



STATUTORY INSTRUMENT

No. 10 of 2014.

Regulatory Statutory Authority (Appointment to Certain Offices) Regulation 2014.

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Regulatory Statutory Authority (Appointment to Certain Offices) Regulation 2014.

Being a Regulation for the purpose of implementing the ***Regulatory Statutory Authority (Appointments to Certain Offices) Act 2004*** (as amended),

MADE by the Head of State, acting with, and in accordance with, the advice of the National Executive Council to be deemed to have come into operation on 1st October 2014.

PART I. – OVERALL ADMINISTRATIVE AND PROCEDURAL RESPONSIBILITIES UNDER THE REGULATION.

1. EMPLOYING AUTHORITY (BOARD OR COMMISSION).

(1) The employing authority is responsible for the conduct of the merit based selection process for the appointment of the head of the authority, in consultation with the Secretary, Department of Personnel Management.

(2) The Chairman of the board or commission is responsible for recommending a short list of candidates to the Ministerial Executive Appointments Committee (MEAC) through the portfolio Minister.

(3) The portfolio Minister is a member of the MEAC for the purpose of considering the appointment of the preferred candidate submitted by the Board or Commission.

2. MINISTERIAL EXECUTIVE APPOINTMENTS COMMITTEE.

(1) The MEAC established by Section 28 of the ***Public Services (Management) Act 2014*** is chaired by the Minister responsible for public sector employment, with the portfolio Minister as a member.

(2) The MEAC is responsible for recommending to the National Executive Council in respect to the appointment of a single candidate as head of the authority, selected through the merit based process following advertisement conducted by the employing authority.

3. SECRETARY, DEPARTMENT OF PERSONNEL MANAGEMENT AND SENIOR EXECUTIVE SERVICES.

(1) The Secretary, Department of Personnel Management as the Secretary to the MEAC is responsible for advising the employing authority and the MEAC on compliance with the Regulation.

(2) The Secretary is the adviser to the employing authority on the conduct of the processes under the Act and the Regulation and shall prepare all submissions to the MEAC and to the NEC to give effect to the MEAC decisions.

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(3) The Office of the Senior Executive Services established within the Department of Personnel Management is responsible to the Secretary for providing technical advice to all parties on merit-based selection and recruitment processes.

(4) In the event there is no Board or Commission in existence, the function of the Board or Commission in regards to the appointment of the CEOs shall be exercised by the Secretary, Department of Personnel Management.

PART II. – JOB DESCRIPTION AND MINIMUM PERSON COMPETENCY AND PERFORMANCE REQUIREMENTS.

4. JOB DESCRIPTION - KEY RESULT AREAS AND PERFORMANCE INDICATORS.

(1) The employing authority shall compile, maintain, and update in a prescribed format a job description.

(2) In compiling the job description, the employing authority shall consult the Secretary and the respective portfolio Ministers in determining the key result areas and performance indicators together with the specific qualifications, competencies and experiences which will be required by the appointee to meet the performance expectations in conformity with these Regulations.

(3) The job description shall be utilised by the employing authority for the following purposes:

- (a) compiling the minimum acceptable person competency and performance requirements for the position; and
- (b) compiling the merit-based selection criteria for the advertisement of vacant positions and conduct of the selection and appointment process; and
- (c) compiling the key result areas for measurement of performance and the performance indicators for purposes of contractual commitments and for performance assessment.

(4) A copy of the job description shall be made available by the employing authority, at all times, to the agency head to potential applicants for each agency head position.

5. MINIMUM ACCEPTABLE PERSON COMPETENCY AND PERFORMANCE REQUIREMENTS FOR SELECTION AND APPOINTMENT.

(1) Persons applying for chief executive officer positions from within or outside of the Public Service are required to satisfy the minimum acceptable person competency and performance requirements for selection and appointment prior to being considered as suitable candidates for appointment, as follows:

- (a) is fit and qualified to serve as an officer of the National Public Service; and
- (b) is able to provide evidence of performance appraisals covering a period of three years at the date of application with previous employers; and
- (c) satisfies health and fitness requirements for occupancy of a chief executive officer position as determined by a medical officer approved by head of the Department of Health; and
- (d) is not less than 35 years of age and not more than 65 years of age; and
- (e) possesses as a minimum tertiary qualification, a degree from a recognised university, together with post graduate training relevant to the technical requirements of the position, and a recognised management program; and

