

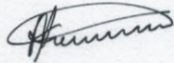
DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

NO. R. 3971

20 October 2023

PUBLIC SERVICE AMENDMENT REGULATIONS, 2023

The Minister for the Public Service and Administration, in terms of section 41 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), hereby makes the Regulations as set out in the Schedule.



MS NOXOLO KIVIET, MP**MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION****DATE: 09/10/23**

Schedule

Definition

1. In this Schedule "the Regulations" means the Public Service Regulations, 2016 published in Government Notice No. R. 877 of 29 July 2016, as amended by Government Notices Nos. R. 125 of 08 February 2019 and R. 581 of 11 April 2019.

Amendment of regulation 2 of the Regulations

2. Regulation 2 of the Regulations is hereby amended by the insertion in subregulation (2) of the following definition before the definition of "CDWP":

"Basic Conditions of Employment Act" means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);".

Amendment of regulation 13 of the Regulations

3. Regulation 13 of the Regulations is hereby amended—

(a) by the substitution for paragraph (a) of the following paragraph:

"(a) not receive, solicit or accept any gratification, as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), in return for performing or not performing his or her official duties;"

(b) by the substitution for paragraph (b) of the following paragraph:

"(b) not engage in any conduct that is in conflict with or infringes on the execution of his or her official duties;"

(c) by the substitution for paragraph (d) of the following paragraph:

"(d) recuse himself or herself from any official action or decision-making process which may result in improper personal gain or conflict of interest, and this shall immediately be properly declared by the employee;" and;

(d) by the substitution for paragraph (h) of the following paragraph:

"(h) not receive or accept any gift in the course and scope of his or her employment to the cumulative value exceeding R500 per year, unless approval is obtained from the relevant executive authority;".

Amendment of regulation 14 of the Regulations

4. Regulation 14 of the Regulations is hereby amended—

(a) by the substitution for paragraph (m) of the following paragraph:

"(m) not release official information unless he or she is authorised or has the necessary approval;"

(b) by the deletion of the word "and" after paragraph (p):

(c) by the substitution for paragraph (q) of the following paragraph:

"(q) immediately report any non-compliance with the Act to the head of department and in the event that the non-compliance is by the head of department, report such non-compliance to the executive authority;" and

(d) by the addition of the following paragraphs:

"(r) not claim any intellectual property over work done in the course and scope of his or her employment; and

(s) not act in a manner that brings his or her department or the public service into disrepute."

Amendment of regulation 16 of the Regulations

5. Regulation 16 of the Regulations is hereby amended by the substitution for the definition of “**form**” of the following definition:

“**form**’ means a form contemplated in regulation 18;”.

Amendment of regulation 18 of the Regulations

6. Regulation 18 of the Regulations is hereby amended —

(a) by the substitution for subregulation (1) of the following subregulation:

“(1) An SMS member, except for a head of department shall, not later than 30 April of each year, disclose to the relevant head of department, in the form directed for this purpose by the Minister, particulars of all his or her interests in respect of the previous financial year.”;

(b) by the substitution for subregulation (2) of the following subregulation:

“(2) A head of department shall, not later than 30 April of each year, disclose to the relevant executive authority, in the form directed for this purpose by the Minister, particulars of all his or her interests in respect of the previous financial year.”; and

(c) by the substitution for subregulation (4) of the following subregulation:

“(4) Any person who assumes duty as a designated employee on or after 1 April shall make such disclosure within 30 days after assumption of duty in respect of the previous financial year.”.

Amendment of regulation 19 of the Regulations

7. Regulation 19 of the Regulations is hereby amended by the addition of the following paragraph:

- "(k) Other financial liabilities:
- (i) nature of liability;
 - (ii) date on which liability was incurred;
 - (iii) principal amount of liability;
 - (iv) institution or person to whom liable; and
 - (v) period over which liability will be paid."

Amendment of regulation 20 of the Regulations

8. Subregulation (1) of regulation 20 of the Regulations is hereby amended—

(a) by the—

- (i) deletion of the word "and" after paragraph (g); and
- (ii) substitution for the full stop after paragraph (h) of a semi-colon; and

(b) by the addition of the following subparagraphs:

- "(i) subject to the approval of the executive authority in respect of the information of a head of department or the head of department in respect of the information of any other employee—
 - (i) persons appointed to investigate, initiate or conduct disciplinary proceedings; and
 - (ii) law enforcement agencies charged with investigating or prosecuting an alleged offence; and
- (j) a person or institution authorised by statute."

