

The date of appointment will be with effect from a date as agreed to by the relevant EA and the appointee (which date should be after the date of approval of the appointment).

Re-appointment of former employees

An EA shall not re-appoint a former employee as HoD where:

PSR
Part VII/B.

- the former employee left the public service earlier on the condition that she/he would not accept or seek re-appointment
 - the original grounds for termination of service militate against re-appointment, or
 - the former employee left the public service due to ill health and cannot provide recent and conclusive evidence of recovery.
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8. Employment contracts

Purpose	<p>The purpose of an employment contract is to:</p> <ul style="list-style-type: none">• Regulate the appointment of HoDs• Confirm the employment provisions and conditions of service of HoDs as determined by the Act and Regulations	
Provisions of the Act	<p>The contract entered into between an EA and a HoD shall be as set out in the PSR.</p> <p>The Act provides that a contract may include any term and condition agreed upon between the relevant EA and the HoD as to:</p> <ul style="list-style-type: none">• Particular duties• Specific performance criteria for evaluating the performance of the HoD• Grounds upon and procedure according to which the services of an HoD may be terminated; and• Any other matter which may be prescribed	<p>Section 12 of the Act. PSR Part VII/B .</p> <p>Section 12(4) of Act.</p>
Contents of the contract	<p>The prescribed contract includes the following:</p> <ul style="list-style-type: none">• The appointment as HoD (dates of commencement and expiry dates)• Remuneration and benefits• Deployment• Renewal and extension of term office• Conduct, including confidentiality• Terms and conditions covering the entering into of PAs and management of salary increases• General aspects pertaining to good faith, applicability of the Act and interpretation of the contract, and• Signatures of the EA and HoD.	<p>PSR, Annexure 2.</p>

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8. Employment contracts, *Continued*

Parties to an employment contract

Parties to an employment contract include the:

- relevant EA, and
- HoD.

Copy of the contract

An EA should provide the MPSA with a copy of the contract as soon as possible after its completion.

Responsibility for record-keeping

The MPSA is responsible for record keeping and involved in re-determination of HoDs' contract periods.

9. Performance agreements

Background	The Act stipulates that an employment contract may include any term and condition agreed upon between the EA and the HoD on particular duties and specific performance criteria for evaluating the performance of the HoD.	Section 12(4) of the Act.
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Performance agreement	<p>The employment contract states that a HoD shall enter into an annual PA with the EA. This is linked to a specific financial year and shall include at least the minimum requirements prescribed in item 7 of the prescribed contract.</p> <p>The HoD should enter into a PA not later than three months after assumption of duty/entering into a new post.</p> <p>Copies of PAs entered into should be forwarded to the MPSA at the latest on 30 June every year.</p>	PSR Annexure 2.
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Minimum requirements	<p>The minimum requirements for a PA are:</p> <ul style="list-style-type: none">• Defining a senior manager's work according to her/his key duties and responsibilities and the specific outputs required from the manager for that specific financial year• Output measurement criteria in terms of which the senior manager's performance can be assessed• Dates for assessment and if necessary, revision of outputs• Dispute resolution mechanism, and• Increment date.	Resolution No 13/1998.
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Guidelines for completion of PAs	The DPSA's handbook on Performance Agreements for Senior Managers will assist HoDs by providing guidelines regarding the development of PAs. The handbook explains the elements that should be included in a PA in more detail.	
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9. Performance agreements, Continued

Implications for HoDs The signing of a PA implies amongst others the following:

- A HoD's salary increase will no longer be determined collectively. Instead the MPSA will provide a framework for adjustments to salaries based on performance.
 - HoDs will for the time being still be subject to decisions in the PSCBC regarding their benefits and allowances.
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10. Probation

Background	The appointment of HoDs is effected on a minimum probation period of 12 calendar months unless the EA directs otherwise.	Section 13 of the Act.
Purpose of probation	The purpose of a probationary period is to facilitate the process of evaluating a HoD in the post while freeing the EA from lengthy and cumbersome processes should it be necessary to: <ul style="list-style-type: none">• terminate the appointment• transfer/deploy her/him.	Section 13 of the Act. PSR, Part VII/E.
The process	<ul style="list-style-type: none">• The process followed in evaluating a HoD during a probationary period and the actions to be taken are prescribed in the Act and in the Regulations• The HoD should be supported by the EA and be given a fair opportunity to meet the conditions of her/his appointment• The relevant EA must quarterly evaluate the HoD's work performance in terms of her/his PA• The HoD must endorse each report as confirmation that she/he is aware of how her/his work performance is being regarded and which areas if any, need to be improved on.	Section 13 of the Act. PSR Part VII/E.
Expiry of the probation period	On expiry of the twelve months probationary period, the EA must: <ul style="list-style-type: none">• Confirm the appointment, or• Extend the probation period, or• Terminate the appointment.	

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10. Probation, Continued

Extension of probation

The probation period may be extended under the following circumstances:

- The period of probation must be extended by the number of days leave taken by the HoD during the initial period or any extension thereof
 - If a probationary period is extended, the process of evaluation and reporting on a quarterly basis must be continued until the probation is ended by terminating the appointment or confirming it
 - A shorter period of probation may be directed by the relevant EA when a HoD is deployed or transferred while on probation
 - Where a decision is taken to extend the HoD's probationary period, it would be advisable to first apply the *audi alteram partem* rule, i.e. allow the HoD to state a case in response.
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Employment for less than a year

HoDs who are employed for a period not exceeding one year do not serve a probationary period.

Actions by the EA

The EA of a HoD on probation shall ensure that the probationer:

- Knows the performance and other requirements needed for confirmation of probation at the start of the probationary period
 - Receives written feedback each quarter on her/his performance and compliance with other requirements
 - Receives training, counselling or other assistance if needed
 - Receives written confirmation of appointment at the end of the probationary period if she or he has been found suitable
 - Is allowed to state her or his case if dismissal as a result of poor performance is considered. During this process the probationer may be assisted by a colleague or a trade union representative
 - Is managed in compliance with the stipulations of Schedule 8 Code of Good Practice, of the *Labour Relations Act, 1995*.
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11. Remuneration and service conditions

Rank, status and benefits	Provincial HoDs and Heads of organisational components (Schedule 2 and 3 of the Act) shall not by virtue only of their post be entitled to the rank, status or salary scale and benefits of the HoD mentioned in the second column of Schedule 1 of the Act.	Section 7 of the Act.
Employment contract	The remuneration package that the HoD shall receive should be based on the grading of the post as determined through job evaluation and as specified in the prescribed employment contract.	PSR, Annexure A, Appendix A.
Setting the salary	<p>The salary level of HoDs will be in accordance with determinations made in this regard by the MPSA. The EA may set the salary above the minimum notch of the salary range to enable the recruitment of suitable candidates. In such a case, the EA:</p> <ul style="list-style-type: none"> • Must ensure that the decision will not create an anomaly or disparity compared with other HoDs, and • Record the reasons for the decision. 	PSR Part V/C.
Salary increases	Salary increases will be based on performance. Performance will be assessed in accordance with the HoD's responsibilities and key performance areas included in her/his performance agreement.	PSR Annexure 2.
Benefits	HoDs may be appointed with full participation in the general conditions of service and benefits specified in the PSR and relevant collective agreements.	PSR Annexure A, Appendix A. PSCBC Resolutions.
Amendments in general conditions	General conditions of service and benefits may be amended by collective agreements in the PSCBC and/or by determinations by the MPSA in terms of the Act.	

