

Directive 5

POLITICAL PARTICIPATION AND COMMUNICATIONS WITH THE MEDIA

Issued on 24 February 2011 Principal Permanent Secretary in terms of the Public Administration Act.

1. APPLICATION OF THIS DIRECTIVE

1.1. This directive:

- (a) regulates political participation by public officers with a view to reconciling the political impartiality of the Public Service with the personal rights of public officers;
- (b) regulates communications with and through the media by public officers in the light of the above; and
- (c) establishes similar provisions for the employees of government entities and agencies.

1.2. Sections 2 to 6 of this directive apply to ministries and departments and to public officers. Section 7 applies to government agencies and entities as defined by the Public Administration Act, and to their management and employees.

1.3. This directive supersedes the provisions of paragraphs 4.7.2, 4.9.4, 7.2 and 7.4 of the Public Service Management Code, which are hereby revoked.

2. GENERAL PRINCIPLES

2.1. It is of the utmost importance that Ministerial and public confidence in the impartiality of the Public Service shall not be impaired in any way. For this reason, activity in the political field, legitimately open to the ordinary citizen, is not considered compatible with the holding of certain posts in the Public Service.

2.2. All public officers need to ensure that they act with propriety at all times. Therefore any participation in political activities as is allowed in terms of this Directive must not bring them into conflict with their primary duty to serve the Government of the day. This is important in order to maintain Ministerial and public confidence in the impartiality of the advice given, and actions taken, by public officers.¹

2.3. On the other hand active participation in the political well-being of the country is to be encouraged. For this reason most posts² in the Public Service are classified as "politically free". However a number of posts are regarded as "politically restricted". The posts listed in Schedule A hereto are regarded as "politically restricted" so however that the said Schedule can be updated by the Principal Permanent Secretary. In the eventuality that a post is re-classified as "politically restricted" the re-classification of the post has to be announced at least three months in advance.³

2.4. Determining what is appropriate in any particular case does not just depend on whether the post is classified one way or the other. Much will depend on the extent of the participation of the individual, the nature of the issue, the position held by the individual and existing regulations within the organisation concerned. Thus, in the case of an officer who is also a Member of Parliament (MP), although the provisions of paragraph 2.6 apply, one cannot ignore the fact that the officer is also an MP representing a constituency.

2.5. Generally speaking posts in Scale 5 (inclusive) and upwards, are regarded as "politically restricted" since such posts are regarded as managerial posts⁴. However there may be instances where, having regard to the duties attached to the post, a specific post may be re-classified as "politically free". A post at this level is only regarded as "politically free" if it is not included in the Schedule referred to in paragraph 2.3 hereof. The decision of the Principal Permanent Secretary in this respect is final, so however that the Principal Permanent Secretary shall publicise this decision on the intranet.

2.6. In addition to what is stated in the preceding paragraphs, public officers occupying posts that are classified as "politically restricted", are precluded from indulging in any political activity. These officers are required to maintain a reserve in political matters and abstain from any public manifestation of their views which might associate them prominently with any political party. They are thus also debarred from being adopted as candidates in any election whilst occupying such posts.

2.7. If for political considerations, a conflict of interest arises, public officers may, at their own instance or at the instance of the Permanent Secretary, have to withdraw or be withdrawn from those areas of their duties giving rise to the conflict of interest. Where this is not possible, those concerned will have to refrain from participating in political activities. This applies also to those cases where, albeit after working hours,⁵ an officer who holds a "politically free" post is engaged in active canvassing on behalf of another candidate during an electioneering period.

2.8. Notwithstanding any other provision of this Directive, it stands to reason that no officer can indulge in political discussions or any other political activity during working hours or on official premises. Nor should any political activity be carried out on Government-owned property and/or premises occupied by a department, a Government entity or some such similar organisation. Nor may Government-owned or leased assets be used for such a purpose.

2.9. In general, no public officer shall be put in a position where s/he will have to resign unless s/he specifically prefers to. Therefore where a public officer is debarred from political participation and yet wishes to be involved in politics and political debate, s/he may:

- (a) renounce to his/her performance agreement if s/he is on a performance contract. In such a case s/he will be deemed to have abandoned the post; and/or

(b) seek to be transferred to a post that is politically free. Management should facilitate such a request so long as a vacancy is available or an employee exchange can be arranged; or

(c) apply for unpaid leave so however that s/he may seek re-instatement once s/he definitely renounces to political participation.⁶ Moreover for the purposes of this Directive, unpaid leave may be availed of even though the individual is still under probation in which case the period of probation shall be extended accordingly, notwithstanding any other provision of the Public Service Management Code.

2.10. The general principles set out in this section apply also to public comments and contributions to the media by public officers. This subject is however treated in more detail under section 5 of this Directive. In case of conflict limitedly with respect to the matters specified in section 5, that section overrides..

