

INTRODUCTION TO THE FOURTH EDITION OF THE GENERAL ORDERS OF THE NATIONAL PUBLIC SERVICE

1. Constitutional Provisions for the National Public Service

- 1.1 **Section 188 of the *Constitution*** establishes the National Public Service as one of the State Services. The National Public Service is established to deliver basic goods and services to the people on behalf of the Government, under control and direction of the National Executive Council.
- 1.2 **Sections 190 and 191 of the *Constitution*** establish the **Public Service Commission**, which has the special function of reviewing the management and control of the National Public Service in relation to personnel matters.
- 1.3 **Section 193 of the *Constitution*** provides for the merit based appointments of Heads of State Services, Departmental Heads and Provincial Administrators by the National Executive Council on a recommendation of the Public Service Commission.
- 1.4 **Section 195 of the *Constitution*** establishes that Acts of the Parliament, the ***Public Services (Management) Act***, which shall make provision for, inter alia:
 - (a) the structures and organisations of the National Public Service; and
 - (b) the employment of persons in the National Public Service; and
 - (c) the terms and conditions of appointment to and employment in the National Public Service.
- 1.5 The ***Public Services (Management) Act*** is the underlying law on employment in the State Services.

2. Provincial and Local Level Government Administration

- 2.1 The ***Organic Law on Provincial Government and Local Level Government*** (a **Constitutional** law) provides for Acts of the Parliament to establish administrative organisations to serve the Provincial and Local Level Governments throughout the Country.
- 2.2 The Provincial and Local Level Government organisations are to be staffed and administered under provisions for the National Public Service. They are established to give effect to the policy direction of the National Executive Council and to the policy direction of the Provincial Executive Councils respectively, in the delivery of goods and services to the people.

3. *The Public Services (Management) Act 1995*

- 3.1 The ***Public Services Management Act, 1995***, is established to implement the

provisions of the **Constitution** under Sections 188, 190, 191, 193 and 195, and to give effect to the staffing of Provincial and Local Level Government Administrations under the *Organic Law*.

- 3.2 The *Public Services (Management Act), 1995*, gives effect to the concept of one National Public Service at all levels of National, Provincial and Local Level Government administration.

4. The Department of Personnel Management

- 4.1 The Department of Personnel Management is created under **Section 20** of the *Public Services (Management) Act 1995*, which is made responsible under **Section 24(2)** for the proper administration of the Act, and represents the State as the employer in the State Services.

- 4.2 The functions and responsibilities of the Secretary for the Department of Personnel Management are:

- (a) the proper administration of the Act, including the management efficiency of the National Public Service; and,
- (b) the application and interpretation of terms and conditions of employment; and
- (c) the setting of terms and conditions of employment and prescribing of conditions of service; and,
- (d) the conduct of industrial relations within public sector organisations; and,
- (e) the retrenchment of employees and officers; and,
- (f) the formulation of General Orders to reflect the policies of the National Executive Council; and,
- (g) the selection, appointment, promotion and transfer of officers in accordance with General Orders; and,
- (h) the delegation and control of personnel management functions to Departments of the National Public Service to be managed in accordance with General Orders; and
- (i) such other functions and duties as determined by the Head of State acting on advice of the National Executive Council.

- 4.3 The Secretary for the Department of Personnel Management is also responsible for:

- (a) the *Salaries and Conditions Monitoring Committee Act 1988*, as Chairperson of the Committee and for provision of secretariat services and pay policy advice to the Committee and to the NEC, in setting the

terms and conditions of employment;

- (b) the *Regulatory Statutory Authorities (Appointments to Certain Offices) Act* in prescribed public authorities, insofar as management of the selection and appointment procedures pursuant to **Section 193** of the **Constitution**;
- (c) the *Public Employment (Non-Citizens) Act 1995* insofar as the determination of terms & conditions and execution of contracts of non-citizens in the National Public Service and prescribed public authorities;
- (d) the *Public Hospitals Act* and the *Provincial Health Authorities Act* insofar as the application of the General Orders to the public employees of the hospitals;
- (e) the *Public Service Conciliation & Arbitration Act* insofar as representing the State as the employer; and
- (f) the *Teaching Service Act* insofar as teachers are public servants and the Teaching Service Commission is bound to consult the Secretary Department of Personnel Management on employment matters.

5. Devolution of Powers of the Secretary, Department of Personnel Management

- 5.1 The National Executive Council has determined that certain powers relating to organisational and staffing matters shall be delegated by the Secretary, Department of Personnel Management to Departmental Heads and Provincial Administrators by virtue of powers under **Sections 23 and 24** of the *Public Services (Management) Act 1995* in order to effect greater accountability by Departmental Heads and Provincial Administrators in personnel management matters for the efficient management of the National Public Service.
- 5.2 The General Orders are written to facilitate and to support the devolution process through regulated policy frameworks and standard systems, methodologies and procedures, to be managed by Departmental Heads and Provincial Administrators whereby performance of individual departments and administrations under devolved powers can be monitored and reported centrally within parameters set in the National Budget process.
- 5.3 Delegated powers shall not be delegated below Departmental Head level and in the event that delegated powers have been abused, they may be withdrawn by the Secretary, Department of Personnel Management.

6. Formulation, Administration and Enforcement of General Orders

- 6.1 **Section 70** of the *Public Services (Management) Act 1995* provides that:

“(1) The Departmental Head of the Department of Personnel Management may give to officers directions (to be known as “General Orders”), not inconsistent with this Act, as to any matter prescribed by this Act to be so provided for or that

is necessary or desirable for the efficient management and control of the Public Service.

(2) In formulating General Orders under Subsection (1), the Departmental Head of the Department of Personnel Management shall give effect to any relevant decisions on policy made by the National Executive Council.”

