

Instructions to HR Managers

**Ministerial Appointments
for the 33rd Dáil**

Department of Public Expenditure and Reform
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Contents

1.	Introduction.....	3
2.	Appointments to the position of Special Adviser and Civilian Driver	4
3.	Tenure	5
4.	Ethics in Public Office Acts	7
5.	The Civil Service Code of Standards and Behaviour.....	9
6.	Lobbying	10
7.	Official Secrets Act, Confidentiality, Publication, etc.....	11
8.	Annual Leave	11
9.	Sick Leave.....	12
10.	Superannuation and Retirement Arrangements.....	12
11.	Severance Provisions.....	18
12.	Travel and Subsistence	19
13.	Mandatory Legislative Provisions.....	20
Appendix 1	Guidelines on Staffing of Ministerial Offices.....	21
Appendix 2	Member of the Single Scheme	24
Appendix 3	Member of the Non-Established Scheme	25
Appendix 4	Membership of the Single Scheme – Extracts to be copied	27
Appendix 5	Definition of New Entrant – Extracts to be copied	31
Appendix 6	Guidelines on the Issuing of Excluding Orders	35
Appendix 7	Organisation of Working Time Act 1997 and Civilian Drivers	36
Appendix 8	Model Contract of Employment for the post of Special Adviser	39
Appendix 9	Model Contract of Employment for the post of Civilian Driver	48
Appendix 10	Model minute to persons appointed as Special Advisers or personal appointees to Ministers and Ministers of State and who are remunerated above the second long service increment point of the Higher Executive Officer (non-personal pension contribution) standard scale in the Civil Service.....	56

1. Introduction

- 1.1 Members of the Dáil appointed as Ministers and Ministers of State may make a number of personal appointments to support them with their enhanced workload. The main posts to which such appointments are made are those of Special Adviser and Civilian Driver. For the 33rd Dáil term Ministers and Ministers of State may also appoint a Parliamentary Assistant and Secretarial Assistant and such staff will be paid by the Houses of the Oireachtas Service and will remain part of the Secretarial Assistance Pension Scheme. However, their accommodation, ICT and other facilities will continue to be provided by Departments/Offices as heretofore.
- 1.2 These *Instructions* have been drawn up to assist HR Managers on matters concerning the appointments including the contracts of employment in respect of such appointments. The matters dealt with include:
- Appointment
 - Remuneration
 - Tenure
 - Ethics in Public Office Acts
 - Civil Service Code of Standards and Behaviour
 - Lobbying
 - Confidentiality
 - Annual Leave
 - Sick Leave
 - Superannuation, Retirement and Severance Provisions
 - Travel and Subsistence
 - Mandatory Legislative Provisions
- 1.3 These *Instructions* should be read in conjunction with the *Guidelines on Staffing of Ministerial Offices* issued by the Department of Public Expenditure and Reform, in July 2020. A copy of the Guidelines is at **Appendix 1**. Note in particular that salaries for these appointments and the number of appointees must be determined in accordance with those Guidelines.
- 1.4 Model Contracts for Special Advisers and Civilian Drivers are set out in **Appendices 8 and 9** and should be used for all appointments under these instructions. All Draft Contracts for these roles should be cleared with the Strategic Resourcing Section of the Department of Public Expenditure and Reform: Please contact Tom.Clancy@per.gov.ie. (In order to confirm Superannuation details, a full career history should accompany the draft contract).
- 1.5 As both Parliamentary Assistants and Secretarial Assistants will be staff of the Houses of the Oireachtas Commission, contracts for these staff will be a matter for that Office.
- 1.6 Persons, who availed of the Civil Service Incentivised Scheme of Early Retirement; the HSE VER or VR Schemes; the Department of Environment, Community & Local Government Voluntary Redundancy Scheme for Local Authorities (Circular Letter LG(P) 06/2013) or any other Collective Agreement in respect of Redundancy Payments

to Public Servants as per the Department of Public Expenditure and Reform letter of 28th June 2012 may not be eligible for these appointments in accordance with the conditions of such schemes.

Important Note - The **NSSO** have issued a detailed guidance pack to all clients serviced by them. This covers the various policies and procedures for the transactional arrangements, covering Ministers and Ministerial Personal Staff. Please refer to that document for further guidance. Any queries can be directed to their Service Management Team at service.management@employeeservices.gov.ie

2. Appointments to the positions of Special Adviser and Civilian Driver

2.1 The appointment of Special Advisers requires the approval of Government in accordance with Section 11 of the Public Service Management Act 1997. Appointments being made from outside the Civil Service do require the sanction of the Taoiseach¹. Application for the Taoiseach's sanction should be made directly to the Taoiseach's Private Office. Under delegated sanction arrangements, Ministerial appointments to the positions of Special Adviser and Civilian Driver no longer require the sanction of the Minister for Public Expenditure and Reform.

Requirements regarding sanction for the rate of remuneration for each such appointment are set out in Appendix 1.

2.1.1 Appointments to these positions are subject to the Civil Service Regulation Acts 1956 to 2005 and to the Public Service Management (Recruitment and Appointments) Act 2004 and, in the case of Special Advisers, the Public Service Management Act 1997. An Excluding Order is required for the post of Civilian Driver. The sanction of Strategic Resourcing Section of the Department of Public Expenditure and Reform to approach the Commission for Public Service Appointments for such Excluding Orders is required (csrecruitmentpolicy@per.gov.ie) (See Department of Finance Circular 37/2007 Guidance on the use of Excluding Orders at Appendix 6). <https://hr.per.gov.ie/wp-content/uploads/2020/03/Circular-37-of-2007-Excluding-Order-Guidelines-for-Personnel-Officers1.pdf>

2.1.2 To support the role of the Special Advisers it is important that there is clarity about how the Department operates and how the Department can support Special Advisers to perform their functions effectively. As suggested by the '*Guidelines for Departments in the Preparation of Office Notices Regarding Special Advisers*', following discussion with the incoming Minister, the Secretary General may wish to set out the arrangements in an internal Office Notice. These Guidelines advise on the suggested elements of an Office Notice. The Office Notice should be brought to the attention of all relevant staff, and be in place as soon as possible after an incoming Minister takes Office.

¹ The requirement for approval by the Taoiseach does not apply to staff employed as Secretarial Assistants or Parliamentary Assistants in the Oireachtas immediately prior to the dissolution of the outgoing Dáil.

Induction Programme

As provided under the Civil Service Renewal Programme, an induction programme for Special Advisers will be delivered centrally. While the Department of Public Expenditure and Reform will contact individual Special Advisers to inform them of this programme, HR Managers should also make known to the Special Advisers the availability of the programme.

To complement the induction programme, each Secretary General should appoint a Special Adviser Liaison Officer in each Department. This Liaison Officer should introduce the Special Adviser to the systems and workings of the Department (e.g. the ICT, phone, PQs, eCabinet etc.) and ensure that they have the necessary facilities and supports in the initial weeks after the appointment.

Queries in respect of the Induction Programme should be sent by email to ian.devlin@per.gov.ie

Probation

- 2.2 It is the responsibility of Departments and Offices to ensure that appropriate probationary procedures are in place for the management of the performance of the Private Office staff of a Minister or Minister of State. Guidelines for the management of probation have been produced by the Department of Public Expenditure and Reform and are available on the Department of Public Expenditure and Reform HR website: [Probation Guidelines](#):

The Guidelines advise that for fixed-term contracts of a year or more, a probationary period of six months would be appropriate.

Queries in respect of Excluding Orders and Contracts of Employment and Probation should be sent by email to CSHRDivision@per.gov.ie.

3. Tenure

Tenure of Personal Appointees other than Special Advisers (Civilian Drivers)

- 3.1 A *personal appointee's* contract starts on the day of their appointment by the Officeholder (i.e. Minister of the Government or Minister of State). Given the delegated sanction given to Departments to recruit staff up to Principal Officer Standard the sanction of the Minister for Public Expenditure and Reform is not required.
- 3.2 The contract should state that the period for which a person is employed as a *personal appointee* shall end not later than the date on which the Officeholder who made the appointment ceases to hold the Office (i.e. ceases to hold the Office of Minister of the Government or Minister of State). The contract must be laid by the Officeholder before the Houses of the Oireachtas.
- 3.3 Where a Minister or Minister of State changes portfolio their *personal appointees* may be reappointed as their *personal appointees* in the new Department. The Department to which a Minister or Minister of State has moved should issue a new contract to the

incoming *personal appointees*. The Vote Section in the Department of Public Expenditure and Reform must be informed and copies of the new contracts sent to Recruitment Section of that Department for approval.

- 3.4 When a Minister of the Government or Minister of State ceases to hold the position of Minister or Minister of State for any reason (including a Minister of State becoming a Minister of the Government or vice versa), the contracts of his or her *personal appointees* terminate on that date.
- 3.5 Following a dissolution of the Dáil, the contracts of the *personal appointees* of a Minister of the Government terminate on the day the incoming Government is appointed, while contracts of the *personal appointees* of a Minister of State cease on the day the incoming Taoiseach is appointed (even if the Officeholder concerned is appointed as an Officeholder of the incoming Government).
- 3.6 Where an incoming Officeholder wishes to re-appoint a *personal appointee* a new contract is required. The new contract starts on the date of appointment of the *personal appointee* by the Officeholder,
- 3.7 The Minister/Minister of State reserves the right to terminate the employment of a personal appointee prior to the date of cessation on giving of the appropriate notice set down in the Minimum Notice and Terms of Employment Acts 1973 to 2005. The Minister/Minister of State also reserves the right to terminate the employment for stated reasons. The appointment may be terminated at any time by either party in accordance with the Minimum Notice and Terms of Employment Acts 1973 to 2005.
- 3.8 A copy of all signed contracts of employment must be forwarded to the Strategic Recruitment Section of the Department of Public Expenditure and Reform for their records: csrecruitmentpolicy@per.gov.ie

Tenure of Special Advisers

- 3.9 A Special Adviser to an Officeholder (i.e. a Minister of the Government or a Minister of State, where applicable) is appointed on the day set out in the Government Decision to appoint the person as a Special Adviser to the Officeholder.

[Note: Ministers of State, with the exception of a Minister of State who regularly attends Cabinet, will not appoint Special Advisers. In particular circumstances where a specific need is identified, a Special Adviser may be appointed to a Minister of State subject to the approval of the Minister for Public Expenditure and Reform and of Government.]

- 3.10 For a Special Adviser to a Minister of the Government, the contract should state that the term of employment of the Special Adviser shall cease on the date on which the Minister ceases to be a Minister of the Government. For a Special Adviser to a Minister of State, the contract should state that the term of employment of the Special Adviser shall cease on the date of expiration of the assignment of the Minister of State to the

Department or Office in question. All contracts for Special Advisers must be laid by the Officeholder before the Houses of the Oireachtas.

- 3.11 Where a Minister of the Government changes portfolio and the Special Adviser is retained as a Special Adviser, the new Department should issue a new contract of employment to the Special Adviser. If the assignment of a Minister of State to a Department or Office expires, the contract of a Special Adviser to that Minister of State terminates on that date, even if the Minister of State is assigned to another Department or Office.
- 3.12 Following a dissolution of the Dáil, the term of office of a Special Adviser to a Minister of the Government terminates on the day the incoming Government is appointed, and that of a Special Adviser to a Minister of State on the day the Taoiseach's successor is appointed. This is the position even if the same Officeholder is again appointed as an Officeholder of the incoming Government.
- 3.13 If an incoming Officeholder wishes to re-appoint the Special Adviser, a new contract is required and the date of appointment is the date set out in the Government Decision to appoint the person as a Special Adviser. The contract must be laid by the Officeholder before the Houses of the Oireachtas.
- 3.14 Under Section 11(1)(a) of the Public Service Management Act 1997 a Minister of the Government may appoint a maximum of two Special Advisers. Ministers of State are not expected to appoint Advisers but may in particular circumstances and with the approval of Government, appoint one Special Adviser. The Taoiseach and Tánaiste may have more than two Special Advisers. Note: A 'Media Adviser/Press Adviser/Programme Manager' is considered to be a 'Special Adviser'.

