

CAYMAN ISLANDS



Supplement No. 1 published with Extraordinary  
Gazette No. 36 dated 14 October, 2005.

**A BILL FOR A LAW TO ESTABLISH A NEW SYSTEM OF HUMAN-RESOURCE MANAGEMENT IN THE CIVIL SERVICE; TO ESTABLISH THE OFFICE OF HEAD OF THE CIVIL SERVICE AND DEFINE ITS FUNCTIONS AND RESPONSIBILITIES; TO ESTABLISH THE CIVIL SERVICE APPEALS COMMISSION; TO REPEAL THE PUBLIC SERVICE COMMISSION LAW; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

**MEMORANDUM OF OBJECTS AND REASONS**

The object of this Bill is to establish a new system of human resource management for the government.

**Part I deals with introductory matters.**

Clause 1 is the short title and commencement.

Clause 2 contains the interpretation provisions.

Clause 3 states the legal effect (on this Law) of any revocation or variation of the instruction issued by the Secretary of State, which instrument made this Law possible.

**Part II contains the Public Service Values and Public Servant's Code of Conduct.** Civil servants and employees of statutory authorities and government companies are required to comply with them.

Clause 4 sets out the Public Service Values.

Clause 5 sets out the Public Service Code of Conduct.

**Part III sets out the personnel authorities of the Governor.**

Clause 6 sets out generally what those authorities are.

Clause 7 provides that the Governor may delegate to the Head of the Civil Service, who is the Chief Secretary, and to chief officers, specified personnel authorities.

Clause 8 provides that the Governor may revoke the powers that he delegates.

**Part IV deals with the personnel arrangements for Official Members**

Under clause 9 the Governor will continue to have direct power to appoint Official Members.

Clause 10 stipulates that Official Members shall be employed under an employment agreement prepared in accordance with personnel regulations.

Under clause 11, the remuneration of Official Members is to be agreed from time to time between the Governor and the Official Member concerned but shall be within the remuneration band specified in the personnel regulations. Further, the remuneration will have a performance-related portion.

Clause 12 provides for the dismissal or early retirement of Official Members.

Clause 13 states that there may be an annual performance agreement between the Governor and each Official Member.

Clause 14 makes provision for the performance of Official Members to be assessed by the Governor every year.

**Part V outlines the duties, responsibilities and powers of the Head of the Civil Service.**

Specifically, clause 15 sets out the duties of the Head of the Civil Service, and more specifically stipulates, in subsection (2), that the Head of the Civil Service is responsible for overseeing all matters relating to the operation of the civil service and specified in that subsection.

Clause 16 provides that there be an annual performance agreement between the Head of the Civil Service and each ministry or portfolio chief officer.

Clause 17 requires the Head of the Civil Service to carry out a performance assessment of each ministry or portfolio chief officer each year.

Clause 18 empowers the Head of the Civil Service to recommend to the Governor the salaries, allowances and other benefits of certain posts specified in that section.

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

Clause 20 specifies certain powers that the Head of the Civil Service will have consequent upon any administrative changes in ministry or portfolio responsibilities. These include powers to transfer civil servants from one ministry or portfolio to another.

Clause 21 reiterates that, in carrying out his duties, the Head of the Civil Service shall act independently and also requires him to ensure that open and fair employment processes operate in the civil service.

Clause 22 sets out the actions to be taken where a civil servant is facing political pressure from a Minister or Official Member.

Clause 23 sets out the actions to be taken where a civil servant is facing political pressure from a Member of the Legislative Assembly.

Clause 24 specifies the duties of the Portfolio of the Civil Service, under a chief officer and defines the portfolio's responsibilities.

Under clause 25 the Portfolio of the Civil Service has power to request from civil service entities information concerning human resource practices.

**Part VI deals with personnel arrangements for chief officers.**

Clause 26 prescribes the procedure for appointing chief officers of ministries and portfolios.

Clause 27 deals with the terms and conditions of employment of chief officers of ministries and portfolios.