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- (f) possess current professional work references from at least three previous employers stating the major achievements in relation to a management responsibility and confirming the candidate is of good character and repute; and
- (g) is free of criminal charges or outstanding court cases of a nature likely to seriously injure the professional standing and reputation of the officer, as verified by a current Police Clearance; and
- (h) is free of any outstanding investigations or disciplinary proceedings under any laws; and
- (i) is not disbarred by virtue of any constitutional or statutory restriction under the *Leadership Code* or the *Defence Act 1974*; and
- (j) able to demonstrate leadership qualities as described in the National Public Service “Leadership and Management Capability Framework”; and
- (k) possesses proven skills, experience and competencies gained through relevant private or public sector experience in the following fields:
 - (i) management of staff, with a minimum of three years at a level not lower than Deputy agency head or equivalent level in a public or private sector organisation; and
 - (ii) policy formulation and development, strategic/corporate planning, and project management; and
 - (iii) financial budgeting and manpower planning; and
 - (iv) negotiating and public relations skills, with an ability to make convincing public presentations of technical information; and
 - (v) general knowledge of the Government political structures and administration systems, the *Constitution*, and knowledge of the *Public Finances (Management) Act 1995* and *Public Services (Management) Act 2014* and the General Orders; and
 - (vi) a resilient nature able to maintain a firm position on principle and policy and to uphold a prescribed code of business conduct; and
- (l) possesses other competencies (physical and mental skills and abilities) relevant to the position, as prescribed in the job description; and
- (m) has provided a dissertation in writing as to suitability for the appointment, and the contribution the candidate intends to make to the Government priority programs if appointed to office; and
- (n) has satisfied all of the requirements specified in the advertisement for the position.

PART III. – ADVERTISING AND MERIT-BASED SELECTION AND APPOINTMENT PROCEDURES FOR SUBSTANTIVE APPOINTMENTS.

6. SECTION 208A (APPOINTMENT TO CERTAIN OFFICES) OF THE CONSTITUTION - SUMMARY OF PROCEDURES.

(1) The procedures for the substantive appointment of the head of an authority must be merit-based and subject to open and transparent assessment prior to a recommendation being made to the MEAC by the employing authority through the portfolio Minister.

(2) A substantive office holder who, prior to declaration of the vacancy, stated their willingness to continue in that office shall have their performance appraised by the employing authority as per the Regulation to determine whether to re-appoint that person without advertisement of the position, following consultation with the Secretary.

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- (3) The NEC shall not introduce new candidates into the appointment process but may at its sole discretion reject the MEAC recommendation and direct that the position be re-advertised in order to conduct the merit-based selection process.
- (4) The merit-based procedures as detailed in Part III of the Regulation are summarised as follows:
- (a) where an office of the agency head becomes vacant, the employing authority shall publicly declare the vacancy and advertise the vacancy in an appropriate medium of communication for a period of not less than two weeks; and
 - (b) the employing agency may engage a private human resource management or recruitment agency in consultation with the Secretary, to conduct the advertising and the short listing stage of the process; and
 - (c) all applicants for the position shall be assessed against the advertised minimum acceptable person specification for appointment; and
 - (d) the employing authority shall adjudicate on the selection process and shall select a short list of three candidates in order of preference those who have satisfied the criteria and shall recommend the candidates to the MEAC through the portfolio Minister for appointment; and
 - (e) the MEAC shall select one of the candidates for recommendation to the NEC in order for the NEC to advise the Head of State to make the appointment.

7. REVIEW OF INCUMBENT PERFORMANCE FOR RE-APPOINTMENT PRIOR TO ADVERTISEMENT OF THE VACANCY.

(1) Subject to receipt of satisfactory performance appraisals during the period of the contract, the Chairman of the employing authority shall firstly inform the incumbent agency head, not less than 6 months prior to expiry of the appointment, and request the incumbent to state in writing whether or not they wish to be considered for re-appointment.

(2) The incumbent agency head shall respond to the Chairman within 14 days and shall state whether or not they wish to be reappointed and shall submit satisfactory performance appraisal reports to support their application.

