

## Appendix 2: Regulatory Impact Analysis

<b>SUMMARY OF REGULATORY IMPACT ANALYSIS (RIA)</b>	
<b>Department:</b> Public Expenditure and Reform	
<b>Title of Legislation:</b> Civil Service Regulation (Amendment) Bill 2018	
<b>Stage:</b> Draft	<b>Date:</b> March 2018
<b>Related Publications:</b> Civil Service Renewal Plan (available at <a href="http://www.csvision.per.gov.ie">www.csvision.per.gov.ie</a> ) People Strategy for the Civil Service 2017-2020 (available at <a href="http://www.hr.per.gov.ie">www.hr.per.gov.ie</a> )	
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<b>Background</b> Action 11.3 of the Civil Service Renewal Plan is to “strengthen the disciplinary code to enable managers to take more effective and decisive action as required to tackle underperformance, including exits”. A review of the Civil Service Disciplinary Code was a key commitment delivered within the first 200 days of the Civil Service Renewal Plan. Under this review the framework in place for managing underperformance and discipline was examined which highlighted that the process for managing discipline is unnecessarily complex in comparison with requirements under employment law and practice outside of the civil service. As part of the review it was determined that in order to streamline the disciplinary decision making and appeals process and to bring civil service practice more in line with external practice, legislative change would be required. On the 7 <sup>th</sup> of July 2015, the Government decided to amend the Civil Service Regulation Acts 1956 – 2005 and the Public Service Management Act 1997 to provide that disciplinary action up to and including dismissal can be devolved below the level of the head of the organisation (“Appropriate Authority”).  One of the strategic priorities of the People Strategy for the Civil Service 2017-2020 is that we “Build, Support and Value Managers as People Developers”. The key provisions of the proposed legislative amendments will contribute to the achievement of this priority by empowering managers to manage their staff effectively rather than having all serious sanctions determined at the very top of an organisation.  Because the decision to legislate has already been taken by the Government this Regulatory Impact Analysis will focus on options for how best to implement this decision.	
<b>What are the policy objectives being pursued?</b>	
<ul style="list-style-type: none"><li>• To give full effect to the legislative intent behind the Public Service Management Act 1997, i.e. to devolve responsibility for disciplinary matters below the level of Secretary General/Head of Scheduled Office;</li><li>• To allow for the function of dismissal to be assigned below the head of the organisation;</li><li>• To enable the introduction of a binding internal appeal for civil servants;</li><li>• To facilitate a two-stage appeals process for the most serious disciplinary sanctions, i.e. an internal and external appeal;</li><li>• To reduce delays related to the current structure of disciplinary and appeals processes;</li><li>• To bring the civil service disciplinary and appeals process in line with external practice;</li></ul>	

- To empower civil service managers to manage their staff effectively by providing access to a fuller range of discipline management tools; and
- To allow for more flexibility in the management and reform of the civil service disciplinary process and related appeals process.

**Options considered:**

1. Do Nothing.
2. Consolidate, restate and amend legislation: Create a new consolidated Act to replace the Civil Service Regulation Acts 1956 – 2005 and the Public Service Management Act 1997 to modernise and simplify the current legislative framework.
3. Amend existing legislation: an Act to amend the Civil Service Regulation Acts 1956 – 2005 and the Public Service Management Act 1997 which will change the specific sections necessary to effect the Government Decision, revise some of the outdated provisions and provide for related matters.

Preferred option: Option 3 is considered the best option to achieve the policy objectives within the desired timeframe. Amending the existing legislation would allow for the Government decision to be fully realised within the shortest timeframe and with less resources than a full consolidation, restatement and amendment of the legislation would demand.

**OPTIONS**

<i>Costs</i>	<i>Benefits</i>	<i>Impacts</i>
<b>Option 1: Do Nothing</b>		
No direct financial costs	No benefit	The Government Decision would not be implemented and there would be no scope to amend the Disciplinary Code to further simplify and streamline the civil service disciplinary process.
<b>Option 2: Consolidate, restate and amend legislation</b>		
Significant administrative overhead	Comprehensive reform and consolidation of existing Acts to modernise and simplify the current legislative framework.	Fully meets the requirements of the Government decision, however this level of reform would require significant resources and an extensive timeframe.
<b>Option 3: Amend existing legislation</b>		
Moderate administrative overhead	Administratively simpler, permitting the necessary reform to take place in the shortest amount of time possible.	Fully meets the requirements of the Government decision while incurring moderate administrative costs and achieving the necessary outcome in the shortest timeframe.