4. Ethics in Public Office Acts

- 4.1 HR Managers should advise all Special Advisers/personal appointees of their obligations under the Ethics Acts (i.e. the *Ethics in Public Office Act 1995* and the *Standards in Public Office Act 2001*) on appointment. The provisions of the Ethics Acts apply to persons in the Special Adviser category whose remuneration exceeds the second long service increment (standard scale) of a Higher Executive Officer in the Civil Service. They also apply to Special Advisers appointed pursuant to Section 11 of the Public Service Management Act 1997.
- 4.2. The following documents relating to a Special Adviser (described in the preceding paragraph) must be laid by the Minister or Minister of State, on whose behalf each appointment is made, before each House of the Oireachtas:
 - (i) a statement of the qualifications of the person relevant to the appointment as Special Adviser,
 - (ii) a copy of any statement of his or her own interests furnished by the Special Adviser to the Officeholder [*it should be noted that, in order to facilitate the laying of the Special Adviser's own interests statement only, Special Advisers may*

furnish separate forms containing statements of their own interests and those of a spouse or civil partner, or child or child of a spouse. The statements relating to spouses, civil partners or children are not required to be laid before either House of the Oireachtas.]

4.3 The following documents are laid before each House for all Special Advisers, regardless of remuneration,

- (i) a copy of the contract or a statement in writing of the terms and conditions under which the person acts, or has acted, as Special Adviser,
- (iii) a statement as to whether the person is a relative of the Officeholder.

Note: The requirements at 4.2(i) and 4.3 directly above are once-off rather than annual requirements. The documents would not require to be laid more than once unless there was a significant change in the information to be provided. General round pay increases may be ignored for this purpose.

The documentation described in paragraphs 4.2(i) and 4.3 above must be laid by the Officeholder before each House of the Oireachtas not more than 60 days after the person was appointed or employed to act as a Special Adviser.

- 4.4
- (a) A Special Adviser/personal appointee will undertake that he/she will not engage in any trade, profession, vocation or other occupation, whether remunerated or otherwise, which might reasonably be seen to be capable of interfering, or being incompatible, with the role of Special Adviser;
 - (b) A Special Adviser will, each year not later than 31 January, furnish to the Officeholder and to the Standards in Public Office Commission a statement of interests (as described in Parts 4 and 5 of the Standards in Public Office Commission's Guidelines for Public Servants) covering the period from 1 January (or the date of commencement, if later) up to 31 December of the preceding year. The statement should contain information, of which the Special Adviser has actual knowledge, relating to his or her own interests and those of his or her spouse or civil partner, or child or child of a spouse, which could materially influence the Special Adviser in, or in relation to, the performance of the functions of the Special Adviser.
 - (c) Where a person, for whatever reason, ceases to be a Special Adviser, the person will provide both the Officeholder and the Standards in Public Office Commission with a statement of interests (including the interests of a spouse or civil partner, or child or child of a spouse) within 28 days of the date of cessation. Such statement would cover the period from 1 January, or the date of commencement, if later, in the year in question up to the date of cessation.
 - (d) A Special Adviser is also required to provide a statement of the facts to the Officeholder and to the Standards in Public Office Commission if a specific function falls to be performed by the Special Adviser and he/she, or a

connected person, has a material interest in a matter to which the function relates. The statement should be furnished as soon as possible. In such circumstances, the Special Adviser will not perform the function unless there are compelling reasons to do so. If the Special Adviser does propose to perform the function, he or she will, before, or if that is not reasonably possible, as soon as may be afterwards, provide a statement in writing of the compelling reasons to the Officeholder and to the Standards in Public Office Commission.

- (e) Where there are no interests to disclose, there is no obligation on a Special Adviser to furnish a nil statement. However, the Standards in Public Office Commission recommends that a nil statement be submitted. Where no interests exist there is no requirement on an Officeholder to lay a nil statement of a Special Adviser before the Houses of the Oireachtas.
- (f) It is deemed to be a condition of the appointment or employment of a Special Adviser that the person will comply with the requirements set out in this section 4.4

4.5 HR Managers are required by Department of Finance *Circular 4/2002 – Standards in Public Office Act 2001* <https://circulars.gov.ie/pdf/circular/finance/2002/04.pdf> to furnish on appointment to each Special Adviser and to each Ministerial personal appointee who is remunerated above the second long service increment (standard scale) of a Higher Executive Officer in the Civil Service:

- (i) A copy of the updated Model Minute that is attached at Appendix 10, on their obligations under the Ethics Acts. This updated Model Minute must be used. (This updated Model Minute supersedes that in Appendix 4 of Circular 4/2002);
- (ii) A statement of interests form for Special Advisers (available on the Ethics page of the Department of Public Expenditure and Reform HR website): <https://hr.per.gov.ie/policy/ethics-and-standards/>;
- (iii) A copy of Circular 4/2002; and
- (iv) A copy of the *Guidelines on Compliance with the Provisions of the Ethics in Public Office Acts 1995 and 2001 – Public Servants*, published by the Standards in Public Office Commission (the most recent version is downloadable from the Commission’s website). <https://www.sipo.ie/acts-and-codes/guidelines/public-servants/index.xml>

Statutory advice may be sought from the Commission by email to info@sipo.ie or by phone at 01-6395666.

5. The Civil Service Code of Standards and Behaviour

5.1 The Civil Service Code of Standards and Behaviour forms part of the terms and conditions of service of **all** Civil Servants including all Ministerial Private Office staff

holding temporary positions and whose tenure is coterminous with that of the relevant Minister (e.g. Special Advisers and Civilian Drivers). The Code underpins the rules in many areas and introduces rules governing gifts, hospitality and the acceptance of outside appointments and of consultancy engagement following resignation or retirement. A copy of the Code must be given to every appointee to such posts and they are required to certify in writing that they have read it.

- 5.2 Attention is drawn to paragraphs 5.1 to 5.4 inclusive (Civil Servants and Politics) of the Code and their application to Ministerial Private Office appointments to posts such as Special Adviser and Civilian Drivers. As outlined in paragraph 5.4, paragraphs 5.1 and 5.2 do not apply to the posts of Government Press Secretary, Deputy Government Press Secretary, Assistant Government Press Secretary, and all Ministerial Private Office staff holding temporary positions and whose tenure is coterminous with that of the relevant Minister (e.g. Special Advisers and Civilian Drivers of Ministers of State). The latest version of the Code can be found here:

<https://hr.per.gov.ie/wp-content/uploads/2020/03/Civil-Service-Code-of-Standards-and-Behaviour.pdf>

- 5.3 Attention is also drawn to paragraphs 20 and 21 of the Code which refer to the acceptance of outside appointments and of consultancy engagement following retirement or resignation and provisions relating to the Outside Appointments Board. These provisions apply to certain persons designated under the Ethics Acts including Special Advisers who are appointed personally by Ministers. These rules apply to Special Advisers whether defined as a Special Adviser within the meaning of section 19 of the Ethics in Public Office Act 1995 or appointed pursuant to section 11 of the Public Service Management Act 1997.

6. Lobbying

- (a) Special Advisers appointed under section 11 of the Public Service Management Act 1997 are Designated Public Officials (DPOs) under the Regulation of Lobbying Act 2015. The attention of Special Advisers should be brought to the guidelines for DPOs:

<https://www.lobbying.ie/media/6185/guidelines-for-dpos-february-2019-final.pdf>

- (b) The Regulation of Lobbying Act provides that certain DPOs are restricted from being engaged in lobbying in certain circumstances for a year after they leave their employment or office. In effect, they are subject to a “cooling-off” period in respect of involvement in particular lobbying activities.

The DPOs concerned are Ministers and Ministers of State, Special Advisers to Ministers and Ministers of State and prescribed Public Servants (these are referred to hereafter as “relevant DPOs”). Others who are DPOs for the purposes of the lobbying registration requirements are not covered by this provision, that is, TDs, Senators, MEPs and Local Authority members.

The public officials who are covered by this provision may not:

- carry on lobbying activities, or
- be employed by, or provide services to, a person carrying on lobbying activities in certain circumstances.

These circumstances are where the lobbying activity:

- involves any Public Service body with which the relevant DPO was connected, that is, employed or held an office or other position in the year prior to his/her leaving, or
- is to a person who was also a DPO, connected with that Public Service body in the year prior to the relevant DPO's leaving.

Relevant DPOs may apply to the Standards in Public Office Commission for consent to engage in such lobbying. The Commission may decide to give consent unconditionally or give consent with conditions attached or refuse the application for all or part of the period.

A relevant DPO who is unhappy with the decision may appeal the decision of the Commission to an independent Appeal Officer.

The Standards in Public Office Commission has published a guidance note on Section 22 of the Regulation of Lobbying Act.

<https://www.lobbying.ie/help-resources/information-for-public-bodies/guidance-notes/guidance-note-on-section-22-of-the-regulation-of-lobbying-act-the-cooling-off-period/>

The guidance note sets out the requirements of Section 22: the information the Commission may seek when it receives an application for consent; and the criteria which the Commission may take into account when considering an application for consent.

The Standards in Public Office Commission may be contacted at info@lobbying.ie or by phone at 01-6395722.

7. Official Secrets Act, Confidentiality, Publication, etc.

- 7.1 Ministerial Private Office appointees are required to observe strict standards under these headings. Suitable provisions have been inserted in the relevant model contracts attached in Appendices 8 and 9. In addition, appointees should be made aware of the potential application of the Freedom of Information Act to correspondence or other records generated by them in the course of their work.

8. Annual Leave

- 8.1 The legislative provisions which provide for an employee's entitlement to Annual Leave are set out in the Organisation of Working Time Act 1997. In that context, annual leave entitlements of Ministerial Private Office appointees are in line with the provisions of Department of Finance Circular 27/03: Annual Leave and Letter to HR

Managers: Revised Annual Leave Arrangements (dated 18th January 2012).

<https://hr.per.gov.ie/wp-content/uploads/2020/04/here-1.pdf>

The contract of employment of all appointees to Ministerial Private Office posts [with the exception of Civilian Drivers] should include the following:

'Annual Leave

The annual leave allowance will be [insert number of days] working days per year, exclusive of the usual public holidays. This annual leave allowance is subject to the usual conditions which apply in the Civil Service regarding the granting of annual leave, and to the making, at such times as may be determined from time to time by the Secretary General, of returns of annual leave taken.'

- 8.2 In the case of Civilian Drivers, two Drivers should be employed. Annual leave arrangements for Civilian Drivers are as provided for in the Model Contract for Civilian Drivers.

Queries in respect of Annual Leave should be sent by email to:

CSHRDivision@per.gov.ie.

9. Sick Leave

- 9.1 Sick pay during properly certified sick absence, provided there is no evidence of permanent disability for service, may be allowed on a pro-rata basis, in accordance with the provisions of Public Service Management (Sick Leave) Regulations (SI 124 of 2014) and Public Service Management (Sick Leave) (Amendment) Regulations (SI 384 of 2015) and Department of Public Expenditure & Reform Circular 12/2015 governing sick leave in the Civil Service. The appointee will be required to sign a mandate authorising the Department of Employment Affairs and Social Protection to pay any benefits due to the appointee, under the Social Welfare Acts, directly to the employing Department (Houses of the Oireachtas Commission in the case of Parliamentary/Secretarial Assistants). Payment of salary during illness will be subject to the appointee making the necessary claims for Social Insurance Benefit to the Department of Employment Affairs and Social Protection within the required time limits.

Queries in respect of Sick Leave should be addressed by email to:

CSHRDivision@per.gov.ie

10. Superannuation and Retirement Arrangements

The superannuation arrangements for appointees are set out in paragraphs 10.1 to 10.11 below.

For Special Advisers and Civilian Drivers being appointed to a Minister's private office, Departments should establish their previous Public Service employment history (if any) so as to determine, at the outset, whether an employee should be a member of the Single Public Service Pension Scheme or a member of the Non-Contributory Pension Scheme for Non-Established State Employees.

Parliamentary Assistants and Secretarial Assistants will be paid by the Houses of the Oireachtas Service and will be part of the Secretarial Assistance Superannuation Scheme.