Amendment of regulation 21 of the Regulations

9. Regulation 21 of the Regulations is hereby amended—

- (a) by the deletion in subregulation (2) of paragraph (d); and
- (b) by the addition of the following subregulation:

"(3) An executive authority, in respect of a head of department, and a head of department, in respect of other designated employees, shall—

- (a) conduct a risk analysis of the disclosed interests and income of the employee;
- (b) in the event that the risk analysis indicates a discrepancy between the disclosed interests and the income of the employee, consult with the employee concerned to obtain an explanation for the discrepancy;
- (c) in the event that the explanation referred to in subregulation (3)(b) does not sufficiently address the discrepancy—
 - (i) investigate whether disciplinary steps must be taken and if so, institute such disciplinary action; and
 - (ii) if there is a reasonable suspicion of a criminal offence, refer the matter to the relevant law enforcement agencies."

Amendment of regulation 22 of the Regulations

10. Regulation 22 of the Regulations is hereby amended—

(a) by the substitution for paragraph (c) of the following paragraph:

"(c) establish a system that encourages and allows employees and citizens to report allegations of corruption and other unethical conduct, and such system shall provide for—

- (i) confidentiality of reporting;
- (ii) the recording of all allegations of corruption and unethical conduct received through the system; and
- (iii) mechanisms to ensure that employees and citizens are made aware of such system;"

(b) by the substitution for paragraph (d) of the following paragraph:

- "(d) establish an information system that—
- (i) records all allegations of corruption and unethical conduct;
 - (ii) monitors the management of the allegations of corruption and unethical conduct;
 - (iii) identifies any systemic weaknesses and recurring risks;
 - (iv) maintains records of the outcomes of the allegations of corruption and unethical conduct; and
 - (v) records all gifts accepted by employees as contemplated in regulation 13(h); and".

Substitution of regulation 23 of the Regulations

11. The following regulation is hereby substituted for regulation 23 of the Regulations:

"Ethics Officer

- (1) An executive authority shall designate or appoint such number of ethics officers as may be appropriate, for the department to-
 - (a) promote integrity and ethical behaviour in the department;
 - (b) advise employees on ethical matters;
 - (c) identify and report unethical behaviour and corrupt activities to the head of department;
 - (d) manage the financial disclosure system; and
 - (e) manage the processes and systems relating to remunerative work performed by employees outside their employment in the relevant department.
- (2) The head of department shall establish an ethics committee or designate an existing committee, chaired by a member of the SMS, preferably a Deputy Director-General, to provide oversight on ethics management in the department."

Amendment of regulation 25 of the Regulations

12. Regulation 25 of the Regulations is hereby amended—

(a) by the substitution for paragraph (b) in subregulation (2) of the following paragraph:

- “(b) define and create the posts necessary to perform the relevant functions of the department while remaining within—
- (i) the current budget;
 - (ii) the Medium-Term Expenditure Framework of the department; and
 - (iii) the norms and standards determined by the Minister for post provisioning for occupations or categories of employees,
- and the posts so defined and created shall constitute the department's approved establishment, which shall be made publicly available on the department's website;” and

(b) by the insertion after subregulation (2) of the following subregulation:

“(2A) If the executive authority approves an organisational structure which is not in accordance with the recommendations emanating from consultations contemplated in subregulation (2)(a)(i) or (ii), the reasons therefor shall be recorded;”.

Substitution of regulation 29 of the Regulations

13. The following regulation is hereby substituted for regulation 29 of the Regulations:

“29 Assessment of efficiency and effectiveness

An executive authority must assess the efficiency and effectiveness of a department in supporting that department's service delivery objectives using the assessment tools as may be directed by the Minister.”.