(3) The Chairman shall consult the portfolio Minister as to the performance of the incumbent during the period of the contract and no later than four months prior to contract expiry shall provide a brief to the portfolio Minister.

8. VACANCY IN THE OFFICE OF AGENCY HEAD.

(1) Vacancy in this context means a position that is substantively vacant for any of the following reasons:

- (a) expiry of contract period and non-renewal; or
- (b) pre-mature termination of contract for any reason; or
- (c) creation of a new chief executive officer position.

(2) The Senior Executive Services shall maintain, in computerised format, a regulatory authorities register of all agency head positions showing occupancy details by name, date of birth, appointment date, and period, expiry date, number of previous appointments and performance history, together with their performance appraisal history.

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(3) The Senior Executive Services shall monitor the regulatory authorities register and shall inform the Secretary at the prescribed intervals of a vacancy becoming due in the office of agency head due to expiry of contract period, or termination for any reason, to enable the Secretary to advise the Chairman and the head of the authority to commence the procedures to fill the vacancy.

9. ADVERTISING OF VACANCIES.

(1) In the event the position of the Chief Executive Officer is vacant or is to become vacant, the Board or the Commission shall advertise the vacant position in the prescribed format, displaying the minimum acceptable person competency and performance requirements.

(2) Suitable persons, including the incumbent agency head, provided that he or she continues to satisfy the minimum acceptable person competency and performance requirements, are eligible to apply within a prescribed time limit, with all applicant information provided in confidence.

(3) The advertisement shall be placed in an appropriate medium of communication for a period of not less than two weeks and the employing authority is responsible for providing budgeted funds to meet the costs of advertisement.

(4) The Board or Commission may consult the Secretary on the establishment of an independent Selection Panel and may seek assistance of the Senior Executive Services to conduct the interviews and finalise the list of suitable applicants in rank order.

(5) The Board or Commission of the employing authority shall appoint the Chairman of the selection panel to receive all applications to the advertisement and to coordinate the applicant assessment process and to advise the Board or Commission on the short list of candidates.

(6) The selection panel members shall execute an oath of confidentiality in the prescribed format and shall exercise due diligence in performing their functions.

10. MERIT-BASED SELECTION CRITERIA AND APPLICANT ASSESSMENT PROCESS.

(1) The Chairman of the selection panel (with the assistance of the Senior Executive Services on request) shall, on receipt of applications, ensure that the following information and certification is provided in the application:

- (a) date of birth and age; and
- (b) two character references from persons of standing in the community; and
- (c) two professional references of which one shall be from the previous employer and the other one from the current employer and two signed copies of the application.

(2) Failure to provide this information or to meet the minimum person specification described in the advertisement shall disbar the applicant from consideration.

(3) The Selection Panel shall prepare the Merit Based Assessment Profile for each applicant listing the assessment factor in the following format:

- (a) secondary, tertiary and vocational qualifications supported by certificates and testimonials; and
- (b) experience covering applicants whole career; and
- (c) management competency in listed generic fields; and
- (d) technical competency in portfolio related fields; and

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- (e) special aptitudes for the position; and
- (f) performance assessment records if a serving officer.

(3) Each of the assessment factors (a) to (f) should be given a standard weighting reflecting the relative importance to achieving the objectives of the position and fulfilling the performance targets set by the Board or Commission of the employing authority.

(4) The selection panel should allocate a points score against each of the assessment factors in the merit-based ranking matrix.

11. SELECTION PANEL SHORT LISTING PROCEDURES.

(1) The Board or Commission may determine the need to outsource the short listing process to a professional recruitment company and the short listing results shall be subject to the scrutiny and review of the selection panel.

(2) The resulting rank order of applicants shall be compiled with a dossier of supporting documents for quality control checks to be conducted by the selection panel to verify a short list of three applicants as suitable candidates and compile a shortlist report to the Chairman of the employing authority.

(3) The Board or Commission of the employing authority shall determine a short list of three candidates in order of preference for recommendation to the portfolio Minister and the portfolio Minister shall then deliver the determination or resolution to the Chairman of the MEAC.

(4) This process must be completed no later than one month prior to expiry of the incumbent agency head's contract of employment.

