

CAYMAN ISLANDS



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THE PUBLIC SERVICE MANAGEMENT (AMENDMENT) LAW, 2009

(LAW 24 OF 2009)

THE PUBLIC SERVICE MANAGEMENT (AMENDMENT) LAW, 2009

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23. Amendment of section 44 - power to discipline, dismiss, retire staff early or otherwise terminate
24. Amendment of section 63 - provisions relating to Portfolio of Legal Affairs
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CAYMAN ISLANDS

Law 24 of 2009

I Assent

Stuart Jack

Governor

5 November, 2009

**A LAW TO AMEND THE PUBLIC SERVICE MANAGEMENT LAW
(2007 REVISION) TO REVISE THAT LAW IN LIGHT OF THE
CAYMAN ISLANDS CONSTITUTION ORDER 2009 AND THE
FREEDOM OF INFORMATION LAW (2007 REVISION); AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

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| 1. (1) This Law may be cited as the Public Service Management (Amendment) Law, 2009. | Short title and commencement |
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| (2) This Law shall come into force on the day that the Cayman Islands Constitution Order 2009 comes into force. | UKSI 1379 of 2009 |
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| 2. The Public Service Management Law (2007 Revision), in this Law referred to as the “principal Law”, is amended in section 1 by deleting “1 st July, 2009” and substituting “1 st July, 2010”. | Amendment of section 1 of the Public Service Management Law - short title and commencement

(2007 Revision) |
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| 3. The principal Law is amended in section 2(1) as follows - | Amendment of section 2 - definitions and interpretation |
| (a) in the definition of “appointing officer” by inserting after the words “Deputy Commissioner of Police” the words “,Information Commissioner, Director of Public Prosecution, Cabinet Secretary”; | |

- (b) by inserting the definition of “chief officer” in its appropriate alphabetical sequence;
- (c) in the definition of “chief officer”-
 - (i) by deleting respectively at the end of paragraphs (d) and (e) the word “and”;
 - (ii) by inserting after paragraph (f) the following paragraphs -
 - “(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.”.
- (d) in the definition of “civil service entity” by inserting after “Audit Office” the words “, the Cabinet Office, the Office of Public Prosecution and the Judicial Administration”;
- (e) in the definition of “Complaints Commissioner” by deleting “section 49N” and substituting “section 120(2)”;
- (f) by repealing the definition of “Constitution” and substituting the following definition -
 - “ “Constitution” means Schedule 2 of the Cayman Islands Constitution Order 2009;”;
- (g) by inserting in the appropriate alphabetical sequence, the following definition -
 - “ “Information Commissioner” means the Information Commissioner appointed under section 35 of the Freedom of Information Law, 2007;”;
- (h) by repealing the definition of “ministry manager”;
- (i) by repealing the definition of “Official Member” and substituting the following definition -
 - “ “Official Member” means the Deputy Governor, Attorney General or Financial Secretary;”;
- (j) by repealing the definition of “portfolio manager”.

UKSI 1379 of 2009

Amendment of section 2
- definitions and
interpretation

4. The principal Law is amended in section 2 by repealing subsections (3) and (4).

5. The principal Law is amended in section 5 -

Amendment of section 5
- Public Servant's Code
of Conduct

- (a) by repealing subsection (2)(h) and substituting the following paragraph -

“(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

- (b) by inserting after subsection (2) the following subsections -

“(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 Revision), 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.”.

6. The principal Law is amended in section 6 -

Amendment of section 6
- personnel authorities of
Governor

- (a) by repealing subsection (1) and substituting the following subsection -

“(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.”;

- (b) in subsection (2) by deleting “section 49B(2)” and inserting “section 100(2)”;
- (c) in subsection (3) by deleting “section 49I(2)” and substituting “section 95(3)”;
- (d) in subsection (6) by deleting “section 55B” and substituting “section 114(1)”;
- (e) in subsection (7) by deleting “section 49N” and substituting “section 120(2)”;
- (f) by inserting after subsection (8) the following subsections -

“ (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.”;

(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.”.

Amendment of section 7
- Governor may delegate
employment powers

7. The principal Law is amended in section 7 as follows -

- (a) in subsection (1) by deleting “Where an instruction has been issued by the Secretary of State under section 9(1) of the Constitution in relation to section 7(1)(c)(v) of the Constitution,” and substituting “In accordance with section 109(2) of the Constitution.”; and
- (b) by inserting after subsection (2) the following subsection -

“ (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.”.

Amendment of section 9
- appointment of Official
Members

8. The principal Law is amended in section 9 as follows -

- (a) in subsection (1) as follows-
 - (i) by repealing paragraph (a) and substituting the following paragraph -

“(a) The Deputy Governor shall be appointed by the Governor acting in accordance with section 34 of the Constitution.”;

- (ii) in paragraph (b) by deleting “in accordance with section 55A of the Constitution” and substituting “as advised by the Judicial and Legal Services Commission in accordance with section 56 of the Constitution.”; and
- (iii) by deleting the full stop at the end of paragraph (b) and substituting “;and” and inserting a new paragraph as follows -

“(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;”;

- (b) in subsection (5), by deleting “may, in accordance with section 10(1)(a) of the Constitution, appoint a temporary Member of the Cabinet” and substituting “may appoint a civil servant to temporarily act in the office of the Official Member”.