10.1 Establishing Previous Public Service Employment History

It is very important to establish correctly the full Public Service history of an appointee. Making assumptions about membership of the Single Pension Scheme or about the “new entrant” status of an individual simply because the appointee is coming from another Department, Office or Public Body can give rise to misunderstandings about pension entitlements. Please obtain and carefully examine the service history of the individual. If it appears that an error has been made in respect of a previous determination, the error should be rectified as early as possible and appropriate actions taken.

Relevant factors in determining an appointee’s pension scheme membership include:

- dates of all previous Public Service employment (start and end date for each employment), including whether the post was pensionable
- pension scheme membership associated with each period of employment, including details of Spouse’ and Children’s scheme membership
- details of any breaks in service between those periods of Public Service employment (greater than 26 weeks)
- their PRSI status during their Public Service employment
- the pay scale on which they were paid (PPC or Non-PPC or otherwise) if such applied
- details of the new appointment (start date, if there will be a break in service of more than 26 weeks, etc.).

10.2 Single Public Service Pension Scheme (Single Scheme)

Under section 10 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012 (“the 2012 Act”), the default pension scheme for a person appointed to a pensionable Public Service position on or after 1 January 2013 (including a Ministerial Appointee) and who is under 70 years of age is the Single Scheme.

The Single Scheme applies to:

- all first-time new entrant pensionable Public Servants to the Public Service on or after that date, and
- former pensionable Public Servants returning to Public Service employment after a break² of more than 26 weeks.

Exceptions to Single Scheme membership are where:

² Note for the purpose of the 2012 Act and the Public Service Pensions (Miscellaneous Provisions) Act 2004 (“the 2004 Act”) a career break, special leave with/without pay is not deemed to be a break in service.

- on or after 1 January 2013, a pensionable Public Servant who is not a Single Scheme member ceases Public Service employment and subsequently takes up a Public Service post **no later than 26 weeks** after ceasing the earlier employment,

Or

- an appointee is over 70 years of age

Bodies included in Schedule 1 of the 2012 Act are not considered to be ‘Public Service Bodies’ for the purpose of scheme membership determination.

In line with the above, a Ministerial appointee will **not** be entered into the Single Scheme if:

- they are over 70 years of age, or
- at some point in the 26 weeks before appointment they worked in another pensionable Public Service post in which their pension terms consisted of membership of a “pre-existing” scheme, meaning a Public Service pension scheme in place before 1 January 2013.

Minimum Pension Age

For Single Scheme members, the normal retirement age is the same as the age of eligibility for the State Pension (Contributory). At present this is 66 years, rising to 67 on 1 January 2021 and 68 on 1 January 2028 in line with planned changes to State Pension age.

Compulsory Retirement Age

Retirement under the Single Scheme is compulsory on reaching age 70.

Important Note: Tenure is co-terminus with the Minister or terminates on reaching the age of 70, whichever occurs first.

Further information on the Single Scheme including resources and toolkits for administrators can be found at: <https://singlepensionscheme.gov.ie/>. Queries from administrators on matters of Single Scheme **policy** may be directed to singleschemequeries@per.gov.ie.

10.3 Non-Contributory Pension Scheme for Non-Established State Employees

A Ministerial appointee, who has previously been employed in a pre-existing Public Service pension scheme in the 26 weeks prior to this appointment shall not be a member of the Single Scheme. Such appointees will be entered into the Non-Contributory Pension Scheme for Non-Established State Employees and associated Contributory Spouses' and Children's Pension Scheme for Non-Established State Employees.

Exceptions to membership of the Pension Scheme for Non-Established State Employees

- An exception applies to persons who are already serving as a Civil or Public Servant and who are **seconded** to their Ministerial appointment. In that case, such persons continue to be members of the superannuation scheme which applied to them immediately prior to their Ministerial reappointment. Importantly, if additional remuneration is paid in respect of their Ministerial appointment, it is **non-pensionable** and superannuation contributions and entitlements are calculated by reference to the substantive salary only.
- Any person who is over 70 years of age and who is deemed **not to be a new entrant** in accordance with the 2004 Act. Such persons should be facilitated in having a PRSA however, the employer will **not** make any contributions to the PRSA.

In establishing the particular pension terms to apply within the Pension Scheme for Non-Established State Employees, HR Managers should have regard to the Public Service Superannuation (Miscellaneous Provisions) Act 2004 (see below).

The Public Service Superannuation (Miscellaneous Provisions) Act 2004 (“the 2004 Act”)

Under section 2 of the 2004 Act, a person is deemed to be a “New Entrant” where they are not serving in a Public Service Body (within the meaning of that Act), or a Body to which Schedule 1 relates, on 31 March 2004 but become a Public Servant on or after 1 April 2004.

It should be noted that the 2004 Act contains a similar provision to the Single Scheme in respect of a “26 weeks break” with two important distinctions. In this case, a person with a break in service of less than 26 weeks shall **not** be regarded as a “New Entrant” under the 2004 Act. Those distinctions are as follows:

- The individual does not have to be in a pensionable position in the previous employment in respect of the 2004 Act whereas the 2012 Act requires that the individual has served in a pensionable position.
- Schedule 1 of the 2004 Act includes such Public Sector bodies as the ESB and RTÉ which in the normal course of events do not fall under the umbrella of Public Service bodies while the Schedule of the 2012 Act excludes such bodies.

A person’s prior Public Service employment history will therefore dictate their pension terms in their new appointment.

Minimum Pension Age

For a Ministerial appointee who is deemed to be a member of the Non-Contributory Pension Scheme for Non-Established State Employees the minimum age at which pension is payable is 65 years.

Compulsory Retirement Age

A Ministerial appointee who is deemed to be a member of the Non-Contributory Pension Scheme for Non-Established State Employees shall have a maximum pension age as follows:

- New Entrant: There is no maximum retirement age
- Non-New Entrant: The maximum retirement age is 70 years

Important Note: Tenure is co-terminus with the Minister or terminates on reaching the compulsory retirement age, if applicable, whichever occurs first.

Queries from administrators in relation to the Non-Contributory Pension Scheme for Non-Established State Employees superannuation terms may be directed to pensions@per.gov.ie.

10.4 Pension Scheme Contributions

Departments should ensure that all appropriate contributions (Main Scheme and/or Spouses' and Children's Scheme) in respect of the pension scheme are deducted in the usual manner, in line with the relevant Scheme rules.

10.5 Additional Superannuation Contribution (ASC)

Ministerial appointments are subject to the Additional Superannuation Contribution, in accordance with the Public Service Pay and Pensions Act 2017. The ASC is **in addition to** any personal pension contributions and/or Spouses' and Children's pension contributions required in respect of pension scheme membership.

Further guidance on the application of ASC can be found in DPER Circular 21/2018: 'Transition to Additional Superannuation Contribution (ASC) from Pension Related Deduction (PRD) in the Public Service on 1 January 2019'.

10.6 Limits on Pension Accrual

Section 52(6) of the Public Service Pensions (Single Scheme and other Provisions) Act 2012 limits the amount of pensionable service an individual may accrue across all pre-existing Public Service pension schemes (non-Single Scheme terms) to a maximum of 40 years or equivalent.

10.7 Previous Pension Entitlements

Pension Abatement

If the appointee has previously been employed in the Civil or Public Service and is in receipt of a pension from the Civil or Public Service or where a Civil/Public Service pension comes into payment during his/her re-employment that pension will be subject to abatement in accordance with the Public Service Pensions (Single Scheme and Other Provision) Act 2012.

Please note, waivers in respect of abatement are an exceptional measure. The Head of a Department is required to put forward a very strong business case with supporting documentation in relation to why a particular individual should be granted a waiver in order to be considered for such a waiver.

Voluntary Early Retirement Arrangements

If the appointee was previously employed in the Civil Service and awarded a pension under voluntary early retirement arrangements (other than the Incentivised Scheme of Early Retirement (ISER), Department of Health Circular 7/2010 VER/VRS, the Department of Environment, Community & Local Government Circular Letter LG(P) 06/2013 or any other collective agreement which, as indicated, renders a person ineligible for appointment) the entitlement to that pension will cease with effect from the date of reappointment. Where the person becomes a member of the Pension Scheme for Non-Established State Employees, special arrangements will however be made for the reckoning of previous service given by the appointee for the purpose of any future superannuation award for which the appointee may be eligible. Where the person becomes a member of the Single Scheme, please consult this Department at pensions@per.gov.ie for further guidance.

Department of Education and Skills Early Retirement Scheme for Teachers (Circular 102/2007)

A Teacher who retired under Strands 1, 2 or 3 of the aforementioned Early Retirement Scheme for Teachers and who is subsequently employed in any capacity, in any area of the Public Sector shall have the pension in payment to them under that scheme immediately ceased. An exception to this cessation of pension exists only in respect of the situations set out in paragraphs 10.2 and 10.3 of the relevant Circular. Pension payments will, however, be resumed on the ceasing of such employment or on the person's 60th birthday, whichever is the later, but on resumption, the pension will be based on the person's actual reckonable service as a Teacher (i.e. the added years previously granted will not be taken into account in the calculation of the pension payment).

Ill-Health Retirement

For an appointee who had previously retired from a Civil/Public Service Body on the grounds of ill-health, his/her pension from that employment may be subject to review in accordance with the rules of the ill-health retirement provisions of the pension scheme from which they retired. For further guidance on employment in the Civil Service post Ill Health retirement please see [this document](#).

10.8 Persons Seconded from the Private Sector

The Pension Section of the Department of Public Expenditure and Reform must be consulted in all such cases.

10.9 Payment-in-lieu of Pension

With effect from the 1 January 2013, the option to receive a payment-in-lieu of pension is no longer available. An exception exists only where, immediately prior to this appointment, the appointee has worked as a Ministerial appointee and has availed of the payment-in-lieu of pension – in such a case, they may continue to receive the payment-in-lieu option.

10.10 Information to be given to, and Declaration signed by, the Appointee

When the appointee's status under the Acts has been determined, the appointee should be advised of this determination. The implications of the 2004/2012 Acts should be fully explained to the appointee including the appointee's responsibility in agreeing to the determination. Extracts in respect of the definition of membership of the Single Scheme/2012 Act are provided at Appendix 4. Extracts from the 2004 Act in relation to the definition of "new entrant" under the Non-Established Scheme are provided at Appendix 5. They should be copied and issued to all appointees, along with the other documentation on superannuation.

The appointee should be given a clear written statement as to which superannuation arrangements apply to him/her. This statement should form part of the offer of appointment so that the person is fully aware of his or her superannuation position before taking up appointment. An appointee is required to complete a declaration that they accept and understand their pension determination. It should be signed by the HR Manager and the new appointee, and should remain on the appointee's Personnel record. An outline of such a statement and declaration is set out at Appendix 2 (Single Scheme Membership) and Appendix 3 (Non-Established Scheme Membership).

If there are any doubts as to the status of an appointee Departments should email pensions@per.gov.ie with the subject line "Ministerial Staff Contracts".

10.11 Disclosure of Information

All appointees will be required to disclose all necessary information, and sign a disclosure declaration, relating to any prior or other current Public Service employment in order to correctly determine their Public Service pension terms. A template declaration form that fulfils these disclosure requirements is included on this web page link below, 4th document.³

<https://singlepensionscheme.gov.ie/for-employers/administrator-tools/standard-forms-and-checklists/recruitment/>

If there are any doubts as to the pension status of an appointee, Departments should contact pensions@per.gov.ie.

11. Severance Provisions

11.1 Severance provisions may be available to Ministerial personal staff who have **not** been appointed by way of secondment or leave of absence from other employments and who, therefore, have no job to which they are entitled to return to on cessation of office of the relevant Minister or Minister of State. Departments will be advised of these provisions in a separate communication.

Queries in respect of severance arrangements should be addressed to Sibéal Archer by email at sibeal.archer@per.gov.ie.

³ While the resource is found on the Single Scheme website, it is relevant and can be used for all schemes placements and the disclosure is a requirement under Section 51 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012

Statutory Redundancy Payment

An entitlement exists for a statutory redundancy payment to be paid in the event that the purpose for which the staff member was employed ceases to exist. For example, in the case of a Civilian Driver/Special Adviser/Parliamentary Secretary or Assistant to a particular named Minister, if that Minister ceases to hold Office, the purpose for which the staff member was employed ceases, and therefore this constitutes a “redundancy” within the meaning of Section 7(2)(a) of the Redundancy Payments Act. Therefore in the majority of cases, a redundancy payment should be made.

