

# Civil Service Conciliation and Arbitration Scheme

## General Council Report 1479

(Meeting/s of 28 June 2006)

### Revised Disciplinary Code for the civil service

#### **Civil Service Disciplinary Code revised in accordance with the Civil Service Regulation (Amendment) Act 2005**

1. The Civil Service Disciplinary Code has been revised to give effect to the changes in the Civil Service Regulation Act 1956 arising from the commencement of the Civil Service Regulation (Amendment) Act 2005 on 4 July 2006. The revised Code replaces the Disciplinary Code in Circular 1/92 and the new procedures in relation to discipline will apply to all new disciplinary cases beginning after the date of this circular regardless of when the alleged offence occurred. Existing cases which are being considered under Circular 1/92 will continue to be considered under that circular.

2. Details of the revised Disciplinary Code and associated Circular are set out below.

3. This report, recording agreement was adopted on 28 June 2006

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Eric Gargan Joan Byrne  
Official Side Secretary Staff Side Secretary

## APPENDIX

E109/127/05

4 July 2006

### **Circular 14/2006: Civil Service Disciplinary Code revised in accordance with the Civil Service Regulation (Amendment) Act 2005**

A Dhuine Uasail

#### **Introduction**

1. The Civil Service Regulation (Amendment) Act 2005 is a key part of the public service modernisation programme that aims to improve human resource practice in the Civil Service and strengthen the mechanisms for accountability and performance. To ensure a more effective Civil Service in the public interest, the Government decided to enact this new legislation to ensure that Ministers, Secretaries General, Heads of Scheduled Offices and managers are given the necessary authority to manage staff directly and in particular to manage performance more effectively.
2. The Act came into force on 4 July 2006. This Code replaces the Disciplinary Code in Circular 1/92 and the new procedures in relation to discipline will apply to all new disciplinary cases beginning after the date of this circular regardless of when the alleged offence occurred. Existing cases which are being considered under Circular 1/92 will continue to be considered under that circular.

#### **Main Purpose of the Act**

3. The main purpose of the Civil Service Regulation (Amendment) Act 2005 is to allow certain provisions contained in the Public Service Management Act 1997 to take effect. The 2005 Act gives each Secretary General/Head of Scheduled Office, as appropriate authority, responsibility for managing all matters relating to performance, conduct and discipline of civil servants below Principal

Officer level. Ministers will continue to be the appropriate authority for these matters in relation to civil servants at or above Principal level in accordance with the Civil Service Regulation Acts 1956 to 2005.

4. In particular, Departments/Offices should take note of the fact that Section 9(1)(f) of the Public Service Management Act 1997 provides that the appropriate authority may assign to another officer the power to perform, on behalf of the appropriate authority, functions in respect of appointments, performance and discipline of personnel. The appropriate authority retains the responsibility for disciplinary action in accordance with Section 10 of the Civil Service Regulation (Amendment) Act 2005 which amends Section 15 of the Civil Service Regulation Act 1956.

5. In addition to devolving managerial responsibility as envisaged under the 1997 Act, the 2005 Act introduces the following changes in human resource practice:

- i. disciplinary action may be taken in cases of underperformance as well as in cases of misconduct, irregularity, neglect or unsatisfactory behaviour
- ii. disciplinary action in cases of underperformance can be taken only when the staff member has been warned and given the opportunity to improve his or her performance and where appropriate training and development measures have been taken
- iii. suspension without pay can be used as a disciplinary measure
- iv. any suspension pending the conclusion of disciplinary proceedings will be suspension on "ordinary remuneration" in accordance with Section 9 of the Civil Service Regulation (Amendment) Act 2005; this amends Section 14 of the 1956 Act which provided that staff may be suspended without pay pending the outcome of a disciplinary investigation
- v. a person may be appointed to be an established civil servant on the basis of a probationary contract
- vi. civil servants, other than those appointed or dismissed by Government, will be brought within the scope of the Unfair Dismissals Acts and the Minimum Notice and Terms of Employment Acts See Appendix 1 regarding application of the Unfair Dismissals Acts and the Minimum Notice and Terms of Employment Acts; civil servants may appeal dismissals to the Rights Commissioner and the Employment Appeals Tribunal and possibly to the Courts.

