

**CIVIL SERVICE LEGISLATION  
CONTENTS CHECKLIST**

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## **THE SIGMA PROGRAMME**

SIGMA -- Support for Improvement in Governance and Management in Central and Eastern European Countries -- is a joint initiative of the OECD Centre for Co-operation with the Economies in Transition and EC/PHARE, mainly financed by EC/PHARE. The OECD and several OECD Member countries also provide resources. SIGMA assists public administration reform efforts in Central and Eastern Europe.

The OECD -- Organisation for Economic Co-operation and Development -- is an intergovernmental organisation of 26 democracies with advanced market economies. The Centre channels OECD advice and assistance over a wide range of economic issues to reforming countries in Central and Eastern Europe and the former Soviet Union. EC/PHARE provides grant financing to support its partner countries in Central and Eastern Europe to the stage where they are ready to assume the obligations of membership of the European Union.

Established in 1992, SIGMA operates within the OECD's Public Management Service (PUMA). PUMA provides information and expert analysis on public management to policy-makers in OECD Member countries, and facilitates contact and exchange of experience amongst public sector managers. Through PUMA, SIGMA offers eleven countries a wealth of technical knowledge accumulated over many years of study and action.

Participating governments and the SIGMA Secretariat collaborate in a flexible manner to establish work programmes designed to strengthen capacities for improving governance in line with each government's priorities and SIGMA's mission. The initiative relies on a network of experienced public administrators to provide counselling services and comparative analysis among different management systems. SIGMA also works closely with other international donors promoting administrative reform and democratic development.

Throughout its work, SIGMA places a high priority on facilitating co-operation among governments. This includes providing logistical support to the formation of networks of public administration practitioners in Central and Eastern Europe, and between these practitioners and their counterparts in OECD Member countries.

SIGMA's activities are divided into six areas: Reform of Public Institutions, Management of Policy-making, Expenditure Management, Management of the Public Service, Administrative Oversight, and Information Services.

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## **Introduction**

The political agendas in the central and eastern European countries (CEECs) imply major democratic and economic reform programmes. Macro-economic stabilisation, privatisation, European integration, reform of the welfare systems, reform of tax systems, decentralisation to self-government are typical areas of reform. The number of new laws regulating reforms and changing old systems is considerable. In this context the need for an effective civil service becomes evident. A permanent and professional administration is the instrument, not only to develop policies and draft laws, but also to implement them and to manage the systems defined in the laws.

Development of the administration as an instrument to carry through political and economic reforms and to manage the systems requires long-term investment and must be protected from short-term abuse and mismanagement. Skills and experience in each of the reform areas and providing professional continuity are thus essential objectives for the establishment of civil services in the CEECs.

But these countries have no recent tradition of specific legislation that is applicable to those who are appointed to carry out the powers and the services of the public administration. With the exception of Poland, where there has been a law on civil servants since 1982 (amended 1994), and Estonia, Hungary, Latvia and Lithuania -- which all have new civil service legislation -- work relations in public administrations of countries in transition are regulated by general labour codes.

In all of the 11 countries with which SIGMA co-operates, creation of a permanent, non-political and professional administration is recognised as necessary in order to move away from an inherited administration where admission and careers were not based on merit but on political or other reasons, and where dismissals were not based on objective professional grounds. A special law, a Civil Service Law, is seen as the means to define the civil service and the qualifications, duties and the rights of the civil servants, as well as their working conditions. Such a law also is needed to define the relationship between itself and other laws, whether superior, complementary or subordinate, such as the labour code, laws on pension rights, etc.

A law defining the civil service should contain provisions protecting the civil service from political interference or other kinds of interference; equally importantly, it should also contain provisions aiming to raise the quality and the performance of the staff subject to the law. In order to benefit from more secure appointment conditions, civil servants should be required to meet certain quality and performance standards.

A Civil Service Law should thus strike a balance between the duties and accountability implied in a public office and the rights that ensure professional integrity in carrying out the office. It must meet a number of different objectives; in particular, the law must:

- i) raise the professional quality of staff so as to improve performance, grant a certain degree of independence for those staff executing public powers in order to prevent political abuse and other mismanagement, and foster appropriate ethical standards in public administration;
- ii) enable the government to adapt the administration to changed needs, eg to restructure, to cut costs or to reallocate human resources from one part of the civil service to another;
- iii) give the public administration legitimacy in the eyes of the citizenry, and make citizens and other groups of state employees accept the features underlying a professional civil service (providing a balance between qualitative requirements and duties on the one hand and rights and benefits on the other); and
- iv) render a career in the civil service attractive, and to retain people in that career.