A potential exception to the above is if an outgoing staff member declines another contract, the employer (Local HR) must decide whether a classified “suitable alternative” role was declined by the individual and if so whether a redundancy payment still applies. This would not affect the severance amount payable.

12. Travel and Subsistence

12.1 Where an actual expense has been incurred in the course of official duty subsistence payments may be claimed. The normal Civil Service Travel and Subsistence provisions apply to appointees to the post of Special Adviser and other posts to which Ministerial Private Office appointments are made including posts as Civilian Driver. The current Circular setting out the domestic subsistence allowances is Circular 13/2019 and the rules governing the payment of subsistence rates are set out in Circular 11/82. However, due to the particular nature of the post of Civilian Driver, drivers continue to be entitled to claim overnight subsistence in all instances where they are 100km from their home.

Day subsistence allowances are not payable for absences of less than 5 hours and at any place within eight kilometres of the driver's home or headquarters.

In respect of eligibility for the payment of subsistence, the Head Office of the Department is the driver’s headquarters. In order for a driver to be eligible for payment of appropriate subsistence rates the following criteria must be satisfied:

Overnight Rate	Civilian Driver must be at least 100km <u>from their home</u> .
10 hour rate	Payment is not made where the Civilian Driver is within 8km of their home <u>or</u> their headquarters
5 hour rate	Payment is not made where the Civilian Driver is within 8km of their home <u>or</u> their headquarters

12.2 Due to the particular nature of the post of Civilian Driver, the following text should be included in a contract of employment for an appointee to that post:

Headquarters

“Your Headquarters will be such as may be designated from time to time by the Secretary General. Travel and Subsistence payments will be made at the appropriate Civil Service rates in respect of certified official travel and subject to the usual Civil Service regulations which apply in relation to Travel and Subsistence.”

Removal Expenses

- 12.3 It should be noted that removal expenses will not apply to any appointment covered by these Instructions.

Queries in respect of Travel and Subsistence should be sent by email to travel.policy@per.gov.ie.

13. Mandatory Legislative Provisions

- 13.1 The following are the main Acts prescribing mandatory provisions which must be included in a contract of employment in some form (some of the more significant provisions referred to have been dealt with earlier):

Organisation of Working Time Act 1997

- Holidays and Public Holidays – Section on Annual Leave
- Working Hours – Section on Hours of Attendance
- Rest Periods – Section on Rest Periods.

Terms of Employment (Information) Act 1994

- Name of Employer and Employee, Place of Work, Job Title and Date of Commencement – Preamble to Contract
- Expected duration of temporary employment – Section on Tenure
- Rate of Remuneration and Pay Periods – Section on Pay
- Terms and Conditions relating to Hours of Work – Section on Hours of Attendance
- Terms and Conditions relating to Paid Leave – Section relating to Annual Leave
- Terms and Conditions relating to incapacity for work due to illness or injury – Section on Sick Leave
- Terms and Conditions relating to Superannuation
- Periods of Notice [to include a statement of the method used for determining the period of notice] – Section on Tenure

Protection of Employees (Part Time Work) Act 2001

Protection of Employees (Fixed-Term Work) Act 2003

Ethics Acts (i.e. the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001)

Public Service Management Act 1997

Appendix 7 deals with the Organisation of Working Time Act 1997 and Civilian Drivers.

Appendix 1

GUIDELINES ON STAFFING OF MINISTERIAL OFFICES

These Guidelines replace those issued to Departments in June 2016 and follow on from Government Decision

1. GENERAL

- a) Any Ministerial appointments must comply with the relevant part of these Guidelines, in particular the necessity to obtain the prior sanction of the Minister for Public Expenditure and Reform where appropriate.
- b) The guidelines as set out below will apply, but may be subject to specific individual exceptions, which will only be given by the Minister for Public Expenditure and Reform following consideration of a detailed business case.
- c) Appointments from outside of the Civil Service require the sanction of the Taoiseach. The appointment of Special Advisers requires the approval of Government in accordance with Public Service Management Act 2007 (section 11).
- d) Payment of salary may not be made until the relevant contract has been signed by the appointee and the Secretary General of the Department concerned.

For the 33rd Dáil term Ministers and Ministers of State may appoint a Parliamentary Assistant and Secretarial Assistant and such staff will be paid by the Houses of the Oireachtas Service and will remain part of the Secretarial Assistance Pension Scheme. However, their accommodation, ICT and other facilities will continue to be provided by Departments/Offices as heretofore.

2. PRIVATE AND CONSTITUENCY OFFICES – Staffing Limits

- (a) The number of staff in a Minister's Private Office may not exceed **10**.
- (b) The number of staff in a Minister of State's Private Office may not exceed **7**.
- (c) The number of staff in a Minister's Constituency Office may not exceed **4**.
- (d) The number of staff in a Minister of State's Constituency Office may not exceed **3**.
- (e) Where a Minister of State is assigned to more than one Department, the staffing numbers for Minister of States Offices may not exceed **7**. There should be only one Constituency Office, with a maximum of **3** staff.
- (f) Within the staffing limits indicated above a Minister or a Minister of State may appoint one Parliamentary Assistant and one Secretarial Assistant. Both the

Parliamentary Assistant and Secretarial Assistant will remain as employees of the Minister and will retain the terms and conditions of the Secretarial Assistance Scheme in the Houses of the Oireachtas Commission. Accommodation and equipment will continue to be provided by the Department and Office in which they are based.

- (g) Within the staffing limits indicated above a Minister, may appoint 2 Special Advisers.
- (h) Ministers and Ministers of State may also appoint 2 Civilian Drivers. Civilian Drivers are not 'office' staff and are therefore not encompassed by the limits set out above.

3. SPECIAL ADVISERS

- (a) Following a request from a **Minister of the Government, the Government** can appoint a Special Adviser, as provided for by Section 11 of the Public Service Management Act 1997.

In the 33rd Dáil, in general, it is expected that only Ministers of the Government (and any Minister of State who regularly attends Cabinet) will have Special Advisers appointed to them. In particular circumstances where a specific need is identified, a Special Adviser may be appointed to a Minister of State subject to the approval of the Minister for Public Expenditure and Reform and the Government.

Special Advisers are appointed under the terms and conditions set out in these Guidelines and the model contract.

- (b) **Remuneration**

Special Advisers to Ministers and Ministers of State who regularly attend Cabinet are to be placed on the Principal Officer (Standard) PPC scale:

€87,325 €90,920 €94,487 €98,082 €101,114

While appointments should normally be on the first point of the scale, Secretaries General have delegated sanction to approve any increment on the Principal Standard Scale where they are satisfied that this is justified.

Where a salary greater than the maximum of the Principal (Standard) Scale is being considered, the Secretary General of a Department must seek sanction from the Secretary General of the Department of Public Expenditure and Reform, having regard to the candidate's existing pay and previous relevant experience to justify the pay rate now being sought.

Special Advisers to Ministers of State are to be placed on the Assistant Principal Officer (Standard) PPC scale:

€67,659 €70,104 €72,537 €74,977 €77,411 €78,816

While appointments should normally be on the first point of the scale, Secretaries General have delegated sanction to appoint to any increment on the Assistant Principal Standard Scale where they are satisfied that this is justified.

The above restrictions on salary scale do not apply to Special Advisers to the Taoiseach or Tánaiste.

(c) Increments

Where a Special Adviser is placed on a salary point below the maximum of the scale he or she may be paid an annual increment until the maximum of that scale is reached, and then progress to the Long Service Increments of the scale subject to usual service requirements. A Special Adviser may, by an agreement with his or her own Minister, agree a salary lower than as set out in these guidelines, such agreement is to be included and noted in the signed contract.

(d) Proposals regarding Publication of Pay of Special Advisers;

The Department of Public Expenditure and Reform must be notified of the salary rate to be paid to Special Advisers in all cases; these rates will be published on the website of the Department of Public Expenditure and Reform.

Severance arrangements are covered in section 11 of the Guidelines. Standard Public Service pension terms apply to new appointments as Special Adviser. See section 10 for further details.

4. PARLIAMENTARY ASSISTANTS AND SECRETARIAL ASSISTANTS

All **Officeholders** may appoint **one** Parliamentary Assistant and **one** Secretarial Assistant. Such staff will continue to be paid by the Houses of the Oireachtas Service and will remain part of the Secretarial Assistance Pension Scheme.

5. CIVILIAN DRIVERS

Ministers or Minister of State may appoint 2 Civilian Drivers. The selection of these appointees is a matter for each individual Minister or Minister of State. The current PPC salary for Civilian Drivers is **€710.13** per week.

6. CIVIL SERVANTS

No serving Civil Servant may be promoted on joining a Minister's or Minister of State's Private Office, as Special Adviser or otherwise. Such officers remain eligible for promotion within the Civil Service on the same basis as other officers. Similarly, Civil Servants should not be promoted outside of the normal arrangements for promotion in the Civil Service when Ministers are vacating office.

Appendix 2

Member of the Single Scheme

DECLARATION CONFIRMING ACCEPTANCE OF MEMBERSHIP OF SINGLE SCHEME

The Public Service Pensions (Single Scheme and Other Provisions) Act 2012 introduces new superannuation and retirement provisions for Public Servants who are deemed to be members of the Single Public Service Pension Scheme (“the Single Scheme”) in accordance with section 9 and 10 of the Act. A copy of these sections is attached for your information.

On the basis of the information supplied by you in relation to your previous Public Service employment history, i.e. that

1. *You have never been employed in a pensionable position in the Public Service*
or
2. *in the 26 weeks immediately preceding your appointment on or after 1 January 2013*
 - (i) *you have not been employed in a pensionable position in the Public Service*
(Note: for the purposes of the legislation an individual who is on a career break or a leave of absence is deemed to be still in employment)
 - and*
 - (ii) *you have not been a member of a pre-existing scheme as defined in the above legislation*

You are deemed to be a member of the Single Scheme.

HR Manager, Department of _____ [Insert name of Department]

Name: _____

Signed: _____

Dated: _____

Form of Acceptance to be signed by an appointee.

The implications of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012 have been explained to me. A copy of the sections 9 and 10 relating to “membership” has been given to me. I have considered those sections and I agree/do not agree (strike out as appropriate) with the decision in my case. (If you do not agree with the decision, please state your reasons.)

Name: _____

Signed: _____

Dated: _____

Appendix 3

Member of the Non-Established Scheme

DECLARATION CONFIRMING ACCEPTANCE OF MEMBERSHIP OF NON-CONTRIBUTORY PENSION SCHEME FOR NON-ESTABLISHED STATE EMPLOYEES

The Public Service Pensions (Single Scheme and Other Provisions) Act 2012 introduced new superannuation and retirement provisions for Public Servants who are deemed to be members of the Single Public Service Pension Scheme (“Single Scheme”) in accordance with section 9 and 10 of the Act. Copies attached for information. On the basis of the information supplied by you in relation to your previous Public Service employment history, i.e. that

- (i) During the 26 weeks immediately preceding this appointment you have been employed in a pensionable position in the Public Service,
- and**
- (ii) You have been a member of a pre-existing Public Service pension scheme as defined in the above legislation during the 26 weeks.

You are deemed not to be a member of the Single Scheme and are deemed to be a member of the Non-Contributory Pension Scheme for Non-Established State Employees

The Public Service Superannuation (Miscellaneous Provisions) Act 2004 introduced superannuation and retirement provisions for “new entrants” to the Public Service with effect from 1 April 2004. The term “new entrant” is defined in Section 2 of the Act. Copies attached for information.

HR Managers should remove either paragraph below as appropriate.

On the basis of the information supplied by you in relation to your previous employment history, you are deemed to be a new entrant for the purposes of the 2004 Act. This means that your superannuation position is as follows: [details should be given outlining the scheme which applies, the rate of contribution, the rate of accrual, the minimum pension age and whether or not a compulsory retirement age applies].