## **REGULATORY IMPACT ANALYSIS (RIA)**

### **1 Purpose**

1.1 This Regulatory Impact Analysis (RIA) examines the proposed Civil Service Regulation (Amendment) Bill 2018.

### **2 Policy Context**

2.1 A Review of the Civil Service Disciplinary Code was a key commitment delivered within the first 200 days of the Civil Service Renewal Plan. This review highlighted that the process for managing discipline in the civil service is unnecessarily complex in comparison to requirements under employment law and practice outside of the civil service. As part of the review it was determined that in order to be in a position to further streamline the disciplinary decision-making and appeals process, and to bring civil service practice more in line with external practice, both the Civil Service Regulation Acts 1956 – 2005 (CSRAs) and the Public Service Management Act 1997 (PSMA) require amendment.

2.2 The principal objective of the Civil Service Regulation (Amendment) Bill 2018 is to give effect to the Government Decision of 7th July 2015 to amend the CSRAs and the PSMA to provide that disciplinary action up to and including dismissal can be devolved below the level of the head of the organisation (“Appropriate Authority” - see section 4.2). This legislative amendment will contribute towards the realisation of the commitment in the Civil Service Renewal Plan (Action 11.3) to strengthen the Disciplinary Code to enable civil service managers to take effective and decisive action as required to tackle underperformance, including exit.

2.3 One of the strategic priorities of the People Strategy for the Civil Service 2017-2020 is that we “Build, Support and Value Managers as People Developers”. The key provisions of the proposed legislative amendments will contribute to the achievement of this priority by empowering managers to manage their staff effectively rather than having all serious sanctions determined at the very top of an organisation.

2.4 Other miscellaneous legislative amendments which are proposed in the draft Heads of Bill are outlined in sections 4.18 – 4.28 of this document.

2.5 Because the decision to legislate has already been taken by the Government, this Regulatory Impact Analysis will focus on options for how best to implement this decision.

### **3 Restrictions of the current legislative framework**

3.1 Within the current legislative framework the extent to which the disciplinary decision making and subsequent appeals process in the civil service can be reformed to reduce delays and remove unnecessary and overly complex steps is highly restricted. The PSMA provides that the Secretary General/Head of Scheduled Office can assign all functions in respect of disciplining staff, except dismissal. However, the CSRAs provide that the Appropriate Authority must be the final decision maker in respect of dismissal, demotion, suspension without pay and reduction in salary (including withholding of an increment). Unlike the PSMA, which explicitly provides for the assignment of functions, there is no express provision under the CSRAs allowing responsibility for taking disciplinary actions to be assigned below the level of the Appropriate Authority. The interaction of these provisions is such that only the Appropriate Authority can decide to impose serious disciplinary sanctions, including dismissal.

3.2 As all serious sanctions must be decided at the very top of the organisation, there is a significant delay between the point when a manager recommends that disciplinary action should be taken and when the sanction is actually imposed by the Appropriate Authority. This is primarily due to the complexity of the current appeals process whereby the appeal body has to hear the appeal before the Appropriate Authority comes to a decision to discipline and before any serious disciplinary sanction can be imposed. A recommendation to the Appropriate Authority is the only possible outcome of an appeal. This structure is very unusual in the context of disciplinary procedures in other organisations and has the consequence that managers are not empowered to manage their staff effectively.

3.3 Requiring all serious disciplinary sanctions to be decided by the Appropriate Authority means that:

- an internal appeal is not possible for serious disciplinary sanctions (as there is no one more senior than, or equally senior to, the decision maker, i.e., the Appropriate Authority, to hear an appeal within the organisation);
- a binding appeal to another person/body is not possible (as the Appropriate Authority must be the final decision maker in relation to serious disciplinary matters); and
- The Appropriate Authority must make the final decision on serious disciplinary matters and so the decision of an appeal body can only be a “recommendation” to the Appropriate Authority. If the appeal was heard by the appeal body after the Appropriate Authority took a decision, the recommendation of the appeal body would be made to the original decision maker who would then make a further decision based on this recommendation on whether to discipline. This is a breach of fair procedure as the decision maker is the same before and after the appeal.