The objectives of a labour code are different. A labour code aims to create fair and equal, politically determined conditions for all employees and at the same time to define their general obligations. It is thus natural that a labour code should concentrate more on formal rights of the workers and less on quality standards and the employers' interest in efficiency or rule of law. In order to judge and determine quality issues, private employers must depend on other parameters such as branch-traditions, market competition and trade union inputs. For public employers, quality issues are usually defined in specific civil service legislation.

In countries where public employment has been regulated for a long time by labour codes, the understanding of the differences between a labour code and a Civil Service Law tends to be limited. SIGMA has developed the following Checklist in order to help make that difference clear, and to assist drafters of a Civil Service Law to take account of all the necessary considerations. The Checklist does not recommend specific solutions, but does point out what must be considered, as well as the likely consequences of the solutions chosen.

This publication already has been provided to drafting teams in a number of countries. It also has been used as the basic framework for many SIGMA reviews of draft civil service legislation in CEECs. Yet the Checklist stands by itself as a practical document defining a professional, impartial and permanent civil service in legal terms and this is the reason why we now publish it.

This reference document reflects the legislation, as well as the exchange of experiences and views among public sector managers, in central and eastern European and OECD countries. Professor Keith W. Patchett, University of Wales, Cardiff, United Kingdom, has brought together the concepts and recommendations from these sources and organised them in the following Checklist.

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February 1996

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## CIVIL SERVICE LEGISLATION

### CONTENTS CHECKLIST

This checklist is intended to provide a means of ascertaining whether matters commonly included in OECD civil service legislation have been considered for inclusion in a particular statute under preparation. It is not intended as a direction as to what must be included in such a statute, nor how particular matters should be dealt with. Choices in those respects must reflect local circumstances.

In this checklist, "the Act" refers to the primary legislative instrument governing the civil service; "the legislation" refers to the Act together with the secondary legislation made to supplement it.

#### 1. Objectives

**Note:** The usual purposes for enacting civil service legislation include the following -- to:

- (a) establish a professional and politically neutral civil service which provides public services promptly and efficiently in response to the needs of the nation, free of bias, corruption and misuse of power, but loyal to the requirements of the government;
- (b) define the institutions that are empowered to manage civil servants or to monitor their management when carried out by the ministries/agencies;
- (c) provide for selection of civil servants on merit after fair and open competition;
- (d) provide for equality of opportunity for entry and promotion in the civil service and for a career in the service;
- (e) create a regime of duties for civil servants directed to producing quality, continuity and impartiality in, and accountability for, the performance of their functions; and
- (f) guarantee a range of rights, benefits and other conditions of employment that will attract high quality civil servants.

##### 1.1. *Will the legislation satisfactorily secure the objectives? In particular --*

- (a) is the correct balance struck between the constraints upon civil servants that arise from the regime of duties and the special status and positive privileges that they are given in return?
- (b) is adequate protection given for job security or tenure of office that will provide protection to civil servants from politicisation of the service and abuse of political power?



- (c) are the benefits provided (eg, in terms of working conditions, leave, promotion opportunities, allowances, health care and pensions) sufficient to attract and retain the desired quality of personnel needed?

1.2. *Is the Act itself to contain a statement of the objectives which it is designed to achieve ? Or will the actual rules in the Act or its accompanying commentary make the objectives sufficiently clear to parliament and to users of the legislation?*

## **2. Scope of the Legislation**

2.1. *What categories of persons performing public functions are to be subject to this legislation? Does the Act contain clear definitions or descriptions of the categories that it covers?*

2.2. *In particular, does the Act make clear whether the legislation --*

- (a) is to be confined to those officials who perform executive and administrative functions for the state ("state officials")?
- (b) also extends to those who perform similar functions for local governments?

### State Officials

2.3. *If the legislation is confined to state officials, does the Act make clear whether the legislation is intended to apply to officials concerned with the administration of distinct state authorities, such as:*

- (i) the office of the state president?
- (ii) parliament?
- (iii) the office of the ombudsman or similar authorities?
- (iv) the courts?