Or

On the basis of the information supplied by you in relation to your previous employment history, you are deemed not to be a new entrant for the purposes of the 2004 Act. This means that your superannuation position is as follows: [details should be given outlining the scheme which applies, the rate of contribution, the rate of accrual, the minimum pension age and whether or not a compulsory retirement age applies].

HR Manager, Department of _____ [Insert name of Department]

Name: _____

Signed: _____

Dated: _____

Form of Acceptance to be signed by Appointee

The implications of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012 and The Public Service Superannuation (Miscellaneous Provisions) Act 2004 have been explained to me. A copy of the sections relating to "membership" (2012 Act) and "new entrant status" (2004 Act) have been given to me. I have considered those sections and I agree/do not agree (strike out as appropriate) with the decision in my case. (If you do not agree with the decision, please state your reasons.)

Name: _____

Signed: _____

Dated: _____

Appendix 4

Definitions member/non-member Single Scheme – Extracts to be copied

THE FOLLOWING ARE EXTRACTS FROM THE PUBLIC SERVICE PENSIONS (SINGLE SCHEME AND OTHER PROVISIONS) ACT 2012 Regarding MEMBERSHIP OF THE “SINGLE SCHEME”

These extracts should be copied and issued to all appointees, along with the other documentation on superannuation.

Scheme and membership

9.—(1) There is established a scheme, to be known as the Single Public Service Pension Scheme (in this Part referred to as the “Scheme”) whose terms and conditions are provided for by or under this Part.

(2) The Scheme applies to Public Servants other than the following—

- (a) persons who are not Scheme members by virtue of *section 10*,
- (b) any person who has not attained the age of 16 years,
- (c) except in respect of a Scheme member to whom *section 20, 21, or 23* relates, any person after he or she attains the following:
 - (i) subject to subparagraph (ii), the age of 70 years;
 - (ii) where an age later than the age of 70 years is provided for by order under *section 13*, such later age.

10.—(1) Subject to *subsections (2) to (5)*, in this Part “Scheme member” means a person who is not serving in a Public Service body⁴ as a pensionable Public Servant on the day immediately preceding the day this section comes into operation but becomes a pensionable Public Servant on or after such date.

(2) Where—

- (a) on the day immediately preceding the operative date a pensionable Public Servant—
 - (i) stands seconded from the Public Service to a body not in the Public Service (whether or not within the State), or

⁴ Copy of definition of public service body in the 2012 Act below for ease of reference

- (ii) is absent on leave with or without pay from the Public Service,

And

- (b) that pensionable Public Servant is entitled to resume his or her office or position or another office or position within the Public Service,

then that pensionable Public Servant shall not be a Scheme member on such resumption within the Public Service on or after the operative date and, accordingly, the provisions applicable in respect of his or her pensionable Public Service shall apply in the same manner as those provisions would have applied to such a pensionable Public Servant if he or she had been serving in the Public Service on the day immediately preceding the operative date.

(3) Where—

- (a) a person duly receives a written offer of appointment as a pensionable Public Servant before the operative date and takes up that offer after that date,
- (b) subject to *section 47*, a person was serving in a Public Service body as a pensionable Public Servant before the operative date and left the relevant office or position but, subsequently, takes up appointment as a pensionable Public Servant—
 - (i) under the same contract of employment as he or she had been so serving under, or
 - (ii) within 26 weeks after his or her last day of service before that date,

Or

- (c) a person who immediately before the operative date stood admitted as a trainee Garda to the Garda College,

And where—

- (I) but for this subsection, the person concerned would be a Scheme member, and
- (II) where *paragraph (a)* applies, the terms of the offer of appointment would be contravened if *subsection (1)* were to apply,

Then the person shall not be a Scheme member and the provisions applicable in respect of his or her pensionable Public Service shall apply in the same manner as those provisions would have applied to such a pensionable Public Servant if he or she had been serving in the Public Service on the day immediately preceding the operative date.

- (4) Where at any time before the operative date a person was a member of the Oireachtas or the European Parliament or was a holder of a qualifying office but was not such a

member or holder on the operative date, then, subject to section 47, such person shall not be regarded as a Scheme member for the purposes of any superannuation benefit payable in respect of any subsequent membership of the Oireachtas of the European Parliament or the holding of any qualifying office.

- (5) Where on or after the operative date a pensionable Public Servant who is not a Scheme member ceases to serve in a Public Service body, then, subject to *section 47*, that person shall, if he or she subsequently takes up a pensionable office or position within the Public Service, be regarded as a Scheme member in respect of such subsequent service unless he or she takes up appointment—
- (a) under the same contract of employment, or
 - (b) as a Public Servant no later than 26 weeks following the last day of service prior to cessation.

“public service body” means—

- (a) the Civil Service,
- (b) the Garda Síochána,
- (c) the Permanent Defence Force,
- (d) a local authority for the purposes of the Local Government Act 2001 ,
- (e) the Health Service Executive,
- (f) a vocational education committee established under section 7 of the Vocational Education Act 1930 ,
- (g) subject to section 6 (1), the Central Bank of Ireland,
- (h) any other body (other than a body specified or referred to in the Schedule⁵) established—
 - (i) by or under an enactment (other than the Companies Acts), or
 - (ii) under the Companies Acts in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of money provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government, in respect of which a pre-existing public service pension scheme⁶ exists or applies or may be made,
- (i) any other body (other than a body specified or referred to in the Schedule) that is wholly or partly funded directly or indirectly out of monies provided by the Oireachtas or from the Central Fund or the growing produce of that Fund and in respect of which a pre-existing public service pension scheme exists or applies or may be made,
- (j) any subsidiary of, or company controlled (within the meaning given by section 10 of the Taxes Consolidation Act 1997) by, a body to which paragraph (d), (e) or (h) relates and in respect of which a pre-existing public service pension scheme exists or applies or may be made, and a reference to “public service” shall be read accordingly;

⁵ Schedule from 2012 Act, including link to amendments to this, can be found at <http://www.irishstatutebook.ie/eli/2012/act/37/schedule/enacted/en/html#sched>

⁶ Copy of definition of pre-existing public service pension scheme 2012 Act included below for ease of reference

“pre-existing public service pension scheme” means an occupational pension scheme or pension arrangement, by whatever name called, for any part of the public service—

(a) provided for by or under—

(i) the Superannuation Acts, or

(ii) any other enactment (other than this Act) or administrative measure for the like purpose and to the like effect as the Superannuation Acts and of either general or limited application,

or

(b) made by a relevant Minister or which has been approved or requires the approval or consent, however expressed, of either or both a relevant Minister and the Minister, but does not include the Scheme or a scheme or arrangement in respect of a body specified or referred to in the Schedule

Appendix 5

Definition of New Entrant – Extracts to be copied

THE FOLLOWING ARE EXTRACTS FROM THE PUBLIC SERVICE SUPERANNUATION (MISCELLANEOUS PROVISIONS) ACT 2004 REGARDING DEFINITION OF “NEW ENTRANT”

These extracts should be copied and issued to all appointees, along with the other documentation on superannuation.

New entrant

2.—(1) Subject to *subsections (2) to (6)*, reference in this Act to “new entrant” means a person who is not serving in a Public Service body⁷, or a body to which *Schedule 1*⁸ relates, on 31 March 2004 but becomes a Public Servant on or after 1 April 2004.

(2) Where a person is not a Public Servant (by virtue of the exclusions to “Public Servant” in *section 1*)⁹ but is a person to whom—

(a) *paragraph (i)* of those exclusions relates and such person holds, or had held on or before 31 March 2004, the office to which that paragraph relates, or

(b) *paragraph (ii), (iii), (iv) or (v)* of those exclusions relates and such person holds on 31 March 2004 an office or position to which one of those paragraphs relates or to whom *subsection (3)* would apply if the office or position were that of a Public Servant within the meaning of this Act,

then, where such person on or after 1 April 2004 becomes a Public Servant for the purposes of this Act, then that person shall be deemed not to be a new entrant.

(3) Where—

(a) a person on 31 March 2004—

(i) stands seconded from the Public Service to a body not in the Public Service, either within or outside the State or both, or

(ii) is absent on leave with or without pay from the Public Service,

⁷ Copy of definition of Public Service body from Section 1 of the Act below for ease of reference.

⁸ Schedule 1, including links to amendments to this, available at:

<http://www.irishstatutebook.ie/eli/2004/act/7/schedule/1/enacted/en/html>

⁹ **NOTE:** This subsection refers to exclusions in Section 1 of the Act and the offices referred to are: (i) the President, (ii) a member of the judiciary, (iii) the Master of the High Court, (iv) a taxing master, (v) a county registrar.

And

(b) that person is entitled to resume his or her office or position or another office or position within the Public Service, then that person shall not be treated as a new entrant if he or she resumes his or her office or position, or takes up another office or position, within the Public Service on or after 1 April 2004.

(4) Where—

(a) a person duly receives a written offer of appointment as a Public Servant before 1 April 2004 and takes up that offer after that date,

(b) a person was serving in a Public Service body or a body to which *Schedule 1* relates prior to 31 March 2004 and left such an office or position and takes up appointment as a Public Servant on or after 1 April 2004—

(i) under the same contract of employment, or

(ii) no later than 26 weeks following the last day of service prior to 31 March 2004,

Or

(c) a person who immediately before 1 April 2004 stood admitted as a trainee Garda to the Garda College at Templemore,

and where—

(I) but for this subsection, *subsection (1)* would apply to him or her, and

(II) where *paragraph (a)* applies, the terms of the offer of appointment would be contravened if *subsection (1)* were to apply,

then, such person shall not be regarded as a new entrant and the provisions applicable to a Public Servant shall, but only in so far as the application of provisions relating to retirement age and superannuation, as the case may be, apply in the same manner as to a person serving in the Public Service on 31 March 2004.

(5) (a) Where before 1 April 2004 a person was a member of either House of the Oireachtas or the European Parliament, or was a holder of a qualifying office, then such person shall not be regarded as a new entrant for the purposes of any superannuation benefit payable in respect of membership of the Oireachtas or the European Parliament or in respect of any qualifying office.

(b) A person who holds or has held the office of Taoiseach shall not be regarded as a new entrant in relation to any superannuation benefit payable in respect of the holding of a qualifying office.

(6) Where on or after 1 April 2004 a Public Servant who is not a new entrant ceases to serve in a Public Service body or in a body to which *Schedule 1* relates and does so otherwise than for employment in another Public Service body or in a body to which *Schedule 1* relates, then that person shall, if he or she subsequently applies for an office or position within the Public Service, be treated as a new entrant in respect of such subsequent service unless he or she takes up appointment—

(a) under the same contract of employment, or

(b) as a Public Servant no later than 26 weeks following the last day of service prior to cessation.

(7) For the purpose of supplementing *subsection (5)*, the Act referred to in *columns 1 and 2 of Part 1 of Schedule 2* is amended to the extent specified in *column 3* of that Part opposite the references to the Act concerned.

“Public Service body” means—

(a) the Civil Service,

(b) the Garda Síochána,

(c) the Permanent Defence Force,

(d) a local authority for the purposes of the Local Government Act 2001,

(e) a health board,

(f) a vocational education committee established under section 7 of the Vocational Education Act 1930,

(g) a body, other than a body set out in *Schedule 1*—

(i) established by or under any enactment (other than the Companies Acts 1963 to 2003), or

(ii) established under the Companies Acts 1963 to 2003 in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government,

and in respect of which a Public Service pension scheme¹⁰ exists or applies or may be made,

(h) any body, other than a body set out in *Schedule 1*, wholly or partly funded out of moneys provided by the Oireachtas or from the Central Fund or the growing produce of that Fund and in respect of which a Public Service pension scheme exists or applies or may be made,

¹⁰ Copy of definition of Public Service pension scheme from Section 1 below for ease of reference.

(i) any subsidiary of a body to which *paragraph (d), (e) or (g)* relates and in respect of which a Public Service pension scheme exists or applies or may be made, and reference to “Public Service” shall be read accordingly;

“**Public Service pension scheme**” means an occupational pension scheme or pension arrangement, by whatever name called, for any part of the Public Service which—

(a) is provided for under the Superannuation Acts 1834 to 1963 or any other enactment to like effect, or

(b) is made by a relevant Minister or which has been approved or requires the approval or consent, however expressed, of either or both a relevant Minister and the Minister, but is not a scheme or arrangement in respect of a body or category of bodies set out in *Schedule 1*;

Appendix 6

Guidelines on the Issuing of Excluding Orders

Ministerial Appointments

Where an appointment is being made to the post of Civilian Driver an Excluding Order is required under Section 8 of the Public Service Management (Recruitment and Appointments) Act 2004. Service in such posts is co-terminus with the term of office of the appointing Minister.