Clause 28 deals with the remuneration of chief officers of ministries and portfolios.

Clause 29 has to do with the dismissal and early retirement of chief officers of ministries and portfolios.

Clause 30 stipulates the need for performance agreements for chief officers of ministries and portfolios and further states that in preparing his performance agreement, a chief officer shall consult with his heads of department and other ministry or portfolio managers about the contents of the agreement.

Clause 31 provides for the annual performance assessment of chief officers of ministries and portfolios.

Clause 32 speaks to the calculation of the performance component of the remuneration of chief officers of ministries and portfolios.

Clause 33 confers on civil servants applying to a position of chief officer of a ministry or portfolio the right of appeal in the event of their not being successful.

Clause 34 gives a chief officer of a ministry or portfolio a right of appeal in relation to decisions other than those relating to appointments.

Clause 35 provides for the procedure of appointing the Auditor General.

Clause 36 makes provision for appointing the Complaints Commissioner.

Clause 37 contains certain provisions for the remuneration and terms and conditions of employment of the Auditor General and the Complaints Commissioner.

Clause 38 makes provision for the dismissal and early retirement of the Auditor General and the Complaints Commissioner.

**Part VII deals with the personnel arrangements for staff.**

Clause 39 states that the provisions of Part VII apply only to the extent that a delegation from the Governor to a chief officer allows it.

Clause 40 provides chief officers with the power to appoint, promote or transfer staff within their civil service entities. It also provides that a chief officer may from time to time establish the duties of a staff member and the place at which the duties are to be performed.

Clause 41 prescribes the procedures to be followed when appointing staff, including a requirement that, subject to merit, Caymanians be given preference.

Clause 42 provides for staff of civil service entities to be employed under an employment agreement and allows for continuity of employment when transferring between civil service entities.

Clause 43 deals with the remuneration and other terms and conditions of employment of staff.

Clause 44 provides chief officers with power to discipline, dismiss and early retire staff on medical grounds, retire staff to improve the organisation or otherwise terminate staff.

Clause 45 deals with delegation of powers by chief officers.

Clause 46 requires the delegation of personnel powers to heads of department unless there are good reasons to the contrary.

Clause 47 deals with the general personnel authorities of chief officers.

Clause 48 deals with the appointment of the Commissioner of Police and other police officers, as well as support staff.

Clause 49 deals with the annual performance agreements between chief officers and their staff.

Clause 50 deals with annual performance assessment of staff.

Clause 51 makes provision for chief officers to operate systems of performance incentives.

Clause 52 states how the performance component of staff remuneration is to be determined.

Clause 53 confers on staff members the right of appeal to chief officers.

Clause 54 confers on staff members the right to appeal to the Civil Service Appeals Commission.

Clause 55 directs chief officers to be good employers.

Clause 56 obliges chief officers to publish and promote Public Service Values.

Clause 57 obliges chief officers to publish and promote the Public Servant's Code of Conduct.

**Part VIII deals with the Civil Service Appeals Commission.**

Clause 58 establishes the Civil Service Appeals Commission and provides for its appointment.

Clause 59 stipulates the duties of the Commission while clause 60 prescribes principally the meeting procedures and related powers of the Commission.

Clause 61 provides that 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 will be privileged in that it 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 has a miscellany of provisions.**

Clause 62 makes certain provisions relating to the Portfolio of Legal Affairs.

Clause 63 grants to all civil servants immunity from liability for anything done or omitted in the performance of their functions unless the act or omission was in bad faith.

Clause 64 grants members of the Civil Service Appeals Commission the same protection from actions and suits as is granted to Judges of the Grand Court.

Clause 65 reiterates that the Governor or the government is not liable for acts or omissions of statutory authorities or government companies.

Under clause 66, the Cabinet will be empowered, on the advice of the Head of the Civil Service, to make regulations relating to matters specified therein.

Clause 67 contains the offences and provides, among other things, that 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.

