



## STATUTORY INSTRUMENT

No. **7** of 2014.

*Public Services (Management)(Employment of Departmental Heads) Regulation 2014.*

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No.      of 2014.

### *Public Services (Management)(Employment of Departmental Heads) Regulation 2014,*

Being a Regulation for the purpose of implementing Sections 26, 27, 28, 29, 30 and 31 of the *Public Services (Management) Act 2014*,

MADE by the Head of State, acting with, and in accordance with, the advice of the National Executive Council to be deemed to have come into operation on 1<sup>st</sup> October 2014.

#### **PART I. – OVERALL ADMINISTRATIVE AND PROCEDURAL RESPONSIBILITIES UNDER THE REGULATION**

##### **1. MINISTERIAL EXECUTIVE APPOINTMENTS COMMITTEE (MEAC).**

(1) Pursuant to Section 193 of the *Constitution* and Section 28 of the Act the MEAC is responsible for the recommendation made to the National Executive Council in respect to the appointment of a single candidate as a departmental head. The selection is made from a final list of not less than three and not more than five candidates selected by the Pre-Selection Committee utilising the minimum acceptable person criteria and the merit based selection process.

(2) The MEAC is also responsible for advising the National Executive Council on performance assessment of serving departmental heads, on re-appointment, on disciplinary suspension and on termination of departmental heads for any reason, subject to the advice of the Secretary, Department of Personnel Management.

##### **2. SECRETARY, DEPARTMENT OF PERSONNEL MANAGEMENT AND SENIOR EXECUTIVES SERVICES.**

(1) Pursuant to Sections 22 and 28 of the Act, the Secretary, Department of Personnel Management is the Secretary to the MEAC (“the Secretary”) and is responsible for the overall administration of all departmental head employment processes described in the Act and the Regulation, within time limits set, from selection to appointment on contract, performance assessment and to termination.

(2) The Secretary shall coordinate all administrative processes leading to the advice to the MEAC and for preparation of Cabinet Submissions providing recommendations and advice to the NEC on the direction of the Chairman MEAC in accordance with the Regulation, and ensuring that timely funding is made available to meet associated costs.

(3) The Secretary shall be responsible for all procedural communications and in particular for informing the Minister and the portfolio Ministers on progress at various stages of the procedures to expedite action and ensure compliance with procedural time limits imposed by the Regulation.

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(4) The Senior Executive Services is an Office within the Department of Personnel Management for the purpose of coordinating the procedures and for advising the Secretary on compliance and progress.

(5) In complying with the procedures time is of the essence, and all parties are bound to cooperate with the Secretary to ensure that the requirements of the MEAC and the NEC are met and that transactions can be completed in the shortest possible time.

(6) All time limits prescribed by the Regulation are for administrative purposes to ensure that action is effected in the shortest possible time and that contractual notice periods applying to an incumbent departmental head are complied with.

(7) As much as possible, the time limits must be complied with but non-compliance with time limits does not derogate the process and the Secretary shall, in consultation with the Chairman MEAC, determine what action to take in such circumstances where time limits are over-run, but the merit based selection process shall be complied with at all times.

**3. CHIEF SECRETARY TO GOVERNMENT.**

(1) The Chief Secretary is responsible under the *Prime Minister and National Executive Council Act 2002* for reporting to the NEC on the overall performance of departments against targets and standards set by the NEC.

**PART II. – JOB DESCRIPTION AND MINIMUM PERSON COMPETENCY AND PERFORMANCE REQUIREMENTS.**

**4. JOB DESCRIPTION - KEY RESULT AREAS AND PERFORMANCE INDICATORS.**

(1) The Secretary shall compile, maintain and up-date the Job Description for each departmental head position.

(2) The Job Description shall meet the following requirements:

- (a) compiling the Minimum Acceptable Person Competency and Performance Requirements for the position; and
- (b) compiling the Merit Based Selection Criteria for the advertisement of vacant positions and conduct of the selection and appointment process; and
- (c) compiling the Key Result Areas for measurement of performance and the Performance Indicators for purposes of Contractual Commitments and for Performance Assessment.

(3) A copy of each Job Description shall be made available within the Department of Personnel Management and on its website, accessible at all times to each departmental head and to potential applicants for each departmental head position.

**5. MINIMUM PERSON APPOINTMENT SPECIFICATION.**

(1) Persons applying for departmental head positions from within or outside of the Public Service are required to satisfy the Minimum Acceptable Person Competency and Performance Requirements for Selection and Appointment prior to being considered as suitable candidates for appointment as follows:

- (a) a serving officer of the National Public Service, or a person fit and qualified to serve as an officer of the National Public Service, as determined by the criteria hereunder; and

