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PUBLIC SERVICE MANAGEMENT LAW

(2010 Revision)

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Note (not forming part of the Law): This revision replaces the 2007 Revision which should not be discarded.

PUBLIC SERVICE MANAGEMENT LAW

(2010 Revision)

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PUBLIC SERVICE MANAGEMENT LAW

(2010 Revision)

PART I - Introductory

1. This Law may be cited as the Public Service Management Law (2010 Revision). Short title

2. (1) In this Law - Definitions and interpretation

“appointing officer” means -

- (a) in the case of Judges and Magistrates, Official Members, the Auditor General, the Complaints Commissioner, the Commissioner of Police, the Deputy Commissioner of Police, the Information Commissioner, the Director of Public Prosecution, the Cabinet Secretary and the Assistant Commissioner of Police - the Governor;
- (b) in the case of the chief officers of ministries and portfolios - the Head of the Civil Service;
- (c) in the case of staff of a civil service entity - the chief officer, or the head of department or other manager in the civil service entity with delegated authority from the chief officer to make personnel decisions;

“Cabinet” means the Governor in Cabinet;

“Caymanian” means a person who possesses Caymanian status under the Immigration Law (2010 Revision) or any earlier law providing for the same or similar rights and includes a person who acquired that status under Part III of the Immigration Law (2010 Revision); 2010 Revision

“chief officer” means -

- (a) in the case of a ministry - the Permanent Secretary of that ministry;
- (b) (i) in the case of the Portfolio of Internal and External Affairs - such public officer in the Portfolio as may be designated by the Governor;
- (ii) in the case of the Portfolio of Legal Affairs - such public officer in the Portfolio as may be designated by the Governor;
- (iii) in the case of the Portfolio of Finance and Economics - such public officer as may be designated by the Governor; and

- (iv) in the case of the Portfolio of the Civil Service - such public officer in the Portfolio as may be designated by the Governor;
- (c) in the case of a statutory authority or a government company - the person appointed as chief officer (by whatever name called) by the board of that authority or company;
- (d) in the case of the Audit Office - the Auditor General;
- (e) in the case of the judicial administration - the court administrator or such other suitable person as may be designated by the Chief Justice;
- (f) in the case of the Office of the Complaints Commissioner - the Complaints Commissioner;
- (g) in the case of the Information Commissioner's Office - the Information Commissioner;
- (h) in the case of the Cabinet Office - the Cabinet Secretary; and
- (i) in the case of the Office of Public Prosecution - the Director of Public Prosecution.

“civil servant” means a person employed by the government, but does not include a Member of the Legislative Assembly other than an Official Member, and is a public officer for the purposes of the Constitution;

“civil service” means the group comprising all civil servants;

“civil service entity” means a ministry, portfolio, the Audit Office, the Cabinet Office, the Office of Public Prosecution and the Judicial Administration or the Office of the Complaints Commissioner;

“Complaints Commissioner” means the Complaints Commissioner appointed under section 120(2) of the Constitution;

UK SI 1379 of 2009

“Constitution” means Schedule 2 of the Cayman Islands Constitution Order 2009;

“employment agreement” means a written agreement between an employer and an employee by which a contract of service is instituted for either an open-ended or limited period;

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“financial year” in relation to any entity required to report under the Public Management and Finance Law (2010 Revision), means a year ending on the 30th June or, in the case of a statutory authority or government company, such other date as the Cabinet may determine;

“fixed-term employment agreement” means an employment agreement which has a defined date of cessation;

“government company” means -

- (a) a company in which the Government has a controlling interest; and

- (b) in respect of each such company, includes all subsidiary entities of the company;

“gross misconduct” means misconduct that is of such a serious nature or magnitude that, in the opinion of the appointing officer, the employee should be dismissed with immediate effect;

“Head of the Civil Service” means the person designated as such by section 15 (1);

“Information Commissioner” means the Information Commissioner appointed under section 35 of the Freedom of Information Law, 2007;

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“input” means any labour, capital or other resource used to produce inputs;

“internal output” means an output produced by an individual and delivered within the entity rather than provided to persons external to the entity;

“misconduct” means acting in a dishonest or illegal manner, failing to comply with the Public Servant’s Code of Conduct set out in section 5, failing to comply with conditions of employment, or failing to comply with workplace rules, and comprises “gross misconduct”, “serious misconduct” and “minor misconduct” as defined in this section;

“ministry” means the whole of the division of government administration for the actions of which a Minister is accountable to the Legislative Assembly and includes a departmental section or unit which forms part thereof, but does not include a statutory authority or government company;

“minor misconduct” means misconduct other than gross misconduct or serious misconduct;

“Official Member” means the Deputy Governor, the Attorney General or the Financial Secretary;

“open and fair employment process” -

- (a) in relation to appointment, reappointment or promotion, means a process which -
 - (i) provides an opportunity for any suitably qualified person to apply for the position;
 - (ii) ensures that all persons applying are considered for appointment in an unbiased manner; and
 - (iii) ensures that the person appointed, reappointed or promoted is the person whose qualifications, skills, knowledge, experience and integrity make him the most suitable for the position, taking into account any requirement in this Law or personnel regulations to give preference to Caymanians;
- (b) in relation to discipline, dismissal, retirement or termination of employment for any other reason, means a process which

provides an opportunity for the civil servant concerned to be informed of all relevant matters and is afforded an opportunity to make representations in an environment that is neutral and unbiased towards that civil servant.

“outputs” means the goods or services that are produced by an entity or other person;

“permanent disability” means a disability which is likely to render a participant incapable by reason of infirmity of mind or body of discharging the duties of his office, which infirmity is certified by the Chief Medical Officer as likely to be permanent;

“personnel arrangements” means the engagement, employment and management of employees;

“personnel regulations” mean the regulations made under section 67;

“political pressure” means any attempt directly or indirectly to influence a personnel or other input-related decision of a chief officer vested in a chief officer under this or any other law, or to change advice tendered by a chief officer to the Governor, the Cabinet, a Minister or an Official Member from what it would have been had the influence not been applied;

“portfolio” means the whole of a division of government administration for the actions of which an Official Member is accountable to the Legislative Assembly, and includes a departmental section or unit which forms part thereof, but does not include a statutory authority or government company; and includes the Governor’s office and the judicial administration;

“Portfolio of the Civil Service” means the portfolio established under section 24;

“public servant” means a person employed by a civil service entity or an employee of a statutory authority or government company;

“Public Servant’s Code of Conduct” means the Code of Conduct specified in section 5;

“public service” means the civil service and employees of statutory authorities and government companies;

“public service values” means the values specified in section 4;

“remuneration” means salary, wages, allowances and any benefits received by a civil servant as a result of his employment as a civil servant;

“serious misconduct” means misconduct that is serious in nature or magnitude but is not so severe as to be gross misconduct;

“staff” or “staff member” means a civil servant, other than the chief officer, employed in a civil service entity and does not include an Official Member nor a Judge or Magistrate;

“statutory authority” means an entity established by a law to carry out functions which are capable, under that law, of being funded, partly or entirely, by money provided by the Government, and for which the Governor, the Cabinet or the Government has the power to appoint or dismiss the majority of the Board or other governing body;

“wage worker” means a staff member whose remuneration is calculated at an hourly rate.

(2) A chief officer appointed by the Governor in the Portfolio of Internal and External Affairs, the Portfolio of Legal Affairs, the Portfolio of Finance and Economics or the Portfolio of the Civil Service is deemed to have been appointed as such on the basis of such other post as that person holds, with the effect that where that person no longer holds the other post, the appointment as chief officer shall automatically expire, without further act on the part of the Governor or the chief officer concerned.

(3) *Repealed by section 4 of Law 24 of 2009.*

(4) *Repealed by section 4 of Law 24 of 2009.*

(5) Where this Law requires the Head of the Civil Service to consult with the Official Member responsible for a portfolio, the Head of the Civil Service shall not be required to consult with the Official Member responsible for the Portfolio of Internal and External Affairs when, at the time the consultation is required, the same person is both the Head of the Civil Service and Official Member responsible for the Portfolio of Internal and External Affairs.