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11. Remuneration and service conditions,

Continued

Re-grading of jobs

All jobs of Provincial HoDs as listed in Schedule 2 of the Act, must be evaluated with the EQUATE job evaluation system before amendments to the grading of such jobs (e.g. upgrading) are considered.

PSR Part IV.B.
Letter from Minister to Premiers dated 3/11/99.

12. Overtime

Policy	The MPSA shall determine rates of compensation for overtime through the collective bargaining process	PSR Part V.E
When overtime is considered	<p>The EA may only in exceptional cases compensate a HoD for overtime work. The following conditions apply:</p> <ul style="list-style-type: none">• The department must have a written policy on overtime• The EA must have provided written authorisation in advance for the work• The compensation for overtime constitutes 1 % or less of the salary bill on the relevant salary level, and• The department has established clear and unambiguous procedures and criteria on overtime which have been agreed to by the relevant personnel.	PSR Part V.E.
Authorisation	The EA must personally authorise overtime in respect of a HoD.	

13. Deployment

Provisions of the Act

The Act states that:

Section 3(B)(2) of Act.

“any person appointed as head of department may before or at the expiry of his or her term of office be deployed with her/his consent to perform functions in a similar or any other capacity in a post or against a post of equal, higher or lower grading or additional to the establishment, as the EA deems fit.”

When deployment is allowed

A HoD may be deployed only if :

Section 3(B)(3) of the Act.

- The President deploys a HoD of a national department or organisational component to perform functions in a national department or organisational component, and
 - The relevant Premier deploys a head of provincial administration, department or office, to perform functions in the administration, department or office of the relevant province.
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Implications

The Act states that:

Section 3(B) of the Act.

- A deployed HoD shall be appointed for the unexpired portion of her/his term of office at the same salary and conditions of service
 - If a HoD is deployed to a new HoD position with a higher grading, the position is to be job evaluated (if not already evaluated) and the HoD's salary should be adjusted accordingly for the remainder of her/his contract period
 - A deployed HoD may be appointed at the expiry of her/his term of office (without advertising the post) at the salary and conditions of service attached to the post or capacity in which she/he is appointed.
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13. Deployment, Continued

Important provisions

In order to deploy a HoD, it is important to note that:

- There should be consensus between the President/Premier and the responsible Minister/MEC that deployment is required to deal with the situation
- The arrangement cannot be made unilaterally as deployment is, in terms of the provisions of the Act, subject to the consent of the HoD
- Reasons must be given to the HoD for making the arrangement
- Further arrangements related to the new position and the level of employment shall be formalised in a service contract, and
- It is the prerogative of the EA to determine the level of utilisation.

Expiry of the term of office

At the expiry of the term of office it is for the relevant HoD to:

Section 3(B)
of the Act.

- Accept the salary and conditions attached to the deployed position if appointed, or
 - Let her/his term of office expire, after which she/he will receive the normal benefits applicable at the expiry of a HoD's term of office.
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14. Transfers

Policy	The Act stipulates that a HoD may, when the public interest requires, be transferred to any post/position in the same or any other department.	Section 14 of the Act.
No restrictions	This transfer may occur irrespective of the grade of the post (lower or higher) and notwithstanding whether it is within or outside the Republic.	
Approval	The transfer of a HoD from one post/position to another may be made on the authority of the EAs having the power of transfer. Both EAs have to approve the transfer.	
No reduction in salary	A HoD shall not upon a transfer suffer any reduction in her/his salary/scale without her/his consent, except when wrongly granted remuneration was awarded in accordance with section 38 of the Act.	Section 14 of the Act.
Transfer to a higher post/grade	The HoD who has been transferred to or employed in a post which is graded higher than her/his own grade shall not by reason only of that transfer or employment be entitled to the higher scale or salary status that is applicable to the post.	Section 14 of the Act.

15. Secondment

Policy	A HoD can be seconded to: <ul style="list-style-type: none">• any other department within the Public Service, or• another government, institution, body or persons established by or under any law from such government; institution or person.	Section 15 of the Act.
Conditions	A secondment must occur: <ul style="list-style-type: none">• With the mutual agreement of the HoD involved• Under predetermined or prescribed conditions, and• After consultation with Treasury.	PSR, Part VII/B.
Exercising of powers	The President or a Premier will exercise this power together with the relevant EA's (and others in Cabinet/Executive Councils).	
Laws applicable to public service	A HoD remains subject to the laws applicable to her/him in the public service while on secondment.	

16. Extension of term of office

Provisions of the Act	The Act provides for the extension of the term of office of a HoD.	Section 12(2) of the Act.
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Timing	Extension occurs at the expiry of the term and is carried out in accordance with the terms and conditions of the contract.
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Contract	A further contract may be concluded between the EA and the HoD for a period/successive periods of not less than twelve months and not more than five years at a time.
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Number of terms	There is no limit to the number of times a term of office can be extended.
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Departments' responsibility	Departments shall establish clearly when terms of HoDs are due to expire:	PSR, Annexure A.
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Stage	Description
Three months prior to the expiry of the term of office	
1	The EA should inform the MPSA of her/his intention to extend a contract or not (Situation will be different in a Province, depending on the delegation of power)
2	The MPSA informs Cabinet prior to the expiry of the term of office of the intention to extend the term (Situation will be different in a Province, depending on the delegation of power).
At least two calendar months prior to the expiry of the term of office	
3	The EA communicates in writing with the HoD on whether she/he intends to retain the HoD's services for a further period not exceeding five years (60 calendar months)
Within one calendar month of the date of communication	
4	The HoD informs the EA in writing whether she/he accepts the offer of extended employment.

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16. Extension of term of office, Continued

If the contract is renewed

If it is agreed that the HoD will enter into a further contract at the end of the present contract, her/his continued service will be recognised under the new contract. This will avoid any break of service and any accrued or *pro rata* entitlement will be carried forward into the new contract.

Lapse of contract

Should the EA not renew the contract beyond the initial period(s) the HoD shall be entitled to the pension and other benefits directly linked to the specific section of the Act. Section 16(3) of the Act.



Note:

For more detail refer to the part dealing with termination of employment contracts.

17. Acting as HoD

Responsibility When necessary, the EA shall appoint a senior manager in an acting capacity. Section 32 of the Act.

If a Premier has not delegated powers to other EAs, she/he shall appoint a senior manager in an acting capacity.

Compensation An acting HoD may only be compensated for acting as HoD in terms of a determination of the MPSA made through the collective bargaining process. PSR, Part VII/B.5.



Note:
At this stage no such provision exists.

Time limit A manager acting as HoD may not do so for an uninterrupted period exceeding 12 months.

