

CIVIL SERVICE ORDER IN COUNCIL 1995

The following is an informal consolidation of the operative parts of the Civil Service Order in Council 1995 and the Civil Service (Amendment) Orders 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2005, 2007 and (No. 2) 2007. It should not be relied upon as an authentic text.

At the Court at Buckingham Palace

THE 15TH DAY OF MARCH 1995

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

WHEREAS by the Civil Service Order in Council 1991 (hereinafter referred to as "the principal Order") provision was made relating to the appointment of persons to situations in Her Majesty's Home Civil Service and for regulating the conduct of Her Majesty's Home Civil Service and the conditions of service therein:

AND WHEREAS by virtue of the Transfer of Functions (Treasury and Minister for the Civil Service) Order 1995, certain functions exercised by the Treasury were transferred to the Minister for the Civil Service:

AND WHEREAS it is expedient to make further provision for her Majesty's Home Civil Service in relation to the matters aforesaid:

NOW, THEREFORE, Her Majesty is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered as follows:

Definitions

1. In this Order, except where otherwise expressly provided,

"the Commissioners" means the persons for the time being appointed by Her Majesty in Council to be Her Majesty's Civil Service Commissioners for the purposes of this Order;

"audit" means any review carried out by or on behalf of the Commissioners of the recruitment practices and policies followed by appointing authorities in making an appointment;

"public service" means any civil service of the State (other than the Service), and any public authority, or non-governmental body or institution discharging public functions, which the Minister may from time to time determine to be a public service for the purposes of this Order;

"the Minister" means the Minister for the Civil Service;

"secondment" means a voluntary and temporary transfer from a permanent employer for a fixed period and which does not affect the employment status of the seconded employee;

"the Service" means Her Majesty's Home Civil Service;

“the Senior Civil Service” means that part of Her Majesty’s Home Civil Service whose members are classified by the Minister as members of the Senior Civil Service.¹

Selection on Merit

2. (1) Except as otherwise expressly provided by this Order, no person shall be appointed to a situation in the Service unless
 - (a) the selection for appointment is made on merit on the basis of fair and open competition; and
 - (b) the person appointed satisfies such qualifications as may be prescribed pursuant to Article 10(d).
- (2) Notwithstanding Article 2(1)(b), a person may be appointed in accordance with Schedule 2 to this Order.

Exemptions from Selection on Merit

- [3. (1) Article 2(1)(a) shall not apply to any situation where the holder is appointed directly by the Crown.
- (2) Article 2(1)(a) shall not apply to any situation where the holder is appointed directly by a Minister of the Crown
 - [(aa) with the approval of the Minister for the Civil Service and on terms incorporating conditions approved by him, and ²]
 - (a) for the purpose only of providing [assistance³] to any Minister, and
 - (b) for a period which cannot extend beyond the end of an Administration.
- [(3) This paragraph (3) of Article 3⁴ is revoked.¹⁶]
- [(4) Article 2(1)(a) shall not apply to any situation where the holder is appointed directly by a member of the Scottish Executive
 - (a) with the approval of the Minister and on terms incorporating conditions approved by him, and
 - (b) for the purpose only of providing [assistance³] to the member of the Scottish Executive, and
 - (c) for a period which cannot extend beyond the end of the term of office as member of the Scottish Executive of the person whom he is appointed to [assist³]

but no more than twelve situations may be held at any time by persons appointed by virtue of this paragraph.

- (5) Article 2(1)(a) shall not apply to any situation where the holder is appointed directly by the [First Minister for Wales or a Welsh Minister appointed under section 48 of the Government of Wales Act 2006¹⁵]

- (a) with the approval of the Minister and on terms incorporating conditions approved by him, and
- (b) for the purpose only of providing [assistance³] to the [First Minister for Wales or the Welsh Minister¹⁵], and
- (c) for a period which cannot extend beyond the end of the term of office as [First Minister for Wales or the Welsh Minister¹⁵] of the person whom he is appointed to [assist³] but no more than [six⁵] situations may be held at any time by persons appointed by virtue of this paragraph⁶].