Clause 68 states that any person who, at the commencement of the Public Service Management Law, holds any position in the civil service will continue to hold it.

Clause 69 is a preservation of certain rights under existing Laws.

Clause 70 is a transitional provision relating to appeals. It provides that where an appeal is pending under legislation and other arrangements existing at the commencement of the Public Service Management Law, that legislation and those arrangements will continue to apply to those appeals.

Clause 71 repeals the Public Service Commission Law, 1976 and the Public Service Regulations, 1985.

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71. Repeals.



**A BILL FOR A LAW TO ESTABLISH A NEW SYSTEM OF HUMAN RESOURCE MANAGEMENT IN THE CIVIL SERVICE; TO ESTABLISH THE OFFICE OF HEAD OF THE CIVIL SERVICE AND DEFINE ITS FUNCTIONS AND RESPONSIBILITIES; TO ESTABLISH THE CIVIL SERVICE APPEALS COMMISSION; TO REPEAL THE PUBLIC SERVICE COMMISSION LAW; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

**PART I- Introductory**

Short title and commencement

1. This Law may be cited as the Public Service Management Law, 2005, and shall come into operation on 1st July, 2006 except sections 11 (2) (b), 17 (2), 28 (2) (b), 32, 43 (2), 51 and 52, which shall come into force on 1<sup>st</sup> July, 2007.

Interpretation

2. (1) In this Law -

“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 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, 2003 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, 2003;

Law 34 of 2003

“civil servant” means a person employed by the government but does not include an elected Member of the Legislative Assembly;

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

“civil service entity” means a ministry, portfolio, the Audit Office or the Office of the Complaints Commissioner;

“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; and
- (iii) in the case of the Portfolio of Finance and Economics, such public officer as may be designated by the Governor;
- (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; and
- (e) in the case of the judicial administration, the court administrator or such other suitable person as may be designated by the Chief Justice; and

- (f) in the case of the Office of the Complaints Commissioner, the Complaints Commissioner;

Law 18 of 2003

“Complaints Commissioner” means the Complaints Commissioner appointed under section 49N of the Constitution;

UK SI 1972 No. 1101

“Constitution” means the Cayman Islands (Constitution) Order, 1972;

“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;

“financial year” in relation to any entity required to report under the Public Management and Finance Law (2005 Revision), means a year ending on the 30<sup>th</sup> 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);

“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;

“ministry manager” means a head of department or other staff member who has responsibility for managing a group of staff or the production of outputs and who reports directly to the chief officer of the ministry;

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

“Official Member” means a member of the Cabinet who is not a Minister;

“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 66;

“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 manager” means a head of department or other staff member who has responsibility for managing a group of staff or the production of outputs and who reports directly to the chief officer of the portfolio;

“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;

“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;

“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 or a Judge or Magistrate;

“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) Whenever a provision of this Law or any regulations made hereunder is susceptible to two or more interpretations, resort may be had to the instruction by the Secretary of State under section 9 (1) of the Constitution, and such interpretation as best accords with that instruction shall prevail.

(4) For the avoidance of doubt, it is declared that the instrument of delegation shall be used merely as an aid to interpretation and shall not override this Law.

3. Where the instruction referred to in section 2 (3) is revoked or varied, this Law shall stand suspended or stand appropriately varied on the date following the date on which the suspension of the instruction is published in the Gazette.

Revocation or variation  
of instruction

## **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 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;
- (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, 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 must treat all official information and any dealings with the Governor, an Official Member or Minister as confidential, and, unless authorised to do so, must not give or disclose, directly or indirectly, any information about official business or anything of which he has official knowledge;
- (i) A public servant must not use official resources, including electronic or technological resources, offensively or for other than very limited private purposes.

**Part III-Personnel Authorities of the Governor**

6. (1) The power to employ all civil servants rests with the Governor acting in his discretion but subject to this Law.

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 49B(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 49I(2) of the Constitution.