9. The principal Law is amended in section 12 by inserting after subsection (2) the following subsection -

Amendment of section 12 - dismissal or early retirement of Official Members

“(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).”.

10. The principal Law is amended in section 15 as follows -

Amendment of section 15 - duties of Head of Civil Service

- (a) in subsection (1), by deleting “Chief Secretary” and substituting “Deputy Governor”; and
- (b) in subsection (2) -
 - (i) in paragraphs (d) and (e), by deleting “ministries” wherever it occurs and substituting “ministries and portfolios”; and
 - (ii) in paragraph (g), by deleting “portfolio” and substituting “portfolios”.

11. The principal Law is amended in section 16(1)(a) by deleting “ministry” and inserting “ministry or portfolio”.

Amendment of section 16 - performance agreement responsibilities of Head of the Civil Service

12. The principal Law is amended in section 17(1) by deleting “ministry” and inserting “ministry or portfolio”.

Amendment of section 17 - performance agreement responsibilities of Head of the Civil Service

13. The principal Law is amended in section 18 as follows -

Amendment of section 18 - salaries of certain posts

- (a) at the end of paragraph (e), by deleting “and”;
- (b) at the end of paragraph (f), by deleting the full-stop and substituting a semi-colon;
- (c) by inserting at the end of paragraph (f) the word “and”; and
- (d) by inserting after paragraph (f) the following paragraph -

“(g) any officer referred to in section 106(4) of the Constitution.”.

Amendment of section 22 - political pressure from Ministers and Official Members

14. The principal Law is amended in section 22(1) and (2) by deleting the words “Leader of Government Business” wherever they occur and substituting “Premier”.

Amendment of section 23 - political pressure from Members of the Legislative Assembly

15. The principal Law is amended in section 23(1) and (2) by deleting the words “Leader of Government Business” wherever they occur and substituting “Premier”.

Amendment of section 24 - duties of Portfolio of Civil Service

16. The principal Law is amended in section 24 as follows -

- (a) in paragraph (b) by inserting after the word “Law” the words “as may be required by the Commission”; and
- (b) in paragraph (i) by deleting the words “by chief officers” and substituting the words “by any chief officer”.

Insertion of section 36A - procedure for appointing Director of Public Prosecution

17. The principal Law is amended by inserting after section 36 the following section -

“ Procedure for appointing Director of Public Prosecution

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. ”.

Amendment of section 37 - remuneration and terms and conditions of employment of Auditor General and Complaints Commissioner

18. The principal is amended in section 37 as follows -

- (a) by inserting after “Auditor-General” wherever it occurs the words “, Director of Public Prosecution”; and
- (b) by inserting after subsection (2) the following -

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

Insertion of section 37A - remuneration and terms and conditions of Information Commissioner

19. The principal Law is amended by inserting after section 37 the following section -

“Remuneration and

37A. For the avoidance of doubt and without limiting the

terms and conditions of Information Commissioner	effect of section 37 of the Freedom of Information Law, 2007, section 27(1) and (2) shall apply to the Information Commissioner.	
20. The principal Law is amended in section 38 by deleting “Subject to sections 55B and 49N of the Constitution, section 29 shall apply to the Auditor-General” and substituting “Sections 114(1), 57 and 120(2) shall apply to the Auditor-General, Director of Public Prosecution”.		Amendment of section 38 - dismissal and early retirement of Auditor – General, Director of Public Prosecution and Complaints Commissioner
21. The principal Law is amended by inserting after section 38 the following sections -		Insertion of sections 38A and 38B - term of office and removal of Information Commissioner; sections 30, 31 and 32 apply to Director of Public Prosecution
“Term of office and removal of Information Commissioner (Law No. 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.	
22. The principal Law is amended in section 41 by inserting after subsection (15) the following subsection -		Amendment of section 41 - procedures and requirements for appointment
	“ (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.”.	
23. The principal Law is amended in section 44 by inserting after subsection (8) the following subsection -		Amendment of section 44 - power to discipline, dismiss, retire staff early or otherwise terminate
	“ (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.”.	
24. The principal Law is amended in section 63(1) and (2) by deleting “Attorney General” wherever it occurs and substituting “Attorney-General and Judicial and Legal Services Commission”.		Amendment of section 63 - provisions relating to Portfolio of Legal Affairs
25. The principal Law is amended in section 69 as follows -		Amendment of section 69 -offences

- (a) by renumbering section 69 as section 69(1); and
- (b) by inserting after subsection (1) the following subsection -

“(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 Revision) 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.”.

Passed by the Legislative Assembly the 15th day of October, 2009.

Mary J. Lawrence, JP

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.