2.4. *If the legislation is confined to state officials, is it concerned with those who discharge functions of some responsibility ("high functionaries")?, or does it also extend to support staff ("industrial state employees", such as secretaries, computer operators, drivers, messengers and security guards, etc.)?*

2.5. *If the legislation is principally concerned with high functionaries, does the Act make clear:*

- (a) how those officials are to be identified (eg, holding a post in an authorised list of such posts or particular class or grade in the service)?
- (b) what legal rules govern industrial state employees?

2.6. *If the legislation is confined to high functionaries, does it include provisions that enable industrial state employees to enter the ranks of high functionaries by some form of internal promotion (eg, by gaining necessary qualifications or passing a special examination)?*

2.7. *If the legislation is confined to state officials, is it intended to apply to other categories in addition to those stated above? If so, does it apply to --*

- (a) members of the judiciary (ie, judges or magistrates who perform judicial functions)?
- (b) members of the disciplined forces (eg, armed forces, police, customs and border guards, prison officers)?
- (c) employees in state-provided medical services (eg, doctors and nurses)?
- (d) employees in state-provided educational services (eg, university and school teachers)?
- (e) employees in the national transport and communication services?
- (f) employees of parastatal authorities or agencies?

**Note:** The more categories included, the greater the necessity for ascertaining whether the general provisions in the legislation (eg, duties and rights) can be applied equally to each category, and, if not, for making provision to modify those provisions appropriately. In many cases, it may be better to undertake the enactment of separate legislation which deals explicitly with the special needs of the category (although matters in common with those in the Act can be dealt with in the same way or by reference to the Act).

2.8. *If the legislation is not intended to apply to all or any of these other categories, does the Act make that clear (eg, by excluding words), and does the Act indicate by which other law or legislation those categories are governed?*

#### Categories Other than State Employees

2.9. *If the legislation is intended to apply to other categories of persons in addition to state officials, do these include --*

- (a) employees in local government?
- (b) elected members of the state government or of local governments?

2.10. *If the legislation deals with elected persons, does it take account of the fact that such persons cannot be given tenure?*

#### Political, Fixed-term or Contract Officials

2.11. *Is the legislation to be concerned only with those in full-time and enduring service ? If so, has consideration been given to the legal position of those who:*

- (a) are appointed by ministers or other elected persons to provide them with political or policy-making services during the term of office of the minister or such other person?

- (b) are brought in under a personal contract to perform a civil service function for a fixed-term or for a precise purpose?

2.12. *If such cases are to be permitted, should the Act --*

- (a) indicate how, when and by whom such appointments and contracts are to be made, how those cases are to be regulated and the extent to which the general provisions of the legislation are to apply to them?
- (b) provide safeguards against the wide-scale use of these powers in ways that are incompatible with the objectives of the Act in providing a permanent civil service?

### 3. **Cross-Government Management**

3.1. *Is the legislation built upon a system for the cross-governmental management of the whole civil service? If one is not already provided for, is this Act (or other legislation) to establish such a system?*

**Note:** the objectives in providing such a system are usually to ensure that there is some body responsible for securing:

- (a) equity of treatment between different parts of the civil service and between different regions;
- (b) a guarantee of standards of quality throughout the public service;
- (c) fair treatment for all civil servants;
- (d) professional and loyal execution of government policy decisions throughout the public service;
- (e) conditions that permit mobility of civil servants within the service (which are necessary if the civil servants are given tenure and cannot be dismissed);
- (f) proper oversight of the economic costs of the civil service and some central control over its size and distribution; and
- (g) independent monitoring of the implementation of the civil service legislation.

3.2. *If no cross-governmental management function is to be provided, how are these objectives to be secured? If management is to be undertaken separately by each ministry/agency, how are their management activities to be collectively coordinated and monitored so that common standards are applied?*

3.3. *If a cross-government management system is to be provided --*

- (a) is it to be a central management authority (eg, a commission or directorate), with policy-making and secondary legislation powers for the whole civil service?
- (b) Or is there to be some central unit, with its own human resource management expertise, charged with the duty of co-ordinating ministry/agency management, and entitled to set common standards by issuing secondary legislation and guidelines?
- (c) To which minister or body in central government will such a body or unit be responsible (eg, prime minister, council of ministers, minister for the civil service)?

#### **4. Secondary Legislation**

4.1. *Does the Act take fully into account the inevitable need for supplementary, secondary legislation?*

**Note:** Secondary legislation is inevitable for a number of reasons --

- (a) it is not logistically practicable for all the details of the new arrangements to be decided by parliament;
- (b) details will have to be changed quite frequently, especially during the period of reform; it is improbable that Parliament will have time for this;
- (c) much of the detail is of little interest to parliament and can be dealt with better by a more expert body (eg, civil service commission or directorate, or council of ministers);
- (d) much of the detail depends on principles decided upon by parliament, and may need to be implemented at short notice and speedily; this is a task better suited to a government body.