(4) The Governor shall retain responsibility for the employment of Magistrates in accordance with section 6 of the Summary Jurisdiction Law (1995 Revision).

(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 55B 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 49N of the Constitution and the provisions of 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 of this Law.

(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) 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), 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 of this Law; 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 of this Law; 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 of this Law.

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

Governor may revoke employment delegation

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, to promote, to transfer, to discipline, to dismiss or to 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 -

- (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, to promote, to transfer, to discipline, to dismiss or to 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 Chief Secretary and the Financial Secretary shall be appointed by the Governor acting in his discretion in exercise of his powers under section 7(1)(c)(v) of the Constitution; and
- (b) the Attorney General shall be appointed by the Governor acting in his discretion in accordance with section 55A of the Constitution.

(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) The Governor may appoint a civil servant to act as an Official Member when the substantive holder of the position is absent or when the position is temporarily vacant.

(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.

Remuneration of  
Official Members

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

(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.

13. The Governor may, 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 30 days after the end of the financial year.

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

*Head of the Civil Service*

Duties of Head of the Civil Service

15. (1) The Chief Secretary 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 in accordance with section 16;
- (e) undertaking the annual performance assessments of chief officers of ministries 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 the provisions of 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;
- (l) giving effect to the administrative rearrangement of ministries or portfolios in accordance with section 20.

Performance agreement responsibilities of Head of the Civil Service

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

- (a) enter into a performance agreement with each chief officer of a ministry 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 in accordance with the provisions of section 31.

Performance assessment responsibilities of Head of the Civil Service

(2) The Head of the Civil Service shall, in accordance with the provisions of 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 (2005 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.

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; and
- (f) the Auditor-General and the Complaints Commissioner.

- 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 do any of the following -
- (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;
  - (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.
- Political pressure from ministers and Official Members
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 Leader of Government Business of his concerns and request that the Leader of Government Business discuss the matter with the Minister concerned.

(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 Leader of Government Business, 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 Leader of Government Business or the Leader of the Opposition, as the case may be, of his concerns and request that the Leader of Government Business 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 Leader of Government Business, 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 the Civil Service*

Duties of Portfolio of  
the 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;
- (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 the provisions of 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 chief officers 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  
the Civil Service

25. For the purposes of undertaking its duties in section 24 (2) (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) is to 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 are to 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) In appointing or reappointing a chief officer, the Head of the Civil Service is to ensure that an open and fair employment process operates.

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

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.

(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.

Remuneration of chief officers of ministries and portfolios

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.

(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 the provisions of 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 (compared to performance agreements) over a period of at least twelve months, 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 (2005 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;
- (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.

(5) The performance assessment is to be completed within 30 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 (2005 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 30 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 30 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.

Right of appeal by chief officers of ministries and portfolios

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 30 days of a decision being notified.

(2) The Civil Service Appeals Commission shall rule on the appeal referred to in subsection (1) and make a recommendation to the Governor within

30 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 the 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

37. (1) Section 27 shall apply to the Auditor General and 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 and Complaints Commissioner except that any reference in those sections to the Head of the Civil Service shall be replaced with the Governor.

38. Subject to sections 55B and 49N of the Constitution, section 29 of this Law shall apply to the Auditor General and Complaints Commissioner, except that any reference to the Head of the Civil Service shall be replaced with the Governor. Dismissal and early retirement of Auditor General and Complaints Commissioner

**PART VII - Personnel Arrangements for Staff**

*Authority to Appoint, Remunerate and Dismiss Staff*

39. The provisions of this Part apply 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 officers' powers to appoint, promote and transfer staff

40. (1) Subject to the provisions of 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 -

the interview

(i) the information provided by the applicants;

(ii) the results of the interviews;

(iii) the personal knowledge of the persons on the 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 are to 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 any provisions of 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 any provisions of 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) 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.

Basis of employment of staff

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.

(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; 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 the provisions of 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.

