

Appendix 1: General Scheme of the Bill

Civil Service Regulation (Amendment) Bill 2018

PART 1 – Preliminary and General

Long Title

An Act to provide for:-

- the amendment of the Civil Service Regulation Acts 1956 – 2005 and the Public Service Management Act 1997 to provide that disciplinary action up to and including dismissal can be assigned below the level of Appropriate Authority, and related matters.
- other miscellaneous amendments to the Civil Service Regulation Acts 1956 – 2005 and the Public Service Management Act 1997.

Explanatory Note

The Long Title of the Bill will be considered further in consultation with the Office of the Parliamentary Counsel.

Head 1 Short title

Provide that:

- The Act may be cited as the *Civil Service Regulations (Amendment) Bill 2018*.
- This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular Part or purpose, and different days may be so appointed for different Parts and different purposes.

Explanatory Note

- This is a standard provision.

PART 2

Amendment of the Civil Service Regulation Acts 1956 – 2005

Head 2 Amendment of Section 1: Interpretation

Provide for:

- The amendment of the definition of “established service” so that reference is made to the Superannuation Acts, 1834 to 1963. This amendment also needs to be carried through in subsection 2 so that reference is made to the Superannuation Acts 1834 to 1963.
- The amendment of the definition of “the Minister” from the Minister for Finance to the Minister for Public Expenditure & Reform.
- A new definition of “Ministerial Private Office appointment” to include special advisers and civilian drivers.

Explanatory Note:

- The definition of “established service” and subsection 2 currently make reference to the Superannuation Acts 1834 to 1954. These references require updating so that reference is made to the Superannuation Acts 1834 to 1963.
- The definition of “the Minister” currently refers to the Minister for Finance but should refer to the Minister for Public Expenditure & Reform.
- The current definition of “Ministerial Private Office appointment” is defined with reference to the definition of ‘special adviser’ in section 19 of the Ethics in Public Office Act 1995. This piece of legislation is to be repealed by the Public Sector Standards Bill 2015 which has proposed a narrower definition of special adviser than was included in the Ethics legislation. It is intended that the definition in the Civil Service Regulation Acts should include special advisers and civilian drivers who are unestablished civil servants for the period of their appointment. Other Ministerial Private Officer appointees, i.e. personal assistants and personal secretaries are not civil servants.

Amendment of the Civil Service Regulation Acts 1956 – 2005

Head 3 Amendment of Section 2: Appropriate authority

Provide for:

- The amendment of the definition of Appropriate Authority in section 2 of the Civil Service Regulation Acts so that, in general, the Appropriate Authority for all staff will be the Secretary General/Head of Scheduled Office, i.e. to remove the distinction between the Appropriate Authority for Principal Officers and above and Assistant Principals and below. Specifically the definition to be amended as follows:
- To amend subsection 2(1)(a) to include that the Appropriate Authority in relation to a civil servant who is the Head of a Scheduled Office or who holds a position as a Director of Audit in the Office of the Comptroller and Auditor General shall be the Government except in the case of the CEO of the Courts Service for whom the appointing and dismissing authority is the Board of the Courts Service by virtue of the Courts Service Act 1998. This exception is necessary in order to protect the principle of the Separation of Powers.
- To delete subsection 2(1)(b) and 2(1)(c) and replace them with a new subsection providing that the Appropriate Authority for all staff will be the Secretary General/Head of Scheduled Office in which the officer is serving.
- To delete subsection 2(2)(f) and subsection 2(2)(g) and replace them with a subsection that provides that the Appropriate Authority for all staff of the Office of the Secretary General to the President (not covered by subsection (1)(a)(i)) will be the Secretary General of the Office of the President.
- To delete subsection 2(2)(h) and subsection 2(2)(i) and replace them with a subsection that provides that the Appropriate Authority for all civilian staff of the Garda Síochána will be the Commissioner of the Garda Síochána.
- To include a new subsection providing that the definition of an ‘Appropriate Authority’ and relevant roles and functions of an Appropriate Authority in the Civil Service Regulation Acts take precedence over any other related provisions in other pieces of primary legislation.

