

**Reference No:** E109/36/07;      **Date:** 15/11/2007

**Circular 37/2007:- Guidance Note: to all Personnel Officers on the use of Excluding Orders as provided for under the Public Service Management (Recruitment and Appointments) Act, 2004**

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A Dhuine Uasail,

**Background:**

The Public Service Management (Recruitment and Appointments) Act, 2004 was enacted in October 2004. The Act provides for a new system of recruitment licensing within the Civil Service and for the establishment of the Commission for Public Service Appointments (CPSA) and the Public Appointments Service (PAS).

The Public Appointments Service (PAS) acts as the centralised recruitment and selection body for the Civil Service and can be contacted at [www.publicjobs.ie](http://www.publicjobs.ie) .

The CPSA is responsible for setting standards for recruitment and selection (including promotion) and is charged with monitoring compliance with those standards by all Civil Service bodies. The standards for recruitment and selection are set out in Codes of Practice published by the CPSA and are available at [www.cpsa-online.ie](http://www.cpsa-online.ie) .

The Act provides for recruitment to established and unestablished posts in the Civil Service to be carried out under licence and in accordance with the CPSA's Codes of Practice. The Codes provide for the core principles of probity and fairness, selection on the basis of merit and the implementation of best practice in recruitment and selection.

**Exclusions from the Act**

The Act also provides for the exclusion of appointments to certain posts from the provisions of the Act. **Section 7** covers excluded positions generally and provides for the exclusion of appointments to a range of posts including;

- officer holders under the Constitution
- appointment made by the President
- appointment made by the Government
- appointment to the position of an officer of the Houses of the Oireachtas
- appointment to the position of special adviser
- appointment in the public interest

**Section 8** provides for the exclusion by Order granted by the CPSA of certain unestablished posts in the Civil Service. Under Section 8, an application can be made by a Department/Office requesting the CPSA to declare that a specified unestablished position shall be an excluded position for the purposes of the Act. The CPSA shall not make such an Order except at the request of the authority duly authorised under section 8(3) of the Act and with the consent of the Minister for Finance.

Requests for the granting of Excluding Orders under Section 8 of the Act must be made in writing to the CPSA by Departments /Offices. The exclusion process is intended to be used where - for valid business reasons - recruitment needs to take place outside the provisions of the Codes of Practice. The time span of an Excluding Order is to be kept to an absolute minimum. In future, Departments/Offices should note that sanction for Orders for periods in excess of three months will only be granted in limited circumstances, and only when supported by a convincing business case.

It was expected that the 2004 Act would result in a fall in applications for Excluding Orders as Departments/Offices began to use recruitment licences. The Department and the CPSA are both concerned to ensure that the Excluding Order Process is fully understood by Departments / Offices and is used only in an appropriate manner. Following consultations between the Department of Finance and the CPSA, it has been decided to issue the attached guidelines on the use of Excluding Orders.

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