(5) The shortlist report must contain all the necessary information to enable the MEAC to make an assessment of the three most suitable candidates and on the advice of the portfolio Minister shall submit the recommendation of one preferred candidate to the National Executive Council

12. SHORTLISTED APPLICANTS CHARACTER AND STANDING CHECKS.

(1) The Board or Commission, prior to submitting the final list of candidates through their Minister to the MEAC, shall ensure all shortlisted applicants are cleared by the Police Commissioner, the Ombudsman Commission, Public Prosecutor and the Previous Employer.

(2) Shortlisted applicants who have conviction record as verified by Police, criminal case pending in the National Court as verified by State Prosecutor and Leadership case before the Ombudsman Commission will automatically be removed from the list.

(3) Where Subsection (2) applies, the Board or Commission may proceed to review the candidates list and approve the next best candidate to satisfy the minimum candidate shortlist requirements.

13. MEDICAL AND FITNESS REQUIREMENTS FOR SHORTLISTED APPLICANTS.

(1) The Board or Commission, in consultation with the Secretary for the Department of Health, may appoint two legally certified and qualified medical practitioners to assess the medical and fitness suitability of the shortlisted applicants before submitting the final list through the portfolio minister to the MEAC.

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(2) Shortlisted applicants who failed the medical clearance test will automatically be removed from the list and the Board or Commission may approve for the next best candidate to satisfy the minimum shortlist requirements.

14. INTERVIEW PROCEDURES FOR SHORTLISTED APPLICANTS.

(1) All candidates ranked in the final short list may be interviewed by a selection panel in accordance with the provisions of this section.

(2) The Board or Commission may delegate the interview process to an independent professional human resource practitioners to interview the shortlisted applicants recommended by the selection panel before making a final recommendation to the MEAC.

(3) The minimum acceptable person specification and requirements of the position as detailed in the National Gazette shall be utilised in conducting the interview, and the short listed candidates shall be assessed against the following competency based criteria:

- (a) knowledge of the role, functions and objectives of the agency; and
- (b) knowledge of basic laws applying in the Public Service and the industry; and
- (c) achievements in previous employment; and
- (d) plans for agency's performance over the four years; and
- (e) leadership ability and management skills; and
- (f) ability to express and conduct themselves professionally.

(4) The employing authority may compile for the selection panel an interview profile for each of the short listed candidates highlighting the strengths and weaknesses in each of the assessed criteria (a) to (f).

15. FINAL SELECTION PANEL REPORT.

(1) The Board or Commission shall compile a final selection panel report containing the following information:

- (a) the National Gazette advertisement; and
- (b) the candidate assessment profiles; and
- (c) the rank order matrix; and
- (d) the interview profiles; and
- (e) the final short list in order of merit.

(2) The selection report (marked "Strictly Confidential for Members of the MEAC Only") shall be delivered to the Chairman by the Secretary to enable the MEAC to review the short listed candidates and to select one preferred candidate for recommendation to NEC for appointment.

(3) Any discrepancies as perceived by the MEAC in the information provided by the Secretary are to be referred back to the Secretary and the Board or Commission for resolution within the set time limits.

16. MEAC ADJUDICATION OF CANDIDATE SHORTLIST IN THE SELECTION PANEL REPORT.

(1) On receipt of the selection report from the Secretary, the MEAC shall assess the candidates in the short list.

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(2) The MEAC shall complete the adjudication and final selection of a suitable candidate in the shortest possible time and no later than one month following receipt of the selection report from the Secretary.

17. MEAC RECOMMENDATION TO NATIONAL EXECUTIVE COUNCIL.

(1) The MEAC shall present the recommendation of the preferred candidate in a submission to NEC prepared by the Secretary.

(2) All other considerations unrelated to the processes described in this Regulation shall have no bearing on the recommendation of the MEAC to the NEC.

(3) In considering the recommendations made under Subsection (2), the NEC may -

(a) approve a recommendation; or

(b) reject a recommendation and direct the re-advertisement of the position, but the NEC shall not introduce any new candidate not already included in the MEAC recommendation, in breach of Section 208A of the *Constitution*.

(4) Where the NEC approves the MEAC recommendation, the NEC shall advise the Head of State to make the appointment and the Chairman of the employing authority shall officially inform the successful candidate of the appointment.