Explanatory Note:

- The intention in amending these sections is to enable us to streamline and simplify the disciplinary process in the civil service by changing the definition of Appropriate Authority (i.e. the authority with, among other powers and functions, the power to discipline, including dismiss, civil servants) to allow a Secretary General/Head of Scheduled Office, or equivalent, to sanction all staff. This will be complemented by the inclusion of an enabling provision (addressed in Head 4) allowing the Secretary

General/Head of Scheduled Office to assign this responsibility to another officer(s) or to a grade(s) of officer, as appropriate.

- Re: Section 2(1)(a) – It is suggested that the Appropriate Authority for all Heads of Scheduled Offices should be the Government. At present the Appropriate Authority for the Head of a Scheduled Office is either the Government or a Minister depending on whether he/she has been appointed by Government. The Government is, however, responsible for dismissing all Heads of Scheduled Offices regardless of who their Appropriate Authority is. The intention in amending this legislation is to provide greater clarity and consistency across Scheduled Offices. The exception to this will be the CEO of the Courts Service who will continue to be appointed and dismissed by the Board of the Courts Service by virtue of the Courts Service Act 1998 (in recognition of the principle of the Separation of Powers).

In addition, the insertion of a provision defining the Government as the Appropriate Authority for the Directors of Audit in the Office of the Comptroller and Auditor General is proposed. Following legislative amendment, the Secretary and Director of Audit will be the Appropriate Authority for all staff of the organisation. The Directors of Audit are the same grade as the Secretary and Director of Audit and report directly to the Comptroller and Auditor General. As such it was deemed appropriate to amend the Appropriate Authority for Directors of Audit to being the Government.

- Re: Section 2(1)(b) and section 2(1)(c) – it is suggested that these two subsections could be replaced with a single subsection that does not make a distinction between the Appropriate Authority for Principal Officers and above and Assistant Principals and below as the intention in this amending legislation is that the Appropriate Authority for all staff would be the Secretary General/Head of Scheduled Office in which an officer is serving.
- Re: Section 2(1)(d) and section 2(1)(e) – As the Minister/Minister of State is responsible for Private Office appointments it is not considered appropriate that a Secretary General/Head of Scheduled Office would manage such appointees. Therefore it is necessary to retain the provision that says that the Minister/Minister of State, as appropriate, is the Appropriate Authority for these appointees.
- Re: Section 2(2)(a) and section 2(2)(e) – it is proposed, following consultations with the Houses of the Oireachtas Service and given the complexities of the arrangements for Staff of the Houses of the Oireachtas Service, that no changes be made to the current appropriate authority arrangements for this cohort of civil servants at this time.
- Re: Section 2(2)(f) and section 2(2)(g) – it is suggested that these two subsections should be replaced with a single subsection that provides that the Appropriate Authority for all staff in the Office of the Secretary General to the President (except for those appointed by Government) would be the Secretary General to the President.

- Re: Section 2(2)(h) and section 2(2)(i) – These two subsections were inserted by the Civil Law (Miscellaneous) Provisions Act 2008 and it is suggested that they be replaced with a single subsection that provides that the Appropriate Authority for all civilian staff of the Garda Síochána will be the Commissioner of the Garda Síochána. This will bring the Civil Service Regulations Acts in line with the Garda Síochána Act 2005.
- Re: Insertion of new subsection - Legislative ambiguity currently exists between the Civil Service Regulation Acts and a number of pieces of primary legislation underpinning statutory civil service bodies. These pieces of primary legislation, relating to statutory bodies, set out who is responsible for certain functions within an organisation including disciplinary, appointing and dismissing functions. As the functions set out in these pieces of legislation overlap with the functions of the Appropriate Authority, the individual responsible for carrying out the particular functions can be at variance between the two pieces of legislation. In order to increase clarity and consistency, it is proposed to include a new subsection providing that the definition of an ‘Appropriate Authority’ and relevant roles and functions of an Appropriate Authority as set out in the Civil Service Regulation Acts take precedence over any other related provisions in other pieces of primary legislation.

Amendment of the Civil Service Regulation Acts 1956 - 2005

Head 4 New Provision in the Civil Service Regulation Acts

Provide for:

An enabling provision that would allow for the assignment of the responsibility for the performance of any function of an Appropriate Authority, within the meaning of this Act, to other officer(s) or grade(s) of officer, as appropriate.