An Excluding Order is **not** required where an appointment is to the post of Special Adviser as such appointments are covered by the general exclusion provided under section 7(1) (e) of the 2004 Act.

Guidelines on the issuing of Excluding Orders

Department of Finance *Circular 37/2007: Guidance Note of 15, November, 2007 to all HR Managers on the use of Excluding Orders as provided for under the Public Service Management (Recruitment and Appointments) Act, 2004*, refers.

<http://hr.per.gov.ie/recruitment-policy/>

The sanction of the Minister for Public Expenditure and Reform is required before approaching the Commission for Public Service Appointments (CPSA) to request the making of an Excluding Order. Departments/Offices should note that where the making of an appointment requires an Excluding Order, under no circumstances should that appointment be made nor any contractual arrangements entered into, until the Order is made. There is no facility under the Act for the retrospective issuing of an Excluding Order.

Procedure for applying for an Excluding Order or extension to an existing Excluding Order

1: There are three steps involved in making application for an Excluding Order or seeking an extension to an existing Excluding Order as set out below:

- a) Request sanction for the post from appropriate Vote Section, Department of Public Expenditure and Reform, 7-9 Merrion Row, Dublin 2),
- b) Request approval from Strategic Resources Section to submit application to the Commission for Public Service Appointments (CPSA) to fill the position by way of an Excluding Order, (Recruitment Section, Department of Public Expenditure and Reform, 7-9 Merrion Row, Dublin 2. (csrecruitmentpolicy@per.gov.ie)
- c) Submit application to CPSA. (Commission for Public Service Appointments, 6 Earlsfort Terrace, Dublin 2, D02 W773) info@cpsa.ie

Appendix 7

Organisation of Working Time Act 1997 and Civilian Drivers

Organisation of Working Time Act 1997 (OWTA) and Civilian Drivers

The OWTA places a clear obligation in relation to record keeping (Section 25(1) OWTA 1997). The prescribed format and content of the records required is set out in S.I. No. 473 - Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations 2001. In addition a prescribed form (Form OWT1) is provided in a Schedule to that S.I. for the purposes of recording the days and hours worked each week. **In order to be compliant with the legislation, in the absence of clocking-in facilities, Form OWT1 or a form 'substantially to like effect' must be used by all Departments to record Civilian Drivers' working time. Form OWT1 must be completed by the Civilian Driver, countersigned and retained by the employer.**

On 27 September 2010 a letter issued from the Department of Finance to all HR Managers including the following text:

"As you are aware SI 21/1998 Organisation of Working Time (General Exemptions) Regulations, 1998, sets out subject to the subsequent provisions of this Regulation, the activities exempted from the application of sections 11, 12, 13 and 16 (replicated as Appendix 1 attached to this letter) of the OWTA. I wish to draw attention to the recent advice of the Attorney General's Office that the language in paragraph 1 of the Schedule to SI 21/1998

'an activity in which the employee is regularly required by the employer to travel distances of significant length, either from his or her home to the workplace or from one workplace to another workplace'

is wide enough to encompass a Civilian Driver to a Minister of State. This being so Sections 11, 12, 13 and 16 of the OWTA do not apply to Civilian Drivers to Ministers of State. As regards what rest periods such workers are entitled to Article 4 of SI 21/1998 is quite clear:

If an employee is not entitled, by reason of the exemption, to the rest period and break referred to in sections 11, 12 and 13 of the Act, the employer shall ensure that the employee has available to himself or herself a rest period and break that, in all the circumstances, can reasonably be regarded as equivalent to the first-mentioned rest period and break.

In other words civilian drivers to Ministers of State must not overall have any less of a rest period than a worker covered by the Act. It is important that the compensatory rest for rest breaks at work and for daily rest breaks, in particular, be provided as soon as possible and, generally, in an adjacent time frame.

In this context, paid off-duty periods may be regarded as constituting compensatory rest. For example, where a civilian driver works seven days on and seven days off, they could in theory be due seventy seven hours compensatory rest but this could be deemed to be provided by the following week off.

Attention is also drawn to the obligations of Ministers and Accounting Officers in relation to record keeping for Ministerial Private Office Staff. Accounting Officers are required to satisfy themselves that arrangements are in place for the keeping of records of a Civilian Driver's time and attendance, and to ensure compliance with these requirements on a regular basis, perhaps quarterly. A sample record is set out overleaf.

FORM OWTI

ORGANISATION OF WORKING TIME ACT 1997

PLEASE COMPLETE THIS FORM IN BLOCK CAPITALS

EMPLOYER'S REGISTERED NUMBER _____

BUSINESS NAME OF EMPLOYER _____

BUSINESS ADDRESS _____

FIGURES LETTER

EMPLOYEE'S PERSONAL PUBLIC SERVICE NUMBER _____

SURNAME _____ FIRST NAME _____

- NUMBER OF HOURS WORKED BY EMPLOYEE PER DAY PER WEEK

WEEK COMMENCING: WEEK COMMENCING: WEEK COMMENCING: WEEK COMMENCING:
AND ENDING: AND ENDING: AND ENDING: AND ENDING:

MONDAY	MONDAY	MONDAY	MONDAY
TUESDAY	TUESDAY	TUESDAY	TUESDAY
WEDNESDAY	WEDNESDAY	WEDNESDAY	WEDNESDAY
THURSDAY	THURSDAY	THURSDAY	THURSDAY
FRIDAY	FRIDAY	FRIDAY	FRIDAY
SATURDAY	SATURDAY	SATURDAY	SATURDAY
SUNDAY	SUNDAY	SUNDAY	SUNDAY

WEEKLY TOTAL WEEKLY TOTAL WEEKLY TOTAL WEEKLY TOTAL

I DECLARE THAT THE ABOVE INFORMATION IN RELATION TO DAILY AND WEEKLY HOURS WORKED IS CORRECT

SIGNATURE OF EMPLOYER: _____

SIGNATURE OF EMPLOYEE: _____

- NUMBER OF HOURS WORKED EXCLUDES MEAL BREAKS AND REST BREAKS

Appendix 8

Model Contract of Employment for the post of Special Adviser

Employing Department/Office _____ [Insert Name of Department]

Address

Employee

Address

I am directed by the Minister for [Insert Name of Department] to inform you that following Government Decision **N999/99/99/9999N of DD/MM/YYYY**, he/she is prepared to offer you an appointment as Special Adviser under Section 11 of the Public Service Management Act 1997 on the following terms and conditions, with effect from **[date of Government Decision]**.

General

1. The appointment is subject to the Civil Service Regulation Acts 1956 to 2005, the Public Service Management (Recruitment and Appointments) Act 2004, the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 and any other Act for the time being in force or any other regulations relating to your employment in the Civil Service.

Pay

2. The salary scale for this position is [Insert actual full scale (PPC/non-PPC as appropriate)].

The annual rate of pay upon commencement will be € **[Insert Amount]**. Payment will be made fortnightly in arrears by Electronic Fund Transfer (EFT) into a Bank Account of your choice. Payment cannot be made until you supply a Bank Account number and Bank Sort Code to the Personnel Section/PeoplePoint.

The rate of pay may be adjusted from time to time in line with Government policy.

Statutory deductions from salary will be made as appropriate by the Department of [Insert Name of Department]. Deductions for superannuation contributions will be made from pensionable remuneration only.

You will agree that any overpayment of salary, allowances, or expenses will be repaid by you in accordance with Circular 10/2017: Recovery of Salary, Allowances, and Expenses Overpayments made to Staff Members/Former Staff Members/ Pensioners.

Under Section 23 of the National Minimum Wage Act 2000, you may request a written statement of your average hourly rate of pay for any pay reference period.

Tenure

3. The appointment is to a temporary position in the Civil Service. It carries no entitlement to permanent status, by way of limited competition or otherwise. Your term of appointment as Special Adviser shall cease on the date on which the Minister ceases to be a Minister of the Government

Or

For a Special Adviser to a Minister of State, your term of appointment as Special Adviser shall cease on the date of expiration of the assignment of the Minister of State to the Department or Office in question.

4. In accordance with the Protection of Employees (Fixed Term Work) Act 2003, your contract is on a fixed-term contract basis only as your appointment is coterminous with that of the **[Minister of the Government or Minister of State]**.
5. The Department of **[Insert Name of Department]** reserves the right to terminate your employment prior to the date of cessation on giving of the appropriate notice set down in the Minimum Notice and Terms of Employment Acts 1973 to 2005. The Department of **[Insert Name of Department]** also reserves the right to terminate your employment for stated reasons. The appointment may be terminated at any time by either side in accordance with the Minimum Notice and Terms of Employment Acts 1973 and 2005.
6. In the event of serious misconduct, the appointment may be terminated without notice.
7. In the event of the appointment being terminated under the terms of paragraph 6 above, no remuneration or compensation will be payable other than that applicable to work carried out.

Probation

8. Your appointment will be subject to a probationary period of six months from the date of your appointment. Should your service be satisfactory as regards health, conduct, efficiency and performance generally during the probationary period, you will be confirmed in your appointment for the period of tenure set out above.

Duties

You will be required to perform any duties which may be assigned to you from time to time as appropriate to the position of Special Adviser as set out in Section 11 of the Public Service Management Act 1997.

Ethics in Public Office Acts

9. The terms of the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 apply to this appointment (i.e. your contract of employment and a statement whether you are a relative of the Minister or Minister of State on whose behalf you are appointed will be laid before the Houses of the Oireachtas).

*[Note to HR Managers: If the Special Adviser's remuneration **exceeds** the second Long Service Increment point of the Higher Executive Officer (general service grade, class B PRSI in the Civil Service) scale, the following inclusions should be made:]*

In circumstances where the Special Adviser's remuneration exceeds the salary described in number 9 above, the following paragraphs refer.

- 9.1 As provided for by section 19(3)(a)(iii) of the Ethics in Public Office Act 1995, you undertake not to engage in any trade, profession, vocation or other occupation, whether remunerated or otherwise, which might reasonably be seen to be capable of interfering or being incompatible with the performance by you of your official functions as a Special Adviser.
- 9.2. Each year, during any part of which you hold or held a position to which the provisions of section 19 of the Ethics in Public Office Act 1995 apply, you must prepare:

- a statement in writing of your own registrable interests, as provided for in the Second Schedule to the Ethics in Public Office Act 1995 which could materially influence you in, or in relation to, the performance of your official functions;

And

- a statement in writing of the registrable interests, of which you have actual knowledge, of your spouse, of your civil partner, of a child of yours or of a child of your spouse, which could materially influence you in or in relation to the performance of your official functions.

- 9.3 You must furnish these statements of interests to the Officeholder¹¹ who selected you for appointment and to the Standards in Public Office Commission, in the form determined by the Minister for Public Expenditure and Reform, and which, in relation to your own registerable interests, will be laid before each House of the Oireachtas¹².

¹¹ Where there are no interests to disclose, there is no obligation on a special adviser to furnish a nil statement. However, the Standards in Public Office Commission recommends that a NIL statement be submitted.