4.2. *Does the Act identify the authorities that are empowered to make secondary legislation to give effect to the various general requirements of the Act?*

4.3. *Where there is the need for common standards or practices or for the regulation of issues that affect the civil service as a whole, is it made clear that the making of secondary legislation is to be by, or should involve, a central body of authority (eg, the council of ministers, ministry of finance)?*

4.4. *Is it feasible for the draft secondary legislation to be prepared alongside the Act so that the entire legislative scheme can be presented to parliament and considered at the same time?*

## Contents of Secondary Legislation

4.5. *Has a sound balance been struck between the contents of the Act (in terms of basic structures and principles) and those of secondary legislation (in terms of detail, and procedural and administrative provisions)?*

4.6. *In Particular --*

- (a) is the Act concerned in the main with establishing the broad framework of principle and in settling the essentials of the new arrangements and resolving those issues that are likely to be controversial -- ie, matters in which parliament has an interest?
- (b) does the Act authorise matters of detail or a specific or routine nature to be dealt with by secondary legislation, in particular such matters as --
  - (i) numbers and distributions of posts, or classes, ranks and grades?
  - (ii) recruitment and promotion procedures, including methods of examination or ensuring competition?
  - (iii) processes of performance appraisal?
  - (iv) working hours?
  - (v) conditions governing leave?
  - (vi) levels of remuneration, and conditions and levels of allowances?
  - (vii) disciplinary procedures?
- (c) should authority be given to some central authority to develop and issue a code of conduct/ethics and a code of discipline?

## **5. Cost Factors**

5.1. *Is it clear how cost factors relevant to the civil service are to be dealt with in the context of the state budgetary system?*

5.2. *In particular, is it clear --*

- (a) how and by whom the costs of the civil service (eg, remuneration, allowances, pensions, operational expenditure, etc.) are to be determined and controlled?
- (b) how and by whom the numbers of civil servants, overall and in individual ministries/agencies are to be determined, monitored and controlled, consistently with the state budgetary process?

- (c) whether additional procedures need to be provided to enable parliament to exercise control over personnel costs and staffing levels and to ensure efficiency in the public service?

5.3. *If these matters are not adequately covered by existing law, should they be dealt with in this Act or in accompanying legislation (eg, the budget law)?*

## **6. Entry to the Civil Service System**

6.1. *Is the system of appointment to be a career system or a post system, or some combination of both? That is, does the Act make clear whether civil servants are appointed to --*

- (a) the civil service in a class and grade, thereafter moving forward through grades as their career progresses; or
- (b) specific posts from which they may seek to move to another such post as they advance in age or experience?

6.2. *Are the legislative provisions concerning selection (and remuneration, promotion and mobility) fully consistent with the system adopted?*

### Qualifications

6.3. *Does the Act provide comprehensively with respect to the qualifications for entry to the civil service? In particular -*

- (a) does the Act contain a statement of the general qualifications and disqualifications that apply in all cases?
- (b) is it clear how particular or specialist qualifications for particular appointments are to be determined and made public (eg, by secondary legislation, job description)?
- (c) does the Act state the circumstances in which entry may be open to persons who do not hold local nationality?

6.4. *Does the Act provide for how and by whom more detailed regulations should be made in this context?*

6.5. *Is it necessary to include in the legislation detailed provision as to the formal educational achievements required, especially requirements that are tied rigidly to particular classes or grades or levels of posts?*

6.6. *Are any special forms of educational qualifications (eg, specialist training in public administration at a national institution) to confer priority for entry or entry to particular class or categories of post, etc. (eg, "fast stream")?*

### Mode of Entry

- 6.7. *Does the Act require entry to be by open competition on merit amongst those qualified?*
- 6.8. *If a career based system is adopted, does the Act require some form of open examination for entry to the civil service as a whole?*
- 6.9. *If competition is not required, is it clear how selection will be made, and by whom, in ways that preclude patronage or nepotism, prejudice and partiality?*