PART IV. – ACTING APPOINTMENTS.

18. PROCEDURES FOR ACTING APPOINTMENT.

(1) Where a vacancy occurs in the office of a Chief Executive Officer for any reason, pursuant to Section 193 of the *Constitution* and Section 6 of the *Regulatory Statutory Authority (Appointment to Certain Offices) Act 2004*, the Board or Commission shall, in the event of any delay in making a substantive appointment, recommend to the Minister a suitable person from within the organisation who meets the prescribed minimum person specification to act for a period not exceeding three months, subject to further review.

(2) On receipt of the recommendation under Subsection (1), the Chairman of the Ministerial Executive Appointment Committee shall advise the Head of State to make an acting appointment.

PART V. – FIXED PERIOD CONTRACTS OF EMPLOYMENT.

19. APPOINTMENT OF AGENCY HEAD ON CONTRACT.

(1) By virtue of the Act, all agency heads shall be employed on fixed period contracts of 3 or 4 years in duration on terms and conditions of employment determined by the employing authority's enabling Act, subject to the Salaries and Remuneration Commission Determination.

(2) The Chairman, in consultation with the Secretary, shall prepare a contract of employment in the prescribed format for agreement between the Chairman and the appointed head of the authority for execution by the Head of State and witnessed by the Secretary.

(3) The Secretary shall submit all supporting documentation, including NEC Decision, and individual contract to the State Solicitor to obtain legal certification within 14 days, enabling the Head of State to execute the contract.

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(4) The Secretary shall brief the appointee on specific terms and conditions of the contract and shall arrange through the Secretary to the National Executive Council, for the signing ceremony with the Head of State.

(5) The Secretary is responsible on behalf of the State for advising the Chairman and the agency head on the interpretation of the contract terms and conditions.

(6) The contractual provisions governing agency head performance are prescribed by Division V of the Regulation.

20. PROCEDURES ON CONTRACT TERMINATION.

(1) Pursuant to Section 31 of the Act, where, on the expiry of the contract period, the incumbent Chief Executive Officer is not reappointed, his service in the Public Service is terminated on conclusion of a three month notice period from the end of the contract and the longest period that the terminated Chief Executive Officer is to remain on the payroll is three months from the end of the contract period

(2) At any time during the three month period, the terminated CEO may opt to leave the service and be paid in lieu of the balance of the period.

(3) On leaving the service, the terminated Chief Executive Officer shall be paid only accrued service related entitlements, including money in lieu of leave, money in lieu of furlough, and repatriation benefits. (Reference must be made to the Division VI).

(4) A Chief Executive Officer re-deployed or appointed to a lower office as agency head or deemed agency head shall continue to maintain the salaries and allowances at his or her previous substantive position for the duration of the new contract.

(5) A Chief Executive Officer who refuses to sign a contract of employment for whatever reason shall have his or her employment terminated forthwith.

PART VI. – CONTRACTUAL PERFORMANCE COMMITMENTS AND PERFORMANCE APPRAISAL PROCEDURES.

21. RESPONSIBILITY FOR THE PERFORMANCE MANAGEMENT SYSTEM.

(1) The employing authority shall establish a performance management system in consultation with the Secretary and the agency head shall be responsible for compliance with the performance commitments in his or her contract.

(2) The Chairman of the employing authority shall appoint a performance management committee of the Board or Commission to assess the performance of the agency head on not less than an annual basis and the assessment shall report on the success of the organisation in delivering the end results as determined in the agency head's performance commitments and such level of performance must be rated against a standard for the position.

22. PERFORMANCE APPRAISAL PROCEDURES.

(1) For each year of an agency head's term of appointment, there shall be performance commitments matrix signed off by the key signatories to the performance appraisal process, being the Chairman of the Board or Commission and the portfolio Minister.

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(2) The performance appraisal procedure is to be tied to the annual budget cycle and to the commitments made by an agency head in the annual management plan.

23. PERFORMANCE APPRAISAL ON ANNUAL BASIS.

(1) The Chairman of the employing authority shall ensure that for each budgetary year of the agency head's term of appointment, there shall be a completed performance appraisal form.