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- (b) satisfies health and fitness requirements for occupancy of a departmental head position, as determined by a medical officer appointed or approved by head of the Department of Health; and
- (c) not less than 35 years of age and not more than 65 years of age; and
- (d) possesses a degree from a recognised university, together with post graduate training relevant to the technical requirements of the position, and a recognised management qualification; and
- (e) of good character and repute, with no previous criminal record, and as witnessed by suitable references from at least three persons of standing in the community; and
- (f) posses current professional work references from previous employers and or persons of standing stating the major achievements in relation to a management responsibility and confirming the candidate is of good character and repute; and
- (g) free of criminal charges or outstanding court cases of a nature likely to seriously injure the professional standing and reputation of the officer, as verified by a current Police Clearance; and
- (h) free of any outstanding investigations or disciplinary proceedings under any laws; and
- (i) not disbarred by virtue of any constitutional or statutory restriction under the *Leadership Code* or the *Defence Act 1974*; and
- (j) able to demonstrate leadership qualities as described in the National Public Service “Leadership and Management Capability Framework”; and
- (k) the candidate possesses proven skills, experience and competencies gained through relevant private or public sector experience in the following fields:
  - (i) management of staff, with a minimum of three years at a level not lower than Deputy Secretary, or Deputy Managing Director or deemed equivalent level in a public or private sector organisation; and
  - (ii) policy formulation and development, strategic and corporate planning, and project management; and
  - (iii) human resource and financial management; and
  - (iv) negotiating and public relations skills, with an ability to make convincing public presentations of technical information; and
  - (v) an acceptable level of knowledge of the Government political structures and administration systems, the *Constitution*, the *Organic Law on Provincial Government and Local-level Governments* and knowledge of the *Public Finances (Management) Act 1995* and the *Public Services (Management) Act 2014* and the General Orders in particular; and
  - (vi) able to maintain a firm position on principle and policy and to uphold the Public Service Code of Business Ethics and Conduct; and
  - (vii) possesses other competencies (physical and mental skills and abilities) relevant to the position, as prescribed in the Job Description; and
  - (viii) has provided a dissertation in writing as to suitability for the appointment, and the contribution the candidate make to the Government priority programs;
  - (ix) has satisfied all of the requirements specified in the National Gazette.

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**PART III. – ADVERTISING AND MERIT BASED SELECTION AND APPOINTMENT PROCEDURES FOR SUBSTANTIVE APPOINTMENTS.**

**6. SECTION 193(1A) (APPOINTMENTS TO CERTAIN OFFICES) OF THE *CONSTITUTION* - SUMMARY OF PROCEDURES.**

(1) The procedures for the substantive appointment of a departmental head must be in compliance with the act and the regulations.

(2) A substantive office holder who, prior to declaration of the vacancy, stated their willingness to continue in that office shall have their performance appraised per the Regulation and the MEAC shall recommend to NEC to determine whether to re-appoint that person without advertisement of the position.

(3) The NEC shall not introduce new candidates into the appointment process but may at its sole discretion reject the MEAC recommendation and direct that the position be re-advertised in order to conduct the merit based selection process.

(4) The merit based procedures as detailed in PART III of the Regulation pursuant to Sections 27 and 28 of the Act are summarised as follows:

- (a) where an office of departmental head becomes vacant the Secretary shall, declare the vacancy and advertise the vacancy in appropriate medium of communication for a period of not less than two weeks; and
- (b) the Secretary shall assess all applicants for the position against the advertised minimum acceptable person specification for appointment and recommend suitable candidates to the MEAC; and
- (c) the MEAC shall select one candidate to recommend to the NEC for appointment, and the NEC shall advise the Head of State to make the appointment.

**7. REVIEW OF INCUMBENT PERFORMANCE FOR RE-APPOINTMENT PRIOR TO ADVERTISEMENT OF A VACANCY.**

(1) The Secretary shall firstly inform the incumbent departmental head not less than 6 months prior to expiry of the appointment and request the incumbent to state in writing whether or not they wish to be considered for re-appointment, subject to receipt of satisfactory performance appraisals during the period of the contract.

(2) The incumbent departmental head shall respond to the Secretary within 14 days and shall state whether or not they wish to be reappointed and shall submit satisfactory Performance Appraisal Reports as prescribed by this Regulation to support their application for re-appointment.

(3) The Secretary shall consult the Chief Secretary and the portfolio Minister in the standard format as to the performance of the incumbent during the period of the contract and no later than four months prior to contract expiry shall provide a brief to the MEAC.

(4) In the event that the MEAC recommends the incumbent departmental head for re-appointment, the Secretary shall prepare a submission to the NEC describing the incumbent's performance record over the period of the expiring contract with a recommendation to re-appoint, no later than three months prior to expiry of the contract.

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(5) Where NEC determines not to re-appoint, the Secretary shall advertise the position and the incumbent departmental head shall be informed of the NEC Decision.

**8. VACANCY IN AN OFFICE OF DEPARTMENTAL HEAD.**

(1) Vacancy in this context means a position that is substantively vacant for any of the following reasons:

- (a) expiry of contract period and non-renewal; or
- (b) pre-mature termination of contract for any reason; or
- (c) creation of a new departmental head position.

(2) The Department of Personnel Management Senior Executive Services shall maintain in computerised format a Departmental Head Register of all departmental head positions showing occupancy details by name, date of birth, appointment date, and period, expiry date, number of previous appointments and performance history, together with their performance appraisal history.

(3) The Senior Executive Services shall monitor the Departmental Head Register and shall inform the Secretary at the prescribed intervals of a vacancy becoming due in the office of departmental head due to expiry of contract period, or termination for any reason, to enable the Secretary to commence the procedures to fill the vacancy.

(4) The Senior Executive Services shall ensure that incumbent departmental heads are informed and that their performance reports have been provided to the Secretary for assessment, as provided by Subsection (2) of the Regulation.

**9. ADVERTISING OF VACANCIES.**

(1) In the event of a vacancy, the Secretary shall advertise the vacant position as prescribed in the National Gazette.

(2) The advertisement shall be placed in the appropriate medium of communication as determined by the Secretary for a period of not less than two weeks.

(3) The Secretary for the Department of Personnel Management shall meet the cost of the advertisements and all other administrative expenses relating to the departmental heads position in the Public Service.