### Legal Relationship

- 6.10. *Does the Act make clear -*
- (a) *that the legal relationship is between the civil servant and the state rather than the individual ministry/ agency?*
  - (b) *who has the authority to enter into that legal relationship on behalf of the state (eg, the head of the ministry/agency)?*
- 6.11. *Is the structure for decision-making on appointments so designed as to prevent nepotism and partiality and to facilitate mobility between ministries/agencies?*
- 6.12. *Is the council of ministers, or some other central body, given responsibility for -*
- (a) *appointment of the most senior level of state official?*
  - (b) *oversight of the overall appointment process?*
- 6.13. *Does the legislation prescribe how the appointment is to be formally recorded and when it is to begin?*
- 6.14. *Should the taking of an oath be a pre-requisite of appointment ? If so, what is the consequence of a failure to take the oath?*

### Probation

**Note:** To appoint a civil servant on tenure involves a long-term financial commitment on the part of the state. Many OECD countries therefore require appointees to complete a period of probation satisfactorily before the appointment is confirmed.

- 6.15. *Is provision made for the initial appointment to the service or a post to be subject to satisfactory completion of a probationary period?*
- 6.16. *If so, is the:*
- (a) *probationary period set long enough for a fair assessment to be made?*
  - (b) *performance to be assessed in a way that will guarantee a professional and fair judgment?*

- (c) appointment to be confirmed or terminated by a decision at a level that will prevent nepotism and partiality?
- (d) civil servant who is not confirmed entitled to have the period extended or the termination reviewed?
- (e) civil servant eligible for entitlements during the probationary period (if so, what are the entitlements)?

## **7. Conditions of Service**

### Personnel File

- 7.1. *Is provision made for the institution and maintenance of a personnel file for each civil servant and for which authority is to have the responsibility in that respect?*
- 7.2. *Does the legislation require the confidentiality of the files but at the same time guarantee civil servants the right to inspect and to challenge the contents of their own personnel file?*
- 7.3. *Is provision made determining which body is to have power to issue detailed regulations in this respect?*

### Advancement and Promotion

- 7.4. *Does the legislation provide for when and how civil servants may advance in their career and may be promoted, and by whom decisions in that regard are to be made?*
- 7.5. *Will the decision-making be at a particular level and in ways that it will -*
  - (a) make advancement possible elsewhere in the state administration?
  - (b) prevent nepotism and partiality?
- 7.6. *Does the Act provide for a system of performance appraisal for civil servants?*
- 7.7. *If so -*
  - (a) how, by whom, and how frequently is the appraisal to be carried out?
  - (b) is appraisal to be linked to, and form the basis of, advancement and promotion?
  - (c) will the civil servant have the right to see the appraisal in writing and to challenge the assessment?
- 7.8. *Are advancement and salary increases to be automatic as a result of achieving seniority or of completing prescribed periods of service or should they be related, in whole or part, to performance?*
- 7.9. *Are bonuses ("primes") to be payable for special service ? If so, in what circumstances and by whom are the relevant decisions to be made?*



- 7.10. *Are further qualifications and/or examinations to be required for advancement to a new grade or for appointment to a new post? Can such requirements be better dealt with by terms of service rather than by the legislation?*
- 7.11. *In what circumstances are promotions and appointments to new posts to be subject to open competition on merit, and is it made clear that the use of competition is to be determined and the competition itself conducted in ways that will prevent nepotism and partiality?*
- 7.12. *Are vacant posts in a ministry/agency to be open to all civil servants holding the relevant qualifications or merely to those in the same ministry/agency?*
- 7.13. *If vacancies are to be open to all, does the legislation require general advertisement throughout the civil service?*

#### Transfers

- 7.14. *To what extent and in what circumstances may a civil servant transfer to a different ministry/agency?*
- 7.15. *Given that transfers should normally be at the request or with the consent of the civil servant, are there exceptional circumstances in which a civil servant can be required to transfer?*
- 7.16. *Do civil servants who are to be made redundant have a priority right to be transferred to an equivalent position in another ministry/agency when a vacancy arises?*
- 7.17. *Does the decision-making structure provide for the possibility of using transfer as a means or career development or of avoiding redundancy?*

#### Termination

- 7.18. *Does the Act contain a statement of the circumstances in which the legal relationship may be terminated? In particular, does the legislation prescribe the conditions under which service may be terminated for -*
- (a) *ill health?*
  - (b) *incompetence/unsuitability in the job or poor performance?*
  - (c) *redundancy or closure of the ministry/agency, in the case of those without tenure?*
  - (d) *misconduct?*
  - (e) *a civil servant's resignation/request?*
- 7.19. *Does the Act provide that the same authority that makes appointments is the body authorised to terminate, and does it provide for the procedures and for rights of appeal/review in respect of termination of service?*
- 7.20. *What rights (eg, allowances, pensions, re-appointment) has a civil servant whose employment has been terminated in the various circumstances?*