6. Departments/Offices must make themselves fully aware of the terms of the new legislation and in particular of the new powers and responsibilities set out in the Act and consider, as a matter of priority, what internal procedures are required to give full effect to its provisions.

### **Disciplinary Procedures – General Principles**

7. It is essential that staff be managed appropriately, fairly, and consistently in all aspects of their work. Most problems relating to underperformance and conduct can be dealt with before reaching the point at which disciplinary action is contemplated by management. Failure to deal with problems of underperformance and misconduct places an unfair burden on other staff. Managers and supervisors must take responsibility, in the interests of the Department/Office and all their staff, for tackling, in an appropriate way, underperformance, misconduct, irregularity, neglect or unsatisfactory behaviour.

8. However, disciplinary action must be taken in certain circumstances. Where such cases arise, Departments/Offices must ensure that officers against whom disciplinary measures are proposed, are dealt with in a fair and equitable manner in accordance with the Civil Service Regulation Act and the Industrial Relations Act 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order, 2000 which has these general principles:

- *that details of any allegations or complaints are put to the employee concerned*
- *that the employee concerned is given the opportunity to respond fully to any such allegations or complaints*
- *the employee concerned is given the opportunity to avail of the right to be represented during the procedure*
- *that the employee concerned has the right to a fair and impartial determination of the issues concerned, taking into account any representations made by, or on behalf of, the employee and any other relevant or appropriate evidence, factors, or circumstances.*

9. All matters of discipline must be dealt with by management in a manner that protects the dignity of the officer.

10. It is also essential for the operation of this Code that all officers

co-operate fully in any disciplinary procedure. An officer who fails to co-operate in a disciplinary procedure will be in breach of his or her terms of employment and subject to appropriate disciplinary action.

11. The provisions of this Code apply to all officers other than officers serving in a probationary capacity after entry to the Civil Service. In relation to officers on probation after promotion or on assignment to a post on a higher duties allowance basis, the provisions of this Code will apply to such officers, in relation to allegations of misconduct, irregularity, neglect or unsatisfactory behaviour but not to underperformance issues for the duration of the trial period. In the event of a management decision that an officer's performance was not satisfactory during the probationary period for that promotion, the officer, after having received the reason/s for the decision, may request in writing to the Personnel Officer that the Civil Service Disciplinary Code Appeal Board review the decision in accordance with paragraph 50(ii) of this Code.

12. This Code covers disciplinary procedures relating to grades equivalent to Principal Officer and below.

#### **Assignment of Functions of the Appropriate Authority**

13. For the purposes of this Code, where 'Personnel Officer' appears in the text, the term should be taken to include the Personnel Officer or any other officer to whom the functions of the appropriate authority have been assigned.

14. Any functions assigned to the Personnel Officer under the provisions of this Code may be performed by another officer nominated for this purpose by the appropriate authority or by the Personnel Officer.

#### **Definition of Disciplinary Action**

15. For the purposes of this Code, the term "disciplinary action" is action taken by the appropriate authority under the Civil Service Regulation Act by reason of, or as a direct consequence of a finding that the officer concerned has, in the opinion of the appropriate authority, failed to perform his or her duties to an adequate or appropriate standard, or has been guilty of misconduct, irregularity, neglect or unsatisfactory behaviour.

16. Disciplinary action shall comprise any of the following actions

taken in accordance with paragraph 15 above:

- i. formal written notes placed on the officer's personnel file
- ii. deferral of an increment
- iii. debarment from competitions or from specified competitions or from promotion for a specified period of time
- iv. transfer to another office or division or geographical location
- v. withdrawal of concessions or allowances
- vi. placing the civil servant on a lower rate of remuneration (including the withholding of an increment)
- vii. reducing the civil servant to a specified lower grade or rank
- viii. suspending the civil servant without pay, or
- ix. dismissal.