3. *Omitted as a consequence of the repeal of section 2(3).*

PART II – Public Service Values and Code of Conduct

4. The values to which the public service shall aspire and which shall govern its management and operation are as follows - Public Service Values

- (a) to serve diligently the government of the day, the Legislative Assembly and the public in an apolitical, impartial and courteous manner and to deliver high-quality policy advice and services;
- (b) to uphold the proper administration of justice and the principles of natural justice, and to support public participation in the democratic process;

- (c) to strive continually for efficiency, effectiveness and value for money in all government activities;
- (d) to adhere to the highest ethical, moral and professional standards at all times;
- (e) to encourage creativity and innovation, and recognise the achievement of results;
- (f) to be an employer that cares, is non-discriminatory, makes employment decisions on the basis of merit and recognises the aims and aspirations of its employees, regardless of gender or physical disabilities;
- (g) to be an employer that encourages workplace relations that value communication, consultation, co-operation and input from employees (either individually or collectively) on matters that affect their workplace and conditions of service; and
- (h) to provide a safe and healthy working environment.

Public Servant's Code
of Conduct

5. (1) In the course of employment, a public servant must comply with the Public Servant's Code of Conduct specified in subsection (2) and failure to do so in a significant way shall be grounds for discipline or dismissal.

(2) The Public Servant's Code of Conduct is as follows -

- (a) a public servant must behave honestly and conscientiously, and fulfil his duties with professionalism, integrity and care;
- (b) a public servant must be courteous and respectful to the Governor, the Speaker and Deputy Speaker, Official Members, Ministers, Members of the Legislative Assembly, other public servants and members of the public, and treat everyone with impartiality and without harassment of any kind;
- (c) a public servant must be politically neutral in his work and serve the government of the day in a way that ensures that he maintains the confidence of the government, while also ensuring that he is able to establish the same professional and impartial relationship with future governments;
- (d) a public servant, as a member of the public, has the right to be politically informed but must ensure that his participation in political matters or public debate or discussions, does not conflict with his obligation as a public servant to be politically neutral;
- (e) a public servant must not, at any time, engage in any activity that brings his ministry, portfolio, statutory authority, government company, the public service or the government into disrepute;
- (f) a public servant must obey the law and comply with all lawful and reasonable directions, including work place rules established

by his chief officer or a person with delegated authority from the chief officer;

- (g) a public servant must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) with his duties as a public servant, and must not use his official position for personal or familial gain;
- (h) a public servant shall not directly or indirectly disclose information which comes into his possession in his official capacity unless authorised or allowed to do so under this section, the Freedom of Information Law, 2007 or any other Law"; and
- (i) a public servant must not use official resources, including electronic or technological resources, offensively or for other than very limited private purposes.

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(3) The Governor in Cabinet may establish policies and procedures for the release to the public of records that may or may not be divulged under the Freedom of Information Law, 2007 so long as those policies or procedures do not prevent the divulging of records that must be divulged under that or any other Law.

(4) The duty imposed by subsection (2)(h) continues after a public servant leaves the public service.

Part III - Personnel Authorities of Governor

6. (1) In accordance with section 55(1)(d) of the Constitution, the power to employ all civil servants rests with the Governor acting in his discretion .

Personnel authorities of Governor

(2) The Governor acting in his discretion shall retain responsibility for the employment of judges of the Court of Appeal in accordance with section 100(2) of the Constitution.

(3) The Governor acting in his discretion shall retain responsibility for the employment of judges of the Grand Court in accordance with section 95(3) of the Constitution.

(4) The Governor shall retain responsibility for the employment of Magistrates in accordance with section 6 of the Summary Jurisdiction Law (2006 Revision).

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(5) The Governor shall retain responsibility for the employment of, and performance management arrangements for, Official Members in accordance with Part IV.

(6) The Governor shall retain responsibility for the employment of the Auditor General in accordance with section 114(1) of the Constitution and Part VI of this Law.

(7) The Governor shall retain responsibility for the employment of the Complaints Commissioner in accordance with section 120(2) of the Constitution and Part VI of this Law.

(8) The Governor shall retain responsibility for the employment of the Commissioner of Police, Deputy Commissioner and Assistant Commissioner in accordance with section 48.

(8A) The Governor shall retain personal responsibility for the employment of the Cabinet Secretary in accordance with section 48 of the Constitution and Part VI of this Law.

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(8B) The Governor shall retain responsibility for the employment of the Information Commissioner in accordance with section 35 of the Freedom of Information Law, 2007 and Part VI of this Law.

(8C) The Governor shall retain responsibility for the employment of any office referred to in section 106(4) of the Constitution in accordance with section 106 of the Constitution and this Law.

(8D) The Governor shall ensure that financial provision already exists for any action that he may take in regard to the employment of civil servants, in accordance with section 55(1)(d) of the Constitution.

(9) Where a delegation has not been issued under section 7, or the delegation has been revoked under section 8, the responsibilities of the Head of the Civil Service or a chief officer, as the case may be, under Parts V, VI and VII shall reside with the Governor and those Parts shall apply to the Governor as if he were the Head of the Civil Service or a chief officer.

Governor may delegate employment powers

7. (1) In accordance with section 109(2) of the Constitution, the Governor may in writing delegate to -

- (a) the Head of the Civil Service -
 - (i) the power to oversee all matters relating to the operation of the civil service, which powers are to be exercised in accordance with Part V; and
 - (ii) powers relating to the personnel arrangements for chief officers of ministries and portfolios, which powers are to be exercised in accordance with Part VI; and

- (b) chief officers' powers relating to the personnel arrangements for staff in their civil service entity, which powers are to be exercised in accordance with Part VII.

(2) A delegation issued by the Governor under subsection (1) shall be subject to this Law.

(3) A delegation issued by the Governor under subsection (1) shall include the requirement that financial provision must already exist for any action taken under the authority of the delegation, in accordance with section 55(1)(d) of the Constitution.

8. (1) The Governor may by written notice to the Head of the Civil Service, at any time revoke any powers delegated to the Head of the Civil Service under section 7 or any combination of those powers, that is to say, that the Governor shall not make any decision or be otherwise involved in the procedures related to the handling of particular matters but may only revoke a category or categories of powers such as the power to appoint, promote, transfer, discipline, dismiss or retire staff and even then the powers may only be revoked if the Governor has reason to believe that the Head of the Civil Service is not complying with -

Governor may revoke employment delegation

- (a) the terms of the delegation; or
- (b) the requirements of this Law or personnel regulations.

(2) The Governor may by written notice to a chief officer, at any time revoke any powers delegated to the chief officer under section 7 or any combination of those powers, that is to say, that the Governor shall not make any decision or be otherwise involved in the procedures related to the handling of particular matters but may only revoke a category or categories of powers such as the power to appoint, promote, transfer, discipline, dismiss or retire staff and even then the powers may only be revoked if the Governor has reason to believe that the chief officer concerned is not complying with -

- (a) the terms of the delegation; or
- (b) the requirements of this Law or personnel regulations,

but before doing so shall consult the Head of the Civil Service.

(3) Where a delegation has been revoked under subsection (2), the Governor may in writing reissue a delegation and in doing so may attach such terms and conditions as he thinks fit.

PART IV - Personnel Arrangements for Official Members

9. (1) Official Members shall be appointed as follows -

Appointment of Official Members

- (a) The Deputy Governor shall be appointed by the Governor acting in accordance with section 34 of the Constitution;
- (b) the Attorney General shall be appointed by the Governor acting in his discretion as advised by the Judicial and Legal Services Commission in accordance with section 56 of the Constitution; and
- (c) the Financial Secretary shall be appointed by the Governor acting in his discretion under section 109(4) of the Constitution and in accordance with this Law.

(2) Before appointing an Official Member, the Governor may satisfy himself that the person to be appointed has the necessary skills, knowledge and integrity to carry out the duties required of the position concerned in a highly competent and politically neutral manner.

(3) The Governor may reappoint an Official Member who has reached the end of a fixed-term employment agreement and such reappointment shall, to the extent allowable having regard to the provisions referred to in subsection (1) and having regard to subsection (2), be made in accordance with the provisions of personnel regulations relating to reappointment of civil servants who have reached the end of fixed-term employment agreements.

(4) The Governor may reappoint an Official Member who has attained the retirement age for civil servants and such reappointment shall, to the extent allowable having regard to the provisions referred to in subsection (1) and having regard to subsection (2), be made in accordance with provisions of personnel regulations relating to reappointment of civil servants who have reached retirement age.

(5) Where an Official Member is, by reason of illness or absence from the Islands or for any other reason, incapable of performing the functions of his office, the Governor may appoint a civil servant to temporarily act in the office of the Official Member.

(6) The Portfolio of the Civil Service shall provide the Governor with such information, assistance and support as he may request in the process of considering the appointment or reappointment of an Official Member.

Employment of Official
Members

10. (1) Official Members shall, subject only to the Constitution, be employed under terms and conditions of employment specified in personnel regulations.