Insertion of regulation 34A in the Regulations

14. The following regulation is hereby inserted in the Regulations after regulation 34:

“34A Abolition of government components and specialised service delivery units

An executive authority may abolish a government component, as contemplated in section 7(5)(c) or (d) of the Act, or a specialised service delivery unit, as contemplated in section 7B of the Act, after —

- (a) complying with regulation 32 in respect of the transfer of functions; and
- (b) withdrawing a notice issued in terms of sections 7A(5) or 7B(5) of the Act.”.

Substitution of regulation 35 of the Regulations

15. The following regulation is hereby substituted for regulation 35 of the Regulations as follows:

“35 Organisational functionality assessment

An executive authority shall conduct an organisational functionality assessment, as directed by the Minister, to assess the effectiveness of a department’s internal systems and processes.”.

Amendment of regulation 39 of the Regulations

16. Regulation 39 of the Regulations is hereby amended—

- (a) by the substitution for paragraph (a) in subregulation (3) of the following paragraph:

“(a) a system of remuneration for an occupational category; and”;

and

(b) by the substitution for subregulation (4) of the following subregulation:

“(4) An executive authority shall link all posts in his or her department as contained in a remuneration system contemplated in subregulation (3)(a) to an occupation listed in the occupational classification system referred to in subregulation (3)(b).”.

Amendment of regulation 41 of the Regulations

17. Regulation 41 of the Regulations is hereby amended by the substitution for paragraph (d) in subregulation (2) of the following paragraph:

“(d) issue directives that determine the evaluation and grading of any job or category of jobs.”.

Amendment of regulation 44 of the Regulations

18. Regulation 44 of the Regulations is hereby amended —

(a) by the substitution in subregulation (1) for the words preceding paragraph (a) of the following words:

“(1) Except where otherwise provided for in an OSD and subject to subregulation (2) to (4) an executive authority may set the salary of an employee above the minimum notch of the salary level indicated by the job weight-”;

(b) by the substitution for paragraph (c) in subregulation (2) of the following paragraph:

“(c) the counter offer made is limited to the higher salary notch closest to the external offer; and”;

(c) by the substitution for paragraph (d) in subregulation (2) of the following

paragraph:

"(d) the counter offer shall not exceed the salary level of the post occupied by the employee."; and

(d) by the substitution for subregulation (3) of the following subregulation:

"(3) The setting of a higher salary notch, as contemplated in subregulation (1) to recruit a person, shall only take place on the first day of the month following the date of approval if-

- (a) the executive authority has complied with the process contemplated in regulation 64;
- (b) the person was earning a higher salary immediately before the date of appointment;
- (c) the higher salary does not exceed the closest higher salary notch than that of the person immediately prior to the appointment; and
- (d) the higher salary does not exceed the salary level of the post, unless such employee has been awarded a higher salary attached to the grade of the post in terms of any other provision of the Act."

Amendment of regulation 45 of the Regulations

19. Regulation 45 of the Regulations is hereby amended by the substitution for paragraph (b) in subregulation (2) of the following paragraph:

"(b) has received a fully effective rating in his or her most recent annual moderated and approved performance assessment in the post and where the incumbent has not yet been assessed, his or her performance shall first be assessed to determine whether the performance is fully effective;"

Amendment of regulation 49 of the Regulations

20. Regulation 49 is hereby amended by the substitution for subregulation (1) of the following subregulation:

"(1) An executive authority shall, subject to any collective agreement and the Basic Conditions of Employment Act, compensate an employee, other than a member of the SMS, for overtime work if—

- (a) the department has an approved written policy on overtime;
- (b) the executive authority has provided written authorisation in advance for the work;
- (c) the monthly compensation for overtime constitutes less than—
 - (i) 30 percent of the employee's monthly basic salary; or
 - (ii) 30 percent of the monthly salary calculated on the minimum basic annual salary determined by the Minister,whichever is the lesser;
- (d) the approval is not inconsistent with a collective agreement or the Basic Conditions of Employment Act;
- (e) the hours of overtime is in accordance with the Basic Conditions of Employment Act;
- (f) such overtime is in the interest of service delivery; and
- (g) funds are available within the budget of the department."