#### **4. Proposed legislative amendments**

4.1 In order to significantly streamline the disciplinary decision making and appeals processes, the restrictions in the current legislative framework need to be removed from the CSRAs and the PSMA. Legislative change would allow for the devolution of disciplinary powers and functions below the level of the Appropriate Authority and facilitate the introduction of a binding internal appeal.

##### ***Appropriate Authority (amendments to the CSRAs)***

4.2 Key to implementing this change are proposed legislative amendments that would define the Appropriate Authority for all staff regardless of grade as the Secretary General/Head of the Scheduled Office. “Appropriate Authority” is a term used in the CSRAs to refer, *inter alia*, to the individual who can decide to impose disciplinary sanctions on civil servants. Under the current legislative framework, for the generality of civil servants, the Appropriate Authority for Principal Officers and above is the relevant Minister and the Appropriate Authority for Assistant Principals and below is the Secretary General/Head of Scheduled Office.

4.3 It is proposed under the Civil Service Regulation (Amendment) Bill 2018 to amend the definition of Appropriate Authority so that the relevant disciplinary decision maker for the generality of staff would be the Secretary General/Head of Scheduled Office.

4.4 Under the current legislation the Appropriate Authority for all Secretaries General is the Government. The Appropriate Authority for a Head of a Scheduled Office is either: (i) the

Government where the Head has been appointed by the Government, or (ii) the relevant Minister where the Head has not been appointed by the Government. Regardless of who the Appropriate Authority is, however, the Government is to carry out dismissals of all Heads of a Scheduled Office. In order to provide greater consistency and clarity, it is proposed under the Civil Service Regulation (Amendment) Bill 2018 to amend the definition of Appropriate Authority so that the Government is the Appropriate Authority for all Heads of Scheduled Offices.

4.5 The amendment of the definition of Appropriate Authority will also affect the implementation of section 5 *Tenure of office of established civil servants*. It is proposed that subsection (5) be deleted as there would be no need to provide for Ministers to receive a recommendation from the relevant Secretary General/Head of Scheduled Office to dismiss an established civil servant as the Minister would no longer be the Appropriate Authority for a dismissal; this would be the role of the Secretary General/Head of Scheduled Office.

#### ***Statutory Civil Service Bodies***

4.6 A number of organisations have defined the Appropriate Authority for their organisation, within the meaning of the CSRAs, in primary legislation other than the CSRAs. It is proposed that this Bill will supersede these pieces of legislation.

4.7 Many statutory Civil Service bodies have arrangements regarding the appointment, dismissal, setting of terms and conditions, etc. of staff specified in their associated primary legislation. As the functions set out in these pieces of legislation overlap with the functions of the Appropriate Authority under the CSRAs and the PSMA, the individual responsible for carrying out the particular functions can be at variance between the two pieces of legislation. In order to increase clarity and consistency, it is proposed to include a new subsection in this Bill providing that the definition of an ‘Appropriate Authority’ and relevant roles and functions of an Appropriate Authority as specified in the CSRAs and PSMA take precedence over any other related provisions in other pieces of primary legislation.

#### ***Proposed Enabling Provision in the CSRAs – Assignment of roles and functions of the Appropriate Authority***

4.8 It is proposed that the amendments to the definition of Appropriate Authority will be complemented by the inclusion of an enabling provision allowing the Appropriate Authority to assign the responsibility for the performance of any function of an Appropriate Authority to other officers.

4.9 In respect of discipline, including dismissal, it is not intended to be prescriptive in the legislation about who the Appropriate Authority should assign their disciplinary functions to. It would be a matter for each organisation to determine which officer(s) is/are the most appropriate to carry out the role of decision maker in the disciplinary process in light of the circumstances of the case, the severity of the sanction and the grade of the civil servant being disciplined.

4.10 By devolving the responsibility for the performance of disciplinary functions down the organisation a binding internal appeal would be possible. The assignee of the decision making functions would be in a position to impose sanctions up to and including dismissal and an assignee of equivalent or higher grade would hear an associated appeal.

4.11 From a policy perspective it is also intended to offer a two-stage appeals process for all serious sanctions in line with what is currently offered for less-serious sanctions under the current Civil Service Disciplinary Code. Sanctions would be imposed in circumstances following an unsuccessful internal appeal thereby curtailing the current situation of prolonged timeframes before the imposition of sanctions. The civil servant would subsequently have recourse to an external appeal.