(2) Official Members shall be employees of the government and employed on the basis of an employment agreement prepared in accordance with personnel regulations.

(3) If an Official Member is dismissed or retires early on medical grounds (under section 12), the Official Member's employment with the government is terminated concurrently.

11. (1) The remuneration of Official Members shall be agreed from time to time between the Governor and the Official Member concerned. Remuneration of Official Members

(2) The remuneration level referred to in subsection (1) shall -

- (a) be within the remuneration band specified in the personnel regulations; and
- (b) include a performance-related portion established in accordance with the provisions of personnel regulations, the payment of which shall be based on the performance of the Official Member for the year as determined by the Governor.

12. (1) Except in cases where the Constitution specifically provides for the dismissal or early retirement of an Official Member (in which case the relevant provisions shall govern), the Governor may dismiss an Official Member but may do so only on the basis of - Dismissal or early retirement of Official Members

- (a) gross misconduct or serious misconduct; or
- (b) significant inadequate performance over a reasonable period of time (compared to agreed performance agreements) and provided that there has been adequate opportunity for the Official Member to improve performance to the required level; and
- (c) procedures specified in personnel regulations for dismissing civil servants.

(2) The Governor may, subject as stated in subsection (1), require an Official Member to take early retirement on medical grounds where the Official Member has a permanent disability but shall do so in accordance with the procedures specified in regulations for retiring civil servants early on medical grounds.

(3) The Governor shall seek the advice of the Judicial and Legal Services Commission before undertaking any action in relation to the employment of the Attorney General under subsections (1) and (2).

13. The Governor shall, for each financial year, enter into a performance agreement with each Official Member, which shall specify the performance expected of the Official Member for that financial year. Performance agreements with Official Members

14. (1) The performance of an Official Member is to be reviewed at the end of each financial year by means of an annual performance assessment undertaken by the Governor and involving the Official Member concerned. Performance assessments of Official Members

(2) Before completing a performance assessment, the Governor shall consult with the Official Member about the extent to which the Official Member concerned has achieved the performance specified in the performance agreement for the year.

(3) In undertaking the performance assessment and determining the amount of any performance-related remuneration, the Governor shall base his assessment on a factual comparison of actual performance with that specified in the performance agreement, for the financial year, together with any modifications of that agreement.

(4) The performance assessment is to be completed within thirty days after the end of the financial year.

PART V - Duties, Responsibilities and Powers of Head of Civil Service

Head of Civil Service

Duties of Head of Civil Service

15. (1) The Deputy Governor shall be the Head of the Civil Service and the Head of the Civil Service shall, to the extent allowed for by a delegation from the Governor issued under section 7, perform the functions specified by or under this Law.

(2) The Head of the Civil Service is responsible for overseeing all matters relating to the operation of the civil service including -

- (a) the development, promotion, review and evaluation of human resource policies and practices for the civil service as a whole;
- (b) succession planning for the positions of chief officers;
- (c) encouraging and assisting chief officers with succession planning for senior appointments in their civil service entities;
- (d) entering into annual performance agreements with chief officers of ministries and portfolios in accordance with section 16;
- (e) undertaking the annual performance assessments of chief officers of ministries and portfolios in accordance with section 17;
- (f) appointing chief officers of ministries and portfolios under section 26;
- (g) agreeing remuneration with chief officers of ministries and portfolio in accordance with section 28;
- (h) dismissing chief officers of ministries and portfolios in accordance with section 29;
- (i) recommending to the Governor the remuneration of persons specified in section 18;

- (j) monitoring the human resource policies and practices of civil service entities, and advising the Governor on the revocation or reissuing of personnel authorities under section 8;
- (k) taking action under sections 22 and 23 when chief officers are subject to political pressure; and
- (l) giving effect to the administrative rearrangement of ministries or portfolios in accordance with section 20.

16. (1) The Head of the Civil Service shall -

Performance agreement responsibilities of Head of the Civil Service

- (a) enter into a performance agreement with each chief officer of a ministry or portfolio for each financial year in accordance with section 30; and
- (b) ensure that the agreement is sufficiently detailed and sufficiently clear that it will provide a good basis to assess the chief officer's performance at the end of the year.

(2) Before signing a chief officer's performance agreement the Head of the Civil Service shall satisfy himself that the performance agreement is fair and achievable.

17. (1) The Head of the Civil Service shall undertake an annual performance assessment for each chief officer of a ministry or portfolio in accordance with section 31.

Performance assessment responsibilities of Head of the Civil Service

(2) The Head of the Civil Service shall, in accordance with section 32, determine the amount, if any, of any performance-related remuneration to be awarded to each chief officer of a ministry for performance relating to the financial year.

(3) In undertaking performance assessments at the end of the financial year, and determining the amount of any performance-related remuneration, the Head of the Civil Service shall act on the basis of the facts before him and, in relation to the aspects of performance specified in the annual budget statement established under section 42 of the Public Management and Finance Law (2010 Revision), shall base his assessment on a factual comparison of actual performance as reported in the quarterly and annual reports of the relevant ministry or portfolio with that specified in the performance agreement for the financial year.

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18. The Head of the Civil Service shall recommend to the Governor the salaries, allowances or other benefits of -

Salaries of certain posts

- (a) elected members of the Cabinet;
- (b) the Speaker, Deputy Speaker and Members of the Legislative Assembly;

- (c) judges and magistrates;
- (d) members of the boards or other governing bodies (however called) of statutory authorities and government companies;
- (e) boards, committees or other non-corporate bodies (however called) appointed by the Governor or the Cabinet;
- (f) the Auditor General and the Complaints Commissioner; and
- (g) any officer referred to in section 106(4) of the Constitution.

Monitoring of human resource policies

19. The Head of the Civil Service shall monitor the human resource policies and practices of civil service entities to ensure that they comply with the requirements of this Law and any other applicable laws and regulations.

Administrative re-arrangement of ministries and portfolios

20. (1) In order to give effect to an administrative re-arrangement of ministry or portfolio responsibilities, the Head of the Civil Service may -

- (a) transfer a civil servant to another ministry or portfolio, by a determination in writing;
- (b) determine in writing that a civil servant ceases to be an employee of the government and becomes an employee of a statutory authority or government company, and such determination shall be effective notwithstanding the provisions of the statute governing the statutory authority or the instruments of incorporation of the company, as the case may be; and
- (c) engage any person who was previously an employee of a statutory authority or government company as a government employee in a specified ministry or portfolio.

(2) Where a civil servant becomes an employee of a statutory authority or government company under paragraph (1)(b) he shall, unless the Head of the Civil Service otherwise directs, continue to enjoy remuneration and other conditions of employment that are not less favourable than the terms and conditions to which the employee was entitled immediately before ceasing to be a civil servant.

(3) Subsection (2) shall cease to have effect on the next occasion when there is a variation in remuneration and conditions in the statutory authority or government company.

Independence and obligations of Head of the Civil Service

21. In carrying out the duties under this Part, the Head of the Civil Service shall -

- (a) act independently and not be subject to the direction of any other person or authority other than the Governor to the extent specified in this Law; and
- (b) ensure that open and fair employment processes operate in the civil service.

22. (1) If, at any time, the Head of the Civil Service is satisfied, either personally or on the basis of information received, that political pressure is being exerted on a chief officer, or a person with delegated authority from a chief officer, by a Minister, the Head of the Civil Service shall advise the Premier of his concerns and request that the Premier discuss the matter with the Minister concerned.

Political pressure from
Ministers and Official
Members

(2) If following the actions required by subsection (1) the Head of the Civil Service is still of the opinion that political pressure therein referred to is being placed on the chief officer, or a person with delegated authority from the chief officer, the Head of the Civil Service shall advise the Governor of his concerns who, after consultation with the Premier, may issue an instruction to the relevant Minister to desist and the Minister shall do so.

(3) If at any time the Head of the Civil Service is of the opinion that political pressure is being placed on a chief officer, or a person with delegated authority from a chief officer, by an Official Member, the Head of the Civil Service shall discuss the matter with the Official Member concerned and request that he desist.

(4) If following the action required by subsection (3) the Head of the Civil Service is still of the opinion that political pressure is being placed on a chief officer, or a person with delegated authority from the chief officer, by an Official Member, the Head of the Civil Service shall advise the Governor of his concerns who may issue an instruction to the relevant Official Member to desist and the Official Member shall do so.