Explanatory Note:

- It is intended that this new provision would be enabling. It should allow the Appropriate Authority within the meaning of this Act (in most cases the Secretary General or Head of Scheduled Office) to assign responsibility for the performance of any function of an Appropriate Authority to another officer(s) or grade(s) of officer.
- It is not proposed to allow the Appropriate Authority to assign the responsibility for the performance of functions under section 8 *Retiring age for civil servants* and section 9 *Retirement on the ground of ill-health* of the Civil Service Regulation Acts to an officer below the grade of Principal Officer or equivalent.
- In respect of discipline, including dismissal, it is not intended to be prescriptive about who the assignee should be in the legislation as this will vary depending on the particular circumstances that prevail in each civil service organisation, the grade of officer being disciplined and the severity of the disciplinary action. In some cases it will be appropriate to assign the responsibility for the functions of an Appropriate Authority to a direct line manager, in other cases this responsibility will be retained at more senior levels within the organisation. We need to retain flexibility to allow organisations determine the assignee that is most appropriate to their own circumstances.
- For disciplinary matters it is envisaged that the assignee will either be a decision maker at disciplinary meeting or a decision maker at appeal. It is necessary to provide that an assignment can be made to more than one officer in order to facilitate this arrangement. The assignee would then be in a position to impose sanctions up to and including dismissal and an assignee of equivalent or higher grade would hear an associated appeal. (Head 14 and 15 propose related amendments to the Public Service Management Act 1997.)
- For disciplinary matters relating to Assistant Principals and below the assignment could be in the nature of a general assignment to Assistant Secretaries and Principal Officers which includes a requirement that Principal Officers oversee the assignment of disciplinary responsibilities to individual officers or groups of officer within their section. This approach would be similar to the arrangements for the Framework of Assignments under the Public Service Management Act 1997.

- To make this process administratively simple it would be desirable to provide that the Appropriate Authority could delegate the power of assignment to, for example, a HR Manager. The HR Manager could then have a subsidiary power to pick the individual Assistant Secretary or Principal who is to carry out a particular disciplinary process.
- For disciplinary matters relating to Principal Officers and above it may be more appropriate for an individual assignment to be given by the Secretary General to an individual senior officer to hear a particular matter. The Secretary General should retain the discretion as to who, specifically, should be the decision maker at the disciplinary meeting and on appeal for these senior officers.
- It is envisaged that the decision of the officer who carries out the function of the Appropriate Authority could not, apart from where an appeal is being considered, be overturned by the officer who originally assigned the function or the Appropriate Authority from whom the function stemmed. Furthermore, the agreement of the officer who originally assigned the function or the Appropriate Authority is not required to take action. The officer to whom the performance of the function is assigned would be responsible for defending their decision or action to a third party should the need arise.

Amendment of the Civil Service Regulation Acts 1956 - 2005

Head 5 Repeal of Section 4: Exercise of powers under sections 6 and 7 in relation to members of the staff of the National Library of Ireland

Provide for:

- The repeal of section 4 of the Civil Service Regulation Acts and consequential amendments to section 6 and section 7.

Explanatory Note:

- The National Cultural Institutions Act 1997 provided for the establishment of a new Board for the National Library of Ireland, and the Council of Trustees referred to in section 4 of the CSRAs ceased to exist from May 3rd 2005.
- The staff of the National Library are no longer civil servants; they are now public servants.
- Section 4 would no longer appear to have any application and therefore should be repealed.
- If section 4 is repealed references to this section in section 6 *Tenure of office of civil servants who are not established civil servants* and section 7 *Persons appointed on probation to established positions* should also be deleted.

Amendment of the Civil Service Regulation Acts 1956 - 2005

Head 6 Amendment of Section 5: Tenure of office of established civil servants

Provide for:

- The deletion of subsection (5) as Ministers will only be in the role of Appropriate Authority in respect of Ministerial Private Office Appointees who are unestablished officers for the duration of their appointment. (This section relates to the tenure of established officers.)