Substitution of regulation 51 of the Regulations

21. The following regulation is hereby substituted for regulation 51 of the Regulations:

"51 Working hours

Subject to any collective agreements and the Code of Good Practice on Arrangement of Working Time issued in terms of section 87 of the Basic Conditions of Employment Act, a head of department shall determine—

- (a) the work week and daily hours of work for employees; and
- (b) the opening and closing times of places of work of the department,

taking into account—

- (i) the needs of the public with due regard to the department's service delivery improvement plan; and
- (ii) the needs and circumstances of employees, including family obligations and transport arrangements.”.

Insertion of regulation 56A in the Regulations

22. The following regulation is hereby inserted in the Regulations after regulation 56:

“56A Reasonable accommodation

Subject to any directives issued by the Minister, a head of department shall develop a policy for the reasonable accommodation in the workplace of employees with disabilities, which shall include, as far as possible, measures to—

- (a) make the workplace accessible;
- (b) provide access to information and communication;
- (c) provide assistive devices and technology;
- (d) provide the necessary tools and assistance for the performance of the employee's duties;
- (e) manage safety and well-being; and
- (f) regulate the work arrangements.”.

Amendment of regulation 57 of the Regulations

23. Regulation 57 of the Regulations is hereby amended —

- (a) by the substitution for subregulation (2) of the following subregulation:

“(2) An executive authority may, unless otherwise authorised by the Act, within the available budget and at a salary level linked to a grade determined through job evaluation or as determined in an OSD, employ persons additional to the establishment, where—

- (a) the incumbent of the post is expected to be absent for such a

period that his or her duties cannot be performed by other employees;

- (b) there is a temporary increase in the volume of work for a period not exceeding 12 calendar months;
- (c) an employee's post has been abolished and he or she cannot be transferred into another post;
- (d) an employee is part of a development programme as contemplated in regulation 58;
- (e) the nature of the work for which the employee is employed is of limited or definite duration; or
- (f) it is necessary for any other justifiable reason to temporarily increase the staff of the department for a period not exceeding 12 calendar months."; and

(b) by the deletion of subregulation (4).".

Substitution of regulation 58 of the Regulations

24. The following regulation is hereby substituted for Regulation 58 of the Regulations:

"58 Developmental programmes

An executive authority may appoint persons in a developmental programme, including but not limited to, internships, learnerships and apprenticeships, on such terms and conditions that shall be determined by the Minister."

Amendment of regulation 60 of the Regulations

25. Regulation 60 of the Regulations is hereby amended by the substitution for paragraph (a) in subregulation (3) of the following paragraph:

- "(a) the appointment is made for a period not exceeding 12 calendar months; and"

Amendment of regulation 61 of the Regulations

26. Regulation 61 of the Regulations is hereby amended—

(a) by the substitution for the Table in subregulation (1) of the following Table:

	ACT OF MISCONDUCT	PERIOD OF PROHIBITION
1.	(a) Financial misconduct as contemplated in section 81 or 82 of the Public Finance Management Act.	Ten (10) years
2.	Misconduct involving elements of dishonesty or gross negligence.	Five (5) years
3.	(a) Sexual harassment; (b) Unfair discrimination against others on the basis of race, gender, disability, sexuality or other grounds prohibited by section 9(3) of the Constitution; or (c) Assault with intent to do grievous bodily harm.	Five (5) years
4.	Misconduct resulting from a criminal conviction where an employee has been sentenced to imprisonment without the option of a fine.	Five (5) years
5.	(a) Use of position as a senior manager or confidential information for private gain or improperly benefit another person; or (b) Disclosure of any privileged or confidential information obtained during the course of duty to an unauthorised person or persons.	Five (5) years
6.	Conducting business with the State as contemplated in section 8 of the Public Administration Management Act.	Five (5) years

7.	Receiving, soliciting or accepting directly or indirectly any gratification that may influence the exercise of his or her functions, the performance of his or her duties or other grounds prohibited by the Constitution.	Five (5) years
8.	Any other act of misconduct.	Two (2) years

(b) by the substitution for subregulation (3) of the following subregulation:

“(3) Notwithstanding subregulation (1) an employee who is deemed to have been dismissed in terms of section 17(3)(a) of the Act and who is not re-instated in terms of section 17(3)(b), shall not be re-appointed in the public service for a period of one year after the effective date of his or her deemed dismissal.”.