23. (1) If, at any time, the Head of the Civil Service is of the opinion that political pressure is being placed on a chief officer, or a person with delegated authority from the chief officer, by a Member of the Legislative Assembly other than a Minister or Official Member, the Head of the Civil Service shall advise the Premier or the Leader of the Opposition, as the case may be, of his concerns and request that the Premier or the Leader of the Opposition, discuss the matter with the Member concerned.

Political pressure from
Members of Legislative
Assembly

(2) If, following the actions required by subsection (1), the Head of the Civil Service is still of the opinion that political pressure is being placed on a chief officer, or a person with delegated authority from the chief officer, by a Member of the Legislative Assembly other than a Minister or Official Member, the Head of the Civil Service shall advise the Governor of his concerns who, after consultation with the Premier, or the Leader of the Opposition, as the case may be, may issue an instruction to the relevant Member to desist and the Member shall do so.

Portfolio of Civil Service

Duties of Portfolio of
Civil Service

24. In relation to civil service human resource matters, the Portfolio of the Civil Service shall be responsible for -

- (a) providing assistance, administrative support and technical advice to the Head of the Civil Service and the Governor in undertaking their duties under this Law;
- (b) providing assistance, administrative support and technical advice to the Civil Service Appeals Commission in undertaking its duties under this Law as may be required by the Commission;
- (c) providing advice and technical assistance to civil service entities on human resource issues;
- (d) providing personnel services to civil service entities at their request;
- (e) promoting the Public Service Values set out in section 4 and the Public Servant's Code of Conduct set out in section 5;
- (f) undertaking periodic audits of personnel systems in civil service entities to establish the extent of compliance with this Law and the personnel regulations and advising the Head of the Civil Service and the Governor accordingly;
- (g) providing advice and support to the Governor concerning the revocation or reissuing of personnel authorities to chief officers under section 8;
- (h) undertaking job evaluations for each civil service position and allocating each position to a remuneration band;
- (i) inquiring into alleged breaches of the Code of Conduct by any chief officer and reporting to the Head of the Civil Service, or in the case of the chief officers of the Audit Office, the Portfolio of Legal Affairs and the Office of the Complaints Commissioner, to the Governor, on the results of such enquiries (including recommendations for sanctions);
- (j) assisting with the appointment of Official Members;
- (k) assisting with the appointment of chief officers to the extent specified in section 26; and
- (l) such other investigations and human resource-related services as the Governor or the Head of the Civil Service may, from time to time, request.

Powers of Portfolio of
Civil Service

25. For the purposes of undertaking its duties in section 24 (f) and (i), the Portfolio of the Civil Service has the power to request information concerning human resource practices from civil service entities and the civil service entities shall accede to such requests.

PART VI - Personnel Arrangements for Chief Officers

Employment Arrangements for Chief Officers of Ministries and Portfolios

26. (1) When there is a vacancy or an impending vacancy in the position of a chief officer of a ministry or portfolio, the Head of the Civil Service (with the assistance of the Portfolio of the Civil Service) shall appoint a new chief officer in accordance with the requirements of personnel regulations and the following procedures -

Procedure for appointing
chief officers of
ministries and portfolios

- (a) The Head of the Civil Service shall, following consultation with the Official Member or Minister responsible for the ministry or portfolio to which a chief officer is to be appointed, define the duties of the position and the qualifications, skills, knowledge and experience required of the appointee in a job description.
- (b) The Head of the Civil Service shall then notify the vacancy in such manner as enables suitably qualified persons to apply for the position.
- (c) Upon the closing of applications, the Head of the Civil Service shall prepare a shortlist of suitable candidates for interview consisting of at least two persons who, in the opinion of the Head of the Civil Service, have the -
 - (i) qualifications, skills, knowledge and experience to carry out the duties required for the position in a highly competent manner; and
 - (ii) integrity to carry out the duties in a politically neutral manner.
- (d) In placing persons on the shortlist, the Head of the Civil Service shall take into account only the attributes set out in paragraph (c) and, if the Head of the Civil Service is of the opinion that no candidate satisfies all the requirements of paragraph (c), he shall re-notify the vacancy under paragraph (b) as if it was being notified for the first time.
- (e) All candidates on the shortlist are to be interviewed by a panel chaired by the Head of the Civil Service using a comparable interviewing approach for each applicant.
- (f) Following the interviews, and after consultation with the Governor, the Head of the Civil Service may appoint the candidate from the shortlist that in his opinion best satisfies all the criteria set out in paragraph (c), and where, after applying the criteria, two or more persons rank broadly at the same level, Caymanians shall be given preference.

(2) The Head of the Civil Service may reappoint a chief officer who has reached the end of a fixed-term employment agreement and such reappointment shall be made in accordance with the provisions of personnel regulations relating to reappointment of civil servants who have reached the end of a fixed-term employment agreement.

(3) The Head of the Civil Service may reappoint a chief officer who has attained the retirement age for civil servants and such reappointments shall be made in accordance with any provisions of personnel regulations relating to reappointment of civil servants who have reached retirement age.

(4) The Head of the Civil Service may appoint a civil servant to act as a chief officer when the substantive holder of the position is absent or when the position is temporarily vacant, provided that -

- (a) in making the acting appointment the Head of the Civil Service appoints the person with the best mix of qualifications, skills, knowledge and experience from amongst the persons available to act; and
- (b) the requirements of personnel regulations are complied with.

(5) The Head of the Civil Service may transfer a chief officer of a ministry or portfolio to another position in the civil service where, in the opinion of the Head of the Civil Service, it is in the public interest to do so.

(6) Before effecting a transfer under subsection (5), the Head of the Civil Service -

- (a) shall consult with the Minister or Official Member responsible for the ministry or portfolio for which the chief officer on transfer is working; and
- (b) shall, where the chief officer on transfer is to occupy a position other than that of chief officer, consult with the chief officer of the ministry or portfolio to which the chief officer on transfer is to be transferred.

(7) Where the chief officer on transfer is to occupy the position of chief officer in another ministry or portfolio, the Head of the Civil Service shall, before effecting the transfer, consult the Minister or Official Member responsible for that ministry or portfolio.

(8) In appointing or reappointing a chief officer, the Head of the Civil Service is to ensure that an open and fair employment process operates.

(9) In this section -

“chief officer on transfer” means the chief officer who is being considered for transfer.

27. (1) A chief officer of a ministry or portfolio is to be employed in accordance with the terms and conditions for the employment of chief officers specified in personnel regulations.

Terms and conditions of employment of chief officers of ministries and portfolios

(2) A chief officer of a ministry or portfolio shall be an employee of the government and employed on the basis of an employment agreement prepared in accordance with personnel regulations.

(3) If a chief officer of a ministry or portfolio is dismissed, retired early on medical grounds or retired to improve the organisation (under section 29), the chief officer’s employment with the government is terminated concurrently.

28. (1) The remuneration of a chief officer of a ministry or portfolio shall be agreed from time to time between the chief officer and the Head of the Civil Service.

Remuneration of chief officers of ministries and portfolios

(2) The remuneration level of a chief officer of a ministry or portfolio shall -

- (a) be within the remuneration band established in the personnel regulations; and
- (b) include a performance-related portion established in accordance with personnel regulations, the payment of which is to be based on the performance of the chief officer’s ministry or portfolio for a financial year in accordance with section 32.

29. (1) Subject to the requirements of the personnel regulations, the Head of the Civil Service may dismiss a chief officer of a ministry or portfolio, but may do so only on the basis of -

Dismissal and early retirement of chief officers of ministries and portfolios

- (a) gross misconduct or serious misconduct; or
- (b) significant inadequate performance over a reasonable period of time (compared to performance agreements) and provided that there has been adequate opportunity for the chief officer to improve his performance to the required level.

(2) In accordance with such procedures as may be provided in personnel regulations, the Head of the Civil Service may require a chief officer of a ministry or portfolio to take early retirement on medical grounds where the chief officer has a permanent disability.

(3) The Head of the Civil Service may retire a chief officer in order to improve the efficiency of the civil service entity, but shall do so in accordance

with the procedures established in personnel regulations for retiring civil servants to improve the organisation.

(4) Where the Head of the Civil Service plans to dismiss a chief officer of a ministry or portfolio, require him to take early retirement on medical grounds or retirement to improve the organisation, he shall, before doing so, consult with the Official Member or Minister responsible for the ministry or portfolio to which the chief officer is appointed.

(5) In taking any action relating to a chief officer involving the dismissal, early retirement on medical grounds or retirement to improve the organisation, the Head of the Civil Service is to ensure that an open and fair employment process operates.