Functions of the Commissioners

- 4. (1) The Commissioners shall maintain the principle of selection on merit on the basis of fair and open competition in relation to selection for appointment.
- (2) The Commissioners shall prescribe and publish a recruitment code on the interpretation and application by appointing authorities of the principle of selection on merit on the basis of fair and open competition, including the circumstances in which exceptions to that principle may be permitted in accordance with Articles 6 and 7 of this Order.
- (3) The Commissioners shall audit recruitment policies and practices within the Service to establish whether the recruitment code is being observed by the appointing authority.
- (4) The Commissioners may require appointing authorities to publish such summary information as may be specified relating to recruitment and the use by such authorities of permitted exceptions to the principle of selection on merit on the basis of fair and open competition.
- [(5) The Commissioners may hear and determine appeals to them by a member of the Service under the Civil Service Code and for this purpose
 - (a) may regulate their own procedure; and
 - (b) may require the parties to any appeal or to any investigation occasioned by an appeal to provide such information and other assistance as the Commissioners shall think necessary or appropriate; and
 - (c) may make recommendations.⁷]

The Commissioners' Approval for Appointment

- [5. (1) Subject to Article 5(2) and Article 5(3), no appointment shall be made to any situation in the Service which is specified for the purposes of this paragraph in the recruitment code referred to in Article 4(2) without the written approval of the Commissioners, whose decision shall be final. Approval may be given conditionally or unconditionally.
- (2) The written approval of the Commissioners is not required under Article 5(1)
 - (a) for an appointment of less than 12 months,

- (b) for an appointment on secondment of less than 24 months,
- (c) for an extension (or further extension) of an appointment referred to in Article 5(2)(a) or Article 5(2)(b) where the overall term of the appointment is less than 24 months, or
- (d) for an appointment referred to in Article 3.

(3) Where pursuant to Article 5(1) the Commissioners have given approval conditionally, the relevant appointing authority may make such appointment pursuant to Schedule 1 as appears to that appointing authority to be appropriate.^{8]}

Exceptions to Selection on Merit

6. (1) Subject to Article 6(2) the Commissioners may except an appointment from the requirements of Article 2(1)(a), either individually or by cases of a class or description, where the appointment falls within one or more of the following categories

- (a) where the total period of service does not exceed five years and the appointment is justified by the needs of the Service; [or by the need to relieve long-term unemployment^{9]}
- (b) where the person is appointed on secondment;
- (c) where immediately before appointment the person is the holder of a situation to which he was appointed on secondment, or under which the period of service (continuous or otherwise) does not exceed five years, and the appointment would be on an exceptional basis;
- (d) where the person has previously held a situation in the Service to which appointment was made on merit on the basis of fair and open competition and is being considered for reinstatement or re-employment;
- (e) where the person holds a situation in a public service;
- (f) where the person is, or has recently been, employed on functions which have been or are being transferred to the Crown;
- (g) where the person has reached an appropriate standard in a fair and open competition for another situation without securing appointment and there is a demonstrable shortage of suitable candidates for the relevant situation.
- [(h) where the person is defined as being a disabled person or as having a disability by or under any enactment relating to the employment of disabled persons and the person is a participant in a government scheme to promote the employment of disabled persons.^{10]}

(2) The Commissioners may except from the requirements of Article 2(1)(a) any appointment to a situation for which their approval is required by Article 5 where they are satisfied that

- (a) the person proposed for appointment is of proven distinction; or

- (b) that the person proposed for appointment has been assessed in fair and open competition with all other applicants for the situation, and that he is qualified to discharge all the duties of the situation effectively

and, in either case, that the appointment is justified for exceptional reasons relating to the needs of the Service.

Disabled People

- 7. Without prejudice to their powers under Article 6 the Commissioners may except an appointment from the requirements of Article 2(1)(a) where it appears to the relevant appointing authority that the person satisfies the relevant standard for entry into the Service and has been selected for appointment under arrangements which
 - (a) provide for such selection to be made on merit on the basis of fair and open competition, but
 - (b) include provision for encouragement and assistance in the process of selection (by way of guarantee of an interview or otherwise) to be given to any person who is defined as being a disabled person or as having a disability by or under any enactment relating to the employment of disabled persons.

Commissioners' Annual Report

- [8. (1) The Commissioners shall publish an annual report which shall include:
 - (a) summary information as to appointments requiring the Commissioners' approval under Article 5, including the number of persons appointed on the basis of each category of permitted exceptions identified in Article 6 and Article 7, and
 - (b) an account of the audit of recruitment policies and practices, and
 - (c) an account of the number of appeals made to them under the Civil Service Code together with summary information as to the nature of such appeals.
- (2) The Commissioners may from time to time make such other reports on appeals to them under the Civil Service Code as they think fit.^{11]}

Exercise of the Commissioners' Powers and Duties

- 9. (1) Any power or duty of the Commissioners under this Order may be exercised by
 - (a) the First Civil Service Commissioner, or such Commissioner as the First Civil Service Commissioner may authorise for that purpose; or
 - (b) any officer of the Commissioners authorised for that purpose by the Commissioners.
- (2) The Commissioners may from time to time and to such extent as they think fit authorise any person to perform

- (a) any function under Article 4(3); or
- (b) any of their functions relating to the selection and recruitment of persons prior to the exercise by them of their power of approval under Article 5; or
- (c) any of their functions including the power of approval under Article 5 where the Commissioners have approved the arrangements for selection for particular appointments.