17. Disciplinary action for the purposes of this Code shall not include any of the actions set out at paragraph 16 above, when such action is taken on grounds of health or sick leave record.

18. Measures taken in relation to an officer's performance as part of PMDS procedures will not constitute disciplinary actions for the purposes of this Code.

### **General Management of Conduct**

19. It is expected that, if the conduct or performance of an officer is not of a standard required by the Department/Office, the line manager will bring this to the officer's attention at the earliest opportunity. Wherever possible, this will be carried out informally with the officer being informed of any complaint or criticism and given the opportunity to offer explanation and comment before any decision to invoke disciplinary action is taken. Where an improvement might be effected without recourse to disciplinary action, guidance will be provided as appropriate and due attention given to whether the shortcoming is outside the officer's control, e.g. if it arises from domestic circumstances. In such cases, Personnel should be

contacted, and help and advice will be given where possible. However, if advice is not taken and there is a repetition of the misconduct, disciplinary action may be considered.

20. Where it has not proved possible to deal with misconduct, irregularity, neglect or unsatisfactory behaviour to the satisfaction of management, the matter will be dealt with under the formal disciplinary procedures set out in this Code.

### **Performance Management and Development System (PMDS)**

21. The Performance Management and Development System (PMDS) provides a very effective tool for managing individual performance within the Civil Service. Departments/Offices must make certain that, before they consider taking disciplinary action in cases of underperformance, staff are given adequate and reasonable warning that action may be taken and have been given a reasonable opportunity to improve their performance in a specified period, with an appropriate level of assistance and, where necessary, training being offered in accordance with the 2005 Act.

22. The Civil Service Regulation (Amendment) Act 2005, Section 10(4), provides that disciplinary action in relation to underperformance on the part of an officer should not be taken unless *the appropriate authority is satisfied that measures aimed at improving the performance of the civil servant through training or development:*

*(a) have in relation to that civil servant been introduced and applied, and have failed to result in specified improvement in performance of the civil servant, or*

*(b) have in relation to that civil servant no reasonable prospect of resulting in an improvement in performance on the part of the civil servant.*

### **Formal Disciplinary Procedures**

23. Where an officer's conduct and/or performance does not meet the required standard despite informal discussion and/or the procedures under PMDS, the matter will be dealt with as set out in paragraphs 24 - 31 below.

#### **Stage 1 - Verbal Warning**

24. A formal disciplinary interview with the officer should be

conducted by the immediate supervisor, a more senior manager or the Personnel Officer as appropriate to the Department/Office. The officer should be given at least three working days notice of the interview, the notice should state the purpose of the interview and general nature of the complaint. The officer concerned may be accompanied at any such meeting by a serving civil servant of his or her choice or by a whole-time official of the union holding recognition for his or her grade.

25. At the interview, the officer should be given a clear statement of the areas where his or her conduct and/or performance is unsatisfactory and given an opportunity to respond. Where a verbal warning is given it should state the improvement required, the timescale for improvement and the consequences of failure to improve. The warning should inform the officer that a written warning may be considered if there is no sustained, satisfactory improvement. A record should be retained of the verbal warning by the supervisor or senior manager. The record will be removed from the file after six months subject to satisfactory improvement during the period.

### **Stage 2 - Written Warning**

26. If having received a verbal warning an officer fails to make the necessary improvement and it is proposed to proceed to Stage 2, the Personnel Officer should be consulted before further steps are taken. Where it is decided to proceed, a formal disciplinary interview with the officer should be conducted by the immediate supervisor, a more senior manager, or the Personnel Officer as appropriate to the Department/Office. The officer should be given at least three working days notice of any interview, the notice should state the purpose of the interview and general nature of the complaint. The officer concerned may be accompanied at any such meeting by a serving civil servant of his or her choice or by a whole-time official of the union holding recognition for his or her grade.