¹² Where no interests exist there is no requirement on an Officeholder to lay a nil statement of a special adviser before the Oireachtas

- 9.4 The first statements must cover the period from your date of appointment to 31 December of that year. Subsequent statements must cover any calendar year or any part thereof during which you hold any post to which the provisions of section 19 of the Ethics in Public Office Act 1995 apply.
- 9.5 The statements must be furnished not later than 31 January of the following year.
- 9.6 In the year your appointment ends, the statements must be furnished within 28 days of your appointment ending.
- 9.7 The Officeholder who selected you for appointment will also lay before the Houses of the Oireachtas:
- (i) a statement of your qualifications relevant to your official functions;
 - (ii) a copy of the contract or a statement in writing of the terms and conditions under which you act, or have acted, as Special Adviser; and
 - (iii) a statement as to whether you are a relative of the Officeholder.
- 9.8 Where an official function falls to be performed by you, and you have actual knowledge that you, or a connected person, as defined in the Ethics in Public Office Act 1995, have or has a material interest in the matter to which the function relates, you must, as soon as may be, prepare and furnish a statement in writing of those facts to the Officeholder who selected you for appointment and to the Standards in Public Office Commission. You must not perform the function unless there are compelling reasons requiring you to do so. If you propose to perform the function you must, before doing so, or, if that is not reasonably practicable, as soon as possible afterwards, furnish a statement in writing of the compelling reasons to the Officeholder who selected you for appointment and to the Standards in Public Office Commission. The requirements set out in this paragraph apply whether or not an interest has been disclosed in a statement of registrable interests referred to above.
- 9.9 Where there are no interests to disclose, there is no obligation on a Special Adviser to furnish a nil statement. However, the Standards in Public Office Commission recommends that a nil statement be submitted. Where no interests exist there is no requirement on an Officeholder to lay a nil statement of a Special Adviser before the Oireachtas
- 9.10 Statutory advice on your obligations under the Ethics in Public Office Acts 1995 and 2001 may be sought from the Standards in Public Office Commission by email to info@sipo.ie or by phone to 01-6395666.

Headquarters

10. Your headquarters will be such as may be designated from time to time by the Secretary General. The provisions of Department of Finance Circular 6/89, Removal Expenses, **will not apply** to relocation from headquarters. Travel to and from headquarters will not be eligible for travel expenses.

Hours of attendance

11. Hours of attendance will be as fixed from time to time but will amount to not less than 43 hours and 15 minutes gross per week. No additional remuneration will be paid for extra attendance.

Annual leave

12. The annual leave allowance will be **[insert number of Days]** working days per year, exclusive of the usual public holidays. This annual leave allowance is subject to the usual conditions which apply in the Civil Service regarding the granting of annual leave, and to the making, at such times as may be determined from time to time by the Secretary General, of returns of annual leave taken. The Organisation of Working Time Act 1997 gives all full time employees a statutory minimum of four working weeks (20 days) which must be taken during the 12 month leave year.

Organisation of Working Time Act

13. The terms of the Organisation of Working Time Act 1997 will apply, as appropriate, to your appointment.

Sick Leave

14. Sick pay during properly certified sick absence, provided there is no evidence of permanent disability for service, may be allowed on a pro-rata basis, in accordance with the provisions of sick leave Circular 12/2015.

You will be required to sign a mandate authorising the Department of Employment Affairs and Social Protection to pay any benefits due under the Social Welfare Acts direct to this Department and payment during illness will be subject to you making the necessary claims for social insurance benefit to the Department of Employment Affairs and Social Protection within the required time limits.

Superannuation and Retirement

15. Choose the relevant options (a-e below) from both 15.1 and 15.2 and delete the non-applicable options, as appropriate. **In section 15.1 and 15.2 below, scheme membership classification (a) in section 15.1 corresponds with retirement age classification (a) in paragraph 15.2, (b) with (b) and so on.**

15.1 Pension Scheme Membership

Based on the information supplied by you, that:

- (a) you have never worked in the Public Service or you have had a greater than 26 week break since your last pensionable Public Service employment, you are deemed to be a member of the Single Public Service Pension Scheme in accordance with the Public Service Pensions (Single Scheme and Other Provisions) Act 2012.

OR

(b) you have worked in a pensionable (non-Single Scheme terms) Public Service job in the 26 weeks prior to this appointment, the terms of the Non-Contributory Pension Scheme for Non-Established State Employees and of the Contributory Spouses' and Children's Pension Scheme for Non-Established State Employees will apply to this appointment, **and**

(c)

(i) you are deemed to be a "New Entrant" in accordance with the Public Service Superannuation (Miscellaneous Provisions) Act 2004.

OR

(ii) you are **not** deemed to be a "New Entrant" in accordance with the Public Service Superannuation (Miscellaneous Provisions) Act 2004.

OR

(d) your appointment is on the basis of **secondment** from the Department/Office of **[Insert Name of Department/Office Here]**. You will remain a member of the pension scheme for **[insert pension scheme name]**. The terms and conditions of that pension scheme shall apply to this appointment. Please note: your pension benefits will be based on your salary in your substantive grade only i.e. the grade from which you have been seconded.

OR

(e) your appointment is on the basis of **secondment** from the private sector. **[Please consult the Department of Public Expenditure and Reform if this is the case]**

15.2 Retirement Age

(a) Your minimum retirement age is the age at which you become eligible for the State Pension (Contributory). At present this is 66 years, rising to 67 on 1 January 2021 and 68 on 1 January 2028 in line with planned changes to State Pension age. Retirement is compulsory on reaching age 70. Tenure is co-terminus with the Minister or on reaching 70 years of age, whichever is the earlier.

OR

(b) (i) Your minimum retirement age is 65 and you do not have a maximum retirement age. Tenure is co-terminus with the Minister.

OR

(ii) Your minimum retirement age is 65 and your maximum retirement age is 70. Tenure is co-terminus with the Minister or on reaching 70 years of age, whichever is the earlier.

OR

(c) Your minimum retirement age is **[insert age based on current pension scheme]** and your maximum retirement age is **[insert age based on pension scheme]**. Tenure is co-terminus with the Minister or on reaching **[insert compulsory retirement age based on current pension scheme]** years of age, whichever is the earlier.

OR

(d) Tenure is co-terminus with the Minister.

Pension Accrual

Please note that section 52(6) of the Public Service Pensions (Single Scheme and other Provisions) Act 2012 limits the amount of pensionable service an individual may accrue across all pre-existing Public Service pension schemes (non-Single Scheme terms) to a maximum of forty years or equivalent.

Pension Abatement

If you are in receipt of a pension with respect to another Public Service employment, your pension will be subject to abatement for the duration of this employment in accordance with Section 52 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012.

Additional Superannuation Contribution

This appointment is subject to the Additional Superannuation Contribution in accordance with the Public Service Pay and Pensions Act 2017.

Official Secrecy and Integrity

16. You will, during the term of your appointment, be subject to the provisions of the Official Secrets Act 1963 as amended by the Freedom of Information Act 2014.

17. Regulation of Lobbying Act

- (a) You are a Designated Public Official under the Regulation of Lobbying Act 2015.
- (b) In accordance with the Regulation of Lobbying Act 2015, you are not permitted to carry out lobbying activities involving the Public Service body or any Designated Public Official with which you were “connected” in the preceding year, for a period of one year from the day on which you cease to be a Special Adviser, unless the consent of the Standards in Public Office Commission has been obtained.

The term “Connected” is defined in Section 22(4) of the Regulation of Lobbying Act as follows:

“For the purposes of subsection (3) a Public Service body is one with which a person was connected at any time if it was at that time a Public Service body by which the person was employed or in which the person held any office or other position”

- (c) Similarly, you may not be employed by, or provide services to, a person carrying on lobbying activities in the circumstances described in paragraph 17(b) directly above, unless the prior consent of the Standards in Public Office Commission has been obtained.

Confidentiality and Publication

18. You will not while holding the position of Special Adviser to the Minister for **[Insert Name of Department Here]** or thereafter, disclose or publish any confidential official information or material, including electronically held data, which you acquired or which

came to your knowledge in the course of, or as a consequence of, your employment in that capacity, except where the matter has been submitted for adjudication to the Secretary General to the Government as to its confidentiality and, on the basis of his decision, the prior approval of the Minister concerned at the time of publication has been obtained for publication or disclosure. The disclosure of official information is also covered by the provisions of the Official Secrets Act 1963 and Freedom of Information Act 2014.

19. It is a condition of your employment in the above-stated capacity that the copyright in any book, article or other publication which you write or publish, containing unauthorised disclosures of official information is vested in the Government of Ireland. If in breach of the said condition you write or publish any book, article or other publication containing unauthorised disclosures of official information, any copyright in the said book, article or other publication which but for this clause would vest in you will belong to the Government of Ireland.

Civil Service Code of Standards and Behaviour

20. The Civil Service Code of Standards and Behaviour forms part of your contract for this appointment.

Personnel Code

21. All circulars are available on the website <http://circulars.gov.ie> or from the Personnel Section.

Acceptance of Appointment

22. If you are prepared to accept the appointment on these terms please complete the enclosed acceptance form and return it to me at the above address.

Secretary General
Department [Insert Name of Department]

Form of Acceptance

I have read and noted the contract and I am prepared to accept an appointment as Special Adviser to the Minister for **[Insert Name of Department Here]** on the terms and conditions set out above. I also acknowledge receipt of a copy of the Civil Service Code of Standards and Behaviour and confirm that I have read and understood same.

Name: _____

Signed: _____

Dated: _____

Secretary General: _____

Signed: _____

Dated: _____

Appendix 9

Model Contract of Employment for the post of Civilian Driver

Employing Department/Office _____ [Insert Name of Department]

Address _____

Employee _____

Address _____

Contract of Employment as Civilian Driver

I am directed by the Minister for **[Insert Name of Department]** to say that s/he is prepared to offer you an appointment as Civilian Driver for the Minister/Minister of State [Insert name of Minister/Minister of State] in the Department of [Insert Name of Department] on the following terms and conditions with effect from [date]. This contract is issued in accordance with the Unfair Dismissals Acts 1977 to 2007 and the Minimum Notice and Terms of Employment Acts 1973 to 2005.

General

1. The appointment is subject to the Civil Service Regulation Acts 1956 to 2005, the Public Service Management (Recruitment and Appointments) Act 2004 and any other Act for the time being in force or any other regulations relating to your employment in the Civil Service.

Pay

2. The rate of pay offered will be **€675.63/€710.13** per week and will be payable in arrears by Electronic Fund Transfer (EFT) into a Bank Account of your choice. Payment cannot be made until you supply a Bank Account number and Bank Sort Code to the Personnel Section/PeoplePoint.

The rate of pay may be adjusted from time to time in line with Government policy.

Statutory deductions from salary will be made as appropriate by the Department of [Insert Name of Department]. Deductions for superannuation contributions will be made from pensionable remuneration only.

You will agree that any overpayment of salary, allowances, or expenses will be repaid by you in accordance with Circular 10/2017: Recovery of Salary, Allowances, and Expenses Overpayments made to Staff Members/Former Staff Members/Pensioners.

Under Section 23 of the National Minimum Wage Act 2000, you may request a written statement of your average hourly rate of pay for any pay reference period.

Tenure

3. The appointment is to a temporary position in the Civil Service. It carries no entitlement to permanent status, by way of limited competition or otherwise. Your term of employment will cease on the date the Minister/Minister of State ceases to hold Office as Minister of State.
4. In accordance with the Protection of Employees (Fixed Term Work) Act 2003, your contract is on a fixed-term contract basis only as your appointment is coterminous with that of the **[Minister of the Government or Minister of State]**.
5. The Department of [Insert Name of Department] reserves the right to terminate your employment prior to the date of cessation on giving of the appropriate notice set down in the Minimum Notice and Terms of Employment Acts 1973 to 2005. The Department of [Insert Name of Department] also reserves the right to terminate your employment for stated reasons. The appointment may be terminated at any time by either side in accordance with the Minimum Notice and Terms of Employment Acts 1973 and 2005.
6. In the event of serious misconduct, the appointment may be terminated without notice.
7. In the event of the appointment being terminated under the terms of paragraph 6 above, no remuneration or compensation will be payable other than that applicable to work carried out.

Unfair Dismissals Acts 1977 to 2007

8. The Unfair Dismissals Acts 1977-2007 will not apply to the termination of your employment by reason only of the expiry of this fixed term contract without it being renewed or the cessation of the purpose of the contract.

Probation

9. Your appointment will be subject to a probationary period of six months from the date of your appointment. Should your service be satisfactory as regards health, conduct, efficiency and performance generally during the probationary period, you will be confirmed in your appointment for the period of tenure set out above.

Duties

10. You will be required to perform the duties appropriate to you as Civilian Driver which may be assigned to you from time to time by the Minister/Minister of State. You may not engage in private practice or be connected with any outside business which would interfere with the performance of official duties.