3. HOLDERS OF POSTS IN A PARTY STRUCTURE

3.1. For the purposes of this section:

(a) "party" means a political party, movement, organisation or other group or formation which has, as its main thrust, the formulation of political agendas;

(b) "post in a party structure" or "party post or posts" refers to a post in the party's core administration irrespective of whether the party has a statute or not; and

(c) it is irrelevant whether the post is salaried or not.

3.2. Without prejudice to the overriding principle that "public officers occupying posts that are classified as 'politically restricted' are precluded from indulging in any political activity",⁷ officers in salary Scale 6 (or equivalent) and lower may hold posts in a party structure. Such officers may apply for unpaid leave for the duration of their political appointment. However, if they are only required to attend to party matters outside working hours and only occasionally are they required to attend to such duties during working hours, then these officers may opt to avail themselves of their vacation leave entitlement or request temporary leave of absence on unpaid leave but in this case, not on grounds of public policy to cover the political activity during working hours. The granting of temporary leave of absence is always subject to the exigencies of the service.

3.3. Once the officer ceases to hold such party post or posts s/he will be automatically resume his/her duties as per the relative substantive grade on notifying the Principal Permanent Secretary of the change in circumstance. However the officer is also entitled to avail himself/herself of three working days unpaid leave after leaving the party post as s/he may need to settle any outstanding business.

4. ELECTIONEERING

4.1. Public Officers occupying posts that are "politically free" can apply for unpaid leave for political activity. In the case of electioneering for:

(a) The National Parliament, as from the first working day⁵ next following the proclamation of the relative writ;

(b) the Local Councils⁸ as from the first working day⁵ next following the date the election is officially announced; and

(c) the European Parliament as from the first working day⁵ of the calendar year during which the election is to be held;

so however that in each of the three cases, the prospective candidate has no option but to avail himself/herself of unpaid electoral leave for an uninterrupted period of at least 15 working days, of which at least two working days shall be the days prior to polling day and two other working days following the announcement of the election results;

Provided further that should the counting of the Local Councils vote be postponed because the election is held along with the National or European Parliament election, then the "uninterrupted period" rule will not apply and the public officers may resume duties. Should the officer opt to resume duty the two outstanding working days leave referred to above shall however be availed of when the counting of votes of the Local Councils election actually takes place.

4.2. Prospective candidates are to inform the line Permanent Secretary, through their Head of Department, as to their plans in terms of the preceding paragraph, not later than 48 hours after they declare their intention to contest an election. The Permanent Secretary will, in turn, inform the Public Administration HR Office for record purposes only.

National elections

4.3. Officers who are elected to Parliament shall have an option to:

(a) return to their duties from electoral leave as public officers in terms of the Members of Parliament (Public Employment) Act; or

(b) remain on unpaid leave.

4.4. The option referred to in paragraph 4.3 may be exercised only once in respect of each period of election to Parliament and shall be exercised by letter to the Principal Permanent Secretary, within seven days from the date of the official publication of the relative official electoral result, whereby the public officers exercising the option are declared elected to Parliament.

4.5. Officers taking up option (a) indicated in paragraph 4.3 shall be treated like any other public officers returning from unpaid leave. They shall however be subject to any special rules which the Prime Minister by order in the Government Gazette may make in the public interest, prohibiting them from serving in particular departments or offices or from performing particular duties. Such public officers shall be reassigned or excused from those duties as specified by that order.

4.6. Officers taking up option (b) indicated in paragraph 4.3 shall:

(a) be entitled to resume duties if they cease to be Members of Parliament irrespective of the duration of their absence provided that they resume duties within six months of their ceasing to be Members of Parliament. Should the officers seek re-election to Parliament at the end of their term of office, the interim periods between one legislature and another will also be considered as unpaid leave unless the officers concerned do not resume duties in such interim periods; and

(b) have their period of unpaid leave reckonable for Treasury pension purposes, provided that the same period is not taken into consideration for the purposes of the computation of a Members of Parliament pension. If pensionable public officers become also eligible to a Members of Parliament pension then this period of service which may be reckonable for both pensions shall only be taken into account in reckoning the higher of the two pensions.

4.7. If in the course of the tenure of their parliamentary appointment, public officers are appointed or promoted to a grade which is classified as politically restricted, they shall retain what is due to them through automatic progression but, unless the new post is one they specifically applied for, will have the option to ask for a postponement of their appointment or promotion. This applies both to elected public officers who opt to return to their duties and also to those who remain on unpaid leave.

4.8. Officers who have not been elected to Parliament shall be obliged to return to their duties from electoral leave not later than seven days from the date of the official publication of the relative electoral result.