(2) The Chairman, in consultation with the portfolio Minister, may utilise the performance appraisal rating at any time to give a formal warning to an agency head to comply with their performance commitments and to improve their performance.

(3) The agency head's performance based contract provides that a report may be brought by the portfolio Minister on the recommendation of the Chairman of the employing authority to the MEAC for the purpose of recommending termination of appointment on grounds of poor performance.

24. PERFORMANCE APPRAISAL FOR CONTRACT RENEWAL.

(1) Pursuant to PART III, Section 7, six months prior to the end of a chief executive officer's appointment, the Board or the Commission shall assemble all completed performance appraisal forms (not less than two) of the Chief Executive Officer.

(2) The Chairman of the Board or Commission shall provide a report to the MEAC signed off by the portfolio Minister to recommend whether or not to re-appoint the chief executive officer based upon the overall performance outcomes against commitments.

PART VII. – CONTRACTUAL TERMINATION AND SUSPENSION PROCEDURES.

25. REVOCATION OF APPOINTMENT OF CHIEF EXECUTIVE OFFICES.

(1) An appointment made by the Head of State, acting on advice, shall be revoked only in accordance with a recommendation of the MEAC pursuant to Section 193 (appointment of certain officers) of the *Constitution*, ensuring that the provisions of the Regulation are complied with.

(2) An appointment shall be revoked only in accordance with the criteria and the procedures contained within a contract of employment, authorised by the Nation Executive Council and entered into between the Head of State and the Chief Executive Officer, made pursuant to Section 28 of the *Public Services (Management) Act 2014*.

(3) The grounds, criteria and the procedure for termination prescribed by a contract of employment shall include the following provisions:

(a) breach of contract and termination for cause (Under a Contract of Employment), the following disciplinary action:

- (i) conduct described under the contract provisions as serious disciplinary offences, following the laying of charges and assessment of guilt, as provided for in a disciplinary procedure which preserves the principles of natural justice; and
- (ii) contractual compensation where no payments to be made in respect to ex-gratia benefits, gratuities, and money in lieu of notice, which are to be forfeited to the State. Payment of normal service related benefits shall be in order, subject to any surcharge arrangements that may be in place to recover monies owed to the State; and

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- (b) breach of contract for poor performance (Under a Contract of Employment) where no disciplinary action was involved; and
- (c) following consistently poor performance by a Chief Executive Officer over a period of not less than 6 months, whereby, as a result of a decision of the MEAC, the portfolio Minister has issued a warning in writing to a Chief Executive Officer to improve his performance or to overcome weakness in conduct within a period of not less than 6 months -
 - (i) the Secretary shall provide a performance report to the MEAC as to the change in performance of the Chief Executive Officer and whether or not there has been compliance with the Ministerial directive to improve performance; and
 - (ii) the NEC having received a report from the Chairman MEAC, has determined that the Chief Executive Officer's performance has not improved adequately, shall advise the Head of State to terminate the Chief Executive Officer for poor performance; and
 - (iii) contractual compensation where no payments are to be made in respect to ex-gratia benefits, and gratuities, which are to be forfeited to the State; and
 - (iv) payment of money in lieu of notice and normal service related benefits shall be in order, subject to any surcharge arrangements that may be in place to recover monies owed to the State; and
- (d) reasons not resulting from poor work performance or requiring disciplinary action or other breach of contract ("In the Interests of the State") -
 - (i) reasons for termination must be in the interest of the State as employer, as determined by the National Executive Council on the recommendation of the Ministerial Executive Appointment Committee, and may result in redeployment to another position, or permanent termination of employment by the State, dependent upon the circumstances, and shall include -
 - (A) reorganisation of Departments involving amalgamation, abolition, or reconstruction of the Chief Executive Officer position, as a result of functional or legislative change. (NB this arrangement is specifically provided for in the current Contract Agreements); and
 - (B) as a result of the need to re-deploy, or to inter-change two Chief Executive Officers resulting in improved efficiency and such change is in the interest of the State, (whereby the NEC varies the Chief Executive Officer's contract and maintains his overall remuneration and tenure in the service of the State, for a period not less than the original appointment); and
 - (C) other grounds for termination, not contrary to the contract provisions, or to the public interest, and subject to independent assessment by the MEAC and a recommendation to the NEC upon the appropriateness of such action; and
 - (ii) revocation and re-appointment to a similar position in the event that the NEC wishes to effect the transfer of a Chief Executive Officer from one Organisation to another Organisation or State Enterprise, the revocation and re-appointment shall be undertaken in the interest of the State and continuity of service and contractual benefits are to remain unaffected, and a new or varied contract of employment is to be issued for the new position (See Clause 3 of the Chief Executive Officer's Contract Agreement) which would constitute a transfer in the interest of the State; and