(4) The Secretary may delegate to the Director for Senior Executive Services the authority to endorse the advertisement of a departmental head position.

(5) Following the advertisement, a departmental head position which attracts less than three suitable applications shall be re-advertised and in the event that the position has been re-advertised on two occasions and still there are less than three suitable applicants, Secretary shall resolve the matter with the Chairman MEAC.

(6) In order to be considered eligible in the selection process by the Department of Personnel Management, an applicant must satisfy the Minimum Acceptable Person Competency and Performance Requirements for the position and the conditions specified in the National Gazette.

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(7) A Pre-Selection Committee is hereby established to be chaired by a Deputy Secretary of the Department of Personnel Management reporting to the Secretary, to receive all applications to the advertisement and to coordinate the Applicant Assessment Process thereafter.

(8) The Pre-Selection Committee shall comprise of designated officers at deputy secretary level or their delegates but at the level not lower than the First Assistant Secretary Level from the Central Agency departments as follows:

- (a) Department of Personnel Management; and
- (b) Department of PM and NEC; and
- (c) Department of Treasury; and
- (d) Department of Justice and Attorney General; and
- (e) Department of Provincial and Local Level Government; and
- (f) Department of National Planning and Monitoring.

(9) The quorum of the Pre-Selection Committee is four (4) including the Chairman.

(10) The Secretary may determine the need to engage a Human Resource specialist as an adviser to the Pre-Selection Committee to offer independent advice.

(11) The Pre-Selection Committee Members shall execute an oath of confidentiality in the prescribed format and shall exercise due diligence in performing their functions.

**10. MERIT BASED SELECTION CRITERIA AND APPLICANT ASSESSMENT PROCESS.**

(1) The Senior Executive Services shall, on receipt of applications, ensure that the following information and certification is provided in the application:

- (a) date of birth and age; and
- (b) two character references from persons of standing in the community; and
- (c) two professional references of which one shall be from a previous employer and the other from the current employer; and
- (d) two signed copies of the application.

(2) A failure to provide this information or to meet the minimum person specification described in the advertisement shall disbar the applicant from consideration.

(3) The Senior Executive Services shall prepare the Individual Candidate Profile for Assessment Purposes for merit-based assessment for each applicant listing the assessment factor in the following format:

- (a) secondary, tertiary and vocational qualifications supported by certificates and testimonials; and
- (b) experience covering applicants whole career; and
- (c) management competency in listed generic fields; and
- (d) technical competency in portfolio related fields; and
- (e) special aptitudes for the position; and
- (f) performance assessment records if a serving officer.

(4) Each of the assessment factors (a) to (f) have been given a standard weighting reflecting the relative importance to achieving the objectives of the position and fulfilling the performance targets set by the Government.



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(5) Utilising the Merit Based Ranking Matrix compiled for each applicant, the Pre-Selection Committee shall allocate a points score against each of the assessment factors in the Merit Based Ranking Matrix.

**11. DEPARTMENT OF PERSONNEL MANAGEMENT SHORT LISTING PROCEDURES.**

(1) The Secretary may determine the need to outsource the short listing process to a professional recruitment company and the short listing results shall be subject to the scrutiny and review of the Pre-Selection Committee and the Secretary.

(2) The resulting Rank Order Of Applicants shall be compiled with a dossier of supporting documentation for quality control checks within the Department of Personnel Management to be conducted by the Chairman of the Pre-Selection Committee and justified to the Secretary to ensure internal consistency in the rank order.

(3) The Secretary shall determine from the rank order of applicants a short list of not less than three and not more than five candidates for the position to finalise a Pre-Selection Report to the MEAC.

**12. SHORTLISTED APPLICANTS CHARACTER AND STANDING CHECKS.**

(1) The Secretary, Department of Personnel Management prior to submitting the final list of candidates to the MEAC shall ensure all shortlisted applicants are cleared by the Police Commissioner, the Ombudsman Commission, Public Prosecutor and the Previous Employer.

(2) Shortlisted applicants who have conviction record as verified by Police, criminal case pending in the National Court as verified by State Prosecutor and Leadership case before the Ombudsman Commission will automatically be removed from the list.

(3) Under such circumstance the Secretary may proceed to review the candidates list and approve the next best candidate to satisfy the shortlist requirements.

**13. MEDICAL AND FITNESS REQUIREMENTS FOR SHORTLISTED APPLICANTS.**

(1) The Secretary, Department of Personnel Management in consultation with the Secretary for the Department of Health may appoint two legally certified and qualified medical practitioners to assess the medical and fitness suitability of the shortlisted applicants before submitting the final list to the MEAC.

(2) An incumbent departmental head who wishes to be considered for re-appointment may be required to undergo medical clearance from a legally certified and qualified medical practitioner approved in (1) above by the Secretary, Department of Personnel Management.

(3) Shortlisted applicants who failed the medical clearance test will automatically be removed from the list.

(4) and under such circumstances, Secretary may approve for the next best candidate to satisfy the minimum shortlist requirements.

**14. INTERVIEW PROCEDURES FOR SHORTLISTED APPLICANTS.**

(1) All candidates ranked in the final short list may be interviewed by the Pre-Selection Committee in accordance with the provisions of this subsection.

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(2) Secretary may delegate the interview process to independent Professional Human Resource Practitioners to interview the shortlisted applicants recommended by the Pre-Selection Committee before making a final recommendation to the (MEAC).