27. At the interview, the officer should be given a clear statement of the areas where his or her conduct and/or performance is unsatisfactory and given an opportunity to respond. Where a written warning is given it should state the improvement required, the timescale for improvement and the consequences of failure to improve. The warning should inform the officer that a final written warning may be considered if there is no sustained, satisfactory improvement. A record should be retained of the written warning in the officer's personnel file for a period of twelve months. The written warning will be removed from the personnel file after twelve months subject to satisfactory improvement during the period.



### **Stage 3 - Final Written Warning**

28. In the event of a further recurrence of the same or similar offences or the occurrence of a more serious offence, a formal disciplinary interview with the officer should be conducted. The disciplinary interview with the officer should be conducted by the second supervisor or the Personnel Officer as appropriate to the Department/Office. The officer should be given at least three working days notice of any interview, the notice should state the purpose of the interview and general nature of the complaint. The officer concerned may be accompanied at any such meeting by a serving civil servant of his or her choice or by a whole-time official of the union holding recognition for his or her grade.

29. At the interview, the officer should be given a clear statement of the areas where his or her conduct and/or performance is unsatisfactory and given an opportunity to respond. Where a final written warning is given it should include full details of the unsatisfactory conduct or performance and should inform the officer that failure to modify his or her conduct or performance will lead to further disciplinary action up to and including dismissal in accordance with the procedures set out in this Code. If no further warnings are to be given, the officer should be informed of this. A record should be retained of the final written warning in the officer's Personnel file. The final written warning will be removed after twenty-four months subject to satisfactory improvement during the period.

30. If in the opinion of the second supervisor or Personnel Officer, following the holding of the disciplinary interview, there is no basis for the issue of a final written warning, then the second supervisor or Personnel Officer may decide that no further action should be taken in the matter. The second supervisor or Personnel Officer may also decide that the warnings previously issued should be withdrawn. The warning or records of warnings will then be removed from the files in accordance with the procedures set out in paragraph 31 below.

31. Where the record of verbal and written warnings are removed from the files in accordance with the procedures set out in paragraphs 24 - 30 above, Departments/Offices will need to make arrangements for the preservation of these records for the purposes of the Freedom of Information Acts and the Archives Acts.

### **Failure by an Officer to Attend Disciplinary Interview**

32. Verbal or written warnings may be issued to an officer notwithstanding his or her failure to attend the disciplinary interview.

#### **Stage 4 - Implementation of Further Disciplinary Action**

33. Serious misconduct or underperformance is a serious breach of the Civil Service rules and procedures or of recognised and accepted standards and behaviour which results in a breakdown of the relationship of trust and confidence between the Department/Office and the member of staff concerned. Serious misconduct or underperformance will justify disciplinary action set out in this Code including dismissal in accordance with the procedures in paragraphs 34 - 41 below, without giving verbal or written warnings as provided for in paragraphs 24 - 31 above.

The Personnel Officer may give effect to the process set out at paragraphs 34 - 41 below, notwithstanding non-compliance by the officer concerned.

34. An officer may be suspended on "ordinary remuneration" pending the conclusion of disciplinary proceedings in accordance with Section 9 of the Civil Service Regulation (Amendment) Act 2005.

35. Where an allegation of serious misconduct See Appendix 2 for examples of serious misconduct or underperformance has been made against an officer, or a final written warning in relation to misconduct, irregularity, neglect, unsatisfactory behaviour or underperformance has failed to result in an improvement and further action is contemplated, the Personnel Officer shall consider the matter. The Personnel Officer shall cause such investigation or such further investigation as he or she considers appropriate to the matter to be undertaken. The Personnel Officer shall provide the officer with a written statement of the matter that is to be the subject of the investigation. The Personnel Officer shall arrange an interview with the officer against whom the allegation is made or the warning given and any other appropriate persons. The officer concerned may be accompanied at any such meeting by a serving civil servant of his or her choice or by a whole-time official of the union holding recognition for his or her grade.