Explanatory Note:

- Subsection (5) requires a Minister to obtain a written recommendation from a Secretary General or Head of Office before dismissing a civil servant. Under the proposals in these draft Heads this will no longer be a requirement as it is intended, and enabled by the provision in Head 3, that the Secretary General/Head of Scheduled Office will be the Appropriate Authority for all staff and will also have the responsibility for dismissals of staff of all grades. Ministers will only act as Appropriate Authority in respect of Ministerial Private Office Appointees who are unestablished civil servants for the duration of their appointment. Section 5 deals with the tenure of established civil servants and so it will not apply to Ministerial Private Office Appointees. Subsection (5) can therefore be deleted.

Amendment of the Civil Service Regulation Acts 1956 - 2005

Head 7 Amendment to Section 7: Persons appointed on probation to established positions

Provide for:

- The amendment of certain roles and functions of the Minister for Public Expenditure & Reform currently provided for in section 7 and to allow for these roles and functions to be carried out by the Appropriate Authority and assigned to another officer(s) or grade(s) of officer as provided for under Head 4.

More specifically to provide for:

- The amendment of section 7(b) to remove the requirement to seek the consent of the Minister for Public Expenditure & Reform to revert a civil servant who previously held an established position and who has failed to fulfil the conditions of their probation to a grade that is the same or an equivalent or lower grade to their previous position.
- The amendment of section 7(b) to remove the requirement that the Minister for Public Expenditure & Reform should designate the established position to which a civil servant who has failed to fulfil the conditions of their probation should be reverted.
- The amendment of section 7(c) to remove the requirement that the Minister for Public Expenditure & Reform may fix conditions of probation and other conditions for a civil servant who held his previous position in a probationary capacity and is reverted to a probationary position.
- The amendment of section 7(d) to remove the requirement to seek the consent of the Minister for Public Expenditure & Reform to revert a civil servant who previously held an unestablished position and who has failed to fulfil the conditions of their probation to a grade that is the same or equivalent or lower to their previous position.
- The amendment of section 7(d) to remove the requirement that the Minister for Public Expenditure & Reform should designate the unestablished position to which a civil servant who has failed to fulfil the conditions of their probation should be reverted.
- The roles for the Minister for Public Expenditure & Reform that are listed above should be made the responsibility of the Appropriate Authority and should be capable of being assigned to another officer(s) or grade(s) of officer.

Explanatory Note:

- The intention in amending this section is to modernise the legislation by providing for greater levels of devolution of the functions from the Minister for Public Expenditure & Reform to the Appropriate Authority within each organisation. These functions should then be capable of being further assigned to other officers or grade(s) of officer as appropriate.

Amendment of the Civil Service Regulation Acts 1956 - 2005

Head 8 Amendment of Section 8A: Appointment of civil servants beyond normal retirement age

Provide for:

- The amendment of section 8A to provide for a maximum appointment age to the civil service of 3 years less than the maximum retirement age.

Explanatory Note:

- Section 8A was included in the CSRAs to allow the appointment of persons over 65 to the civil service. It was necessary to include this provision to take account of the abolition of the retiring age under section 8(5A) as inserted by section 3 of the Public Service Superannuation (Miscellaneous Provisions) Act 2004.
- This section was not amended when the retirement age of 70 was introduced under the Public Service Pensions (Single Scheme and Other Provisions) Act 2012.
- This section could be interpreted as allowing for the appointment of persons to the civil service beyond the age of 65 with no upper age limit attaching.
- It is proposed that language is included to the effect that a maximum appointment age to the civil service of 3 years less than the maximum retirement age will apply to civil service competitions.
- The reasoning for this is that:
 - It would allow for the cost of recruitment, training etc. to be recouped in terms of productivity over a minimum 3 year period.
 - It eliminates the issue of waiting time on panels – i.e. to avoid a situation where someone could be under 67 on the closing date of the competition, but be 68 or over by appointment date.
 - It gives scope for any future changes to the retirement age to automatically impact on the maximum appointment age.
- Amendments to this section need to be in line with amendments proposed to section 8 in the *Public Service Superannuation (Miscellaneous Provisions)(Amendment) Bill 2017*

Amendment of the Civil Service Regulation Acts 1956 - 2005

Head 9 Amendment to Section 9: Retirement on the ground of ill health

Provide for:

- The amendment of section 9(1) to state that “medical referee” means a registered specialist medical practitioner who is suitably qualified to assess medical fitness for work, who is not a treating doctor of the civil servant and that this medical referee shall be appointed by the Chief Medical Officer.
- The amendment of section 9(2)(c)(iv) to remove the reference to the payment of fees for a medical referee and the payment of travel and maintenance expenses.
- To provide that nothing in this section or any provision of the Civil Service Regulation Acts 1956 to 2005 or the Public Service Management (Recruitment and Appointments) Act 2004 prejudices the discretion of an Appropriate Authority to lawfully terminate the appointment of a civil servant on grounds related to capability.