(3) The minimum acceptable person specification and requirements of the position as detailed in the National Gazette shall be utilised in conducting the interview, and the short listed candidates shall be assessed and against the following competency based criteria:

- (a) knowledge of the role, functions and objectives of the Department; and
- (b) knowledge of basic laws applying in the Public Service; and
- (c) achievements in previous employment; and
- (d) plans for Department's performance over the four years; and
- (e) leadership ability and management skills; and
- (f) ability to express and conduct themselves professionally.

(4) The Senior Executive Services shall compile for the Pre-Selection Committee an Interview Profile for each of the short listed candidates highlighting the strengths and weaknesses in each of the assessed criteria (a) to (f).

**15. FINAL PRE-SELECTION REPORT.**

(1) The Senior Executive Services may compile a final Pre-Selection Report containing the following information:

- (a) the National Gazette Advertisement; and
- (b) the Candidate Assessment Profiles; and
- (c) the Rank Order Matrix; and
- (d) the Interview Profiles; and
- (e) the Final Short List in Order of Merit (not more than 5; not less than three).

(2) The Pre-selection Report (marked "Strictly Confidential for Members of the MEAC Only") shall be delivered to the Chairman by the Secretary to enable the MEAC to review the short listed candidates and to select and recommend one preferred candidate to NEC for appointment.

(3) Any discrepancies as perceived by the MEAC in the information provided by the Secretary are to be referred back to the Secretary for resolution within the set time limits.

**16. SPECIAL ARRANGEMENTS FOR THE POSITIONS OF CHIEF SECRETARY TO GOVERNMENT, SECRETARY FOR DEPARTMENT OF PERSONNEL MANAGEMENT AND SECRETARY TO NATIONAL EXECUTIVE COUNCIL.**

(1) The position of Chief Secretary to Government (Secretary, Department of Prime Minister & NEC) shall be advertised in the manner described provided that following the merit based selection processes, the Secretary Department of Personnel Management through the Senior Executive Services shall assist the Chairman MEAC in profiling of applicants, and the Chairman MEAC shall obtain the Prime Minister's views on the preferred candidate for recommendation to the National Executive Council.

(2) The position of Secretary, Department of Personnel Management shall be facilitated by the Chief Secretary through an outsourcing process, and the Chairman MEAC shall obtain the Prime Minister's views on a preferred candidate for recommendation to the National Executive Council.

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(3) The position of Secretary to NEC shall be advertised in the manner described herein, provided that following the merit based selection processes, the Secretary, Department of Personnel Management through the Senior Executive Services shall assist the Chairman MEAC in profiling applicants, and the Chairman MEAC shall obtain the Prime Minister's views on a preferred candidate for recommendation to the National Executive Council.

**17. MEAC ADJUDICATION OF CANDIDATES SHORTLIST IN THE PRE-SELECTION REPORT.**

(1) On receipt of the Pre-Selection Report from the Secretary, the MEAC shall assess the candidates in the short list.

(2) The MEAC shall complete the adjudication and final selection of a suitable candidate in the shortest possible time following receipt of the Pre-Selection Report from the Secretary.

**18. MEAC RECOMMENDATION TO NATIONAL EXECUTIVE COUNCIL.**

(1) The MEAC shall present the recommendation of the preferred candidate from the shortlist in a standard submission to NEC prepared by the Secretary.

(2) All other considerations unrelated to the processes described in this Regulation shall have no bearing on the recommendation of the MEAC to the NEC.

(3) In considering the recommendations made under Subsection (2), the NEC may -  
(a) approve a recommendation; or  
(b) reject a recommendation and direct the re-advertisement of the position.

(4) The NEC shall not introduce any new candidate not already included in the MEAC recommendation which would be in breach of Section 193 of the *Constitution*.

(5) In the event that the NEC approves a MEAC recommendation -  
(a) the NEC shall advise the Head of State to make the appointment in the National Gazette, (and the appointment becomes official only on the publication of the National Gazette); and  
(b) on receipt of the National Gazette the Secretary shall officially inform the appointee and any previous occupant of the appointment; and  
(c) the Secretary shall arrange for any necessary official "handover takeover ceremony" as soon as possible.

(6) The same procedures apply to Offices of deemed Departmental Head status (other than Provincial Administrator as described under a separate Regulation), established by the *Public Services (Management) Act 2014* or as declared by the Head of State on advice.

**PART IV. – PROCEDURES FOR ACTING APPOINTMENTS.**

**19. ACTING APPOINTMENT.**

(1) An acting appointment is required immediately for relief purposes for a period of not less than ten (10) days but not more than three (3) months in any of the reasons listed hereunder -

(a) expiry of Contract term and non-renewal;  
(b) pre-mature termination of contract for any reasons;  
(c) duty-related travel;

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- (d) any form of leave;
- (e) disciplinary reasons; or
- (f) creation of new departmental head position.

(2) Under such circumstances, the Secretary shall pursuant to Section 27 of the *Public Services (Management) Act 2014*, consult with the portfolio Minister who shall indicate from the list of three (3) candidates from within the Department his preferred (who meets the Minimum Acceptable Person Competency and Performance Requirements for Selection and Appointment) nominee to fill the temporary acting appointment.

(3) The Minister for Public Service shall, in accordance with the delegation of power made by the NEC to make acting appointments, advise the Head of State to make the acting appointment as recommended by the Secretary.

(4) In consultation with the Chairman MEAC, the Secretary shall, from time to time maintain a list of three preferred candidates from within the Department preferably at the level not lower than Deputy Secretary or equivalent who meet the Minimum Acceptable Person Competency and Performance Requirements for Selection and Appointment to fill temporary acting appointments.