Appointment letter The person to be appointed in the acting capacity should be informed in writing and the letter should include the following:

- an indication that she/he has been appointed in accordance with section 32 of the Act
 - the period of acting
 - an indication of post requirements and responsibilities in accordance with section 7(3)(b) of the Act
 - an indication that she/he acts as accounting officer in terms of section 37 of the Public Finance Management Act, 1999.
-

18. Ethical conduct

Background	A HoD is expected to comply with the Code of Conduct provided for in the PSR. Specific measures have been introduced to regulate the involvement of HoDs in work outside the public service and to enforce the disclosure of their financial interests.	PSR, Chapter 2.
Work outside Public Service	<p>No HoD shall perform paid work outside the public service unless provided for in her/his conditions of employment and without written permission from the relevant EA.</p> <p>A HoD may not claim any extra remuneration for any official duty or work which she/he performs voluntarily or is required by an EA to perform.</p>	<p>Section 30 of the Act.</p> <p>Section 30 of the Act.</p>
Disclosure of financial interests	<p>A framework for the disclosure of financial interests has been developed and included in the PSR.</p> <ul style="list-style-type: none">• HoDs must disclose their financial interests to their EAs by 30 April of each year. New appointees must disclose their interests within 30 days after assumption of duty.• The framework includes a standardised form that has to be completed and certified – see Annexure 4.• The regulatory framework prescribes that if HoDs do not disclose their interests by the prescribed date they may be charged with misconduct.	PSR, Chapter 3.
Role of PSC	<p>The role of the PSC is to keep a centralised database of information on financial matters of HoDs and other levels.</p> <p>The OPSC is also responsible for the management of the information.</p>	

19. Suspension

Circumstances under which an HoD may be suspended

The EA may suspend a HoD on full pay if:

- She/he is alleged to have committed a serious offence, and
- The EA believes that the presence of the HoD at the workplace might jeopardise an investigation into the alleged misconduct, or endanger the well-being or safety of any person or state property.

Resolution 2/99.

Precautionary measure

A suspension of this kind is a precautionary measure that does not constitute a judgement and must therefore be on full pay.

Resolution 2/99.

Disciplinary hearing

When a HoD is suspended, a disciplinary hearing must be held within a month.

The chair of the hearing must then decide on any further postponement and or further suspension.

Resolution 2/99.

20. Disciplinary procedure

Less serious misconduct

Resolution no 2 of 1999 provides for the process to be followed in cases of less serious misconduct that warrants only counselling or warnings. It is an “informal” process that requires at least a meeting with the HoD where she/he will have the opportunity to state her/his case.

Resolution 2/99.

Serious misconduct

If the alleged misconduct justifies a more serious form of disciplinary action, the Resolution allows the EA to initiate a disciplinary enquiry. This may be used:

Resolution 2/99.

- Where the transgression is so serious that counselling or warnings by an EA will not suffice
 - The transgression constitutes a material breach of the employment relationship
 - For repeated transgressions and/or during validity of a final written warning.
-

Criteria of seriousness

The criteria for assessment of the seriousness of the alleged misconduct are:

- Actual or potential impact on work of public service, department, organisational component, colleagues and public
 - Nature of the HoD's work and responsibility
 - Circumstances in which alleged misconduct took place.
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Continued on next page

20. Disciplinary procedure, Continued

Procedure

The following are the steps/actions as prescribed in the Resolution on the disciplinary hearing:

- The EA may suspend a HoD at any stage deemed necessary
- The EA must appoint a representative to initiate the enquiry
- The Relevant EA must nominate another EA or Cabinet/Provincial Executive Committee another person as chairperson for the hearing
- The HoD must be given written notice of at least 5 working days before the date of the hearing and must sign receipt of notice
- Written notice must be done in a form as indicated at Annexure D (Resolution No 2 of 1999)
- The relevant EA may suspend an employee (see 7.2 of Resolution).

The hearing

- The disciplinary hearing must be held within 10 working days after the notice is delivered to the HoD:
 - The HoD may be represented by a fellow employee or a representative of a recognised trade union, but not by a legal practitioner
 - Both sides shall be allowed to present evidence and cross-examine.
 - The decision/final outcome of the hearing must be communicated to the HoD within 5 working days after conclusion of the disciplinary hearing
 - If the Chair finds a HoD has committed misconduct, she/he must pronounce a sanction
 - A HoD may appeal against a finding/sanction. Appeal should be submitted to the relevant Premier or the President within 5 working days after receiving notice of the final outcome.
 - The appeal authority must consider the appeal on the record of proceedings, or by allowing a hearing
 - The EA shall immediately implement the decision of the appeal authority.
-

21. Grievances

Policy

HoDs have the right to complain about management decisions that affect them adversely.

HoDs with personal grievances or who are dissatisfied over an official act or omission related to their work shall be given the opportunity to lodge a grievance.

Procedure

As the prescribed grievance procedure is inadequate for dealing with grievances of HoDs, HoDs who wish to lodge a grievance should do so in accordance with the stipulations of section 35 of the Act. Such grievance should, depending on its nature, be lodged either with the EA or directly with the PSC.

Section 35
of the Act.

22. Incapacity code and procedures for the Public Service

Code to cover poor performance	If the EA considers that a HoD is unfit for her/his duties or incapable of carrying them out efficiently and is not performing in accordance with the job requirements, he/she should be managed in accordance with the appropriate collective agreement.	Resolution 10/99.
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Reference	The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 1995, insofar as it relates to incapacity, constitutes part of this agreement.	Labour Relations Act, 1995.
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Purpose of the Code	<p>The purpose of the incapacity code is to help a HoD to:</p> <ul style="list-style-type: none"> • Overcome poor performance • Correct inadequate performance, and • Prevent arbitrary or discriminatory actions being taken. 	
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Application	<p>In applying this procedure, the EA must assess the incapacity by considering:</p> <ul style="list-style-type: none"> • the extent to which the incapacity affects the work of the public service, the HoD's department, colleagues, and the public • the extent to which the HoD fails to meet the required performance standards established by the EA • the extent to which the HoD lacks the necessary skills to perform in accordance with the HoD's PA • the nature of the HoD's work and responsibilities; and • the circumstances of the HoD. 	
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Procedure – what to do first	If the EA considers that a HoD is not performing in accordance with the job (PA) that the HoD has been employed to do, then the EA must:	
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Step	Action
1	Give written reasons why it is necessary to initiate this procedure
2	Serve the written reasons referred to in Step 1
3	Meet with the HoD and (if the HoD chooses) with the HoD's trade union representative and/or a fellow employee.

Continued on next page

22. Incapacity code and procedures for the Public Service, Continued

**Procedure –
what to do
when meeting
with the HoD**

When meeting with the HoD, the EA must:

Step	Action
1	Explain the requirements, grade, skills and nature of the job
2	Give feedback on the HoD's performance in relation to the requirements of the job
3	Indicate reasons for perceived poor performance
4	Hear the HoD or her/his representative give reasons on whether: <ul style="list-style-type: none"> • she/he has performed in accordance with the requirements of the job, and • the HoD agrees that she/he has not performed in accordance with the requirements of the job.

**Procedure –
what to do after
the meeting**

After considering the HoD's standpoint, the EA must if necessary:

Step	Action
1	Develop and initiate a formal programme of counselling and instruction to enable the HoD to reach the required standard of performance. This must include: <ul style="list-style-type: none"> • assessing with the HoD the time that it would take for her/ him to overcome the poor work performance • establishing from the assessment realistic time frames for the HoD to have met the required performance standards, and • identifying and providing appropriate training for the HoD to reach the required standard of performance (if necessary).
2	Establish ways to address any factors that affect the HoDs performance that lie beyond her/his control.