4.12 For disciplinary matters relating to Assistant Principals and below, the assignment of disciplinary functions might be in the nature of a general assignment of functions, e.g., assign responsibility for all aspects of the disciplinary process for Assistant Principals and below to all Assistant Secretaries and Principal Officers. The further assignment of responsibility for the performance of functions by individual officers, or grade or grades of officer below Principal Officer level could be handled administratively.

4.13 For disciplinary matters relating to Principal Officers and above it may be more appropriate for an individual assignment to be given in each instance by the Secretary General to an individual senior officer to hear a particular matter. This is because objectivity gets more difficult to facilitate the more senior the civil servant being disciplined is as layers of seniority and numbers of more senior managers reduce in the organisation. The Secretary General/Head of Scheduled Office should retain the discretion as to who, specifically, should be the decision-maker at the disciplinary meeting and on appeal for senior civil servants.

4.14 As a consequence of the proposed amendment of the definition of Appropriate Authority a Secretary General/Head of Scheduled Office, or equivalent, would be enabled to require the retirement of a civil servant on reaching retiring age and to require the resignation of staff on the ground of ill-health, in accordance with the provisions of section 8 *Retiring age for civil servants* and section 9 *Retirement on the ground of ill-health*. It is not proposed to allow the Appropriate Authority to assign these particular powers and functions to an officer below the grade of Principal Officer or equivalent.

#### ***Associated proposed amendments to the Public Service Management Act 1997***

4.15 It is necessary to amend the PSMA to effect the policy change outlined in the Government's decision of July 2015. It is proposed that section 4 *Responsibility and accountability within Departments and Offices* needs to be amended to remove the distinction between the management of staff below the grade of Principal Officer and those at Principal level and above. The Secretary General/Head of a Scheduled Office would be responsible for the management of all staff within their organisation, regardless of grade.

4.16 Under section 9 of the PSMA, responsibility for dismissals currently rests with the Minister or Secretary General/Head of Scheduled Office and he/she cannot assign this role to another individual. In addition to amending section 4, so that the Secretary General/Head of a Scheduled Office would be responsible for the management of all staff within their organisation, it is also proposed that section 9 be amended to allow the Secretary General/Head of Scheduled Office to assign this role to another officer/grade(s) of officer. This will bring this provision in line with the proposed amendments to the CSRAs, in particular with the proposed new enabling provision that would allow the Appropriate Authority to assign the performance of their functions to another officer/grade(s) of officer.

4.17 It is proposed that section 9 of the PSMA would also be amended to remove the reference to “the area of assignment” which creates ambiguity in the interpretation of this section.

#### ***Other proposed legislative amendments***

4.18 In addition, further amendments are proposed to various sections of the CSRAs to bring the language used in the legislation into line with that used in the “Interim” Disciplinary Code (see section 5) and to modernise the approach in certain provisions used in the legislation.

4.19 *Section 1 (CSRAs) Interpretation:* section 1 of the CSRAs deals with the definitions that are used in the Acts. It is proposed that the definition of “established service” be amended so that it refers to the Superannuation Acts 1834 to 1963. Currently the definition only refers to the Superannuation Acts 1834 to 1954. It is also proposed that the definition of “the Minister” be amended to refer to the Minister for Public Expenditure & Reform rather than the Minister for Finance. A definition for ‘Ministerial Private Office appointment’ is also proposed.

4.20 *Section 4 (CSRAs) Exercise of powers under sections 6 and 7 in relation to members of the staff of the National Library of Ireland:* it is proposed that section 4 of the CSRAs, referring to the staff of the National Library of Ireland, would be repealed as the Council of Trustees, mentioned therein, ceased to exist from May 3<sup>rd</sup> 2005 and the staff of the National Library are now public servants, not civil servants and so the CSRAs no longer apply to them. If this repeal is approved there will be consequential amendments to Sections 6 and 7 of the CSRAs.