- 7.21. *What special rights has a civil servant without tenure whose employment has been terminated for redundancy or in consequence of the closure of a ministry/agency (eg, enhanced pension rights, limited continuance of pay)? Are the costs of those rights provided for in the state budget ?*
- 7.22. *Are there provisions in the legislation or elsewhere regulating the procedure, and the order of priority, by which civil servants are to be identified for termination of their employment when redundancy is necessary, in ways that prevent nepotism and partiality?*

## **8. Duties of Civil Servants**

### Special Duties

- 8.1. *Does the Act contain or provide for a full range of special duties upon civil servants, as state officials, that are aimed to ensure their neutrality, probity, loyalty to government and the state, efficiency and accountability?*
- 8.2. *In particular, does the Act provide for -*
- (a) a duty to comply with the lawful orders of hierarchical superiors, and the circumstances and procedure by which the civil servant may refuse to carry out an order that is improper?
  - (b) a duty to provide the public with requested information unless it is secret as defined by a law on secrecy, and the duty of confidentiality in relation to matters that fall within that legal definition of secrecy?
  - (c) the extent to which there is a duty not to undertake other paid work or business activities (and by whom permission may be obtained for such work when it is not incompatible with the civil servant's responsibilities)?
  - (d) the circumstance in which there may be a duty to reside in a particular location or to transfer, for a period, to another place or to other responsibilities?
  - (e) the duty not to solicit or take financial or other rewards or benefits from third parties for discharging civil service functions?
  - (f) the duty to appear before a medical commission for assessment of physical or mental capacity to perform the functions of office?
  - (g) a general duty to perform functions loyally, conscientiously and without delay, without bias and uninfluenced by political opinions or allegiances, and without misusing power, and generally to act respectably and to refrain from behaviour that is incompatible with membership of the civil service?

## Code of Conduct

- 8.3. *Does the Act provide for the publication of a Code of Conduct that provides detailed guidelines to civil servants as to the ways in which the various duties specified in the Act are to be complied with in the circumstances in which they are most likely to arise?*

## **9. Discipline of Civil Servants**

- 9.1. *Does the Act establish a system for disciplinary action against civil servants that is transparent and meets judicial quality standards?*

- 9.2. *In particular -*

- (a) are the grounds for disciplinary action adequately identified in the Act in terms that meet the standards of legality, and is their relationship with the statutory duties and the Code of Conduct clearly indicated?
- (b) does the Act set out a complete statement of the penalties that may be imposed for proven misconduct, and the cases in which each can be ordered?
- (c) does the Act identify the bodies which may exercise disciplinary functions and differentiate those cases that can be dealt with by a hierarchical superior from those that must be heard by a disciplinary tribunal?
- (d) does the Act make provision with respect to the composition of disciplinary tribunals (which do not include those who initiate or prosecute the proceedings) of a sufficient size and in sufficient numbers to perform their expected task?
- (e) is the composition of such tribunals such that it can be expected to reach independent decisions?
- (f) are there adequate safeguards included in the Act for a fair hearing, including the right to receive legal assistance, to be represented by a person of the accused's choice, to know the charge and to hear the evidence, to be heard in defence and to appeal?
- (g) is provision made for a general appeal body for all disciplinary tribunals to ensure common standards of decision-making?
- (h) does the Act authorise the making of a standard set of rules of procedure or Code of Discipline with respect to the initiation, prosecution, hearing and decision of cases?
- (i) does the legislation require the destruction, after a prescribed period, of adverse findings that have been entered into the personnel files of civil servants?

- (j) does the legislation specify the circumstances in which civil servants may be suspended pending the outcome of disciplinary proceedings, and their rights during suspension and if found not guilty?