Explanatory Note:

- It is proposed that section 9(1) be amended to reflect current practice in the Office of the Chief Medical Officer in relation to the appointment of medical referees.
- It is proposed that all references to the payment of fees for medical referees be deleted from section 9(2)(c)(iv) as these provisions are more suitable for specification in circulars. The current provisions in Circular 22/2007 run counter to section 9 from the perspective of payment of fees and are more favourable to the civil servant.
- It is proposed that section 9 of the Civil Service Regulation Acts 1956 - 2005 should be amended to explicitly permit the Minister for Public Expenditure & Reform to establish a policy which could result in the dismissal of a civil servant on grounds relating to capability, but who is not permanently incapable of discharging the duties of his or her position.
- In this context, we note the provisions of section 16 of the Employment Equality Act 1998 as amended. Section 16 preserves the right of an employer to terminate the employment of an employee who is not “fully capable of undertaking the duties attached to the position”, subject to the obligation of the employer to provide reasonable accommodation to an employee who has a disability.
- The intention is to ensure, in line with section 16 of the Employment Equality Act 1998 as amended, that nothing in the legislation governing the terms and conditions of employment of civil servants shall be construed as requiring any person to retain a civil

servant in a position if the individual is not fully capable of undertaking the duties attached to that position, having regard to the conditions under which those duties are, or may be required to be, performed, subject to the employer complying with its obligations to provide reasonable accommodation for the civil servant where required. The provision of ill-health retirement, or any provision in respect of remuneration for civil servants who are ill or injured, should not be read as restricting the right of an Appropriate Authority to terminate the appointment of a civil servant on grounds of capacity on the same basis as other employers terminate on grounds of capacity.

- Retirement on medical grounds for Single Pension Scheme members is specifically provided for in Section 29 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012. Dismissal on grounds related to capability should also apply to the cohort captured by the Single Scheme legislation.

Amendment of the Civil Service Regulation Acts 1956 - 2005

Head 10 Amendment to Section 13: Suspension of civil servants from duty

Provide for:

- The amendment of sections 13(1)(a) and 13(1)(c) to remove references to “grave” misconduct and replace this with references to “serious” misconduct.
- The amendment of sections 13 (1)(a) and 13 (1)(c) to remove reference to “irregularity” in line with the proposed amendments outlined in Head 11.

Explanatory Note:

- The intention in amending this section is to align the language used in the legislation with that used in the Civil Service Disciplinary Code.
- The type of suspension addressed in this section of the Act is often referred to as a “holding suspension” and is normally part of what might be termed "protective measures". Such measures are not disciplinary actions, nor are they an indication of wrongdoing. They are normally applied during the disciplinary process, pending the outcome of an investigation and any subsequent disciplinary process. If an employee is suspended by way of a protective measure they are paid while off duty. It is considered that the use of the term “serious” conveys that a decision to impose such a suspension should not be taken lightly.
- The intention is that “irregularity” is understood by reference to “misconduct”. This amendment is proposed in order modernise the language used in the legislation and to align it more closely with the language used in the Civil Service Disciplinary Code.