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

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

- (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 (compared to the performance agreement) over a period of at least 12 months, 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 (compared to the performance agreement) over a period of at least 12 months, but shall do so 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 exercising his authorities under paragraph (1)(e), an appointing officer may terminate the employment of a wage worker as a result of contraction in work provided that termination occurs,-

- (a) in the first instance, on a first-in-last-out basis among non-Caymanians; and
- (b) in the second instance, on a first-in-last-out basis among Caymanians,

but otherwise in accordance with the procedures established in personnel regulations for terminating the employment of wage workers as a result of contraction in work.

(9) 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.

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

(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 person 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 it is 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.

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.

Delegation of  
personnel authorities to  
heads of department

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 section 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 (1995 Revision) and any regulations made thereunder; and
- (b) other police officers of the Royal Cayman Islands Police 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 (1995 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.

(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*

Annual performance  
agreements with 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.

(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 the staff member reports to;
- (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.

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.

Annual performance  
assessment of staff

(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.

(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.

(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.

(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 30 days after the annual report of the civil service entity has been tabled in the Legislative Assembly, the tabling of which is in accordance section 44 of the Public Management and Finance Law (2005 Revision).

Authority to operate performance incentive arrangements

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 provisions of the personnel regulations.

(2) Performance incentive arrangements, including performance-related remuneration, are to be directly linked to the performance assessment system specified in section 50 of this Law.

Calculation of performance component of staff remuneration

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.

(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.

#### *Appeal Processes for Staff*

Right of appeal to chief officers

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 30 days of being notified that he was not appointed.

(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 30 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 30 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, including a decision on an appeal made under section 53, but must do so within 30 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 30 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 but not limited to -

- (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 Officers*

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 but not limited to -

- (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 officers 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 officers 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 -

Duties of Civil Service Appeals Commission

- (a) hear appeals under section 33;
- (b) hear appeals under section 34;
- (c) hear appeals under section 54.

60. (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.

Meeting 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

61. 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 the Portfolio of Legal Affairs*

Provisions relating to  
the Portfolio of Legal  
Affairs

62. (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 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 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 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*

63. 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

64. 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

65. 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*

66. (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 enjoys the protection that is consistent with the letter and spirit of the Constitution in relation to the performance of those functions.

*Offences*

Offences

67. 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) who 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.

*Transitional Arrangements*

68. Every person who, at the commencement of this Law, holds any position in the civil service shall continue to hold that position and enjoy such vested rights as may be referred to in section 69 (1) but the procedures to be applied in relation to his employment and related matters shall be those provided for by or under this Law.

Preservation of employment of civil servants

69. (1) The repeal of the laws referred to in section 71, unless the contrary intention appears, shall not -

Transitional

- (a) revive anything not in force or existing at the time at which the repeal takes effect;
- (b) affect the previous operation of those laws or anything duly done or suffered under those laws;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any of those laws;
- (d) affect any penalty, fine, forfeiture or punishment incurred in respect of any offence committed against any of those laws; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, fine, forfeiture or punishment as aforesaid; and any such investigation, legal proceedings or remedy may be instituted, continued, or enforced, and any such penalty, fine, forfeiture or punishment may be imposed as if the repealing Law had not been passed.

(2) Subsection (1) shall apply to any revocation of the General Orders in the same way that it applies to the repeal of laws referred to in section 71.

70. (1) Notwithstanding anything in this Law but subject to section 69, if, immediately before the commencement of this Law, an appeal under the Public Service Commission Law 1976, Public Service Commission Regulations 1985 or General Orders was lodged and is pending or if the period for the filing on any such appeal has not expired, the provisions of that Law, the Regulations or General Orders, so far as they are applicable, shall continue to apply to that appeal as if those provisions had not been repealed.

Rights of appeal of employees

(2) The decision on any appeal to which subsection (1) of this section applies shall be binding on the employee, the employer, and any chief officer who may be affected and shall be implemented as if the Public Service Commission Law 1976 or Public Service Commission Regulations 1985 were still in force.