(5) Under such circumstances and where the position of the departmental head is substantively vacant the appointee is entitled to payment of Higher Duty Allowance (new salary minus current salary) together with allowances (except contract gratuity) applicable to the position.

(6) Where the position of the departmental head is not substantively vacant the appointee is entitled to receive Higher Duty Allowances (new salary minus current salary) together with office related allowances (Telephone and Entertainment) applicable to the position.

**PART V. – FIXED PERIOD CONTRACTS OF EMPLOYMENT.**

**20. APPOINTMENT OF A DEPARTMENTAL HEADS ON CONTRACT.**

(1) By virtue of Section 27 of the Act, all departmental heads shall be employed on fixed period contracts of four years duration, on terms and conditions of employment determined by the NEC, subject to the determinations of the Salaries and Remuneration Commission from time to time.

(2) The Secretary shall prepare a contract of employment in the format approved by NEC for execution by the appointee and the Head of State to be witnessed by the Secretary.

(3) The Contract, the NEC Decision and the National Gazette will be referred to the State Solicitor who shall within 14 days provide legal clearance for the contract to be executed by the Head of State.

(4) The Secretary shall brief the appointee on specific job requirements and terms and conditions of the contract prior to execution and shall arrange through the Secretary to the National Executive Council for the signing of the contract.

(5) The Secretary is responsible on behalf of the State for advising departmental heads on the interpretation of the contract terms and conditions and for advising the Minister to ensure that the contract terms and conditions are complied with.

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(6) The contractual provisions governing departmental head performance are prescribed by PART V of the Regulation.

**21. PROCEDURES ON TERMINATION OF CONTRACTS.**

(1) Pursuant to Section 31 of the Act, in the event that on expiry of the contract period the incumbent departmental head is not reappointed, then service in the Public Service is terminated on conclusion of a three month notice period from the end of the contract. The longest period that the terminated departmental head is to remain on the payroll is therefore three (3) months from the end of the contract period. At any time during the 3 month period, the terminated departmental head may opt to leave service and be paid in lieu of the balance of the period.

(2) On leaving service the terminated departmental head shall be paid only accrued service related entitlements, including money in lieu of leave, money in lieu of furlough, and repatriation benefits. (Reference must be made to the PART VI).

(3) A Departmental Head re-deployed or appointed to a lower office as departmental heads or deemed departmental heads shall continue to maintain the salaries and allowances at his or her previous substantive position for the duration of the new contract.

(4) A Departmental Head who refuses to sign a Contract of Employment Agreement for whatever reason shall have his or her employment terminated forthwith.

**PART VI – CONTRACTUAL PERFORMANCE COMMITMENTS AND PERFORMANCE APPRAISAL PROCEDURES.**

**22. RESPONSIBILITY FOR THE PERFORMANCE MANAGEMENT SYSTEM.**

(1) Pursuant to Section 26 of the Act, the Secretary, Department of Personnel Management (“the Secretary”) is responsible for the administration of the Government’s Performance Management System, including the assessment and recording of the performance of individual departmental heads under their contracts of employment.

(2) The Secretary is the principal adviser to the Government on performance management and shall consult the Chief Secretary from time to time in respect to compliance with NEC Decisions and overall delivery of services in accordance with Government targets and priorities.

(3) The Secretary shall ensure that the time limits imposed by the contractual terms and conditions on performance reviews and assessments as outlined in the Regulation are programmed and complied with and the results communicated to the MEAC.

(4) The Senior Executive Services shall coordinate the Performance Management System and advise the Secretary in accordance with the Regulation.

**23. JOB DESCRIPTION AND PERFORMANCE COMMITMENTS.**

(1) Utilising the Key Result Areas and Performance Indicators in the departmental head Job Description (Schedule 2), as varied from time to time, the Senior Executive Services shall, within three months of commencement of a new contract and every twelve months thereafter, facilitate the drafting of the departmental head’s contractual Performance Commitments Matrix.

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(2) The Senior Executive Services shall consult the incumbent departmental head and shall utilise the department's Annual Work and Budget Plans in conjunction with the longer term Corporate Plan to identify the priority service delivery and development targets and standards to which the departmental head shall be committed.

(3) The Secretary, Department of Personnel Management shall facilitate consultation with the Chief Secretary to Government and the Portfolio Minister in ratifying the departmental head's Performance Commitments Matrix and sign off.

**24. PERFORMANCE APPRAISAL PROCEDURES.**

(1) For each year of a departmental head's four year appointment there shall be Performance Commitments Matrix signed off by the key signatories to the performance appraisal process, being the Chief Secretary, the Secretary for Treasury and the Secretary for Personnel Management, together with the portfolio Minister.

(2) The performance appraisal procedure is tied to the annual budget cycle and to the commitments made by a departmental head in the Annual Management Plan.

(3) A Performance Appraisal Form shall be completed in respect to each Performance Commitments Matrix.

**25. USE OF PERFORMANCE APPRAISAL ON ANNUAL BASIS.**

(1) The Senior Executive Services shall ensure that for each budgetary year of a departmental head's four year appointment, there shall be a completed Performance Appraisal Form.

(2) The portfolio Minister may utilise a performance appraisal at any time during the period of the contract to give a formal warning to a departmental head to comply with their performance commitments and to improve their performance.

(3) The departmental head's performance based contract provides that a report may be brought to the MEAC for the purpose of recommending termination of appointment on grounds of poor performance.