Performance Management Arrangements for Chief Officers of Ministries and Portfolios

Annual performance agreements for chief officers of ministries and portfolios

30. (1) Prior to the commencement of each financial year, a chief officer of a ministry shall prepare and agree with the Head of the Civil Service, an annual performance agreement.

(2) Prior to the commencement of each financial year, a chief officer of a portfolio shall prepare and agree with the Official Member responsible for the portfolio concerned, an annual performance agreement.

(3) The performance agreement shall comprise -

- (a) the period to be covered by the performance agreement;
- (b) the performance expected of the chief officer's ministry or portfolio as specified in the Annual Budget Statement of the ministry or portfolio for that financial year prepared in accordance with the Public Management and Finance Law (2010 Revision), including the outputs to be purchased by the Cabinet and the ownership performance expected of the ministry or portfolio;
- (c) the internal outputs that the chief officer is to produce during the performance period;
- (d) the personal behaviours expected of the chief officer during the performance period;
- (e) any training, skills or personal development that the chief officer is expected to undertake during the performance period;
- (f) any other performance expectations as may be specified and agreed between the chief officer and Head of the Civil Service;

2010 Revision

- (g) such other matters as may be required by personnel regulations to be included in the performance agreement;
- (h) the procedures for changing the performance agreement during the year; and
- (i) an acknowledgement by both parties to the agreement that they have discussed and agreed the performance agreement, together with the date on which that discussion and agreement occurred.

(4) In preparing the performance agreement, a chief officer shall consult with his heads of department and other managers in the ministry or portfolio about the contents of the agreement.

(5) The performance agreement of -

- (a) a chief officer of a ministry shall be signed by the chief officer and the Head of the Civil Service;
- (b) a chief officer of a portfolio shall be signed by the chief officer and the Official Member responsible for the portfolio, provided that before the agreement is finalised and signed the Official Member shall consult with the Head of the Civil Service as to the appropriateness of the agreement.

(6) The performance agreement may, with the agreement of the parties to it, be modified during the financial year to which it relates.

31. (1) The performance of a chief officer of a ministry is to be reviewed at the end of each financial year by means of an annual performance assessment undertaken by the Head of the Civil Service (with the assistance of the Portfolio of the Civil Service as required) after consultation with the Minister responsible for the ministry and involving the chief officer.

Annual performance assessment of chief officers of ministries and portfolios

(2) The performance of a chief officer of a portfolio is to be reviewed at the end of each financial year by means of an annual performance assessment undertaken by the Official Member responsible for the portfolio after consultation with the Head of the Civil Service and involving the chief officer concerned.

(3) In undertaking the performance assessment, the Head of the Civil Service or the Official Member, as the case may be, is to base his assessment on a factual comparison of actual performance as reported in the quarterly and annual reports of the ministry or portfolio with that specified in the performance agreement for the financial year, together with any modifications of that agreement made during the year.

(4) Before completing a performance assessment, the Head of the Civil Service or the Official Member, as the case may be, shall consult with the chief

officer concerned and any other persons the Head of the Civil Service or the Official Member, as the case may be, thinks relevant about their views on the extent to which the chief officer has achieved the performance specified in the performance agreement for the year.

2010 Revision

(5) The performance assessment is to be completed within thirty days of the annual report of the chief officer's ministry or portfolio being tabled in the Legislative Assembly, the tabling being in accordance with section 44 of the Public Management and Finance Law (2010 Revision).

Calculation of performance component of remuneration of chief officers of ministries and portfolios

32. (1) The amount of the performance-related portion of the remuneration of a chief officer of a ministry for a financial year to be paid under section 28 is to be determined by the Head of the Civil Service as part of the performance assessment process undertaken under section 31.

(2) The amount of the performance-related portion of the remuneration of a chief officer of a portfolio for a financial year to be paid under section 28 is to be determined by the Official Member responsible for the portfolio after consultation with the Head of the Civil Service as part of the performance assessment process undertaken under section 31.

(3) The amount of the performance-related remuneration is to be determined by reference to the extent of achievement of the chief officer's annual performance agreement for the financial year.

Appeal Processes for Chief Officers of Ministries and Portfolios

Right of appeal by civil servants applying to be chief officers of ministries and portfolios

33. (1) A civil servant applying for the position of chief officer of a ministry or portfolio may appeal to the Civil Service Appeals Commission about an appointment made by the Head of the Civil Service under section 26, but must do so within thirty days of an appointment being notified.

(2) Where a civil servant makes an appeal to the Civil Service Appeals Commission under subsection (1), the civil servant shall provide evidence to the Civil Service Appeals Commission to show that the Head of the Civil Service has acted in an unfair manner or in a manner inconsistent with the requirements of section 26.

(3) The Civil Service Appeals Commission shall rule on the appeal and make a recommendation to the Governor within thirty days of the appeal being lodged and its recommendation shall be based on the information provided by the appellant together with information provided by the Head of the Civil Service and any other information that the Commission considers relevant.

(4) The Governor shall receive the recommendation and act upon it as he sees fit and his decision shall be final.

34. (1) A chief officer of a ministry or portfolio may appeal to the Civil Service Appeals Commission about a decision of the Head of the Civil Service or the Official Member, as the case may be, made under section 28, 29, 31 or 32, but must do so within thirty days of a decision being notified.

Right of appeal by chief officers of ministries and portfolios

(2) The Civil Service Appeals Commission shall rule on the appeal referred to in subsection (1) and make a recommendation to the Governor within thirty days of the appeal being lodged and its recommendation shall be based on the information provided by the appellant together with information provided by the Head of the Civil Service or Official Member, as the case may be, and any other information that the Commission considers relevant.

(3) The Governor shall act upon the recommendation referred to in subsection (2) as he sees fit, and his decision shall be final.

(4) Where a chief officer makes an appeal under subsection (1), the chief officer shall provide evidence to the Civil Service Appeals Commission to show that the Head of the Civil Service or Official Member, as the case may be, has acted in an unfair or biased manner, or in a manner which is inconsistent with the requirements of section 28, 29, 31 or 32.

Employment Arrangements for Auditor General and Complaints Commissioner

35. Where there is a vacancy for the position of Auditor General, section 26 shall apply except that the functions of the Head of the Civil Service shall be undertaken by the Governor.

Procedure for appointing Auditor General

36. Where there is a vacancy for the position of Complaints Commissioner, section 26 shall apply except that the functions of the Head of the Civil Service shall be undertaken by the Governor.

Procedure for appointing Complaints Commissioner

36A. Where there is a vacancy for the position of Director of Public Prosecution, section 26 shall apply except that the functions of the Head of the Civil Service shall be undertaken by the Governor.

Procedure for appointing Director of Public Prosecution

37. (1) Section 27 shall apply to the Auditor General, the Director of Public Prosecution and the Complaints Commissioner.

Remuneration and terms and conditions of employment of Auditor General and Complaints Commissioner

(2) Section 28 (1) and (2) (a) shall apply to the Auditor General, the Director of Public Prosecution and the Complaints Commissioner except that any

reference in those sections to the Head of the Civil Service shall be replaced with the Governor.

Remuneration and terms and conditions of Information Commissioner
Law 10 of 2007

(3) Section 28(2)(b) shall apply to the Director of Public Prosecution.

37A. For the avoidance of doubt and without limiting the effect of section 37 of the Freedom of Information Law, 2007, section 27(1) and (2) shall apply to the Information Commissioner.

Dismissal and early retirement of Auditor General and Complaints Commissioner

38. Sections 57, 114(1) and 120(2) of the Constitution shall apply to the Director of Public Prosecution, the Auditor General and the Complaints Commissioner, except that any reference to the Head of the Civil Service shall be replaced with the Governor.

Term of office and removal of Information Commissioner
Law 10 of 2007

38A. When the Information Commissioner's term expires or he is removed under section 35(3) of the Freedom of Information Law, 2007, his employment with the government is terminated concurrently.

Sections 30, 31 and 32 apply to Director of Public Prosecution

38B. Sections 30, 31 and 32 shall apply to the Director of Public Prosecution.

PART VII - Personnel Arrangements for Staff

Authority to Appoint, Remunerate and Dismiss Staff

Extent to which chief officer may exercise powers under this Part

39. This Part applies to a chief officer where that chief officer has a delegation from the Governor issued under section 7 and to the extent to which that delegation allows the chief officer to exercise the powers set out in this Part.

Chief officer's powers to appoint, promote and transfer staff

40. (1) Subject to this Part and personnel regulations, a chief officer may, from time to time, appoint, promote or transfer staff to positions within his civil service entity.