4.21 *Section 7 (CSRAs) Persons appointed on probation to established positions:* it is proposed to amend section 7 to provide that certain roles and functions that were originally the responsibility of the Minister for Finance (now the Minister for Public Expenditure and Reform) would be updated to allow for these roles and functions to be carried out by the Appropriate Authority and assigned to another officer or grade(s) of officer. It is proposed that the relevant Appropriate Authority would now be responsible for:

- reverting a civil servant who previously held an established position and who has failed to fulfil the conditions of their probation to a grade that is the same or an equivalent or lower grade to their previous position;
- designating the established position to which a civil servant who has failed to fulfil the conditions of their probation should be reverted;
- fixing conditions of probation and other conditions for a civil servant who held his/her previous position in a probationary capacity and is reverted to a probationary position;
- reverting a civil servant who previously held an unestablished position and who has failed to fulfil the conditions of their probation to a grade that is the same or equivalent or lower to their previous position; and
- designating the unestablished position to which a civil servant who has failed to fulfil the conditions of their probation should be reverted.

4.22 *Section 8A (CSRAs) Appointment of civil servants beyond normal retirement age:* it is proposed that section 8A be amended to provide for a maximum appointment age to the civil service. Section 8A was originally included in the CSRAs to allow the appointment of persons over 65 to the civil service to take account of the abolition of the retiring age under section 8(5A) as inserted by section 3 of the Public Service Superannuation (Miscellaneous Provisions)

Act 2004. This section was not amended when the retirement age of 70 was introduced under the Public Service Pensions (Single Scheme and Other Provisions) Act 2012.

4.23 *Section 9 Retirement on the ground of ill health*: it is proposed to make a number of changes to this section. First, it is proposed that section 9(1) be amended to provide that a “medical referee” means a registered specialist medical practitioner who is suitably qualified to assess medical fitness for work, who is not a treating doctor of the civil servant and who is appointed by the Chief Medical Officer. Second, it is proposed to remove the reference to the payment of fees and travel expenses for a medical referee from section 9(2) as these issues are more appropriately dealt with in guidance ([Circular 22/2007 refers](#)). Third, it is proposed that section 9 be amended to provide that nothing in that section or any provision of the CSRAs prejudices the lawful termination of the appointment of a civil servant on grounds related to capability.

4.24 *Section 13 (CSRAs) Suspension of civil servants from duty*: the intention in proposing to amend this section is to modernise the language used in the legislation. References to “grave” misconduct would be replaced with “serious” misconduct and references to “irregularity” to be removed as irregularity is comprehended by references to “misconduct”.

4.25 *Section 15 (CSRAs) Disciplinary measures*: there are a number of amendments proposed to this section. It is proposed:

- that the definition of when Disciplinary Measures can be taken be amended to remove the references to “...irregularity, neglect, unsatisfactory behaviour”. The intention is that each of these instances is comprehended by reference to either misconduct or underperformance. This approach is proposed in order to modernise the language used in the legislation;
- to remove the qualification “in relation to his official duties” from the section as actions taken by civil servants outside of the workplace can, in some instances, be construed as misconduct or underperformance that warrants disciplinary action;
- to remove the three specific references to disciplinary measures. All disciplinary measures available to the Appropriate Authority are set out in the Civil Service Disciplinary Code and it is proposed that the new Bill will refer to the content of the Code.
- to remove the provision in this section allowing a civil servant to make representations to the Appropriate Authority before any disciplinary action is taken. The arrangements proposed would allow for an internal appeal to a more senior manager who may not be the Appropriate Authority. It is not envisaged that an individual would also have an additional appeal to the Appropriate Authority;
- to repeal subsection (4), which requires that “measures aimed at improving the performance of the civil servant through training and development” be taken, as it is considered that it is more appropriate to address this level of detail in guidance rather than in legislation. Placing this provision in the legislation sets too high a bar for civil servants when compared with other private and public sector employees and is considered superfluous in a modern restatement of the legislation;
- to include Heads of Scheduled Offices in the exclusion provision that provides that section 15 does not apply to Secretaries General or Revenue Commissioners or the Clerk of Dáil Éireann.



4.26 *Schedule 2 (CSRAs) Scheduled Offices*: It is proposed that the Chief State Solicitor's Office and the Irish Prison Service be added to Schedule 2 of the Civil Service Regulation Acts 1956 – 2005 so that the Chief State Solicitor and the Director General of the Irish Prison Service would be the Appropriate Authority for all staff in their respective organisations.

4.27 *Section 2 (CSRA 1958) Tenure of office of persons appointed to excluded positions*: it is proposed that, given that section 4 (which provides for the dissolution of the Civil Service Commission and Local Authority Commission) and section 8 (excluded unestablished positions) of the Public Service Management (Recruitment and Appointments) Act 2004 are in place, section 2 of the CSRA 1958 is redundant and should therefore be repealed.