Continued on next page

22. Incapacity code and procedures for the Public Service, *Continued*

Procedure – what to do if the poor performance continues

If the poor performance of the HoD is not remedied within the time frames established by the programme referred to above, then the EA must:

Step	Action
1	Give the HoD a written report on the outcome of the procedure
2	Consult again with the HoD to explain the outcome of the procedure, and on measures to address any problems indicated in the report.

Procedure – final options

After consulting with the HoD, the EA must consider whether to:

- continue to give the HoD appropriate guidance, instruction and counselling and establish a further appropriate period for the HoD to meet the required standard performance
- mentor the HoD
- place the HoD in a more appropriate job (deployment), or
- dismiss the HoD.



Important

Before exercising the option of dismissal or deployment/transfer to an alternative job, the EA must give the HoD a hearing to establish reasons for failure to meet required standards.

23. Incapacity code in respect of ill health

Policy

If the EA considers that as a result of poor health or injury, a HoD is not performing in accordance with the job that she/he has been employed to do, then the EA shall investigate the extent of the incapacity or injury.

Resolution
12/99.

Procedure for conducting the investigation

In conducting the investigation, the EA must:

Step	Action
1	Give the HoD (and the HoD's trade union representative) the opportunity of stating the HoD's case and being heard on all the issues that the EA investigates and considers
2	Consider relevant medical and other information
After the investigation	
3	Provide the HoD with a written report setting out the results of the investigation

Temporary ill health or injury

In the investigation the EA must consider whether the nature of the HoD's ill health or injury is of a temporary nature and the period of time that she/he is likely to be absent from work.

In this investigation the EA must consider the:

- nature of the job
 - likely period of absence
 - seriousness of the illness or injury
 - remuneration of the HoD during her/his period of absence
 - possibility of securing a temporary replacement for the ill or injured HoD.
-

Continued on next page

23. Incapacity code in respect of ill health,

Continued

Permanent ill health or injury

If the HoD's ill health or injury is of a permanent nature the EA must investigate the possibility of:

- securing alternative employment for the HoD (deployment in accordance with section 3B of the Act)
- adapting the duties or work circumstances of the HoD to accommodate her/his disability, and
- offering boarding on the grounds of ill health or injury.

Ill health or injury due to alcohol or drug abuse

If the investigation conducted by the EA suggests that the HoD's ill health is as a result of alcohol or drug abuse, the EA may:

- counsel the HoD
- encourage the HoD to attend rehabilitation
- establish a formal rehabilitation programme which the HoD will be expected to follow, or
- terminate the employment of the HoD after following fair procedures, if the behaviour is repetitive.

What to do if the HoD fails to address the problem

If the HoD fails to follow the formal programme or to attend rehabilitation or to address the problem of alcohol or drug abuse, then the EA must:

- give the HoD or her/his representative a written report, and
- consult again with the HoD.

After consulting the HoD, the EA may consider whether to terminate the employment of the HoD after the normal disciplinary process is concluded.

24. Termination of contract of employment – overview

Reasons for terminating term of office

A term of office can be terminated for the following reasons:

No.	Reason	Reference
1	On reaching the prescribed (or earlier optional) retirement age	section 16(1); (2), 2(A) and (4) of the Act
2	On completing a term or extended term of office	section 16(3) of the Act
3	Premature retirement at own request	section 16(5) of the Act
4	Discharge in terms of any of the subsections of section 17 of the Act	section 17 of the Act
5	Re-determination of original or extended term of office	section 12(1) or (2) of the Act
6	Voluntary resignation	
7	Death.	

Each of these reasons for termination of contract of employment is dealt with in greater detail below.

Rights in terms of the employment contract

The employment contract provides that either party may after consultation and agreement, terminate the contract before the expiry of an original term of office or an extended term of office, by giving to the other party three months notice of termination.

PSR
Annexure 2.

This notice must be given in writing and be given on or before the last day of a month and take effect of the first day of the succeeding month.

References

The payment of pension and other benefits is directly linked to the:

- specific section of the Act
- Government *Employees Pension Fund Law*, 1996 and regulations promulgated as applicable to a HoD
- Public Service Regulations and
- collective agreement(s) reached.



Note:

The following part illustrates the benefits that are payable in different circumstances. These are illustrations only and actual calculations must be done with reference to the above acts/ regulations/ agreements and with the help of experts.

24.1 Termination of contract of employment – reaching retirement age

Severance benefits

The following severance benefits are payable when a term of office is terminated by reaching the prescribed (or earlier optional) retirement age.

Section 16(1), 2(A) and (4) of the Act.

Pension benefits

These are the pension benefits payable:

Length of service	Pension benefit
Less than 10 years concurrent pensionable service	<ul style="list-style-type: none"> Actuarial interest:
	HoDs who are <i>younger than 55</i> : Period of pensionable service x average salary over the last 24 months of service x actuarial factor.
	HoDs who are <i>older than 55</i> : $[6,72\% \times \text{average salary over last 24 months of service} \times \text{years of pensionable service}] + [(1/55 \times \text{average salary over last 24 months of service} \times \text{period of pensionable service}) \times \text{actuarial factor}]$.
More than 10 years concurrent pensionable service.	<ul style="list-style-type: none"> Gratuity at 6,72% x average salary over last 24 months of service x years of pensionable service.
	<ul style="list-style-type: none"> Annuity at 1/55 x average salary over last 24 months of service x years of pensionable service.

Leave gratuity

A leave gratuity is paid, based on the salary and available leave credit of the HoD on her/his last day of duty.

Pro rata service bonus

A *pro rata* service bonus is paid based on 93% of the HoD's salary on her/his last day of duty.

Resettlement benefits

Resettlement benefits are paid as per collective agreement (Resolution 3/99).

Continued on next page

24.1 Termination of contract of employment – reaching retirement age, Continued

Medical assistance

The following medical benefits are paid:

Length of service	Medical assistance
At least 15 years	Continued employer contribution from the age of 50 onwards
At least 10 but less than 15 years	Cash benefit of 36 times the actual employer contribution as at the last day of service.
Less than 10 years	Cash benefit of 12 times the actual employer contribution as at the last day of service.



Note:

Medical benefits are only payable if the HoD is a member of a registered medical scheme for at least 12 months.

24.2 Termination of contract of employment – completing term or extended term of office

Policy On expiry of a HoD's term of office, section 16(3)(b) of the *Act*, applies, which stipulates that the HoD must be deemed to be discharged in terms of section 17(2)(b) of the *Act*. Section 16(3) of the *Act*.

Pension benefits The following severance benefits are payable in respect of pension:

Length of service	Pension benefits
Less than 10 years concurrent pensionable service	Gratuity calculated at 15,5% of average salary over the last 24 months of service x the period of pensionable service. (The amount of the gratuity payable shall be increased by one-third of the said amount)
More than 10 years concurrent pensionable service	Gratuity calculated at 6,72% of average salary over the last 24 months x the period of pensionable service
	Annuity calculated at 1/55 of average salary over the last 24 months x the period of pensionable service, and
	A supplementary amount of R360 per year.

For the purposes of the calculation of the gratuity/annuity in terms of the rule, the period of pensionable service, (excluding all completed terms of office) shall be increased by:

- one third of the period of pensionable service (excluding term of office) but not exceeding five years or the number of years up to the 60th birthday (or 65 in the case of a person in office on 1 May 1997), and
- one half of the (completed) period during which she/he held office as HoD

Note: Provided that the total of a member's pensionable service shall not exceed 55 years.