36. The investigation should be completed as soon as possible. It is not expected that investigations should take longer than eight weeks after receipt of the allegation by the Personnel Officer, but there may be cases where because of the circumstances the timeline for the investigation is extended by the Personnel Officer in the interests of thoroughness and fair procedure.

37. Where the Personnel Officer is satisfied on the basis of consideration and such investigation as he or she has or has had undertaken, that disciplinary action as provided for in this Code is warranted, or a complaint in accordance with the Civil Service Policy

*'A Positive Working Environment'* has been upheld and a recommendation made to implement disciplinary action, he or she shall furnish the officer with:

- i. the probative material gathered in the course of the investigation supporting the allegation which he or she will take into account in arriving at a decision
- ii. a statement of the penalty which, having regard to the breach or breaches of this Code alleged, he or she considers appropriate, and
- iii. a copy of this Code.

38. The officer concerned shall submit a response in writing to the allegations, to be received no later than ten working days from the date of issue to the officer of the material in paragraph 37 above.

39. The officer concerned may include in his or her response a request for a meeting with the Personnel Officer to consider the allegation in the light of the material gathered in the course of the investigation. In the event of such a request the Personnel Officer shall arrange a meeting with the officer to discuss the allegation within five working days of the expiration of the ten day period referred to at paragraph 38 above. The officer concerned may be accompanied at any such meeting by a serving civil servant of his or her choice or by a whole-time official of the union holding recognition for his or her grade.

40. Having considered any response by the officer concerned and any written or oral representations made by or on behalf of the officer concerned, the Personnel Officer shall decide whether the allegations have been substantiated and, where he or she is satisfied that conduct warranting disciplinary action has been established, shall inform the officer concerned in writing as soon as possible of the decision reached and of the action that it is proposed to recommend to the appropriate authority. At the same time, the officer should be informed that he or she may make written representations to the appropriate authority or seek a review of the procedures by the Civil Service Disciplinary Code Appeal Board.

41. Where termination of employment is proposed, the Personnel Officer shall make a recommendation to the appropriate authority and provide him or her with a written report on the circumstances of the case. The decision to dismiss an officer will be made by the appropriate authority based on the report and recommendation made

to him or her. Where the appropriate authority is the Minister, the recommendation shall be made by the Secretary General or Head of the Scheduled Office.

**Appeals to the Civil Service Disciplinary Code Appeal Board**

42. Where a decision has been made to take disciplinary action against an officer in accordance with paragraphs 33 to 41 of this Code, an appeal may be made to the Civil Service Disciplinary Code Appeal Board. The procedure for appealing to the Disciplinary Code Appeal Board is set out below.

**Civil Service Disciplinary Code Appeal Board**

43. The Civil Service Disciplinary Code Appeal Board (the Board) shall comprise:

- i. a Chairperson appointed by the Minister for Finance with the agreement of the General Council Staff Panel
- ii. such number of Deputy Chairpersons, appointed by the Minister for Finance with the agreement of the General Council Staff Panel, as are considered by the Minister to be necessary for the proper conduct of the Board's business
- iii. a panel of serving (or former) civil servants nominated by the Minister for Finance, as are considered by the Minister to be necessary for the proper conduct of the Board's business, and
- iv. a panel of serving (or former) civil servants or whole-time officials of recognised trade unions nominated by the General Council Staff Panel and appointed by the Minister for Finance.

44. A Secretary to the Board will be appointed. The Secretary will be responsible for the management of the work of the Board on the advice and instruction of the Chairperson of the Board.

45. The composition of a Board shall be the Chairperson (or a Deputy Chairperson), a member of the panel appointed by the Minister for Finance and a member of the panel appointed by the Minister on the nomination of the General Council Staff Panel. The allocation of appeals to different compositions of the Board shall be a matter for determination by the Chairperson in consultation with the Secretary.

46. No member shall be appointed to the Board to consider a case

referred to the Board who has had any prior interest in or dealings with that particular case.