- 6.2 The Fourth Edition of the General Orders give effect to the Act and to the policy direction of the National Executive Council for the efficient management and control of the National Public Service, including the application of other laws which impinge upon the terms and conditions of employment of public servants and the administration of the National Public Service.
- 6.3 General Orders are public documents and are to be made freely available to all public servants who may wish to have access to them. They are communicated throughout the National Public Service under Department of Personnel Management **Circular Instructions**, which give effect to the Secretary's powers of direction and interpretation under the *Public Services (Management) Act*. From time to time **Special General Orders** may be issued to vary the established General Orders for temporary periods of time.
- 6.4 General Orders give effect to the provisions of the *Public Services (Management) Act* and, by virtue of the Act, are enforceable at law. Any failure by public servants to observe and to comply with General Orders **through a lack of knowledge about them** is inadmissible at law. Ignorance of General Orders is no defence under the disciplinary procedure.
- 6.5 It is the responsibility of each Departmental Head to maintain up to date copies of the General Orders which are to be freely available to all public servants within their respective Departments. Copies of Circular Instructions and amendments/interpretations of General Orders should be filed and read together with the original copy of the General Orders.
- 6.6 It is the responsibility of each Departmental Head to ensure that every public servant has, at the time of employment, a copy of the General Order on the application of Discipline in the Public Service and a copy of the **Public Service Code of Business Ethics and Conduct**.
- 6.7 Each public servant with responsibility for the supervision of others has a duty to ensure that his or her subordinates fully understand the General Orders which regulate conduct and work performance in the Public Service. Public servants should also understand that they are required to follow only lawful instructions made pursuant to the General Orders and the legislation under which they operate.
- 6.8 The General Orders contain procedural notes for guidance as to best practice in fulfilling the requirements of the General Orders. Departmental Heads are required to ensure that their Departments comply with the procedural notes for guidance.
- 6.9 The General Orders have been written in accordance with the policy of the

National Executive Council and the spirit and intention of the **Constitution** from which, ultimately, they derive their authority and enforceability through the ***Public Services (Management) Act***.

- 6.10 The Fourth Edition of General Orders replaces and supersedes the Third Edition of General Orders of 1st June 2002 **and all other editions** and incorporates legislative and NEC policy changes up to 31st December 2011. The revision date of each General Order is shown in the footer of each General Order. Any uncertainty as to the latest version of the General Order can be clarified with the Department of Personnel Management.

7. **The Public Services (Management) (Amendment) Act 1998**

This amendment incorporated the role and the functions of the Chief Secretary to Government within the ***Public Services (Management) Act 1995***, subsequently amended by the Amendment Act 2002.

8. **The Public Services (Management) (Amendment) Act 2002**

The amendments effected the following changes which are now incorporated into the General Orders.

- (a) Transferred the role and functions of the Chief Secretary to the Prime Minister's Act.
- (b) Transferred responsibility for performance management of Departmental Heads to the Central Agencies Coordinating Committee, chaired by the Chief Secretary to the Government.
- (c) Provided independent staffing arrangements to the Public Service Commission and made decisions of the Commission binding on line departments.
- (d) Provided for Codes of Conduct to be issued by the Head of State on advice, and effected issuance of the **Public Service Code of Business Ethics and Conduct**.

9. **The Public Services (Management) Regulations No's 5, 6 and 7 of 2003**

9.1 In 2002 **Sections 190 and 193** of the **Constitution** were amended to restore certain powers to the **Public Service Commission** for the purpose of monitoring merit based selection processes and for recommending appointments of heads of departments and agencies to be made by the **National Executive Council**.

9.2 The ***Public Services (Management) Act*** was amended to give effect to the amendments made to the **Constitution**. The **Public Service Regulations** were brought into force to regulate and to enforce the respective roles and functions of the Public Service Commission and the Department of Personnel Management in the selection and appointment processes.

- 9.3 The General Orders shall be read together with the Public Service Regulations where they cover common aspects of employment in the National Public Service.

10. **Application of Other Laws Affecting Terms & Conditions of Employment**

10.1 The State as the employer is responsible for paying due care and attention to the welfare of public servants in accordance with laws related to conditions of employment and affecting the rights and interests of public servants in their employment.

10.2 General Orders have been provided **consistent with the scope of Section 70 of the Act**, which draw the attention of Departmental Heads and Provincial Administrators to their responsibilities on behalf of the State to ensure compliance with the following laws through their administrative procedures:

- (a) *Superannuation (General Provisions) Act – (Nambawan Super)*
- (b) *Workers Compensation Act*
- (c) *Occupational Health & Safety Act and Fire Service Act*
- (d) *HIV & AIDS (Management & Prevention) Act (Code of Conduct)*
- (e) *National Library & Archives Act & Statute of Limitations Act (Personnel Records).*

11. **The Leadership Code**

The **Leadership Code** under the **Organic Law on Leadership** prescribes the strict rules related to behavior and conduct in office of Departmental Heads and all agency heads classified as leaders, and is independently administered by the **Ombudsman Commission**.

12. **The Public Service Code of Business Ethics and Conduct (The Code)**

The Code is made by the Head of State on advice pursuant to the *Public Services (Management) Act* and applies to all public servants, including Departmental Heads and agency heads, and may be referenced in disciplinary proceedings.

13. **General Definition of Agency Head**

Throughout the General Orders, reference to “Agency Head” includes reference to Departmental Head, Provincial Administrator, Chief Executive Officer of a Public Hospital or Provincial Health Administration and other Chief Executive Officers with responsibility for the administration of public servants and public employees in circumstances where the General Orders have been adopted by the governing bodies to which they report.