Headquarters

11. Your Headquarters will be such as may be designated from time to time by the Secretary General. Travel and subsistence payments will be made at the appropriate Civil Service rates in respect of certified official travel and subject to the usual Civil Service regulations which apply in relation to travel and subsistence.

Note:

Civilian Drivers will continue to be entitled to claim overnight subsistence in all instances where they are 100km from their home.

Day subsistence allowances are not payable for absences at any place within eight kilometers of the driver's home or headquarters.

Organisation of Working Time Act / Hours of attendance

12. The terms of the Organisation of Working Time Act 1997 (OWTA) will apply, as appropriate, to this appointment.
13. Hours of attendance will be as fixed from time to time but will amount to on average not less than 43 hours and 15 minutes gross per week. The working pattern will be seven days on and seven days off on a week-on week-off basis. You will be required to complete form OWT1 in accordance with S.I. No. 473 of 2001 *Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations, 2001* and submit it to [Insert] on a fortnightly basis.

No additional remuneration will be paid for extra attendance during the week on. You will be given an extra payment equivalent to two days' pay for each day you are required to work on your week off.

Note to HR Manager – if the employee is under 18 years of age please insert the following sentence:

The Protection of Young Persons (Employment) Act 1996 will apply to your appointment until you reach 18 years of age.

Annual Leave

14. The annual leave allowance will be 14 days per year, expressed on the basis of;
 - a seven-day week and exclusive of the usual public holidays,

- *to facilitate the taking of annual leave, consideration will be given to granting annual leave during Dáil recesses or when the appropriate Minister is also on leave,*
- *the duty is rostered between two drivers working one week on and one week off.*

Sick Leave

14. Sick pay during properly certified sick absence, provided there is no evidence of permanent disability for service, may be allowed on a pro-rata basis, in accordance with the provisions of sick leave Circular 12/2015.

You will be required to sign a mandate authorising the Department of Employment Affairs and Social Protection to pay any benefits due under the Social Welfare Acts direct to this Department and payment during illness will be subject to you making the necessary claims for social insurance benefit to the Department of Employment Affairs and Social Protection within the required time limits.

Superannuation and Retirement

15. Choose the relevant options (a-e below) from both 15.1 and 15.2 and delete the non-applicable options, as appropriate. **In section 15.1 and 15.2 below, scheme membership classification (a) in section 15.1 corresponds with retirement age classification (a) in paragraph 15.2, (b) with (b) and so on.**

15.1 Pension Scheme Membership

Based on the information supplied by you, that:

- (a) you have never worked in the Public Service or you have had a greater than 26 week break since your last pensionable Public Service employment, you are deemed to be a member of the Single Public Service Pension Scheme in accordance with the Public Service Pensions (Single Scheme and Other Provisions) Act 2012.

OR

- (b) you have worked in a pensionable (non-single Scheme terms) Public Service job in the 26 weeks prior to this appointment, the terms of the Non-Contributory Pension Scheme for Non-Established State Employees and of the Contributory Spouses' and Children's Pension Scheme for Non-Established State Employees will apply to this appointment, **and**

- (i) you are deemed to be a "New Entrant" in accordance with the Public Service Superannuation (Miscellaneous Provisions) Act 2004.

OR

- (iii) you are **not** deemed to be a "New Entrant" in accordance with the Public Service Superannuation (Miscellaneous Provisions) Act 2004.

OR

(c) your appointment is on the basis of **secondment** from the Department/Office of **[Insert Name of Department Here]**. You will remain a member of the pension scheme for **[insert pension scheme name]**. The terms and conditions of that pension scheme shall apply to this appointment. Please note: your pension benefits will be based on your salary in your substantive grade only i.e. the grade from which you have been seconded.

OR

(d) your appointment is on the basis of **secondment** from the private sector. **[Please consult the Department of Public Expenditure and Reform if this is the case]**

15.2 Retirement Age

(e) Your minimum retirement age is the age at which you become eligible for the State Pension (Contributory). At present this is 66 years, rising to 67 on 1 January 2021 and 68 on 1 January 2028 in line with planned changes to State Pension age. Retirement is compulsory on reaching age 70. Tenure is co-terminus with the Minister or on reaching 70 years of age, whichever is the earlier.

OR

(f) (i) Your minimum retirement age is 65 and you do not have a maximum retirement age. Tenure is co-terminus with the Minister.

OR

(ii) Your minimum retirement age is 65 and your maximum retirement age is 70. Tenure is co-terminus with the Minister or on reaching 70 years of age, whichever is the earlier.

OR

(g) Your minimum retirement age is **[insert age based on current pension scheme]** and your maximum retirement age is **[insert age based on pension scheme]**. Tenure is co-terminus with the Minister or on reaching **[insert compulsory retirement age based on current pension scheme]** years of age, whichever is the earlier.

OR

(h) Tenure is co-terminus with the Minister.

Pension Accrual

Please note that section 52(6) of the Public Service Pensions (Single Scheme and other Provisions) Act 2012 limits the amount of pensionable service an individual may accrue across all pre-existing Public Service pension schemes (non-Single Scheme terms) to a maximum of forty years or equivalent.

Pension Abatement

If you are in receipt of a pension with respect to another Public Service employment, your pension will be subject to abatement for the duration of this employment in accordance with Section 52 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012.

Additional Superannuation Contribution

This appointment is subject to the Additional Superannuation Contribution in accordance with the Public Service Pay and Pensions Act 2017.

Official secrecy and integrity

16. You will, during the term of your appointment, be subject to the provisions of the Official Secrets Act 1963 as amended by the Freedom of Information Act 2014.

Confidentiality and publication

18. You will not, while holding the position of Civilian Driver to the ***Minister/Minister for State for/at the Department of [Insert Name of Department Here]*** or thereafter, disclose or publish any confidential official information or material, including electronically held data, which you acquired or which came to your knowledge in the course of, or as a consequence of, your employment in that capacity, except where the matter has been submitted for adjudication to the Secretary General to the Government as to its confidentiality and, on the basis of his decision, the prior approval of the Minister concerned at the time of publication has been obtained for publication or disclosure. The disclosure of official information is also covered by the provisions of the Official Secrets Act 1963 and Freedom of Information Act 2014.
19. It is a condition of your employment in the above-stated capacity that the copyright in any book, article or other publication which you write or publish, containing unauthorised disclosures of official information is vested in the Government of Ireland. If in breach of the said condition you write or publish any book, article or other publication containing unauthorised disclosures of official information, any copyright in the said book, article or other publication which but for this clause would vest in you will belong to the Government of Ireland.

Civil Service Code of Standards and Behaviour

20. The Civil Service Code of Standards and Behaviour forms part of your contract for this appointment.

Ethics in Public Office Acts

21. The terms of the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 apply to this appointment (i.e. your contract of employment and a statement whether you are a relative of the Minister or Minister of State on whose behalf you are appointed will be laid before the Houses of the Oireachtas).

Personnel Code

22. All circulars are available on the website <http://circulars.gov.ie> or from the Personnel Section.

Acceptance of appointment

23. If you are prepared to accept the appointment on these terms please complete the enclosed acceptance form and return it to me at the above address.

Secretary General
Department [Insert Name of Department]

Form of Acceptance

I have read and noted the contract and I am prepared to accept an appointment as Civilian Driver to the Minister/Minister of State for [insert Department name], on the terms and conditions set out above. I also acknowledge receipt of a copy of the Civil Service Code of Standards and Behaviour and confirm that I have read and understood same.

Name: _____

Signed: _____

Dated: _____

Secretary General: _____

Signed: _____

Dated: _____

Appendix 10

Model minute to persons appointed as Special Advisers or personal appointees to Ministers and Ministers of State and who are remunerated above the second long service increment point of the Higher Executive Officer (non-personal pension contribution) standard scale in the Civil Service

You have been appointed to a position that is subject to the requirements of section 19 of the Ethics in Public Office Act 1995. The attached Department of Finance circular 4/2002 sets out your obligations under the Ethics in Public Office Acts 1995 and 2001 and you should familiarise yourself thoroughly with the circular. The major obligation is that an annual written statement be made in respect of your registerable interests (and those interests, of which you have actual knowledge, of a spouse¹³ or civil partner¹⁴, or a child of yours or a child of your spouse) that could materially influence you in the performance of your official functions. It will not be necessary to specify in any statement of interest the amount or monetary value of any interest or the remuneration of any trade, profession, employment, vocation or other occupation included in the statement. Where there are no interests to disclose, there is no obligation on a Special Adviser to furnish a nil statement. Where no interests exist there is no requirement on an Officeholder to lay a nil statement of a Special Adviser before the Oireachtas.

You are also restricted in performing your official functions where a material interest is involved and must undertake not to engage in any trade, profession, vocation or other occupation, whether remunerated or otherwise, which might reasonably be seen to be capable of interfering or being incompatible with the performance by you of your official functions. (Paragraph 6 of Circular 4/2002 refers).

Where an official function falls to be performed, and you have actual knowledge that you, or a connected person, as defined in the Ethics in Public Office Act 1995¹⁵, have or has a material interest in the matter to which the function relates, you must, as soon as may be, prepare and furnish a statement in writing of those facts to the Officeholder who selected you for appointment and to the Standards in Public Office Commission. You should not perform the function unless there are compelling reasons requiring you to do so. If you propose to perform the function you should, before doing so, or, if that is not reasonably practicable, as soon as possible afterwards, furnish a statement in writing of the compelling reasons to the Officeholder who selected you for appointment and to the Standards in Public Office Commission. The requirements set out in this paragraph apply whether or not an interest has been disclosed in a statement of registrable interests referred to above.

¹³ "spouse", in relation to a person, does not include a spouse who is living separately and apart from the person;

¹⁴"civil partner" in relation to a person, means a civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*, but does not include a civil partner who is living separately and apart from the person.

¹⁵ Section 97 of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* provides that with respect to a person, a reference to a "connected person" of that person shall be construed as including the person's civil partner and the child of the person's civil partner who is ordinarily resident with the person and the civil partner.

If, having read the circular and consulted the Guidelines issued by the Standards in Public Office Commission (a copy of which is available for consultation in the Personnel Section of the Department / available for inspection on the Standards in Public Office Commission's website), you believe there are interests to declare, one or both of the attached statements should be completed in respect of the period between the date of your appointment to this post and next 31 December. The statement(s) should be returned to the Officeholder (i.e. Minister/Minister of State who appointed you), and to the Standards in Public Office Commission, not later than the following 31 January. Subsequent annual statements should be made in respect of the year ending on 31 December of the relevant year and given to the Officeholder who appointed you and to the Standards in Public Office Commission not later than the following 31 January. When you vacate the position a statement on leaving should be furnished within 28 days of the termination of your contract.

Special Advisers should note that the Officeholder who appoints them or on whose behalf they are appointed is required under section 19 of the Ethics in Public Office Act 1995 to lay, within 60 days of their being furnished, the following documents before each House of the Oireachtas, and that, under the Standing Orders relative to Public Business of Dáil Éireann and also of Seanad Éireann, all of these documents are considered public:

- (a) a copy of the contract, or a statement in writing of the terms and conditions, under which the person acts or acted as a Special Adviser;
- (b) a statement as to whether the person is a relative of the Officeholder;

and, if section 19(3)(a) of the Ethics Act applies to the person (i.e. if his or her remuneration exceeds the second long service increment point of the Higher Executive Officer standard (non-personal pension contribution) standard scale in the Civil Service (i.e. currently [state salary amount])):

- (c) a copy of any statement under section 19(3)(a)(i) of the Ethics in Public Office Act 1995 of the registerable interests of the person furnished to the Officeholder (e.g. a statement of interests or a statement of the facts of a conflict of material interests); and
- (d) a statement of the qualifications of the person relevant to his or her functions as a Special Adviser.

If you have a request for advice on compliance, you should refer to the Standards in Public Office Commission, 6 Earlsfort Terrace, Dublin 2 (Phone +353 (0)1 - 639 - 5666; email info@sipo.ie). The Standards in Public Office Commission is obliged either to respond to such a request, or formally to decline to do so, within 21 days of the receipt of the request. Once advice has been given, you are obliged to act in accordance with it, unless by doing so you would contravene another section of the Act.

Signed: _____
HR Manager