47. The Board shall produce an annual report which will set out the number of cases which have been heard and summarise the main recommendations made. The report may also make any comment which it considers appropriate on the conduct of cases. The Board shall not identify individuals or the details of any particular case in the report.

48. The Department of Finance will from time to time produce guidelines for the information of Departments/Offices on the procedures applying in the conduct of appeals before the Board.

### **Appeal Process**

49. An officer may seek a review of disciplinary proceedings by the Board

on one or more of the following grounds:

- i. the provisions of this code were not adhered to
- ii. all the relevant facts were not ascertained
- iii. all the relevant facts were not considered, or not considered in a reasonable manner
- iv. the officer concerned was not afforded a reasonable opportunity to answer the allegation
- v. the officer concerned could not reasonably be expected to have understood that the behaviour alleged would attract disciplinary action
- vi. the sanction recommended is disproportionate to the underperformance or misconduct alleged.

50(i) An officer who has been notified by the Personnel Officer or the appropriate authority that it has been decided to take disciplinary action

(other than an action set out at 16(i)) against him or her in accordance with paragraphs 33 - 41 of this Code may, within ten working days of receiving the notification of the decision, request in writing to the Personnel Officer, or appropriate authority, that the disciplinary proceedings be reviewed by the Board.

50(ii) In the event of a management decision that an officer's performance, was not satisfactory, during the probationary period for that promotion, the officer having received the reason/s for the decision may within ten days of receipt of the decision, request in writing to the Personnel Officer that the Board review the decision.

51. If no such request is received from the officer concerned within the period of ten working days referred to in paragraph 50(i) or 50(ii) above, the Personnel Officer or appropriate authority may proceed to implement the disciplinary action proposed.

52. Where an officer requests that disciplinary proceedings be reviewed by the Board, the following submissions shall be made:

i. a written statement by the officer concerned of the grounds in paragraph 49 on which the review is being sought, to be furnished to the Board and the Personnel Officer within ten working days of the submission of the request for an appeal referred to in paragraph 50(i) above

ii. a written counter statement by the Personnel Officer, to be submitted to the Board and the officer concerned within ten working days of the receipt by the Personnel Officer of the officer's statement referred to in paragraph 50(i) above, and

iii. any other submission which the Board may request from the officer concerned or from the appropriate authority, to be furnished in such form and within such time as the Board may specify in its request.

53. The Board may reject a request for a review of disciplinary proceedings where:

i. the officer concerned fails to make a submission required under paragraph 52(i) above within the prescribed time limit, or

ii. the Board, having considered any submissions made under paragraph 52(i) above, is of the opinion that the case made by the officer concerned is frivolous, vexatious, or without substance or foundation.

54. Where a request is rejected by the Board under paragraph 53, the Personnel Officer or appropriate authority may proceed in accordance with the terms of this Code as though the request had not been made.

55. Where the Board has decided to review the disciplinary procedures having considered the submissions made under paragraph 52 above, it shall set a date for hearing within twenty working days of receipt by the Board of the request for an appeal.

56. The Board may, at its sole discretion, invite any person to give evidence orally or in writing. The Board shall consider and decide on any request from a party to the procedure to give evidence orally or in writing.

57. The officer making an appeal is entitled, if he or she wishes, to make oral submissions to the Board either in person or through a serving civil servant of his or her choice, a whole-time official of the union holding recognition for his or her grade or such other person as the Board agrees may be present for that purpose.

58. Where the Board meets for the purpose of taking oral evidence or hearing oral submissions the following are entitled to be present:

i. the officer concerned

ii. any person in accordance with paragraph 57 above who is entitled to make submissions on behalf of the officer concerned

iii. the Personnel Officer and a serving civil servant designated to assist the Personnel Officer, and

iv. any other person whom the Board agrees may be present.