4.9. Officers who are elected to Parliament and prefer to resign their Public Service appointment instead of taking up either of the options listed in paragraph 4.3 shall continue to enjoy their eligibility to a Treasury pension under the Pensions Ordinance (Cap. 93). Likewise public officers who resign while Members of Parliament, and in the meantime become entitled to any benefits under the Pensions Ordinance (Cap. 93) on account of their death, age or otherwise, shall be paid all such benefits under the same terms and conditions as if they had just been re-instated in Government service prior to the date of such entitlement. Government undertakes to pay these benefits under the Pensions Ordinance (Cap. 93) on the date on which such benefits are normally paid to other serving officers.

4.10. Officers who resign on being elected as Members of Parliament are also entitled to be re-instated in the public service in accordance with the re-employment and re-instatement policy that is applicable at the time of the request for reinstatement.

Local Council elections

4.11. Officers elected to serve on Local Councils may opt to take unpaid leave, so however that if they choose to return to their duties as public officers, they are to be guided by the General Principles enunciated in section 2, in particular, but not limitedly, paragraphs 2.2 to 2.7 inclusive.

European elections

4.12. Officers who are elected to the European Parliament shall not be required to resign their public office, unless they opt to do so, and shall enjoy such rights and be subject to such obligations and conditions as any other officer in the same grade and position.

4.13. Officers elected to the European Parliament shall utilise their vacation leave or unpaid leave to attend to their duties abroad. The unpaid leave shall be concomitant with the period that they are Members of the European Parliament.

5. CONTRIBUTIONS TO THE MEDIA AND PUBLIC COMMENTS BY PUBLIC OFFICERS

Definition of "public comment"

5.1. "Public comment" means public comment on matters relating to public policy and political issues. It includes public speaking engagements, comments on radio, TV, and the electronic media (inclusive of internet forums and social networking websites), and expressing views in letters to newspapers or in books, journals or notices or where it might be expected that the publication or circulation of the comment will spread to the community at large.

Public comment in a personal capacity

5.2. Public officers in scales 6 and lower are allowed to engage in public comment in a personal capacity. Moreover they are allowed to do so only as long as they ensure that their comments are being put forward solely as a matter of personal opinion⁹. It is up to the officers concerned to ensure that their comments are not in any way to be interpreted as being an official comment of the Government or the department where the public officer is employed at the time. But public officers are to refrain from commenting on matters that pertain to their ministry and in particular their area of work, even if in a personal capacity.

5.3. While public officers, as members of the community, have the right in a personal capacity to make public comment and to enter into public debate on political, administrative and social issues, there are some circumstances in which public comment is inappropriate. These include:

(a) the possibility that the public comment, although made in a private capacity, could be in some way linked or interpreted to be an official comment of Government or of the public officer's department; and

(b) where public comment, regardless of the connection or lack of connection with public officers' normal duties, amounts to criticism sufficiently strong or persistent to give rise to the public perception that the officers are not prepared to implement or administer the policies of the Government of the day as they relate to their duties; and

(c) where the public officer is in scale 5 and above.

5.4. Public officers are not to disclose official information or documents acquired in the course of their employment when engaging in public comment in a personal capacity.

Interviews

5.5. A public officer, whether on duty or on leave of absence, is not to comment publicly or allow himself/herself to be interviewed on matters concerning Government policy and programmes without prior authority to do so. Requests for such authority are to be submitted to the Permanent Secretary of the relative ministry.

6. ISSUE OF OFFICIAL INFORMATION

Definition of "media" and "communication"

6.1. "Media" is taken to include all mass media, such as newspapers, journals, radio, TV, internet, etc., whether local or foreign, while "communication" means any sort of contact.

Departmental media relations

6.2. The sole channel for communication with the media on matters relating to the Public Service is the Director of Information. This includes cases where heads of department need to answer letters, articles etc., which appear in the local and foreign press. It applies a fortiori to any such press replies required to be given by heads of section in departments. Anything for the media, originating from such sections, is invariably to be sent to the Director of Information by the Head of Department and Minister concerned. Anything published in the media on behalf of a Government department or official is to appear over the signature of the Director of Information.

6.3. Public officers may be required to engage in public comment through the disclosure of official information or documents, as part of their duties, when required by law or when proper authority has been given. In such cases, the Permanent Secretary is to be informed immediately that this is being requested, and any comments made by public officers in these instances should be confined to factual information and should not express opinion on official policy or practice.

Publication of media releases

6.4. Media releases should be initialled by the appropriate Minister, Permanent Secretary, or whichever official has been delegated accordingly. The guidelines issued by the Department of Information are to be duly adhered to.