(2) The chief officer may, from time to time, establish the duties of a staff member, and the place or places at which the duties are to be performed.

(3) A chief officer may delegate his powers under subsections (1) and (2) to a head of department, other manager or other staff member in his civil service entity in accordance with section 45, and such person with delegated authority may then act as an appointing officer for the purposes of this section.

Procedures and requirements for appointment

41. (1) In exercising authorities to appoint, promote or transfer staff under section 40, an appointing officer shall comply with the requirements of personnel regulations and this section.

(2) Before any action is taken to fill a vacancy in a civil service entity (either by appointment, promotion or transfer) the appointing officer shall ensure

that the duties of the position, and the qualifications, skills, knowledge and experience required of the appointee are defined and documented in a job description.

(3) The appointing officer shall submit the job description to the Portfolio of the Civil Service, which shall then undertake a job evaluation, assign the position to a remuneration band established in personnel regulations and notify the appointing officer accordingly.

(4) The appointing officer shall then notify the vacancy in such manner as enables suitably qualified persons to apply for the position.

(5) Upon the closing of applications, the appointing officer shall prepare a shortlist of suitable candidates for interview consisting of at least two persons who, in the opinion of the appointing officer, have the qualifications, skills, knowledge and experience necessary for the position.

(6) Persons shall be placed on the shortlist only on the basis of their qualifications, skills, knowledge and experience and if the appointing officer is of the opinion that no candidate satisfies the requirements for the position, the appointing officer must re-notify the vacancy under subsection (4) as if it were a new appointment.

(7) Except as provided in subsection (8) -

- (a) all candidates on the shortlist are to be interviewed by an interview panel established by the appointing officer and using a comparable interviewing approach for each applicant; and
- (b) the interview panel is to establish the preferred candidate, that being the candidate that has the best mix of qualifications, skills, knowledge and experience for the position based on -
 - (i) the information provided by the applicants;
 - (ii) the results of the interviews;
 - (iii) the personal knowledge of the persons on the interview panel as declared to the panel; and
 - (iv) any other information the interview panel considers relevant,

but where, after applying the criteria, two or more persons rank broadly at the same level, Caymanians shall be given preference.

(8) If the vacant position is one normally filled by a wage worker, candidates need only be interviewed if it is thought necessary by the appointing officer.

(9) If the preferred candidate is not known to the interview panel, the appointing officer is to obtain references on the preferred candidate to satisfy himself of the candidate's suitability and these references are to be obtained before any appointment is made.

(10) An appointing officer may reappoint a staff member who has reached the end of a fixed-term employment agreement and such reappointment shall be made in accordance with personnel regulations relating to the reappointment of civil servants who have reached the end of a fixed-term employment agreement.

(11) An appointing officer may reappoint a staff member who has attained the retirement age for civil servants and such reappointments shall be made in accordance with personnel regulations relating to reappointment of civil servants who have attained retirement age.

(12) An appointing officer may appoint a staff member to act in a position when the substantive holder of the position is absent or when the position is temporarily vacant, provided that -

- (a) in making the acting appointment the appointing officer appoints the person with the best mix of qualifications, skills, knowledge and experience from amongst the persons available to act; and
- (b) the requirements of personnel regulations are complied with.

(13) An appointing officer may, in special circumstances with the prior written permission of the Head of the Civil Service, appoint a staff member to a position within the civil service entity without applying subsections (2) to (9) but the appointment shall substantively and procedurally comply with personnel regulations.

(14) An appointing officer may, with the prior permission of the Head of the Civil Service, transfer a staff member to a position in the same remuneration band in the civil service entity without applying subsections (2) to (9) but the transfer shall substantively and procedurally comply with the personnel regulations.

(15) In appointing or reappointing a staff member, there is an obligation on the appointing officer to ensure that an open and fair employment process operates.

(16) In appointing or reappointing any staff member referred to under section 106(4) of the Constitution, the appointing officer shall consult with the Judicial and Legal Services Commission.

42. (1) All staff of a civil service entity shall be employees of the government and employed on the basis of an employment agreement prepared in accordance with personnel regulations and the agreement shall include the remuneration and other terms and conditions agreed under section 43.

Basis of employment of staff

(2) Where a staff member is dismissed, retired early on medical grounds, retired to improve the organisation or employment is otherwise terminated (in accordance with section 44), the staff member's employment by the government is terminated concurrently.

(3) Where a civil servant applies for and is appointed to a position in a new civil service entity, the civil servant shall continue as an uninterrupted employee of the government but the tenure and other terms of conditions of employment of the civil servant shall be determined by the chief officer of the new civil service entity as part of the appointment process and in accordance with section 43.

(4) Except as provided in subsection (5), where a civil servant is transferred from one civil service entity to another civil service entity under section 20, the civil servant shall continue to be an uninterrupted employee of the government and the tenure and terms and conditions of the civil servant's employment shall be unaffected by the transfer of that civil servant.

(5) The tenure, and terms and conditions of employment of a civil servant who has been transferred may, after a period of two years from the date of transfer, be renegotiated with the chief officer upon the instigation of the chief officer or the staff member with a view to making them more favourable or less favourable, as the case may be, and for that purpose section 43 will apply.

43. (1) The remuneration of staff of a civil service entity shall be agreed, from time to time, between the chief officer (or person with delegated authority) and the staff member concerned, provided that the remuneration level is within the remuneration band established for the relevant position and specified in the personnel regulations.

Remuneration and other terms and conditions of employment

(2) Where a civil service entity operates a performance-related remuneration system (established under section 51), the remuneration of staff may include a performance-related portion, established in accordance with personnel regulations, the payment of which is to be based on the staff member's performance for a financial year in accordance with section 52.

(3) The terms and conditions of staff of a civil service entity shall be agreed from time to time between the chief officer (or person with delegated authority) and the staff member concerned but must comply with the minimum

terms and conditions specified for the employment of civil servants in personnel regulations.

Power to discipline, dismiss, retire staff early or otherwise terminate

44. (1) Subject to this section and the requirements of personnel regulations, a chief officer may -

- (a) discipline staff;
- (b) dismiss staff;
- (c) retire staff early on medical grounds;
- (d) retire staff to improve the organisation; or
- (e) otherwise terminate the employment of staff.

(2) A chief officer may delegate his powers under subsection (1) to a head of department, other manager or other staff member in his civil service entity in accordance with section 45, and such person with delegated authority may then act as an appointing officer for the purposes of this section.

(3) In exercising his authorities under subsection (1)(a), an appointing officer may discipline a staff member only on the grounds of minor misconduct, or inadequate performance over a reasonable period of time (compared to performance agreements) and provided that there has been adequate opportunity for the staff member to improve his performance to the required level but shall do so in accordance with the procedures established in personnel regulations for disciplining civil servants.

(4) In exercising his authorities under paragraph (1)(b), an appointing officer may dismiss a staff member only on the grounds of gross or serious misconduct, or significant inadequate performance over a reasonable period of time (compared to performance agreements) and provided that there has been adequate opportunity for the staff member to improve his performance to the required level, but shall so do in accordance with the procedures established in personnel regulations for dismissing civil servants.

(5) In exercising his authorities under paragraph (1)(c), an appointing officer may require a staff member to take early retirement on medical grounds where the staff member has a permanent disability, but shall do so in accordance with the procedures established in personnel regulations for the early retirement of civil servants on medical grounds.

(6) In exercising his authorities under paragraph (1)(d), an appointing officer may retire a staff member in order to improve the efficiency of the civil service entity, but shall do so in accordance with the procedures established in personnel regulations for retiring civil servants to improve the organisation.

(7) In exercising his authorities under paragraph (1)(e), an appointing officer may make a staff member redundant if the duties and functions assigned to the staff member are no longer required, those duties and functions will not be substantively transferred to another person or position in the civil service and there is no suitable vacant post in the civil service to which the staff member could be transferred, but shall do so in accordance with the procedures established in personnel regulations for making civil servants redundant.

(8) In taking any actions involving the discipline, dismissal, early retirement on medical grounds, retirement to improve the organisation or otherwise terminating the employment of staff, the appointing officer is to ensure that an open and fair employment process operates.

(9) In exercising his authorities under this section, an appointing officer shall consult with the Judicial and Legal Services Commission where any action relates to any staff member referred to under section 106(4) of the Constitution.

45. (1) A chief officer may delegate his powers under this Part to a staff member in accordance with this section.