## **10. Rights of Civil Servants**

### Specific Rights

10.1. *Does the Act contain the basic framework of specific rights to which civil servants are entitled?*

10.2. *In particular, should the Act authorise the following rights (subject to stated limitations as necessary) -*

- (a) the right of equal access of qualified persons to the civil service?
- (b) the right to a salary (and whether this may be performance-related rather than tied to seniority or years of service)?
- (c) the right to have salary levels settled by a process that involves collective bargaining/negotiation?
- (d) the right to a written order of a hierarchical superior if the lawfulness or propriety of the order is in question?
- (e) the right to join a trade union or a professional association, and the right to strike?
- (f) the right to join and hold office in a political party and to participate in political activities that are not incompatible with the performance of the individual's functions?
- (g) the right to a prescribed minimum period of annual leave and to take unpaid leave?
- (h) the right to go to court or to some other independent authority to settle disputes relating to the employment relationship?
- (i) the right to take prescribed forms of outside employment, unless incompatible with the performance of functions?
- (j) the right not to be transferred without consent, unless necessitated by the exigencies of the service?
- (k) the right to receive and undertake appropriate training at state expense, and to take study leave?
- (l) the right to special allowances (eg, for work in remote areas, official travel, on transfer, during illness, for housing, overtime, and for especially onerous work)?

- (m) the right to special employment conditions (eg, maternity/paternity leave, medical treatment for self and the family, pensions and disability payments for self and the family)?

10.3. *Does the Act provide that the detailed features of these rights (eg, numbers, amounts, conditions of entitlement) may be determined from time to time by other means, such as secondary legislation, job descriptions, administrative directions?*

#### Costs of Implementation

10.4. *Have the costs of implementing the contemplated rights been calculated?*

10.5. *Are those costs capable of being met from the state budget? If not, should any provisions be excluded or modified or some procedure provided for suspending particular rights, until such time as they can be afforded?*

### **11. Personnel Participation**

11.1. *Does the legislation make provision for the participation of civil service personnel or their representatives in management decision-making processes?*

11.2. *In particular -*

- (a) does the legislation make clear the extent and the ways in which trade unions or professional associations have the right to be involved in personnel matters?
- (b) are the functions of unions or associations confined to acting in a collective capacity (eg, salary negotiations, consideration of changed employment conditions or new legislation on entitlements)?
- (c) or do they extend to representing the interests of individual civil servants (eg, in employment disputes or in disciplinary proceedings)?
- (d) are unions or associations entitled to perform collective representative functions for all civil servants in individual ministries/agencies or are they confined to an overall civil service role?
- (e) or should collective representation in individual ministries/agencies be provided by consultative or grievance bodies elected by the civil servants there?
- (f) are unions or associations entitled to representation on disciplinary tribunals?
- (g) should there be provision for the establishment of a single national consultative body in addition to the unions and associations?

## **12. Training**

- 12.1. *Does the legislation make adequate provision for training, linking it to advancement and promotion?*
- 12.2. *If the Act provides for the right and the duty to receive training, what arrangements are provided to ensure and monitor that training is fully and systematically planned and provided throughout the service?*
- 12.3. *Does the legislation adequately indicate upon which bodies the responsibility for the provision of training is to fall, and the role of any national training institutions in that regard?*
- 12.4. *Is there a mechanism by which the costs of training are to be estimated and by which they will be included in the state budget?*

## **13. Transitional and Saving Provisions**

- 13.1. *Does the Act contain or provide for the making of all transitional arrangements necessary to bring existing circumstances, as governed by the present law, into line with the requirements of the new legislation?*

### Timetables and Commencement

- 13.2. *Has a timetable been developed (eg, using flow and critical path charts) to determine how the new civil legislation will be phased in by stages?*
- 13.3. *Does the Act enable its provisions to be brought into force in accordance with those stages?*
- 13.4. *Is it clear that no provisions of the Act will become law until other provisions upon which they are dependent have become fully operational?*
- 13.5. *Do the proposed dates for commencement of particular parts allow a realistic time for the preparation for their implementation prior to commencement?*

### Conversion of Existing Civil Servants

- 13.6. *Does the legislation include provisions which deal with the position of persons who are already engaged in state administration and therefore at present subject to existing law? In particular, does it provide with respect to -*
  - (a) *the means by which the status of those at present performing civil service functions ("existing civil servants") will be brought into line with the new civil service system (whether career or post) and their new grades or posts, and their salary entitlements, determined?*
  - (b) *the status and conditions of service of existing civil servants, and those to be recruited in the transition period, until this conversion process is completed?*

- (c) the position of existing civil servants who do not hold qualifications required by the Act or who are disqualified under the Act?
- (d) what special allowance may be made for unqualified existing civil servants by reason of long service or to enable them to acquire needed qualifications?
- (e) whether special redundancy or pension terms are to be made for existing civil servants who leave, or are required to leave, the civil service consequent upon the coming into force of the legislation?
- (f) the procedures, authorities and time-table by which decisions on the future of existing civil servants are to be made?