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24.2 Termination of contract of employment – completing term or extended term of office, Continued

Leave gratuity A leave gratuity is paid, based on the salary and available leave credit of the HoD on her/ his last day of duty.

Pro rata service bonus A *Pro rata* service bonus is paid based on 93% of the HoD's salary on her/his last day of duty.

Medical assistance Medical assistance is based on the following:

Length of service	Medical assistance
At least 15 years	Continued employer contribution from the age of 50 onwards. A person who does not immediately qualify for the continued employer contribution may be paid a cash amount equal to 6 times the maximum employer contribution.
At least 10 but less than 15 years	Cash benefit equal to 36 times the actual employer contribution as at the last day of service
Less than 10 years	Cash benefit equal to 12 times the actual employer contribution as at the last day of service.



Note: Medical benefits are only payable if the HoD is a member of a registered medical scheme for at least 12 months.

Negotiated benefits The payment of the following benefits should be negotiated between the HoD and the EA as part of the discharge benefits.

Motor finance scheme The payment of an amount equal to a maximum of six times the basic allowance a HoD qualifies for in terms of the scheme for senior managers on her/his last day of duty.

Home owner allowance The payment of an amount equal to six times the allowance a HoD qualifies for on her/his last day of service.

Resettlement benefits Resettlement benefits paid as per collective agreement (Resolution 3/99).

24.3 Termination of contract of employment – premature retirement at own request

Policy

Section 16(5) of the Act provides that a HoD may be allowed to request retirement from the Public Service before her/his term of office expires.

Section 16(5) of the Act.

Pension benefits

If a HoD is allowed to retire from the Public Service in terms of this section, she/he shall not be entitled to any added pension benefits unless she/he retires during an *extended* term of office. In such a situation service is increased as if the term of office had been completed (maximum 5 years + ½ of the completed term of office).

The following pension benefits will be payable:

Length of service	Pension benefit
Less than 10 years concurrent pensionable service	<ul style="list-style-type: none"> Actuarial interest
	<ul style="list-style-type: none"> HoDs who are <i>younger than 55</i>: Period of pensionable service x average salary over the last 24 months of service x actuarial factor. HoDs who are <i>older than 55</i>: [6,72% x average salary over last 24 months of service x years of pensionable service] + [(1/55 x average salary over last 24 months of service x period of pensionable service) x actuarial factor]
More than 10 years concurrent pensionable service	<ul style="list-style-type: none"> Gratuity at 6.72% x average salary over the last 24 months of service x period of pensionable service*.
	<ul style="list-style-type: none"> Annuity at 1/55 of average salary over the last 24 months of service x period of pensionable service*.
	<ul style="list-style-type: none"> Supplementary amount of R 360 per year.



*If a HoD with 10+ years' service retires during an extended term of office, her/his pensionable service (excluding completed term of office) will be increased similar to a HoD who served a completed term, except that the uncompleted term is part of the pensionable service to be increased.

Continued on next page

24.3 Termination of contract of employment – premature retirement at own request, Continued

Leave gratuity A leave gratuity is paid, based on the salary and available leave credit of the HoD on her/his last day of duty.

Pro rata service A *pro rata service* bonus is paid based on 93% of the salary HoDs on her/his last day of duty.

Resettlement benefits Resettlement benefits paid as per collective agreement. Resolution 3/99.

Medical assistance The following medical benefits apply:

Length of service	Medical assistance
At least 15 years	Continued employer contribution from age 50
At least 10 but less than 15 years	Cash benefit of 36 times the actual employer contribution as at the last day of service
Less than 10 years	Cash benefit of 12 times the actual employer contribution as at the last day of service.



Note: Medical benefits are only payable if the HoD is a member of a registered medical scheme for at least 12 months.

24.4 Termination of contract of employment – discharge (Section 17)

Introduction	Payment of pension and other benefits are directly linked to the specific section of the Act, as regulated by the pension laws and other prescripts and collective agreements	Section 17 of the Act.
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Circumstances under which contract may be terminated	<p>The Act allows for the following circumstances under which the contract may be terminated:</p> <ul style="list-style-type: none">• Continued ill health• Abolition of the post, or any reduction, reorganisation, or readjustment of the department or office• If, for reasons other than the HoD's own unfitness or incapacity, her/his discharge will promote efficiency or economy in the department or office, or will otherwise be in the interest of the public service• Unfitness for her/his duties or incapacity to carry them out efficiently• Misconduct• If, in the case of a HoD on probation, her/his appointment is not confirmed• Misrepresentation of her/his position in relation to a condition for permanent appointment• If her/his continued employment constitutes a security risk for the State• If the President or a Premier appoints her/him in the public interest under any law to an office to which the provisions of this Act do not apply.	
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24.5 Termination of contract of employment – re-determination of original or extended term of office

Introduction It might under certain circumstances be necessary to redetermine a HoD's term of office to expire earlier. Section 12(1) and (2) of the Act.

Compensation for breach of contract This represents a breach of contract (if it is not due to inefficiency or misconduct). This breach of contract entitles the outgoing HoD to be compensated for damages incurred.

Reaching agreement In practice, the situation can be dealt with by the EA reaching an agreement with the HoD to re-determine the HoD's term of office. Compensation is then paid for the unexpired portion of the term.

Pension benefits The following pension benefits are paid:

Length of pensionable service	Pension benefit
Less than 10 years concurrent pensionable service	Gratuity calculated at 15,5% of the average salary over the last 24 months of service x the period of pensionable service (+ the amount of the gratuity which is payable shall be increased by one-third of the said amount)
At least 10 years concurrent pensionable service	<ul style="list-style-type: none"> • Gratuity calculated at 6,72% of average salary over the last 24 months of service x the period of pensionable service* • An annuity calculated at 1/55 of average salary over the last 24 months of service x the period of pensionable service* • A supplementary amount of R360 per year

*For the purposes of the calculation of the gratuity/ annuity in terms of the rule, the period of pensionable service (excluding all completed terms of office) shall be increased by a period equal to one third of the period of pensionable service, but not exceeding five years or the number of years up to the 60th birthday (or 65 in the case of a HoD in office on 1 May 1997) , and one half of the (completed) period during which she/he held office as HoD (Provided that the total of a member's pensionable service shall not exceed 55 years).

Continued on next page

24.5 Termination of contract of employment – re-determination of original or extended term of office, Continued

Leave gratuity A leave gratuity is paid, based on the salary and available leave credit of a HoD on her/his last day of duty.

Pro rata service *Pro rata service* bonus is paid based on 93% of the salary of the HoD on her/his last day of duty.

Resettlement benefits Resettlement benefits paid as per collective agreement (Resolution 3/99).

Medical assistance The following medical benefits apply:

Length of service	Medical assistance
At least 15 years	Continued employer contribution from age 50. A person who does not immediately qualify for the continued employer contribution may be paid a cash amount equal to 6 times the maximum employer contribution
At least 10 but less than 15 years	Cash benefit of 36 times the actual employer contribution as at the last day of service
Less than 10 years	Cash benefit of 12 times the actual employer contribution as at the last day of service.

Additional benefits for unexpired term of office Where the service of a HoD is re-determined before the expiry of her/his term of office for reasons acceptable to an EA, specific guidelines/ principles are applicable. The special benefits payable take into account the loss of income, and fairness. Special additional benefits are paid in terms of the provisions of section 37(2)(d) of the Act.