59. Proceedings before the Board shall be informal.

60. Having made such enquiries as it considers necessary and having considered any submissions made or evidence given, the Board shall form an opinion as to whether or not a case has been established on one or more of the grounds set out in paragraph 49 above and shall issue its opinion within ten working days of the hearing to the Personnel Officer, the officer concerned, and their representative.

61. Where that opinion is to the effect that such a case has been established by the officer concerned, the Board may, at its sole discretion, recommend to the Personnel Officer or appropriate authority as the case may be that:

i. no further action should be taken in the matter, or

ii. the disciplinary action decided by the Personnel Officer or appropriate authority should be amended in a specified manner, or

iii. the case should be re-considered by the Personnel Officer to remedy a specified deficiency in the disciplinary proceedings (in which event the provisions of this Code shall continue to apply).

62. A decision to take disciplinary action should be notified in writing to the officer and/or his or her representative. Where no further action is to be taken the allegation will be deemed to have been withdrawn.

63. Where, following the issue of an opinion by the Board, the Personnel Officer proposes to take disciplinary action other than in accordance with that opinion, he or she shall refer the matter to the appropriate authority for review before making a final decision. He or she shall notify the officer concerned accordingly who shall be given an opportunity to make representations to the appropriate authority. Such representations must be made within ten working days of the receipt of the notification. The appropriate authority, in reviewing the matter, shall be supplied with any representations made by the officer concerned and any opinion delivered by the Board.

### **Dismissal**

64. In accordance with Section 9(1)(f) of the Public Service Management Act 1997, a decision to dismiss an officer must be made by the appropriate authority. The decision should be communicated to the officer in writing. Where the decision to dismiss is made other than for reasons of misconduct, notice of termination will be given in accordance with the officer's terms of employment. In accordance with the Civil Service Regulation (Amendment) Act 2005, the Minister is the appropriate authority in relation to staff at Principal level and above and the appropriate authority for staff below Principal level is the Secretary General or Head of the Scheduled Office.

### **All Disciplinary Cases**

65. In general, it is expected that the opinion of the Board will be taken into account and decisions to implement disciplinary action contrary to the opinion of the Board should be an exceptional event.



Mise le meas,

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Assistant Secretary

## **Appendix 1 - Unfair Dismissals Acts and Minimum Notice and Terms of Employment Acts**

### **Application of the Unfair Dismissals Acts 1977 to 2005**

1. The Unfair Dismissal Acts 1977 to 2005 now apply to civil servants other than those who are dismissed by Government. The Acts do not apply to civil servants who at the date of their dismissal have less than one year's continuous service, who are on probation of one year or less or who have reached the normal retirement age for employees of the same employer in similar employment.

2. A civil servant on a fixed term or specified purposes contract cannot avail of the Unfair Dismissals legislation when the term expires or purpose ceases, provided that the contract is in writing, is signed by or on behalf of the appropriate authority and by the employee and provides that the Unfair Dismissals Acts shall not apply to a dismissal consisting only of the expiry of the fixed term or the ending of the specified purpose.

3. The Personnel Officer should ensure that, within twenty-eight days of their entering into a contract of employment, staff are provided with a copy of the Civil Service Disciplinary Code setting out the procedures that will be followed before a civil servant is dismissed. Where a civil servant is dismissed, the appropriate authority, if requested to do so, must furnish them within fourteen days, particulars of the principal grounds for dismissal.

4. Unfair dismissals legislation provides that a dismissal will be deemed to be unfair unless, having regard to all the circumstances, there were substantial grounds justifying dismissal. **In determining whether a dismissal was unfair or not it will be for the appropriate authority to show that there were substantial grounds justifying the dismissal. The burden of proof is on the appropriate authority except in cases of constructive dismissal where the claimant has to establish the facts of the dismissal in the first place.**

5. A dismissal will not be deemed unfair if it results wholly or mainly from the capability, competence or qualifications of the employee for

performing the work of the kind s/he was employed to do, the conduct of the employee, or other substantial grounds. The Employment Appeals Tribunal (EAT) in considering claims in relation to unfair dismissal will require that the appropriate authority establish not only that it had substantial grounds justifying dismissal but also that it followed fair procedures before dismissal.