#### General Transitional Matters

- 13.7. *What will be the status of those formerly employed in the state administration (eg, retired persons) and their families, vis-a-vis any special privileges enjoyed by them under existing law (eg, medical or pension allowances)? In particular -*
- (a) are their rights under that law to be preserved?
  - (b) or are they to be equated with those who are in similar positions under the new legislation?
- 13.8. *What is the status of disciplinary proceedings instituted, or disciplinary action being implemented, against existing civil servants under the existing law? In particular, are those proceedings to be discontinued, or to be completed under the existing law or brought within the scheme of the new legislation?*
- 13.9. *What is the status of on-going employment disputes involving existing or former civil servants? In particular, are these to be completed under the existing law?*
- 13.10. *What are the status and entitlements of persons (if any) who, under existing law, were treated as, or equated with, existing civil servants? In particular, are they to continue to be governed by the existing law, or are they to be put into a similar position under the new legislation?*
- 13.11. *To what extent is a period of past service under the existing law to be counted in calculating any qualifying period for the purposes of any benefit conferred under the new legislation?*
- 13.12. *Is provision needed to ensure the maintenance and transfer of personnel records established under the existing law, for use as records under the new legislation?*
- 13.13. *What period of grace should be allowed within which existing civil servants are to bring their affairs into line with requirements of the legislation, and any Code of Conduct, concerning financial and commercial interests or other incompatibilities?*
- 13.14. *Should any relevant secondary legislation made under the existing law, be continued in force, to the extent that it is consistent with the new Act, until new secondary legislation is made for the purposes of the new Act?*

- 13.15. *Should there be a requirement that references in other legislation to provisions of, or to authorities named in, any law that is being repealed are to be read as references to the relevant provisions or authorities in the new legislation?*

#### Repeal Provisions

- 13.16. *Does the Act contain a complete statement of the extent to which existing law relating to the civil service is repealed?*
- 13.17. *Does the Act fully identify provisions of that existing law which are to be saved (ie, to continue in force) for any specific purpose or period?*

### **14. Structure of the Act**

**Note:** The following questions can usefully be borne in mind both when the provisions of the Act are in the process of being written and, later, when drafts of the text of the Act are being checked. Similar questions should be asked with respect to the secondary legislation made to supplement the Act.

- 14.1. *Is the Act structured in a systematic and ordered way that will facilitate its debate in the parliament and its ready comprehension by those who need to use it?*
- 14.2. *In particular, does the Act satisfy the following general principles, commonly adopted in OECD countries?*
- (a) If provided, the objectives of the Act should be stated at the beginning, since they set the context in which the provisions that follow must be read.
  - (b) Basic concepts or terms used in the Act should be explained or defined before they are put to use.
  - (c) The application or coverage of the Act (ie, the statement of general cases dealt with and not dealt with) should come before the provisions that apply to those cases.
  - (d) Primary (or basic) provisions should come before those subsidiary provisions that develop or expand or depend upon them.
  - (e) In particular, general propositions should come before a statement of exceptions to them.
  - (f) Provisions of universal or general application should come before those that deal only with specific or particular cases.
  - (g) Provisions creating bodies should come before those that govern their activities and the performance of their functions.



- (h) Provisions creating rights, duties, powers or privileges ("rules of substance") should come before those that state how things are to be done ("rules of administration or procedure").
- (i) Provisions that will be frequently referred to should come before those which will not be in regular use.
- (j) Permanent provisions should come before those that will be in force or have application for only a limited time (eg, during a transitional period).
- (k) Provisions affecting a series of related events or actions should be set out following the chronological order in which those events or actions will occur.
- (l) Terminology should be used consistently throughout the Act and all secondary legislation; the same term should be used for the same case, and a different term used for a different case.
- (m) Related provisions should be gathered together in the same part of the Act, and distinct groups of related provisions should be created as separate parts of the Act.
- (n) Groups of provisions, and parts, should be ordered according to the same principles that govern individual provisions.
- (o) Cross-reference should be made expressly in the Act to all other legislation of importance that supplements the Act (eg, the Labour Code and the laws relating to pensions, health insurance or remuneration).
- (p) Cross-reference should be made in provisions of the Act to other provisions of the Act with which they are linked, by reference to their correct numbering.