The Minister for the Public Service and Administration must be consulted on the fairness of the severance payment. The payment is subject to Treasury approval and normal income tax directives apply when paying the severance pay.

24.6 Termination of contract of employment – voluntary resignation

Benefits When a HoD resigns from the Public Service, she/he shall receive only the following:

Pension A choice between:

- A *cash resignation benefit* of 7.5% x average salary x years + (plus) increased with 10% interest for each full year of service between 5 and 15 years e.g. 6 years: 10%, 7 years: 20%; 8 years: 30% up to 100%; or
 - *Transfer benefit* equal to actuarial interest.
-

Other benefits No other benefits are currently payable. This may however change in the future, bearing in mind the stipulations of the Basic Conditions of Employment Act.



Note:

A resignation is to be distinguished from early retirement in accordance with section 16(5) of the Act.

ANNEXURE 1 – Delegation of powers

8 October 1999

Dear Colleague

DELEGATION OF POWERS ENTRUSTED TO THE PRESIDENT: HEADS OF NATIONAL DEPARTMENTS

As you are aware, a new regulatory framework to effectively manage human resources within the Public Service has come into operation with effect from 1 July 1999

Section 3B of the *Public Service Act*, 1994 entrusts me as President with the power to undertake and manage the appointment and other career incidents of heads of national departments. These powers include, *inter alia*, the appointment, deployment, performance management, salary increases, secondments and extension and termination of employment contracts of heads of departments in the national sphere of government.

In view of the fact that Ministers and their Departmental heads actively and continuously work together to optimise departmental functioning and to contribute towards effective service delivery, I have delegated, in accordance with section 3B(4)(a) of the *Public Service Act*, 1994, the powers entrusted to me as described in the first column of the attached Annexure, to Ministers. Please note that the deployment of heads of departments in terms of section 3B(2)(a) of the Act, is not delegated. I will exercise this power together with you and other Executing Authorities in Cabinet, as envisaged in the said section, read with section 85(2) of the Constitution, 1996. The application of the delegated powers listed in the Annexure is, besides the conditions laid down therein, also subject to the relevant provisions of the *Public Service Act*, 1994, the new Regulations and other instructions.

The Minister for the Public Service and Administration will gladly render support and give advice to the application of the delegated powers, if required.

Kind regards.

T M MBEKI

Dr E G Pahad
Minister in the Office of the Presidency
Room 223B
Tuynhuys
CAPE TOWN

POWERS OF THE PRESIDENT IN TERMS OF SECTION 3 B(1) OF THE *PUBLIC SERVICE ACT*, 1994, WHICH ARE DELEGATED BY THE PRESIDENT TO MINISTERS FOR RECOMMENDATION OR APPROVAL

1. Purpose

To expedite as far as possible the taking of decisions regarding the appointment of Heads of Department (HoDs) as well as other career incidents of heads, within the new statutory framework.

2. Delegations

The President delegates the powers assigned to him in terms of Section 3 B(1) of the *Public Service Act*, 1994 (Proclamation 103 of 3 June 1994), to the extent indicated in the Annexure and subject to the conditions as set out thereunder, in terms of section 3B(4) of the *Public Service Act*, 1994 to Ministers as indicated.

3. Conditions

- 3.1 The delegations must be exercised with due regard to the Constitution of the Republic of South Africa, 1996, relevant statutory and financial requirements, the Public Service Regulations and applicable collective agreements.
- 3.2 The criteria prescribed/laid down in the *Public Service Act*, 1994, and the policy as contained in the new Regulations and other relevant documents, must be adhered to.
- 3.3 Even though the relevant powers have been delegated, the President may at any time decide to exercise/perform such powers personally.

POWERS OF THE PRESIDENT IN TERMS OF SECTION 3 B(1) OF THE *PUBLIC SERVICE ACT, 1994*, WHICH ARE DELEGATED BY THE PRESIDENT TO MINISTERS FOR RECOMMENDATION OR APPROVAL

DELEGATED POWER			CONDITIONS	
TOPIC	MINISTER TO WHOM DELEGATED, EXCEPT WHERE OTHERWISE INDICATED	PRESCRIPT	EXECUTION	REPORTING
1. The recruitment/ appointment/ employment/ promotion/of any person or employee to the post of HoD.	Minister who is the executing authority for the department/ organisational component concerned or in the case of the Office of the Presidency, the President acting on his own.	Section 12(1) and (2) of <i>Public Service Act, 1994</i> Regulation VII/B, C and D	<ol style="list-style-type: none"> 1. Suitable vacancy. 2. The relevant Minister to beforehand notify the Minister for the Public Service and Administration (MPSA) of her/his intention to fill the post of HoD to allow the MPSA to advise the President* regarding possible redeployment of other HoDs. 3. Post to be advertised within and outside the Public Service. 4. Relevant Minister's Department to effect the shortlisting. 	

* Note: The President exercises the executive authority together with the other members of Cabinet (section 85 (2) of the Constitution, 1996).

DELEGATED POWER			CONDITIONS	
TOPIC	MINISTER TO WHOM DELEGATED, EXCEPT WHERE OTHERWISE INDICATED	PRESCRIPT	EXECUTION	REPORTING
			5. Selection Panel must comprise of the Minister concerned who must act as Chairperson, at least two other Ministers; and an official to provide secretarial support. 6. Appointment, etc. of the successful person to be decided upon by relevant Minister after consultation with MPSA. 7. Appointment to be effected with the signing of the employment contract pre-scribed in the Public Service Regulations, which contract must include a Performance Agreement between the Minister and the HoD. 8. Appointee to be security cleared.	
2. Determination of commencing salary.	As in No. 1	Regulations V/A, B and C	1. Commencing salaries should be negotiated between the relevant Minister and the selected person and decided upon after consultation with the MPSA. 2. The provisions contained in Regulations V/A,B and C should be adhered to.	

DELEGATED POWER			CONDITIONS	
TOPIC	MINISTER TO WHOM DELEGATED, EXCEPT WHERE OTHERWISE INDICATED	PRESCRIPT	EXECUTION	REPORTING
3. Awards to HoD in recognition of suggestions, inventions, improvements, etc. and sustained above average job performance, for exceptional efficiency and/or for an exceptional achievement.	As in No.1	Section 37(2)(c) of <i>Public Service Act, 1994</i> Regulation VIII/F	An award must be made by the relevant Minister after consultation with the MPSA.	
4. Retirement when term expires	As in No.1	Section 16(3)	1. Three months prior to expiry of term of office relevant Minister to inform MPSA of intention of HoD to retire. 2. Relevant Minister to take decision not to extend term of office of HoD after consultation with MPSA.	Cabinet to be informed prior to expiry of term of office by relevant Minister.
5. Permission for the	As in No. 1	Section 30(b)	Approval by relevant Minister.	MPSA to be informed.
6. Suspension of HoD suspected of misconduct.	As in No.1	Resolution 2 of 1999 of PSCBC.	1. Relevant Minister may suspend HoD with emoluments. 2. Suspension may at any time be withdrawn by relevant Minister.	MPSA to be informed.
7. Extention of the term of office.	As in No.1	Section 12(1) and (2)	1. Three months prior to the expiry of term of office MPSA to be informed of intention to extend contract. 2. Extention to be dealt with after consultation with MPSA.	Cabinet to be informed prior to expiry of term of office by relevant Minister.