Power of chief officer to delegate

(2) Unless the terms and conditions of the delegation otherwise provide, a person to whom duties or powers are delegated by a chief officer under this section shall not sub-delegate those duties or powers to another staff member.

(3) Subject to subsection (2), a delegation under this section may be made to a specified person or persons of a specified group or to the holder or holders for the time being of a specified office or offices, and various powers may respectively be delegated to different persons.

(4) A delegation under this section -

- (a) shall be in writing;
- (b) may be made on such terms and conditions as the person delegating or sub-delegating thinks fit; and
- (c) may be revoked at any time by written notice from the person delegating.

(5) Except to the extent that the terms and conditions of the delegation otherwise provide, a delegate under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on the delegate directly and not by delegation.

(6) No delegation under this section shall affect or prevent the exercise of any of the powers of the delegant nor shall any such delegation affect the responsibility of that person for the actions of the delegate, and once a decision is made, it shall, for all purposes, be as good as having been made by the delegant.

(7) A delegation under this section, until revoked, continues in force, notwithstanding that the delegant has ceased to hold office as such, and shall continue to have effect as if made by the successor of the delegant but without limiting the authorities conferred on the successor by or under this Law.

Delegation of personnel
authorities to heads of
department

46. The chief officer shall, unless there are good reasons to the contrary, delegate his authorities provided by sections 40, 41, 42, 43 and 44 to a head of department or other manager in the civil service entity in relation to the staff for which that head of department or other manager in the civil service entity is responsible.

General personnel
authorities

47. (1) A chief officer shall have such powers as are necessary to carry out the functions, duties and responsibilities established by section 40, 41, 42, 43, 44 and 45.

(2) A chief officer or other person acting under a delegation from a chief officer exercising his powers under sections 40, 41, 42, 43, 44 and 45 must do so without patronage or favouritism.

Appointment and
dismissal of police
officers

48. (1) Notwithstanding sections 39 to 47, -

- (a) the Commissioner of Police, Deputy Commissioner and Assistant Commissioner shall be appointed, disciplined, dismissed, retired early or otherwise dealt with only by the Governor and only in accordance with section 8 (1) and any other relevant provisions of the Police Law (2006 Revision) and any regulations made thereunder; and
- (b) other police officers of the Royal Cayman Islands Police Force shall be appointed, disciplined, dismissed, retired early or otherwise dealt with only by the Commissioner of Police and only in accordance with section 8 (2) and any other relevant provisions of the Police Law (2006 Revision) and regulations made thereunder, but this power shall, in relation to gazetted officers, be exercised in consultation with the Governor;
- (c) for the avoidance of doubt, it is declared that staff who work with the police force but who are not police officers shall be appointed by the relevant chief officer, who may delegate this power to the Commissioner of Police, and for this purpose, sections 45 and 46 shall apply.

2006 Revision

(2) For the avoidance of doubt, it is declared that except only as provided in subsection (1), this Law applies to the Commissioner and other police officers.

Performance Management Arrangements for Staff

49. (1) Prior to the commencement of each financial year, a chief officer shall enter into a performance agreement with each head of department and any other staff member reporting directly to the chief officer, and that agreement shall reflect the relevant aspects of the chief officer's performance agreement. Annual performance agreements with staff

(2) Prior to the commencement of each financial year, a head of department or other manager in the civil service entity shall enter into a performance agreement with each staff member for whom he is responsible, and that agreement shall reflect the relevant aspects of the head of department's or other manager's performance agreement.

(3) A performance agreement for a head of department or other staff member shall contain -

- (a) the name of the staff member;
- (b) the name of the person to whom the staff member reports;
- (c) the period to be covered by the performance agreement;
- (d) the external and internal outputs (or parts thereof) that the staff member is to produce during the performance period;
- (e) the ownership performance (or aspects thereof) that the staff member is to be responsible for during the performance period;
- (f) the personal behaviours expected of the staff member during the performance period;
- (g) any training, skills or personal development that the staff member is expected to undertake during the performance period;
- (h) any other performance expectations as may be specified and agreed between the parties;
- (i) such other matters as may be required by personnel regulations to be included in the performance agreement;
- (j) the procedures for changing the performance agreement during the year; and
- (k) an acknowledgement by both parties to the agreement that they have discussed and agreed the performance agreement, together with the date on which that discussion and agreement occurred.

(4) The performance agreement shall be signed by the two parties concerned.

(5) The performance agreement may, with the agreement of the parties to it, be modified during the financial year to which it relates.

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| Annual performance assessment of staff | <p>50. (1) The performance of a staff member reporting directly to the chief officer is to be reviewed at the end of each financial year by means of an annual performance assessment undertaken by the chief officer and involving the staff member concerned.</p> <p>(2) The performance of each staff member, other than a staff member referred to in subsection (1), is to be reviewed at the end of each financial year by means of an annual performance assessment undertaken by the relevant head of department or other manager in the civil service entity and involving the staff member concerned.</p> <p>(3) For the purposes of an annual performance assessment, performance is to be assessed against the performance agreement for that year, together with any modifications to that agreement, for the staff member concerned.</p> <p>(4) Before completing a performance assessment, the chief officer, head of department or other manager in the civil service entity, as the case may be, shall consult with the staff member concerned and any other persons the chief officer, head of department or other manager in the civil service entity considers relevant, about their views on the extent to which the staff member has achieved the performance specified in his performance agreement for the year.</p> <p>(5) The performance assessment is to be completed as soon as possible after information about the performance of the staff member is available and no later than thirty days after the annual report of the civil service entity has been tabled in the Legislative Assembly, the tabling of which is in accordance with section 44 of the Public Management and Finance Law (2010 Revision).</p> |
| 2010 Revision | |
| Authority to operate performance incentive arrangements | <p>51. (1) A chief officer may operate such performance incentive arrangements as he thinks suitable for the staff of his civil service entity provided that the arrangements comply with the personnel regulations.</p> <p>(2) Performance incentive arrangements, including performance-related remuneration, are to be directly linked to the performance assessment system specified in section 50.</p> |
| Calculation of performance component of staff remuneration | <p>52. (1) The amount of any performance-related portion of the remuneration of a staff member for a financial year is to be determined as part of the performance assessment process undertaken in accordance with section 50.</p> <p>(2) The amount of performance-related remuneration is to be determined by reference to the extent of achievement of the staff member's annual performance agreement for the financial year.</p> |

Appeal Processes for Staff

53. (1) A civil servant seeking appointment may appeal to the chief officer about any appointment decision made under this Part by a head of department or other manager in the civil service entity, but must do so within thirty days of being notified that he was not appointed.

Right of appeal to chief officer

(2) A staff member may appeal to his chief officer about any decision of a head of department or other manager in the civil service entity made under this Part, but must do so within thirty days of a decision being notified in writing.

(3) Where a civil servant makes an appeal under subsection (1) or a staff member makes an appeal under subsection (2), the civil servant or staff member shall provide evidence to the chief officer to show that the head of department or other manager in the civil service entity has acted in an unfair or biased manner, or in a manner inconsistent with the requirements of this Part.

(4) The chief officer shall, within thirty days, render a decision and such decision shall be based on the information provided by the appellant together with information provided by the head of department or other manager in the civil service entity and any other information that the chief officer considers relevant.

54. (1) A staff member or civil servant may appeal to the Civil Service Appeals Commission about any decision of a chief officer made under this Part (other than a decision made under sections 45 and 46), including a decision on an appeal made under section 53, but must do so within thirty days of being notified of the chief officer's decision.

Right of appeal to Civil Service Appeals Commission

(2) Where a staff member or civil servant appeals under subsection (1), the staff member shall provide evidence to the Civil Service Appeals Commission to show that the chief officer acted in an unfair or biased manner, or in a manner inconsistent with the requirements of this Part.

(3) The Civil Service Appeals Commission shall render a decision on the appeal within thirty days, and such decision shall be based on the information provided by the appellant together with information provided by the chief officer and any other information that the Commission considers relevant, and its decision shall be final.

(4) Where the decision being appealed against involves dismissal or other termination of employment, the Civil Service Appeals Commission may, before hearing the matter in full and rendering a final decision thereon, make such interim orders as it thinks fit including -

- (a) temporary reinstatement of the appellant;

- (b) placing him on suspension on such terms and conditions as it thinks fit.

Other Personnel Obligations of Chief Officer

Good employer

55. (1) A chief officer shall operate a personnel policy that complies with the principle of being a good employer, that being an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including -

- (a) good and safe working conditions;
- (b) the impartial selection of suitably qualified persons for appointment;
- (c) recognition of the need for the advancement of Caymanians in all parts of the civil service;
- (d) opportunities for the enhancement of the abilities of individual employees;
- (e) recognition of the employment requirements of women; and
- (f) recognition of the employment requirements of persons with disabilities.