4.28 *Section 11 (PSMA) Special Advisers*: it is proposed to facilitate the appointment of work-sharing employees as Special Advisers. Currently, the wording of Section 11(1) of the Public Service Management Act 1997 limits the number of Special Advisers who may be appointed by a Minister of the Government to two full-time positions (and by a Minister of State to one). These limits appear to apply, whether office holders are full time or work-sharing. The purpose of the amendment is to allow for the appointment of two or more Special Advisers to one Special Adviser post, to allow for work-sharing arrangements, which are available for civil servants generally, to be granted to Special Advisers. It is also proposed to allow for the temporary replacement for Special Advisers on long term leave. This is to be achieved without the temporary replacement being considered to form part of the total number of Special Advisers.

## **5. Review of the Civil Service Disciplinary Code: Interim and Final**

5.1 A two-stage approach is being taken to revising the Code. In the first instance it has been amended on an interim basis, streamlining processes to the greatest extent possible within the existing legislative framework. The current Civil Service Disciplinary Code, which incorporates these amendments, was agreed with the staff side and has been in effect since September 2016. If the CSRAs and the PSMA are amended to provide that disciplinary action up to and including dismissal can be devolved below the level of the Appropriate Authority, a 'final' version of the Disciplinary Code will be prepared to reflect the new legislative framework. Consultations will then be held with the staff side on this version of the Code.

## **6. Objectives**

6.1 The primary objective of this piece of amending legislation is to implement the Government Decision to amend the CSRAs and the PSMA to provide that disciplinary action up to and including dismissal can be delegated below the level of the Appropriate Authority and, thereby, to contribute to the realisation of the commitment in the Civil Service Renewal Plan (Action 11.3) to strengthen the Disciplinary Code to enable managers to take effective and decisive action as required to tackle underperformance, including exits.

6.2 The primary objective of the amending legislation would also contribute to one of the key priorities of the People Strategy for the Civil Service 2017-2020, i.e., "Build, Support and Value Managers as People Developers" as it would empower managers to manage their staff effectively rather than having all serious sanctions determined at the very top of an organisation.

6.3 The opportunity is also being taken to update and modernise some of the language and provisions in the CSRAs the Principal Act of which is now over 60 years old.

6.4 More specifically the key objectives of the legislation are:

- To give full effect to the legislative intent behind the Public Service Management Act 1997, i.e. to devolve responsibility for disciplinary matters below the level of Secretary General/Head of Scheduled Office;
- To allow for the function of dismissal to be assigned below the head of the organisation;
- To enable the introduction of a binding internal appeal for civil servants;
- To facilitate a two-stage appeals process for the most serious disciplinary sanctions, i.e. an internal and external appeal;
- To reduce delays related to the current structure of disciplinary and appeals process which in turn improves fair procedures and may reduce stress associated with protracted timeframes in a disciplinary process;
- To bring the civil service disciplinary and appeals process in line with external practice;
- To empower civil service managers to manage their staff effectively by providing access to a fuller range of discipline management tools; and
- To allow for more flexibility in the management and reform of the civil service disciplinary process and related appeals process.

## **7. Options**

7.1 The costs, benefits and other impacts of the following alternative options are set out below:

1. Do Nothing.
2. Consolidating, restating and amending the legislation.
3. Amendment to existing legislation

### ***Option 1: Do Nothing***

#### *Costs*

7.2 No additional financial costs will be incurred by the State if the legislation is not implemented. It is important, however, to note the current disciplinary and appeals process incurs significant costs in situations where suspension with pay is used in cases pending the outcome of an appeal (and before a sanction can be imposed). A review of cases between 2012 and 2014 has indicated that the appeals process generally takes in the region of four months to complete, with the potential for some cases to go on well beyond this point. These protracted timeframes render the financial cost of suspending officers on pay pending disciplinary sanction untenable.

This particular cost would be minimised through option 2 or option 3 where disciplinary action would be taken following the conclusion of a more streamlined internal appeal and before an external appeal is availed of.

#### *Benefits*

7.3 No benefit would arise if nothing is done.

### *Other impacts*

7.4 The “do nothing” option would run counter to the Government Decision to amend the CSRAs and the PSMA to provide that disciplinary action up to and including dismissal can be delegated below the level of the Appropriate Authority.