DELEGATED POWER			CONDITIONS	
TOPIC	MINISTER TO WHOM DELEGATED, EXCEPT WHERE OTHERWISE INDICATED	PRESCRIPT	EXECUTION	REPORTING
			<p>3. Extention must be effected with the signing of a new employment contract and a Performance Agreement.</p> <p>4. Extention can be granted for up to 5 years.</p>	
8. Salary increases in accordance with the performance of the HoD.	As in No.1	Resolution 13 of 1998 of PSCBC.	To be determined in accordance with bases provided by the MPSA after consultation with MPSA.	
9. Secondment of HoD between depart- ments; to the service of another govern- ment/board, institute, or body.	As in No.1	Section 15(3)	After consultation with MPSA.	Cabinet to be informed by relevant Minister.
10. Retirement on reaching the prescribed (or earlier optional) retirement age.	As in No.1	Section 16(1), (2) (2A) and (4)	HoD to notify relevant Minister.	MPSA to be informed. Cabinet to be informed by relevant Minister.

DELEGATED POWER			CONDITIONS	
TOPIC	MINISTER TO WHOM DELEGATED, EXCEPT WHERE OTHERWISE INDICATED	PRESCRIPT	EXECUTION	REPORTING
11. Premature retirement at request of HoD.	As in No.1	Section 16(5)	After consultation with the MPSA.	Cabinet to be informed by the relevant Minister.
12. Redetermination of original term/ extended term of office by Employer.	As in No.1	Section 12(1) & (2)	1. Recommendation by relevant Minister to MPSA to redetermine term of office of HoD. 2. MPSA to advise President* on redeployment if possible and advisable, otherwise MPSA has to approve and determine the benefits.	Cabinet to be informed by relevant Minister.
13. Resignation	As in No.1		Relevant Minister to note resignation.	MPSA to be informed. Cabinet to be informed by the relevant Minister.
14. Discharge due to continued ill-health.	As in No.1	Section 17(2)(a)	Approved by relevant Minister.	MPSA to be informed. Cabinet to be informed by the relevant Minister.

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Notes:

- * The President exercises the executive authority together with the other members of Cabinet (section 85 (2) of the Constitution, 1996).
- * Other administrative and operational arrangements related to the employment of Heads of Departments such as information on remuneration, working hours, leave etc. must be dealt with within the national norms and standards determined in terms of legislative and other prescripts.
- * Deployment of HoDs in terms of section 3 B(2)(a) of the *Public Service Act, 1994*, cannot be delegated and shall be dealt with by the President (who will exercise the power with other members of Cabinet).

ANNEXURE 2 – Cabinet Memorandum

CABINET MEMORANDUM NO _____ OF 2000

Copy _____ of _____

DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

DATE:

FILE NUMBER: E2/2/2/___

FILLING OF ADVERTISED POST OF DIRECTOR-GENERAL/DEPUTY DIRECTOR-GENERAL AT THE DEPARTMENT OF _____

1. **SUBJECT**

Filling of a post of Director-General/Deputy Director-General: _____ in the Department of _____.

2. **PURPOSE**

To obtain Cabinet's concurrence for the intended appointment of Ms/Mr _____ to the advertised post of Director-General/Deputy Director-General at the Department of _____.

3. **SUMMARY**

It is the intention of the Minister of _____ to appoint Ms/Mr _____ to the post of Director-General/Deputy Director-General on the establishment of the Department of _____.

4. **DISCUSSION**

The relevant post was advertised in the media as well as in the Public Service Vacancy Circular with a closing date of _____.

A total of _____ applications for this post were received of which _____ candidates were shortlisted.

The following key performance areas for this post have been identified:

A pre-selection was done through scrutinising each of the applications received, with due consideration to the core functions and requirements for the post as indicated in the advertisement. On completion of this process a shortlist was compiled and the following candidates were invited for the interview:

Name:	Employer/Department	Rank/Position
Mr _____	_____	_____

Dr _____
Mr _____
Mr _____
Ms _____

A selection committee was constituted consisting of:

The Committee conducted interviews with the shortlisted candidates. After thorough consideration of the candidature of these individuals Mr/Ms _____, was found to be the most suitable candidate for the post.

(Provide motivation of most suitable candidate.)

A copy of the candidate's *curriculum vitae* is attached for information.

The other candidates for the position were found to be either less suitable than the nominee or not suitable at all.

5. **ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

The relevant vacant post exists on the establishment of the Department of _____. The appointee will fill the vacant post on the establishment.

6. **FINANCIAL IMPLICATIONS**

The post has been budgeted for. Funds are thus available to cover the relevant expenses.

7. **COMMUNICATION IMPLICATIONS**

The Department will inform the candidate of her/his appointment, if Cabinet concurs and also inform the other candidates that they have been unsuccessful.

8. **STRATEGIC FOCUS**

None

9. **CONSTITUTIONAL IMPLICATIONS**

None

10. **OTHER DEPARTMENTS/INSTITUTIONS CONSULTED**

None

11. **RECOMMENDATION**

That Cabinet concurs with the appointment of Mr/Ms _____ to the advertised post of Director-General/Deputy Director-General at the Department of _____ with a salary of R _____ per annum, for a term of _____ years – (*in the case of a contract employee*) with effect from a date as agreed to by the relevant Executing Authority and the appointee.

12. **CONTACT PERSON**

Mr/Ms _____ can be contacted at tel: _____, should there be any enquiries on the particulars provided in this Memorandum.

ANNEXURE 3 – Covering Letter

Minister for the Public Service and Administration
Private Bag X884
PRETORIA
0001

Dear Colleague

FILLING OF THE VACANT POST OF _____: DEPARTMENT OF _____

The post mentioned above was advertised nationally within and outside the Public Service during _____. After assessment of these applications against the key performance areas and requirements attached to the post as advertised, candidates were shortlisted.

A Selection Committee conducted interviews with all the shortlisted candidates. Ms/Mr _____, acted as scribe to assist the Committee. All the interviews followed the same format, with _____ asking the initial background questions, followed by the other members of the panel. Candidates were also given the opportunity to ask the panel any questions they considered necessary.

After thorough consideration of the candidature of these individuals against the backdrop of the particular requirements and circumstances of the post, _____ was found to be the most suitable candidate for the post.

The following documents regarding the filling of the post are attached:

- i) Copy of advertisement.
- ii) A list of the candidates who applied for the post.
- iii) A Cabinet Memorandum for submission to Cabinet.
- iv) Comments on suitability of shortlisted candidates.

In view of the aforementioned, it will be appreciated if you can obtain Cabinet's concurrence with the appointment of _____ (on a ____ year term of office), to the vacant post of Director-General/Deputy Director-General: _____, with a salary of _____ per annum with effect from a date to be agreed between myself and the nominee.

Thank you for your co-operation and assistance.

Kind regards

MINISTER

ANNEXURE 4 – Financial Disclosure: Framework and Standardised Form

GENERAL INFORMATION

Why the framework

Top managers are entrusted with public funds. As such, they need to maintain the highest standards of professional ethics. Their integrity and that of their departments must be beyond question.

This framework is aimed at preventing conflicts of interest by requiring of top managers to disclose their financial interests.