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- (C) A Chief Executive Officer is not permitted to seek premature termination of the contract under this provision in order to secure contractual compensation. An attempt to do so shall be construed as improper conduct; and
- (f) redundancy of the position and resulting retrenchment -
 - (i) termination due to abolishment of the position occupied by a Departmental Head as a result of legislative change or abolishment of position, or other grounds for redundancy and retrenchment, as defined under the Public Service General Orders, and applied by the NEC; and
 - (ii) contractual compensation where the officer is terminated from the Public Service in accordance with Section 30 of the *Public Services (Management) Act 2014* and the contract, and is not transferred under the terms of the contract to another position in the employment of the State, whether paid at an equivalent level or not, the greater of the following two payments shall be made:
 - (A) payment of salary and allowances to the end of the contracted period, subject to a maximum period of 18 months inclusive of notice period, together with normal Public Service accruals for long service leave, and recreational leave and other monies accrued under the contract; or
 - (B) Public Service ex-gratia retrenchment benefits, together with other monies and service related entitlements accrued under the contract.
- (g) normal retirement or medical retirement -
 - (i) as provided under the *Public Services (Management) Act 2014*, General Orders and contract relating to age for early and compulsory retirement; and
 - (ii) contractual compensation accrued payments under the contract related to service only to date of retirement, together with three months payment in lieu of notice; and
- (h) resignation of own accord -
 - (i) where Chief Executive Officer gives notice of his/her intention to leave following expiry of a mutually agreed period of notice: and
 - (ii) contractual compensation accrued payments under the contract related to service only, to date of resignation; and
- (i) termination of employment on normal expiry of the agency head's contract of employment -
 - (i) payment shall be made of salary and allowances in lieu of the 3 months' notice period, together with normal Public Service accruals for recreational leave and long service leave; or
 - (ii) normal public service retrenchment benefits is payable only if termination of employment falls within a government approved public service redundancy and retrenchment exercise.

26. SUSPENSION OF CHIEF EXECUTIVE OFFICERS ON DISCIPLINARY GROUNDS AND DISCIPLINARY PROCEDURES IN CONTRACTS.

(1) The Nation Executive Council may suspend a Chief Executive Officer from office on disciplinary grounds, only in accordance with a recommendation of the MEAC, ensuring that the provisions of these Regulations and the Chief Executive Officer's contract are complied with.

(2) A suspension may only be effected in accordance with the criteria and the procedures contained within a contract of employment approved by the National Executive Council and entered into between the Head of State and the Chief Executive Officer.

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(3) The grounds or the criteria and the procedure for suspension prescribed by a contract of employment shall include the following provisions:

- (a) where allegations of serious misconduct have been made against a Chief Executive Officer by the Board dependent upon the circumstances and the nature of the allegations, which may require instantaneous removal from office, the Board shall advise the Portfolio Minister to provide a written report to the Chairman of the MEAC; and
- (b) the Chairman of the MEAC shall provide a written report to the National Executive Council to effect suspension, and by delegation of the National Executive Council under Section 148 of the *Constitution*, the portfolio Minister or the Minister for Public Service shall effect suspension from office on full pay to enable investigations to be conducted, and or disciplinary charges to be laid; and
- (c) in the event that it is necessary to effect the suspension prior to a decision being made by the NEC, suspensory action taken by the Board, Commission or the Minister for Public Service shall be ratified by the National Executive Council no later than 30 days following the action, and the NEC shall determine the time required in which to conclude investigations or disciplinary proceedings against the Chief Executive Officer.