7.5 It would make no contribution to the Civil Service Renewal Plan commitment to strengthen the disciplinary code to enable managers to take more effective and decisive action as required to tackle underperformance, including exits.

7.6 It would make no contribution to the “Build, Support and Value Managers as People Developers” key priority of the People Strategy for the Civil Service 2017-2020.

7.7 It would leave in place the interim Disciplinary Code which, while improving the existing disciplinary process to the greatest extent possible within the current legislative framework, would be constrained within the existing legislative process.

7.8 It would result in a failure to address the lack of internal appeals, the impossibility of a binding appeal by anyone, or the fact that a decision to discipline cannot be implemented until after the non-binding appeal has been heard.

7.9 The civil service would be left constrained by a legislative framework which puts the organisation out of step with the more streamlined HR processes used by non-civil service organisations.

7.10 Outdated provisions of the CSRAs would remain in place on the Statute Book.

### ***Option 2: Consolidating, restating and amending the legislation***

#### *Costs*

7.11 There would be substantial staff resource commitments associated with consolidating, restating and amending the CSRAs and the PSMA. This is because significant resources would have to be invested in such an exercise to bring the legislation in its entirety into a single, modern Act, particularly given the passage of time – 60 years – since the original Act was enacted.

#### *Benefits*

7.12 Option 2 offers the opportunity to introduce a comprehensive and coherent piece of legislation governing the terms and conditions of civil servants. The original Civil Service Regulation Act 1956 is over 60 years old and would benefit from an overhaul. Restatement would allow for sections that have been removed, repealed or become redundant to be removed from the legislative framework. Consolidation would offer the opportunity to have a single piece of legislation in place which would be easier to refer to and follow. Amendment would allow the Government Decision to be implemented in full. By restating, consolidating and amending the existing Acts the current legislative framework can also be modernised and simplified, alleviating the complexity of the existing framework.

### *Other Impacts*

7.13 Although there are considerable benefits to option 2, the process would require a significant time commitment which may cause an unacceptable delay in delivering the benefits required.

### ***Option 3: Amendment to existing legislation***

#### *Costs*

7.14 There are more moderate administrative costs associated with the amendment of the existing legislative framework. This option would be far less resource intensive than a full consolidation, restatement and amendment of the existing legislation.

#### *Benefits*

7.15 Amending existing legislation is administratively simpler and allows for the Government Decision to be fully met and also delivered in the shortest amount of time possible. While keeping the scope of the work focused, additional minor legislative amendments to the CSRAs and the PSMA could be facilitated without undertaking a full overhaul of the existing Acts.

7.16 This course of action is in line with that advised by the former Director General of the Office of the Attorney General, who recommended that the prudent course of action in order to streamline the Disciplinary Code would be *'to ensure that only the very necessary amendments of the present legislation are provided for in the Heads and Scheme of the Bill.'*

#### *Other Impacts*

7.17 In only amending specific sections of the legislation, the Acts become less coherent as a whole and an already complex legislative framework is made more complicated.

7.18 The advantages of option 3 over option 2 are very much bound up with the level of staff resources required, timing issues and the likely pace of progress so as to obtain early enactment of the legislation.

#### *National Competitiveness*

7.19 The strengthening and reform of the Disciplinary Code and devolution of authority to enable managers to take more effective and decisive action will allow the civil service to cultivate a workplace where standards and expectations are set which everyone in the organisation is called upon to meet, boosting morale and improving workplace performance.

#### *The Socially Excluded and Vulnerable Groups*

7.20 There are no impacts for Socially Excluded and Vulnerable Groups.

#### *The Environment*

7.21 There are no impacts for the environment.

#### *Economic Market, including Consumer and Competition Impacts.*

7.22 There are no impacts for the economic market.

### *The Rights of Citizens*

7.23 There are no impacts for the rights of citizens.

### *North-South and East-West Relations*

7.24 There are no impacts for North-South / East-West relations.

### *Enforcement and Compliance*

7.25 It will not increase existing administrative demands on public bodies beyond those that currently apply and will simplify them in some cases.

## **8. Consultation**

8.1 Under action 11.3 of the Civil Service Renewal Plan consultation and analysis was carried out to assess the key issues found in the previous Civil Service Disciplinary Code. As part of this analysis ByrneWallace, a firm of solicitors specialising in Employment Law, was appointed to review the Code, relevant legislation and policies from a legal point of view. ByrneWallace recommended, inter alia, the simplification and streamlining of the civil service disciplinary appeals process.