6.5. Public officers should refrain from answering questions put to them by representatives of the media, irrespective of whether the information to be imparted is considered significant, trivial or already public knowledge. All inquiries should invariably be directed to the Department of Information. Similarly, requests for press coverage of any Government activity should be channelled through the Director of Information. Tip-offs to the press by public officers regarding any item of news which directly or indirectly concerns Government or which concerns third parties but takes place within Government precincts are similarly strictly prohibited.

7. PROVISIONS APPLYING TO GOVERNMENT AGENCIES AND ENTITIES

7.1. The provisions of sections 2 to 4 of this Directive shall be taken as applying to Government agencies and entities and to their managers and employees, subject to the following qualifications:

(a) The reference to posts in Scale 5 and upwards in paragraph 2.5 shall be understood as a reference to senior posts in the agency or entity concerned, and analogous references elsewhere shall be understood in a corresponding manner.

(b) It shall be up to each agency and entity, subject to the approval of the responsible Permanent Secretary, to establish the cut-off point above which positions are to be considered senior posts for the purposes of this Directive, and to draw up a list of politically restricted posts for the purpose of paragraph 2.3. Amendments to the list may likewise be made by the agency or entity with the approval of the responsible Permanent Secretary.

(c) Public officers deployed with a Government agency or entity may participate in political activities only if both their post with the government agency or entity and their Public Service substantive grade is classified as 'politically free', so long as they retain their "public officer" status.

(d) Where action is needed to resolve conflicts as contemplated by paragraph 2.7, this shall be taken by the respective agency or entity.

(e) Prospective election candidates who are agency or entity management or employees are to inform their chief executive officer of their plans. The CEO is to advise the responsible Permanent Secretary but the requirement to inform the Public Administration, HR Office as per paragraph 4.2 does not apply unless the officer has retained his/her "public officer" status..

(f) It is at the discretion of agencies and entities, subject to the approval of the responsible Permanent Secretary, as to whether to offer employees who are elected to Parliament the option set out at paragraph 4.3(a) since the Members of Parliament (Public Employment) Act applies only to public officers. Needless to say, each agency and entity should adopt consistent policy in this regard.

(g) Similarly, it is up to each agency and entity, subject to the approval of the responsible Permanent Secretary, to adopt a policy on re-employment or re-instatement for the purposes of paragraph 4.10.

7.2. The provisions of section 5 of this Directive shall likewise apply to the employees of Government agencies and entities.

7.3. It shall be up to each Minister to regulate media relations by the agencies and entities for which he or she is responsible. Each agency and entity should liaise with the responsible Permanent Secretary with a view to establishing appropriate rules unless they are already in place.

8. IMPLEMENTATION AND TRANSITORY PROVISIONS

8.1. The Public Administration HR Office shall be responsible for the administration of this directive across the whole Public Administration.

8.2. Failure to abide by the provisions of this directive, particularly those concerning non-permissible activities in official premises or on the part of politically restricted posts, will be regarded as a serious disciplinary offence.

8.3. With respect to Government agencies and entities, it is the responsibility of the respective Permanent Secretary to ensure that the lists at sections 7.1.b and other structures listed in paragraph 7 are in place by the 29 April 2011.

8.4. This Directive is effective as from 1 June 2011. However, any person who is currently an elected Member of Parliament, Member of the European Parliament or Local Councillor and/or occupying a post in a party structure, s/he may retain such position until the end of their current term of appointment.

8.5. This directive shall apply indefinitely unless revoked.

¹ For further reading see the "Principles" section in the Code of Ethics attached to the Public Administration Act, Cap. 497.

² Unless otherwise indicated, the words "post" and "Scale" are used as an all-encompassing terms and therefore reference to posts/grades also includes, amongst others, grades, scales, positions, contractees, irrespective of whether the individual is engaged on a full- or part-time basis. On the other hand, reference to scale includes reference to positions in the same level unless otherwise expressly stated.

³ If the post is politically restricted it is immaterial whether the individual takes up a part-time lectureship at University. This is being pointed out by way of clarification in view of what was stated in article 7.2.2.5 of the previous edition of the Public Service Management Code.

⁴ If an employee is in a lower scale or at a lower pay point, on reaching Scale 5 or equivalent, this provision applies.

⁵ In this Directive "working hours" or "working day/s" mean both the official time-table of the place of work as well as the individual's own working schedule as the case may be.

⁶ In this Directive "unpaid leave", unless otherwise indicated, means leave on grounds of public policy such that the officer does not lose any inherent rights.

⁷ Vide "General Principles" in particular paragraph 2.6 of this Directive.

⁸ In this document the word "Local Council" includes also Administrative Committees set up in terms of article 47 of the Local Councils Act, Cap. 363

⁹ Public officers may need to identify themselves and their position in order to clarify that their input is a matter of personal opinion

Principal Permanent Secretary

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