Functions of the Minister

10. The Minister may from time to time make regulations and give instructions
- (a) providing for the number and grading of posts in the Service, the classification of all persons employed therein, their remuneration, expenses, allowances, holidays, hours of work, part-time and other working arrangements, retirement and redundancy, the reinstatement and re-employment of persons in the Service, the re-deployment of staff within the Service and the conditions of service of all persons employed in the Service;
 - (b) for controlling the conduct of the Service, [including the making and amendment of a Civil Service Code¹²];
 - (c) relating to the recruitment of persons to situations in the Service;
 - (d) prescribing the qualifications for appointment to situations in the Service including qualifications relating to age, knowledge, ability, professional attainment, aptitude, and potential.

Citation Etc

11. (1) This Order may be cited at the Civil Service Order in Council 1995 and shall come into force on 1st May 1995.
- (2) The principal Order is hereby revoked, except for Article 5 which is revoked with effect from 1 April 1996.
- (3) Without prejudice to paragraph (4) below, nothing in the said revocation shall affect any instrument or other thing whatsoever made or done or having effect as if made or done under the principal Order, and every such instrument or thing shall continue in force and so far as it could have been made or done under this Order shall have effect as if made or done under this Order.
- (4) The Interpretation Act 1978¹³ shall apply for the interpretation of this Order and of any regulations or orders made under this Order as it applies for the interpretation of an Act of Parliament and the principal Order were an Act of Parliament thereby repealed.

[SCHEDULE 1¹⁴]

SCHEDULE 2 **Articles 2(2) and 5(2)**
**APPOINTMENT BEFORE APPROPRIATE ENQUIRIES ARE
COMPLETED, AND APPOINTMENT WHERE CERTAIN
QUALIFICATIONS ARE NOT SATISFIED**

1. (1) A person may be appointed to a situation in the Service where it appears to the relevant appointing authority that it is necessary that the appointment be made before appropriate enquiries are completed, and that there is no *prima facie* doubt that he satisfies all the prescribed qualifications and is otherwise suitable for appointment.

(2) It shall be a condition of any appointment made under this paragraph that the outcome of the appropriate enquiries is satisfactory, but termination of the appointment where the outcome of those enquiries is not satisfactory shall not preclude the person's further appointment in accordance with paragraph 2.

2. (1) A person may be appointed to a situation in the Service where it appears to the relevant appointing authority that, although otherwise suitable for appointment, he does not fully satisfy the prescribed qualification as to
 - (a) health or character, but that if appointed for a trial period of service he is likely within that period to satisfy such qualifications; or
 - (b) nationality, but that if appointed his employment would be under the authority of a certificate issued under section 1 of the Aliens Employment Act 1955; or
 - (c) knowledge, ability, professional attainment, aptitude or potential, but that if appointed for a trial period of service he is likely within that period to demonstrate that he is fully able to discharge the duties of the grade.
(2) An appointment may only be made pursuant to paragraph 2(1)(c) on an exceptional basis and where there is a shortage of qualified candidates for the situation.

(3) It shall be a condition of any appointment made for a trial period under this paragraph that, within a specified period not exceeding five years, the person demonstrates to the satisfaction of the relevant appointing authority that,
 - (a) in the case of an appointment under paragraph 2(1)(a), he satisfies the relevant qualifications; and
 - (b) in the case of appointment under paragraph 2(1)(c), he is fully able to discharge the duties of the grade.

¹ As amended by the Civil Service (Amendment) Order in Council 1996

² Inserted by the Civil Service (Amendment) Order in Council 1999

³ As amended by the Civil Service (Amendment) Order in Council 2005

⁴ As amended by the Civil Service (Amendment) Order in Council 1997

⁵ As amended by the Civil Service (Amendment) Order in Council 2000

⁶ Inserted by the Civil Service (Amendment) Order in Council 1999

⁷ Inserted by the Civil Service (Amendment) Order in Council 1995

⁸ As amended by the Civil Service (Amendment) Order in Council 2002

⁹ Inserted by the Civil Service (Amendment) Order in Council 1998

¹⁰ Inserted by the Civil Service (Amendment) Order in Council 2001

¹¹ As amended by the Civil Service (Amendment) Order in Council 1995

¹² Inserted by the Civil Service (Amendment) Order in Council 1995

¹³ 1978 c.30

¹⁴ Revoked by the Civil Service (Amendment) Order in Council 2002

¹⁵ As amended by the Civil Service (Amendment) Order in Council 2007

¹⁶ Paragraph (3) of Article 3 inserted by ⁴ is revoked by the Civil Service (Amendment)(No 2) Order in Council 2007