**26. USE OF PERFORMANCE APPRAISAL FOR CONTRACT RENEWAL.**

(1) Pursuant to PART III, Section 7, six months prior to the end of a departmental head's appointment the Senior Executive Service shall assemble all completed Performance Appraisal Forms (not less than two).

(2) The Secretary shall provide a report to the MEAC signed off by the portfolio Minister to recommend whether or not to re-appoint the departmental head based upon the overall performance outcomes against commitments.

**27. SPECIAL ARRANGEMENTS FOR CHIEF SECRETARY TO GOVERNMENT AND SECRETARY FOR DEPARTMENT OF PERSONNEL MANAGEMENT AND SECRETARY TO NATIONAL EXECUTIVE COUNCIL.**

(1) The procedures described in Sections 22 and 26 of are modified by the need for the Chairman MEAC to consult with the Prime Minister in respect to the re-appointment of either the Chief Secretary to Government and Secretary, Department of Personnel Management, or the Secretary to the National Executive Council.

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(2) In each of the processes involving appointment, suspension, termination and performance review for the offices of Chief Secretary to Government, Secretary for Department of Personnel Management and Secretary to NEC, the process will be facilitated by the Chairman of MEAC.

**PART VII. – CONTRACTUAL TERMINATION AND SUSPENSION PROCEDURES.**

**28. REVOCATION OF APPOINTMENT OF DEPARTMENTAL HEADS.**

(1) An appointment made by the Head of State, acting on advice, shall be revoked only in accordance with a recommendation of the MEAC pursuant to Section 193 (*Appointment of Certain Officers*) of the *Constitution*, ensuring that the provisions of the Regulation are complied with.

(2) An appointment shall be revoked only in accordance with the criteria and the procedures contained within a contract of employment, authorised by the NEC and entered into between the Head of State and the departmental head, made pursuant to Section 29 of the *Public Services (Management) Act 2014*.

(3) The grounds, criteria and the procedure for termination prescribed by a contract of employment shall include the following provisions:

- (a) breach of contract and termination for cause (Under a Contract of Employment), the following disciplinary action:
  - (i) conduct described under the contract provisions as serious disciplinary offences, following the laying of charges and assessment of guilt, as provided for in a disciplinary procedure which preserves the principles of natural justice; and
  - (ii) contractual compensation where no payments are to be made in respect to ex-gratia benefits, gratuities, and money in lieu of notice, which are to be forfeited to the State and only payment of normal service related benefits shall be in order, subject to any surcharge arrangements that may be in place to recover monies owed to the State; and
- (b) breach of contract for poor performance (Under a Contract of Employment) where no disciplinary action was involved -
  - (i) following consistent poor performance by a departmental head over a period of not less than 6 months, whereby, as a result of a decision of the MEAC, the Portfolio Minister has issued a warning in writing to a Departmental Head to improve his performance or to overcome weakness in conduct within a period of not less than 6 months; and
  - (ii) the Secretary shall provide a performance report to the MEAC as to the change in performance of the departmental head and whether or not there has been compliance with the Ministerial directive to improve performance; and
  - (iii) the NEC having received a report from the Chairman MEAC, has determined that the departmental head's performance has not improved adequately, shall advise the Head of State to terminate the departmental head for poor performance; and
  - (iv) contractual compensation where no payments are to be made in respect to ex-gratia benefits, and gratuities, which are to be forfeited to the State and only payment of money in lieu of notice and normal service related benefits shall be in order, subject to any surcharge arrangements that may be in place to recover monies owed to the State; and

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- (c) reasons not resulting from poor work performance or requiring disciplinary action or other breach of contract (“In the Interests of the State”) -
- (i) reasons for termination must be in the interest of the State as employer, as determined by the National Executive Council on the recommendation of the Ministerial Executive Appointment Committee, and may result in redeployment to another position, or permanent termination of employment by the State, dependent upon the circumstances, and shall include -
    - (A) reorganisation of Departments involving amalgamation, abolition, or reconstruction of the departmental head position, as a result of functional or legislative change. (NB this arrangement is specifically provided for in the current Contract Agreements); and
    - (B) as a result of the need to re-deploy, or to inter-change two departmental heads resulting in improved efficiency and such change is in the interest of the State, (whereby the NEC varies the departmental head’s contract and maintains his overall remuneration and tenure in the service of the State, for a period not less than the original appointment); and
    - (C) other grounds for termination, not contrary to the contract provisions, or to the public interest, and subject to independent assessment by the MEAC and a recommendation to the NEC upon the appropriateness of such action; and
  - (ii) revocation and re-appointment to a similar position in the event that the NEC wishes to effect the transfer of a departmental head from one Department to another Department or State Enterprise, the revocation and re-appointment shall be undertaken in the interest of the State and continuity of service and contractual benefits are to remain unaffected, and a new or varied contract of employment is to be issued for the new position. (See Clause 3 of the Departmental Head’s Contract Agreement) which shall constitute a transfer in the interest of the State; and
  - (iii) contractual compensation (Transfer “In the Interest of the State”) where no ex-gratia payments or pay out of accrued entitlements and no loss of accrued entitlements and carry-over of contract remuneration for a period not less than the period of the extant contract at the time of transfer; and
- (d) tests for validity of termination of employment “In the Interest of the State” -
- (i) the following criteria shall be satisfied by any recommendation made to National Executive Council “in the interest of the State”:
    - (A) termination is legal in terms of the grounds provided by the contract and does not breach any law; and
    - (B) the State will not become exposed to any unnecessary financial or legal liability resulting from the termination, and any monies payable to the departmental head would not exceed those specified in a contract for such termination; and
    - (C) there is a real, and not imagined, assumed, or fictitious threat to the security of the State (if security is the alleged reason); and
    - (D) termination will in fact advance the interests of Papua New Guinea as determined by the National Executive Council; and
    - (E) termination will in fact save the State from incurring further costs or unnecessary expenses; and