Amendment of the Civil Service Regulation Acts 1956 - 2005

Head 11 Amendment to Section 15: Disciplinary measures

Provide for:

- The definition of the circumstances that can lead to Disciplinary Measures being taken to refer to “misconduct or underperformance” only.
- The removal of the reference to “official duties” in subsection (1) so that misconduct, which could be the subject of disciplinary measures, may also include inappropriate behaviour outside the workplace which has an impact, or could reasonably be likely to have an impact within the workplace
- The deletion of the three Disciplinary Measures specified in subsection (1). Disciplinary Measures should be defined by reference to the Civil Service Disciplinary Code. Please note that it is intended that the revised Civil Service Disciplinary Code will be known as the Civil Service Disciplinary Policy and subsection (7) should be amended accordingly.
- The deletion/ repeal of subsection (3) which provides for a representation to be made to an Appropriate Authority before any action is taken under this section. If this subsection is deleted it should not be referred to in subsection (1).
- The deletion/ repeal of subsection (4) as it is considered that the issues set out in this subsection (requiring that measures aimed at improving the performance of the civil servant through training or development be taken) are more appropriate to guidelines.
- The amendment of subsection (6) to include a civil servant who is the Head of a Scheduled Office.

Explanatory Note:

- It is proposed that the definition of when Disciplinary Measures can be taken outlined at section 15(1)(a) be amended to remove the references to “...*irregularity, neglect, unsatisfactory behaviour*...”. The intention is that each of these instances are comprehended by reference to either misconduct or underperformance. This approach is proposed in order modernise the language used in the legislation and to align it more closely with the language used in the Civil Service Disciplinary Code.
- It is also proposed to remove the qualification “*in relation to his official duties*” as actions taken by civil servants outside of the workplace can, in some instances, be construed as misconduct or underperformance that warrants disciplinary action.

- It is proposed to remove the three specific references to disciplinary measures from the legislation. All disciplinary measures available to the Appropriate Authority are set out in the Civil Service Disciplinary Code.
- Subsection (3) should be deleted/repealed as, under the arrangements proposed in Heads 3 and 4 it is proposed that a civil servant would, in general, have an internal appeal to a more senior manager who may not be the Appropriate Authority. It is no longer envisaged that an individual would also have an additional appeal to the Appropriate Authority which this subsection allows. Deleting/repealing this provision necessitates the removal of the reference to this subsection in subsection (1).
- Subsection (4) provides for “*measures aimed at improving the performance of the civil servant through training and development*”. It is considered that it is more appropriate to address this level of detail in guidance rather than in legislation. Placing them in legislation sets too high a bar for civil servants when compared with other private and public sector employees and is considered superfluous in a modern restatement of the legislation.
- The amendment of subsection (6) to provide that the subsections relating to disciplinary measures will not apply to a civil servant who is the Head of a Scheduled Office is proposed to ensure consistency with the amendment proposed under Head 3, which provides that the Appropriate Authority for the Head of a Scheduled Office shall be the Government.

Amendment of the Civil Service Regulation Acts 1956 - 2005

Head 12 Amendment to Schedule 2

Provide for:

- The inclusion of the Irish Prison Service and the Chief State Solicitor's Office in the Schedule to the Civil Service Regulation Acts 1956 – 2005.

Explanatory Note:

- It is proposed that the Irish Prison Service and the Chief State Solicitor's Office be added to Schedule 2 of the Civil Service Regulation Acts 1956 – 2005 so that, by virtue of the definition of a Scheduled Office in section 1 of the Acts, the Director General of the Irish Prison Service and the Chief State Solicitor would be the Appropriate Authority for their respective organisations.
- At present, the Appropriate Authority for the Irish Prison Service is the Minister for Justice and Equality for staff at Principal level and above and the Secretary General of the Department of Justice & Equality for staff at Assistant Principal level and below. Under these proposed amendments, the Appropriate Authority for all staff should be the Director General of the Irish Prison Service.
- The Appropriate Authority for Principals and above in the Chief State Solicitor's Office is the Attorney General and for Assistant Principals and below it is the Director General of the Office of the Attorney General. Under these proposed amendments the Appropriate Authority for all staff in the Chief State Solicitor's Office should be the Chief State Solicitor.

Amendment of the Civil Service Regulation (Amendment) Act 1958

Head 13 Amendment to Section 2: Tenure of office of persons appointed to excluded positions

Provide for:

- The repeal of section 2 of the Civil Service Regulation (Amendment) Act 1958.