8.2 A further strand of analysis of the previous Code took the form of a Business Process Reengineering review (BPR), carried out by Clarion Consultants. The review was to document the existing process and develop an improved one. Existing documentation was analysed and a number of interviews and workshops were conducted:

#### Structured interviews

Chief Medical Officer

Chair of Appeals Board

Representative of LGMA

#### Workshops

1 x HR Managers workshop

3 x Line Managers workshop

1 x Union Representative workshop

8.3 Recommendations which emerged from the BPR included, inter alia, the simplification and reform of the appeals procedure.

8.4 A large number of the recommendations from both the legal and BPR reviews have now been implemented in the current Disciplinary Code, which took effect from September 2016, and it is proposed to incorporate those regarding the appeals structure following the legislative amendments set out in this document.

8.5 The Office of the Attorney General has been consulted in relation to proposals contained in the draft General Scheme.

8.6 A workshop was held with a working group of HR Managers to discuss the practicalities of further amending the disciplinary decision-making and appeals process.

8.7 Legal advice was obtained from ByrneWallace Solicitors on the practical design of our proposed changes to the disciplinary decision-making and appeals structure in addition to proposed legislative amendments to the CSRAs and the PSMA.

8.8 Consultation was carried out with Departments and Offices as to how the proposed new definition of Appropriate Authority should apply to them.

8.9 A draft RIA was circulated to all HR Managers in June 2016. Responses were received from 26 HR units from Departments/Offices. Many of the observations received related to the practical application of the proposed legislative changes. The need for a strong role for HR in supporting managers carrying out these functions was highlighted, as was the need to upskill and train managers.

8.10 A draft RIA was also circulated to the staff side in September 2016 and a number of meetings were held between December 2016 and February 2017. The staff side have expressed concerns with the legislative proposals. They are opposed to:

(i) serious sanctions including dismissal being decided upon below the head of the organisation; and

(ii) the proposal to change the Appropriate Authority for Principal Officer grades and above to be the Secretary General or Head of Scheduled Office instead of the Minister as is currently the case.

8.11 In addition to the substantive issue - of who can discipline and dismiss staff - concern has been expressed by the staff side about how the policy proposals will work in practice. In response to assurances that consultation on the Disciplinary Code will take place following legislative amendment, which will address practical policy changes, staff side have argued that consultation on the Disciplinary Code should occur before legislative amendment as the two are intrinsically connected.

8.12 We intend to continue consultations with the staff side to address their concerns. As the legislation is enabling in the first instance, any practical changes in relation to who carries out disciplinary actions, up to and including dismissal, will be dealt with in consultation with the staff side through amendment to the Disciplinary Code.

8.13 The draft Scheme and this draft RIA were circulated to all Government Departments for observations prior to the submission of the draft Scheme to Government.

8.14 It is proposed that the draft Scheme and this draft RIA will also be referred to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach for pre-legislative scrutiny.

8.15 Subject to Government approval, the draft Scheme and this draft RIA will also be published on the Department's website to inform and encourage public debate and to act as a basis for further consultation on the proposed Bill.

## **9. Conclusions**

9.1 The foremost positive benefit from the proposed legislative amendment would be to allow for the streamlining and strengthening of the disciplinary and associated appeals process through the devolution of authority for disciplinary decision making and appeals further down each organisation. The reform would address the elaborate structure existing at present which prevents the possibility of a binding appeal and results in the appeal body having to hear the appeal before the Appropriate Authority comes to a decision or any sanction is imposed. It would enable the introduction of a binding internal appeal for civil servants and facilitate a two-stage appeals process for the most serious disciplinary sanctions.

9.2 The reforms proposed complement the work which has been initiated in reforming the current Civil Service Disciplinary Code, would contribute to achieving Action 11.3 of the Civil Service Renewal Plan and would contribute to the achievement of the “Build, Support and Value Managers as People Developers” key priority of the People Strategy for the Civil Service 2017-2020.

9.3 It is strongly recommended that **Option 3** is the best approach to achieve the reform of the current legislative framework. Policy objectives and government commitments will be met and within the desired timeframe.

## **10. Publication**

10.1 Subject to Government approval this RIA will be published on the website of the Department of Public Expenditure and Reform.

*Civil Service HR Division*

*Department of Public Expenditure and Reform*

*March 2018*