(2) A chief officer shall establish work place safety procedures within his civil service entity that comply with personnel regulations and which ensure that the health, safety and welfare of staff at or around workplaces used by the civil service entity are protected.

Chief officer to publish and promote Public Service Values

56. A chief officer shall uphold and promote the Public Service Values specified in section 4 in his civil service entity and operate management systems that reflect those values.

Chief officer to publish and promote Public Servant's Code of Conduct

57. A chief officer shall publish and promote the Public Servant's Code of Conduct specified in section 5 to all staff members and encourage them to comply with it at all times.

PART VIII - Civil Service Appeals Commission

Appointment of Civil Service Appeals Commission

58. (1) There shall be a Civil Service Appeals Commission appointed in accordance with this section.

(2) The Civil Service Appeals Commission shall consist of a Chairman and not less than four or more than six other members, appointed by the Governor acting in his discretion.

(3) The members of the Civil Service Appeals Commission shall be appointed by instrument under the public seal for such period, not being less than two nor more than four years, as may be specified in their respective instruments of appointment.

(4) No person shall be qualified to be appointed as a member of the Civil Service Appeals Commission if he is a civil servant or if he is or has been within the preceding three years -

- (a) an elected member of the Legislative Assembly; or
- (b) the holder of any office in any political party.

(5) The office of a member of the Civil Service Appeals Commission shall become vacant -

- (a) at the expiration of the period specified in the instrument by which he was appointed;
- (b) if he resigns his office by writing under his hand addressed to the Governor;
- (c) if he becomes an elected member of the Legislative Assembly, the holder of any office in any political party or a civil servant;
- (d) if the Governor, acting in his discretion, directs that he shall be removed from office for inability to discharge the functions thereof (whether arising from infirmity of body or mind or any other cause) or for misbehaviour; or
- (e) upon his death.

(6) In the performance of its functions under this Law, the Civil Service Appeals Commission shall not be subject to the direction or control of any other person or authority.

(7) Members of the Civil Service Appeals Commission shall be paid such subsistence and travelling allowances as the Cabinet shall from time to time determine.

59. The Civil Service Appeals Commission shall hear appeals under sections 33, 34 and 54.

Duties of Civil Service Appeals Commission

60. On the appeal of any decision, the Civil Service Appeals Commission may make such determination as it considers appropriate and may, without limiting the generality of this power, grant monetary relief and make interim orders.

Determination of appeals by Civil Service Appeals Commission

61. (1) Meetings of the Civil Service Appeals Commission shall be chaired by the Chairman, and the Commission may appoint a temporary chairman from among its own members to preside over a meeting if the chairman is absent for any reason.

Meetings, procedures, etc., of Civil Service Appeals Commission

(2) All decisions of the Civil Service Appeals Commission shall be by majority vote of members present but the chairman shall have a casting vote whenever the voting is equal.

(3) The Commission shall appoint a secretary who shall keep a record of the members present and of the business transacted at every meeting of the Commission; any member who is present at a meeting when a decision is made shall be entitled to dissent therefrom and to have his dissent and his reasons set out in the record of the meeting if he so requests.

(4) The Commission shall have all the powers of the Grand Court in relation to the summoning of witnesses and the production of documents.

(5) The parties to an appeal may, at their own discretion, choose to be represented at a hearing of the Commission by -

- (a) an attorney;
- (b) a representative of an organisation representing employees or any class thereof; or
- (c) any other person.

(6) Subject to subsections (1) to (5), the Commission may establish its own rules of meeting.

Privilege of Civil
Service Appeals
Commission documents

62. Any report, statement or other communication or document of record of any meeting, inquiry or proceedings which the Civil Service Appeals Commission may make in exercise of its functions or any member may make in performance of his duties shall be privileged in that its production may not be used in any legal proceedings if the Governor certifies in writing that such production is not in the public interest.

PART IX - Miscellaneous

Provisions relating to Portfolio of Legal Affairs

Provisions relating to
Portfolio of Legal
Affairs

63. (1) Notwithstanding section 26 (1) (f), before appointing a person to be chief officer of the Portfolio of Legal Affairs, the Head of the Civil Service shall consult with the Attorney General and the Judicial and Legal Services Commission about the suitability of the preferred candidates' legal qualifications and experience.

(2) Notwithstanding sections 40, 41, 44, 45 and 47, the chief officer of the Portfolio of Legal Affairs shall consult with the Attorney General and the Judicial and Legal Services Commission about any actions under those sections taken in relation to a staff member who is a Crown Counsel.

(3) Notwithstanding section 50, the chief officer of the Portfolio of Legal Affairs shall consult with the Attorney General and the Judicial and Legal Services Commission about the performance of any staff member who is a Crown Counsel before undertaking the performance assessment of that staff member.

(4) In this section -

“Crown Counsel” means any person employed in the Portfolio of Legal Affairs who occupies a post for which a qualification to practise law is required.

Protection from Liability

64. No civil servant shall be liable in damages for anything done or omitted in the discharge of his functions unless it is shown that the act or omission was in bad faith. Protection of civil servants from liability

65. A member of the Civil Service Appeals Commission shall, in case of any action or suit brought against him for any act done or omitted in the execution of his duties, have such and the like protection and privilege as is by law given to acts done or words spoken by a Judge of the Grand Court in the exercise of his judicial office. Indemnity of Civil Service Appeals Commission

66. For the avoidance of doubt, the Governor and the government shall not be liable for any act done or omitted under this Law by an employee of a statutory authority or a government company. Governor and government not liable for actions of statutory authorities and government companies

Personnel Regulations

67. (1) The Cabinet may, on the advice of the Head of the Civil Service, make regulations - Power to make regulations

- (a) to establish procedures for notifying vacancies and appointing civil servants;
- (b) to establish the standard terms and conditions of employment for civil servants;
- (c) to establish bands for remuneration of civil servants;
- (d) to establish the minimum contents of performance agreements;
- (e) to establish the requirements for performance incentive arrangements operated by civil service entities including performance-related remuneration systems;
- (f) to establish procedures for disciplining and dismissing civil servants;
- (g) to establish procedures to be applied in the case of redundancy, early retirement of civil servants or other termination;

- (h) to establish internal grievance procedures to be followed by civil service entities;
- (i) to specify, for civil service entities, practices that satisfy the description of good employer;
- (j) necessary or convenient to be prescribed for carrying out or giving effect to this Law.

(2) In making the regulations under this section, the Cabinet shall ensure that holders of constitutional offices and any person who performs the functions of such holder on behalf of the holder enjoy the protection that is consistent with the letter and spirit of the Constitution in relation to the performance of those functions.

Cayman Islands Civil Service Association

Recognition of Civil Service Association

68. The Cayman Islands Government recognises the Cayman Islands Civil Service Association as the duly appointed representative of the civil service and the Head of the Civil Service, the Portfolio of the Civil Service and chief officers are similarly to recognise the Association and liaise with it as appropriate over human resource issues for which they are responsible.

Offences

Offences

69. (1) A person who -

- (a) otherwise than in the course of his duty directly or indirectly by himself or by any other person in any manner influences or attempts to influence any decision of the Civil Service Appeals Commission;
- (b) without reasonable excuse fails to appear before the Civil Service Appeals Commission when required to do so or who fails to -
 - (i) comply with any request made by the Commission to produce any information that is in that person's possession or under that person's control; or
 - (ii) provide answers or explanations when required to do so by the Commission; or
- (c) makes any statement or gives any information to the Civil Service Appeals Commission, knowing it to be false or misleading,

is guilty of an offence and is liable to imprisonment for six months.

Law 10 of 2007

(2) A public servant who is or has been a member of the security or intelligence services as defined in section 3(8) of the Freedom of Information Law, 2007 and who without lawful authority discloses information relating to

strategic or operational intelligence gathering activities commits an offence and is liable upon conviction to imprisonment for six months.

(3) For purposes of subsection (2) disclosure prohibited by that subsection includes disclosure which purports to be a disclosure of such information or which is intended to be taken by those to whom it is addressed as being such a disclosure.

Publication in consolidated and revised form authorised by the Governor in Cabinet this 2nd day of November, 2010.

Kim Bullings
Clerk of Cabinet

Note: For transitional provisions, see sections 69 to 71 of Law 27 of 2005.

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