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- (F) termination is not motivated by regional or by personal interests of a Minister, (as opposed to the interests of the State as determined by the National Executive Council), or following a change in Government, to replace a departmental head on political grounds, without relating the termination to the departmental head's performance; and
  - (G) all relevant independent advice and recommendations required by normal contractual processes and by law have been obtained and support or endorse the proposed action; and
  - (H) all lawful consultations or recommendations required for the termination have been obtained; and
  - (I) termination is strictly made in accordance with the grounds specified for that purpose in a contract of employment; and
  - (J) the principles of natural justice have been adhered to by all Parties; and
- (ii) contractual compensation (Termination of Employment "In the Interest of the State"), provided that the officer is terminated from the Public Service in accordance with Section 29 of the *Public Services (Management) Act 2014* and the contract, and is not transferred under the terms of the contract to another position in the employment of the State, (in other words, employment with the State is terminated by virtue of Section 29 of the Act) whether paid at an equivalent level or not, the greater of the following two payments shall be made:
- (A) payment of salary and allowances accrued to the end of the contracted period, subject to a maximum period of 18 months inclusive of notice period, together with benefits accrued under the contract and normal Public Service accruals for long service leave, and recreational leave; or
  - (B) Public Service ex-gratia retrenchment benefits, together with other monies and accrued service related entitlements; and
  - (C) a departmental head is not permitted to seek premature termination of the contract under this provision in order to secure contractual compensation and nay attempt to do so shall be construed as improper conduct; and
- (e) redundancy of the position and resulting retrenchment -
- (i) termination due to abolishment of the position occupied by a departmental head as a result of legislative change or abolishment of position, or other grounds for redundancy and retrenchment, as defined under the Public Service General Orders, and applied by the NEC; and
  - (ii) contractual compensation, provided that the officer is terminated from the Public Service in accordance with Section 29 of the *Public Services (Management) Act 2014* and the contract, and is not transferred under the terms of the contract to another position in the employment of the State, whether paid at an equivalent level or not, the greater of the following two payments shall be made:
    - (A) payment of salary and allowances to the end of the contracted period, subject to a maximum period of 18 months inclusive of notice period, together with normal Public Service accruals for long service leave, and recreational leave and other monies accrued under the contract; and

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- (B) Public Service ex-gratia retrenchment benefits, together with other monies and service related entitlements accrued under the contract; and
- (f) normal retirement or medical retirement -
  - (i) as provided for under the *Public Services (Management) Act 2014*, General Orders and contract relating to age for early and compulsory retirement; and
  - (ii) contractual compensation accrued payments under the contract related to service only to date of retirement, together with three months payment in lieu of notice; and
- (g) resignation of own accord -
  - (i) where departmental head gives notice of his intention to leave following expiry of a mutually agreed period of notice; and
  - (ii) contractual compensation accrued payments under the contract related to service only, to date of resignation; and
- (h) termination of employment on normal expiry of the departmental head's contract of employment -
  - (i) payment shall be made of salary and allowances in lieu of the 3 months' notice period, together with normal Public Service accruals for recreational leave and long service leave; or
  - (ii) normal public service retrenchment benefits is payable only if termination of employment falls within a government approved public service redundancy and retrenchment exercise.

**29. SUSPENSION OF DEPARTMENTAL HEADS ON DISCIPLINARY GROUNDS AND DISCIPLINARY PROCEDURES IN CONTRACTS.**

(1) A portfolio Minister may suspend a departmental head from office on disciplinary grounds, only in accordance with a recommendation of the MEAC, ensuring that the provisions of these Regulations and the departmental head's contract are complied with.

(2) A suspension may only be effected in accordance with the criteria and the procedures contained within a contract of employment approved by the National Executive Council and entered into between the Head of State and the departmental head.

(3) The grounds or the criteria and the procedure for suspension prescribed by a contract of employment shall include the following provisions:

- (a) where allegations of serious misconduct have been made against a departmental head by his or her portfolio Minister dependent upon the circumstances and the nature of the allegations, which may require instantaneous removal from office, the portfolio Minister shall give to the departmental head in writing an opportunity to respond to the allegations within a seven day period; and
- (b) on receipt of the departmental head's response to the allegations the portfolio Minister shall provide a written report which contains evidence to support any allegations, or evidence that leads to a reasonable belief that the allegations are true to the Minister for Public Service as the Chairman of the MEAC; and
- (c) the Minister for Public Service shall on the advice of the Secretary Department of Personnel Management determine whether or not the evidence supports suspension of the departmental head on disciplinary grounds, if not the Minister shall advise the portfolio Minister accordingly; and

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- (d) where the Minister for Public Service determines there are grounds to support the suspension of the departmental head the Minister shall inform the portfolio Minister and the MEAC accordingly; and
- (e) the Minister as Chairman of the MEAC shall provide a written report to the NEC to effect suspension, and by delegation of the National Executive Council under Section 148 of the *Constitution*, the portfolio Minister or the Minister for Public Service shall effect suspension from office on full pay to enable investigations to be conducted, and or disciplinary charges to be laid; and
- (f) in the event that it is necessary to effect the suspension prior to a decision being made by the NEC, suspension action taken by a portfolio Minister or the Minister for Public Service shall be ratified by the National Executive Council no later than 30 days following the action, and the NEC shall determine the time required in which to conclude investigations and/or disciplinary proceedings against the departmental head.