Amendment of regulation 62 of the Regulations

27. Regulation 62 of the Regulations is hereby amended by the substitution for paragraph (b) in subregulation (1) of the following paragraph:

“(b) the period of secondment does not exceed 12 calendar months, which period shall not be extended or renewed unless due to operational reasons determined otherwise by the Minister; and.”.

Insertion of regulation 62A in the Regulations

28. The following regulation is hereby inserted in the Regulations after regulation 62:

“62A Transfers

The transfer of an employee in terms of section 14 of the Act shall only take place if—

- (a) in respect of a transfer to another department, the executive authorities of the two relevant departments have agreed in writing to such a transfer;
- (b) due regard has been had to the inherent requirements of the job and the employee has the competencies to perform the functions of the post to which he or she is being transferred; and
- (c) the employee is not transferred into a post in the Office of an executive authority, Deputy President or Deputy Minister.”.

Amendment of regulation 65 of the Regulations

29. Regulation 65 of the Regulations is hereby amended —

- (a) by the deletion of subregulation (3);
- (b) by the substitution for subregulation (4) of the following subregulation:
 - “(4) An executive authority shall advertise a vacant post, as a minimum, in the public service vacancy circular issued by the Department of Public Service and Administration, but may also advertise such post—
 - (a) within the department;
 - (b) locally; or
 - (c) nationwide.”;
- (c) by the deletion of subregulation (5);
- (d) by the substitution for subregulation (7) of the following subregulation:
 - “(7) A funded vacant post shall be filled within eight months after becoming vacant.”;
- (e) by the substitution in subregulation (8) for the words preceding paragraph (a) of the following words:

"An advertisement contemplated in subregulation (4) may be utilised to create a pool of potential candidates for a period of not more than three calendar months from the date of advertisement to fill any vacancy in the relevant department if—"; and

- (f) by the substitution in subregulation (9) for the words preceding paragraph (a) of the following words:

"With due regard to the criteria in regulation 67(5)(b) to (d), an executive authority may fill a vacant post without complying with subregulations (3) and (4) if—".

Substitution of regulation 66 of the Regulations

30. The following regulation is hereby substituted for regulation 66 of the Regulations:

"66 Filling of posts in Offices of executive authorities, the Deputy President and Deputy Ministers

(1) An executive authority may only fill vacancies in the Office of an executive authority, Deputy President, or a Deputy Minister by means of an appointment in terms of section 9 of the Act for the term of office of the incumbent executive authority, Deputy President or Deputy Minister which will terminate at the end of the month after the month in which the term of that executive authority, Deputy President or Deputy Minister terminates for any reason.

(2) Subject to the appointment criteria in regulation 67(5)(b) to (d), an executive authority may fill a post in the Office of the executive authority, Deputy President or a Deputy Minister in terms of subregulation (1) without advertising the post and without convening a selection panel as contemplated in regulations 65 and 67 respectively.

(3) Subregulation (1) shall not be construed as preventing the secondment in terms of section 15(2) or (3) of the Act of a person or

an employee or an assignment in terms of section 32 of the Act of an employee to perform the functions of a post in the office of an executive authority, a Deputy President or a Deputy Minister.

(4) An employee employed in terms of subregulation (1) shall not be transferred within the department or to another department.”.

Amendment of regulation 67 of the Regulations

31. Regulation 67 of the Regulations is hereby amended-

(a) by the insertion in subregulation (2) after paragraph (f) of the following paragraph:

“(fA) a Deputy Director-General in the Presidency, shall be chaired by a Minister in the Presidency and include at least two Deputy Ministers and a head of department;”;

(b) by the substitution for subregulation (7) of the following subregulation:

“(7) If the selection committee is unable to recommend a suitable person for appointment from those who applied in terms of subregulation (5), the executive authority may, after that selection process has been completed approve—

(a) the headhunting of one or more persons with the requisite competencies and subject such person or persons to the same selection process as those who applied; or

(b) re-advertise the post.”;

(c) by the substitution for subregulation (8) of the following subregulation:

“(8) If an executive authority does not approve a recommendation of a selection committee, he or she shall record the reasons for his or her decision in writing and may approve—

(a) the headhunting of one or more persons with the requisite competencies and subject such person or persons to the same selection process as those who applied; or

(b) re-advertise the post.”; and

(d) by the substitution for paragraph (a) in subregulation (9) of the following paragraph:

“(a) satisfy himself or herself that due processes have been complied with, the candidate qualifies in all respects for the post and that his or her claims in his or her application for the post have been verified as directed by the Minister; and”.