(4) The disciplinary process shall be stated in the contract terms and conditions and shall contain the following details:

- (a) in effecting a decision to suspend a Chief Executive Officer, the portfolio Minister (or Minister for Public Service as delegated by the NEC) may either lay disciplinary charges coincident with the suspensory action, or notify the Chief Executive Officer that investigations will be conducted in order to lay disciplinary charges at a later date; and
- (b) investigations shall be conducted initially by an independent committee under the chairmanship of the Secretary for the Department of Personnel Management, and the recommendations of the Committee shall be made within the time limit as determined by the NEC; and
- (c) in the event that the investigations confirm the Chief Executive Officer has a case to answer, then the portfolio Minister shall lay charges against the Chief Executive Officer in a prescribed manner prepared by the Secretary, (as attached); and
- (d) the Chief Executive shall respond to the portfolio Minister within a fourteen calendar day period, stating whether or not he or she admits or denies the charges, and any mitigating circumstances surrounding the allegations; and
- (e) a legal opinion shall be obtained by the Chairman MEAC as to the culpability of the Chief Executive Officer and shall make a recommendation to the National Executive Council on appropriate disciplinary action:
 - (i) re-instatement to office as Chief Executive Officer if considered substantially innocent of misconduct in office; or
 - (ii) termination of appointment in the following manner:
 - (A) in the interest of the State if considered guilty of misconduct to a degree not warranting termination for cause, resulting in either:
 1. redeployment on the same terms and conditions to another position of similar standing for the balance of the contract period; or
 2. termination from State service and payment of salaries and allowances for a 3 month notice period under the contract plus service related benefits; or

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3. termination from State service and payment of salaries and allowances for balance of contract subject to a maximum of an 18 month period including notice period under the contract plus service related benefits; and
 - (B) for cause if considered guilty of substantial misconduct with either:
 1. payment of service related benefits; or
 2. with forfeiture of service related benefits; and
 - (f) throughout disciplinary proceedings, the Secretary for the Department of Personnel Management shall be responsible for advising the Chairman of the MEAC on the procedures and interpretation of Chief Executive Officer contracts under these Regulations.
- (5) A Chief Executive Officer may take paid leave of absence from office if he or she is –
- (a) charged by the Police for a criminal offence which impacts upon his or her work performance; or
 - (b) cited for contempt of court for any reason; or
 - (c) referred by the Public Prosecutor under the *Organic Law to a Leadership Tribunal*, prior to the Tribunal sitting to hear the case; and for no other reason, the MEAC shall determine whether or not the departmental head must take paid leave of absence from office (not to count against accrued leave entitlements), in the public interest and the departmental head shall comply with such requirement, pending the outcome of the referred matter, or until dealt with under the disciplinary provisions of the contract.

PART VIII. – TRANSITIONAL PROVISION.

26. TRANSITIONAL PROVISIONS FOR VARIATION OF DEPARTMENTAL HEAD CONTRACTS.

(1) The standard terms and conditions of chief executive officer contracts as at 30 September, 2014 provide that the Head of State, acting on advice of the National Executive Council, may vary the terms and conditions of a contract by mutual agreement or by the giving of three months' notice.

(2) The National Executive Council has delegated to the Minister for Public Service, as Chairman of the Ministerial Executive Appointments Committee, the responsibility to advise the Head of State to vary the terms and conditions of each contract of employment to comply with the Act and the Regulations effective on and from 1 October, 2014.

(3) The contractual variation will not have any effect to vary the start and end dates of each contract in operation as at 1 October, 2014 and the contractual variation will confirm the new procedures for the appointment and removal of a chief executive officer on the recommendation of the Ministerial Executive Appointments Committee.

(4) The variation includes the application of the performance management system and the execution of performance commitments by the chief executive officer and the governing body to come into effect on and from 1 January, 2015.

(5) The Secretary to the Ministerial Executive Appointments Committee shall prepare the varied contract documents for approval by the Ministerial Executive Appointments Committee for execution by the Head of State and witnessed by the Secretary.

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(6) A refusal by the chief executive officer to execute a varied contract shall be automatic ground for termination of the chief executive officer contract by the payment of three months' pay in lieu of the notice period which shall be effected by the Head of State acting on advice.

(7) In the event that a chief executive officer is to be terminated for refusing a variation of the contract, the Minister for Public Service shall resolve the matter with the portfolio Minister.

MADE this

15th

day of

October

, 2014.



GOVERNOR-GENERAL