6. A civil servant who claims that he or she has been unfairly dismissed and who wishes to make a claim of unfair dismissal under the Acts, must give formal notice in writing to the Rights Commissioner or the Employment Appeals Tribunal (EAT) within six months of the alleged dismissal (this can be extended to 12 months in exceptional circumstances). The claim may be referred in the first instance to the Rights Commissioner or the EAT unless either party has objected in writing to the Rights Commissioner hearing the matter. The majority of claims are heard at first instance by the EAT. An appeal lies from the EAT to the Circuit Court within six weeks.

7. The forms of redress provided for in the Unfair Dismissals Acts comprise re-instatement in the old job (on the terms and conditions pertaining on the date of the award); re-engagement in the old job or in a suitable alternative job on conditions which the adjudicating body considers reasonable and financial compensation with a maximum of two years pay. (In accordance with Section 22 of the Civil Service Regulation (Amendment) Act 2005, the right to re-instatement or re-engagement means re-instatement or re-engagement in the grade or rank held by that civil servant prior to his or her dismissal). Compensation is based on financial loss and employees who have suffered no financial loss (have been immediately re-employed) as a result of an unfair dismissal, may be awarded a maximum of four weeks pay.

### **Application of Minimum Notice and Terms of Employment Acts 1973 to 2005**

1. The Minimum Notice and Terms of Employment Acts 1973 to 2005 now apply to civil servants other than those who are dismissed by Government.

2. The Acts prescribe the minimum periods of notice that must be given when terminating a person's employment. In addition the legislation requires written particulars of the terms of employment to be given.

3. If an employee has been in "continuous service" with the same employer for at least thirteen weeks, s/he is entitled to a minimum

period of notice before the employer may dismiss him/her. This period varies as follows:-

*Length of Service Minimum Notice*

Thirteen weeks to two years One week  
Two years to five years Two weeks  
Five years to ten years Four weeks  
Ten years to fifteen years Six weeks  
More than fifteen years Eight weeks

A civil servant shall be considered as having given continuous service, notwithstanding the fact that the civil servant may have served in more than one Department or Scheduled Office provided that the service would otherwise, by virtue of the provisions of the First Schedule of the Act of 1973, be considered to be continuous.

4. The Acts do not affect the right of an employer or an employee to terminate a contract of employment without notice due to the misconduct of the other party.

## **Appendix 2 - Serious misconduct**

Examples of serious misconduct include, but are not limited to:

- i. theft, fraud, embezzlement, misappropriation of funds, bribery or corruption, lack of due care for state resources
- ii. non-adherence to Civil Service codes of practice/policies
- iii. deliberate falsification of records, violation or misuse of confidential information or organisational property, material or equipment
- iv. unauthorised entry/access to computer and/or other records/files
- v. non adherence to organisation's e-mail, internet, IT, telephone policy
- vi. serious breaches of health and safety rules, fighting, assault on another person in the workplace
- vii. serious incapability through alcohol or being under the influence of illegal drugs or misuse of prescribed medication, possession and/or sale of illegal drugs
- viii. serious negligence which causes unacceptable loss, damage or injury
- ix. disruptive behaviour
- x. discrimination, bullying, harassment, sexual harassment
- xi. misrepresentation or misuse of authority
- xii. unauthorised absence, unacceptable attendance levels
- xiii. failure to comply with sick leave regulations

- xiv. engaging in prohibited activities
- xv. failure to disclose conflicts of interest
- xvi. improper influence to make personal/family gain or acceptance of improper gifts/hospitality, e.g. from commercial organisations
- xvii. engaging in political activity contrary to Civil Service rules
- xviii. disrespect for the law, e.g. knowingly acting in an illegal way that has implications for official employment/criminal conviction that has implications for official employment.

Agreed report, recording agreement

This report was adopted on 28 September 2006