Explanatory Note:

- Section 2 of the Civil Service Regulation (Amendment) Act 1958 is no longer valid given that its provisions relate directly to the Civil Service Commissioners Act 1956 which was repealed by part 1 of schedule 2 of the Public Service Management (Recruitment and Appointments) Act 2004.
- Given that section 4 (which provides for the dissolution of the Civil Service Commission and Local Authority Commission) and section 8 (excluded unestablished positions) of the Public Service Management (Recruitment and Appointments) Act 2004 are in place, it is considered appropriate to repeal section 2 of the Civil Service Regulation (Amendment) Act 1958 as it is no longer required.

Amendment of the Public Service Management Act 1997

Head 14 Amendment of Section 4: Responsibility and accountability within Departments and Offices

Provide for:

- The amendment of subsection 4(1)(h) of the Public Service Management Act 1997 to extend the authority, responsibility and accountability of the Secretary General/Head of Scheduled Office to include the management of all matters pertaining to appointments, performance, discipline and dismissals of all staff regardless of grade in his/her Department or Scheduled Office.

Explanatory Note:

- The proposed amendment removes the distinction between the management of matters relating to appointments, performance, discipline and dismissals in relation to staff below the grade of Principal Officer compared with staff of Principal Officer grade and above. The amendment will be in line with the proposed amendment to the Civil Service Regulation Acts which intends that the Secretary General/Head of Scheduled Office will be the Appropriate Authority, in the first instance, for all staff (addressed in Head 3).
- The aim in amending this subsection is to streamline and simplify the disciplinary process, up to and including dismissal, by allowing, in most cases, for a Secretary General/Head of Scheduled Office to sanction all staff in his/her Department or Scheduled Office, not solely staff below the grade of Principal.

Amendment of the Public Service Management Act 1997

Head 15 Amendment of Section 9: Assignment of responsibility in respect of functions

Provide for:

- The amendment of subsection 1(f) to allow the Secretary General/Head of Scheduled Office to assign responsibility for the performance of functions relating to all aspects of appointments, performance and discipline, including dismissals, to other officer(s) or grade(s) of officer.
- The amendment of subsection 1(f) to remove the reference to “the area of the assignment”.

Explanatory Note:

- Under the PSMA, responsibility for dismissals currently rests with the Secretary General and it cannot be assigned to anyone else. The proposed amendment provides for the assignment of that responsibility to a grade or grades of officer of a Department or a Scheduled Office.
- Ambiguity was previously identified by advisory counsel as regards the interaction of section 4(1)(i) of the Public Service Management Act 1997 which refers to “assigning the responsibility for performance of the functions” of a Secretary General/Head of Scheduled Office and section 9(1)(f) which refers to the performance of functions “in the area of assignment”. It is proposed that this ambiguity be resolved through the deletion of the phrase “in the area of the assignment” from section 9(1)(f).

Amendment of the Public Service Management Act 1997

Head 16 Amendment of Section 11: Special Advisers

Provide for:

- an additional subsection in section 11 to the following effect:
 - (1) For the purposes of subsection (1), two (or more) Special Advisers who are appointed as work-sharing employees to one full-time post as a Special Adviser to a Minister, or Minister of State, shall be counted as one [Special Adviser].

- an additional subsection in section 11 to the following effect:
 - (1) For the purposes of subsection (1), where a Special Adviser is certified by their Minister as on long-term leave, a temporary appointment to his/her position may be made, with the consent of the Minister for Public Expenditure and Reform. Such an appointment should not be considered to form part of the number of Special Advisers as specified in subsection 1.
 - (2) ‘long term leave’ means a Special Adviser is unable to attend to his or her duties due to illness, injury, or statutory leave’.

Explanatory Note:

- The wording of section 11(1) of the Public Service Management Act 1997 limits the number of Special Advisers who may be appointed by a Minister of the Government to 2 full-time positions (and by a Minister of State to 1). For the avoidance of doubt, the purpose of the amendment is to allow for the appointment of two or more Special Advisers to one Special Adviser post, to allow for work-sharing arrangements, which are available for Civil Servants generally, to be granted to Special Advisers.

- It is intended that “work-sharing employee” in this context will provide for two advisers working on 50% work pattern to be regarded as one adviser for the purposes of section 11 of the Public Service Management Act 1997. It would not be intended, for example, that two advisers working 80% or 90% work patterns would be regarded as occupying one adviser post.