(4) The disciplinary process shall be stated in the contract terms and conditions and shall contain the following details:

- (a) in effecting a decision to suspend a departmental head, the portfolio Minister (or Minister for Public Service as delegated by the NEC) may either lay disciplinary charges coincident with the suspensory action, or notify the departmental head that investigations will be conducted in order to lay disciplinary charges at a later date; and
- (b) investigations shall be conducted initially by an independent committee under the chairmanship of the Secretary for the Department of Personnel Management, and the recommendations of the Committee shall be made within the time limit as determined by the NEC; and
- (c) the Independent Investigation Committee shall comprise of one representative preferably at deputy secretary level from the Central Agency departments as follows:
  - (i) Department of Personnel Management; and
  - (ii) Department of Prime Minister & NEC; and
  - (iii) Department of Justice & Attorney General; and
  - (iv) Department of Finance; and
- (d) in the event that the investigations confirm the departmental head has a case to answer, then the portfolio Minister shall lay charges against the departmental head in a prescribed manner prepared by the Secretary; and
- (e) the departmental head shall respond to the Portfolio Minister within a fourteen calendar day period, stating whether or not he or she admits or denies the charges, and any mitigating circumstances surrounding the allegations; and
- (f) a legal opinion shall be obtained by the Chairman MEAC as to the culpability of the departmental head and shall make a recommendation to the National Executive Council on appropriate disciplinary action such as -
  - (i) re-instatement to office as departmental head if considered substantially innocent of misconduct in office; or
  - (ii) termination of appointment in the following manner:
    - (A) in the interest of the State, if considered guilty of misconduct to a degree not warranting termination for cause, resulting in either -
      - 1. redeployment on the same terms and conditions to another position of similar standing for the balance of the contract period; or

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2. termination from State service and payment of salaries and allowances for a 3 month notice period under the contract plus service related benefits; or
  3. termination from State service and payment of salaries and allowances for balance of contract subject to a maximum of an 18 months period including notice period under the contract plus service related benefits; or
- (B) for cause if considered guilty of substantial misconduct with either -
1. payment of service related benefits; or
  2. with forfeiture of service related benefits; and
- (g) throughout disciplinary proceedings, the Secretary for the Department of Personnel Management shall be responsible for advising the Chairman of the MEAC on the procedures and interpretation of departmental head contracts under these Regulations.

(5) A departmental head may take paid leave of absence from Office where the departmental head is-

- (a) charged by the Police for a criminal offence which impacts upon his or her work performance; or
- (b) cited for contempt of court for any reason; or
- (c) referred by the Public Prosecutor under the *Organic Law to a Leadership Tribunal*, prior to the Tribunal sitting to hear the case; and for no other reason, the MEAC shall determine whether or not the departmental head must take paid leave of absence from office (not to count against accrued leave entitlements), in the public interest and the departmental head shall comply with such requirement, pending the outcome of the referred matter, or until dealt with under the disciplinary provisions of the contract.

**30. ARRANGEMENTS FOR CHIEF SECRETARY TO GOVERNMENT AND SECRETARY FOR DEPARTMENT OF PERSONNEL MANAGEMENT AND SECRETARY TO NATIONAL EXECUTIVE COUNCIL.**

(1) The procedures described in Sections 28 and 29 of this division are modified by the need for the Chairman MEAC to consult with the Prime Minister in respect to the recommendations to be made to the National Executive Council in respect to the termination and suspension of the Chief Secretary to Government, Secretary for the Department of Personnel Management and Secretary to the National Executive Council.

**PART VIII. – TRANSITIONAL PROVISIONS.**

**31. TRANSITIONAL PROVISIONS FOR VARIATION OF DEPARTMENTAL HEAD CONTRACTS.**

(1) The standard terms and conditions of departmental head contracts as at 30 September, 2014 provide that the Head of State, acting on advice of the National Executive Council, may vary the terms and conditions of a contract by mutual agreement or by the giving of three months' notice.

(2) The National Executive Council has delegated to the Minister for Public Service, as Chairman of the Ministerial Executive Appointments Committee, the responsibility to advise the Head of State to vary the terms and conditions of each contract of employment to comply with the Act and the Regulations effective on and from 1 October, 2014.

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(3) The contractual variation will not have any effect to vary the start and end dates of each contract in operation as at 1 October, 2014 and the contractual variation will confirm the new procedures for the appointment and removal of a departmental head on the recommendation of the Ministerial Executive Appointments Committee.

(4) The variation includes the application of the performance management system and the execution of performance commitments by the departmental head and the portfolio Minister to come into effect on and from 1 January, 2015.

(5) The Secretary to the Ministerial Executive Appointments Committee shall prepare and vary contract documents for approval by the Ministerial Executive Appointments Committee for execution by the Head of State and witnessed by the Secretary

(6) A refusal by the departmental head to execute a varied contract shall be automatic ground for termination of the departmental head contract by the payment of three months' pay in lieu of the notice period which shall be effected by the Head of State acting on advice.

(7) In the event that a departmental head is to be terminated for refusing a variation of the contract, the Minister for Public Service shall resolve the matter with the portfolio Minister.

MADE this 15<sup>th</sup> day of October, 2014.

  
GOVERNOR-GENERAL.