Who must file

Initially the disclosure framework will only be applicable to the following categories of persons: incumbents of posts mentioned in the second column of Schedule 1, 2 or 3 of the *Public Service Act, 1994* or any person occupying a post on grade 15 in a national department, organisational component, provincial administration or provincial department or any other person approved or instructed by the relevant treasury to be an accounting officer of a national department, organisational component, provincial administration or provincial department. For the purpose of this document, they are referred to as “top managers”.

Where must I file the form

The original completed form must be submitted to your political head (Executing Authority). Your Executing Authority (EA) must submit a copy thereof to the Public Service Commission (PSC) not later than 31 May of the year in question. In the case of top managers appointed after 1 April, the form should be submitted to the PSC not later than 30 days after it has been submitted by the top manager to the EA.

Who will have access to the information

Under normal circumstances only your EA, the Commission and those acting on their behalf, will have access to the information. They are required to liaise with you if they are concerned about a possible conflict of interest. Only your EA may grant a waiver if a conflict of interest is evident. Such a waiver needs to be attached to the original form.

No person who has access to the information may, except when a court so orders, disclose the information. Any person, other than a person referred to above may only be given access to the

information in terms of section 11 of the *Promotion of Access to Information Act, 2000*. Until the commencement of that Act, a request for access to information must be made to the Director-General: Office of the Public Service Commission (DG:OPSC). The DG:OPSC may only grant that request if the person making the request requires access for the protection or exercise of any right of that person or there is a compelling public interest in its disclosure. (For more information see Chapter 3 F of the Public Service Regulations.)

When must I file

A top manager must not later than 30 April of each year, disclose to the relevant EA on the attached form particulars of all her/his registrable interests in respect of the period 1 April of the previous year to 31 March of the year in question.

Top managers who are appointed after 1 April must make such disclosure within 30 days after assumption of duty in respect of the period of 12 months preceding her or his assumption of duty.

What happens if I do not disclose my interests

Any top manager who fails to disclose her/his interests or wilfully provides incorrect or misleading details can be charged with misconduct.

INSTRUCTIONS FOR COMPLETING THE FORM

The form needs to be completed in the person's own handwriting and certified by a Commissioner of Oaths.

By completing the form, the person is not exempted from the statutory requirements of obtaining approval for performing remunerative work outside the public service.

Where insufficient space is provided or if the form does not provide for a certain type of financial interest, the required information should be provided on a separate sheet.

Queries and difficulties

Queries in regard to this form and Chapter 3 of the Public Service Regulations may be directed to:

Senior Public Service Team
Department of Public Service and Administration
Private Bag X 916
PRETORIA
0001
Tel: (012) 314 7395

INFORMATION SHEET

The following notes will guide you in completing the relevant parts of the attached form

NOTE 1

Shares and other financial interests

Top managers are required to disclose the following details with regard to shares and other financial interests held in any private or public company or any other corporate body recognised by law:

- ❖ The number, nature and nominal value of shares of any type;
- ❖ The name of that company/entity; and
- ❖ The nature and value of any other financial interest held in any private or public company or any other corporate entity.

NOTE 2

Directorships and partnerships

Top managers are required to disclose the following details with regard to directorships and partnerships:

- ❖ The name and type of business activity of the corporate entity or partnership; and
- ❖ The amount of any remuneration received for such directorship or partnership.

Directorship includes any position occupied of director or alternate director, or by whatever name the position is designated.

Partnership is a legal relationship arising out of a contract between two or more persons with the object of making and sharing profits.

NOTE 3

Remunerated work outside the public service (All remunerated employment must be sanctioned by the official's EA as required by section 30 of the Public Service Act, 1994.)

Top managers are required to disclose the following details with regard to remunerated work outside the public service:

- ❖ The type of work;
- ❖ The name and type of business activity of the employer; and
- ❖ The amount of the remuneration received for such work.

Remuneration means the receipt of benefits in cash or kind.

Work means rendering a service for which the person receives remuneration.

NOTE 4

Consultancies and retainerships

Top managers are required to disclose the following details with regard to consultancies and retainerships:

- ❖ The nature of the consultancy or any retainership of any kind;
- ❖ The name and type of business activity of the client concerned; and
- ❖ The value of any benefit received for such consultancy or retainership.

NOTE 5

Sponsorships

Top managers are required to disclose the following details with regard to sponsorships:

- ❖ The source and description of direct financial sponsorship or assistance; and
- ❖ The value of the sponsorship or assistance.

NOTE 6

Gifts and hospitality from a source other than a family member

Top managers are required to disclose the following details with regard to gifts and hospitality:

- ❖ A description and the value and source of a gift with a value in excess of R350;
- ❖ A description and the value of gifts from a single source which cumulatively exceed the value of R350 in the relevant 12 month period; and
- ❖ Hospitality intended as a gift in kind.

Top managers must disclose any material advantage that they received from any source e.g. any discount prices or rates that are not available to the general public.

All personal gifts within the family and hospitality of a specifically traditional or cultural nature need not be disclosed.

NOTE 7

Land and property

Top managers are required to disclose the following details with regard to all their land and property (residential or otherwise):

- ❖ A description and extent of the land or property;
- ❖ The area in which it is situated; and
- ❖ The value of the interest.

FINANCIAL DISCLOSURE FORM

I, the undersigned (surname and initials)

Postal address)

(Residential address)

(Position held)

(Name of Department)

Tel _____ Fax _____

hereby certify that the following information is complete and correct to the best of my knowledge:

1. Shares and other financial interests

See information sheet: **NOTE 1**

Number of shares/Extent of financial interests	Nature	Nominal Value	Name of Company/Entity

2. Directorships and partnerships

See information sheet: **NOTE 2**

Name of corporate entity or partnership	Type of business	Amount of Remuneration

3. Remunerated work outside the public service

Must be sanctioned by your Executing Authority. See information sheet: **NOTE 3**

Name of Employer	Type of Work	Amount of remuneration

Name of Executing Authority _____ Portfolio

Signature of Executing Authority _____ Date

4. Consultancies and retainerships

See information sheet: **NOTE 4**

Name of client	Nature	Type of business activity	Value of any benefits received

5. **Sponsorships**

See information sheet: **NOTE 5**

Source of assistance/sponsorship	Description of assistance/ sponsorship	Value of assistance/sponsorship

6. **Gifts and hospitality from a source other than a family member**

See information sheet: **NOTE 6**

Description	Value	Source

7. **Land and property**

See information sheet: **NOTE 7**

Description	Extent	Area	Value

DELETE WHAT IS NOT APPLICABLE AND INITIAL AND DATE.

- I KNOW AND UNDERSTAND THE CONTENTS OF THIS STATEMENT
- I AFFIRM THAT THE CONTENTS OF THIS STATEMENT IS TRUE.

DATE: _____

PLACE: _____

SIGNATURE

I CERTIFY THAT THE ABOVE-MENTIONED PERSON HAS ACKNOWLEDGED THAT SHE/HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS STATEMENT WHICH WAS SWORN TO/AFFIRMED BEFORE ME AND THE DEPONENT'S SIGNATURE WAS PLACED THEREON IN MY PRESENCE.

ON THE DAY OF AT

PLACE _____

SIGNATURE OF COMMISSIONER OF OATHS

CONTENTS NOTED; EXECUTING AUTHORITY

DATE: _____

RECEIVED BY OFFICE OF PUBLIC SERVICE COMMISSION

DATE: _____

TdW00012505AR