Amendment of regulation 71 of the Regulations

32. Regulation 71 of the Regulations is hereby amended—

(a) by the substitution for paragraph (c) in subregulation (5) of the following paragraph:

“(c) monitoring the employee’s performance on a continuous basis with oral feedback on his or her performance at least quarterly if the employee’s performance is fully effective and in writing if the employee’s performance is not fully effective;”; and

(b) by the substitution for paragraph (f) in subregulation (5) of the following paragraph:

“(f) approval of the annual moderated performance assessments referred to in paragraph (e) by 30 November of the financial year following the year of the assessments.”.

Amendment of regulation 72 of the Regulations

33. Regulation 72 of the Regulations is hereby amended—

(a) by the substitution for subregulation (1) of the following subregulation:

"(1) An employee shall enter into a performance agreement or an agreement of similar nature within three calendar months of his or her date of appointment and thereafter within two calendar months of the beginning of each financial year. This agreement may be reviewed from time to time."; and

(b) by the substitution for subregulation (12) of the following subregulation:

"(12) If an employee is absent with permission for a continuous period of three months or longer, the affected employee shall be regarded as having performed fully effective as contemplated in regulation 71(5)(c) for that period of absence within the performance cycle.".

Insertion of regulation 87A in the Regulations

34. The following regulation is hereby inserted in the Regulations after regulation 87:

" 87A Extension of term of head of department

(1) The relevant executive authority may at the expiry of the term of office of a head of department or at the expiry of an extended term of office, extend that term for a period of not more than five years at a time if the head of department—

- (a) achieved an overall average performance rating of fully effective in relation to his or her duties over that term;
- (b) continues to meet the inherent requirements of the post; and
- (c) remains a fit and proper person.

(2) The relevant executive authority and head of department may agree on an extension not more than six calendar months before the expiry of the term of the contract.".

Substitution of regulation 93 of the Regulations

35. The following regulation is hereby substituted for regulation 93 of the Regulations:

“93 Information management and use of information and communication technology

- (1) The head of department shall ensure—
 - (a) that information of the department is collected, processed, stored and disseminated appropriately; and
 - (b) improved knowledge management practices.
- (2) The head of department shall ensure that the acquisition, management and use of information and communication technologies by the department—
 - (a) enhances direct or indirect service delivery to the public, including, but not limited to, equal access by the public to services delivered by the department;
 - (b) improves the productivity of the department;
 - (c) promotes an environmentally friendly public service;
 - (d) ensures cost-efficiency for the department; and
 - (e) promotes public access to information and encourages public participation.”.

Insertion of regulation 97A in the Regulations

36. The following regulation is hereby inserted in the Regulations after regulation 97:

“97A Government Information Technology Council and Officers

- (1) The Minister may establish a Government Information Technology Officers Council (hereinafter referred to as “the GITOC”) as an inter-departmental forum to improve electronic government and information management in the public service.
- (2) The GITOC shall, amongst others,-

- (a) advise on measures to improve integrated information and communication technology systems across the public service;
- (b) propose and advise on appropriate information and communication technology solutions and practices;
- (c) support information and communication technology monitoring and planning in the public service; and
- (d) collaborate to improve the use of information and communication technology in the public service.

(3) A head of department shall nominate an employee of the relevant department as a Government Information Technology Officer who shall be a member of the GITOC, which shall be chaired by an employee of the Department of Public Service and Administration designated by the Minister.

(4) The Government Information Technology Officer shall advise and support the head of department on—

- (a) Information and Communication Technology strategies;
- (b) innovative methods to digitalise Information and Communication Technology within the department;
- (c) establishing reliable and secure Information and Communication Technology systems, services and infrastructure;
- (d) optimising expenditure, reducing duplication and increasing interoperability of Information and Communication Technology systems; and
- (e) the management of Information and Communication Technology assets.”.

Short title and commencement

37. These Regulations shall be called the Public Service Amendment Regulations, 2023, and shall come into operation on 01 November 2023.