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

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**Background:**

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

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

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

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

**Exclusions from the Act**

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

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

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

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

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

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Brendan Fox,  
Assistant Principal,  
Careers and Appointments Section

## **Guidelines on the issuing of Excluding Orders**

The sanction of the Minister for Finance is required before approaching the 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.

The categories of appointments for which an Excluding Order may be sought are set out below and an outline of the procedure involved is set out in Appendix A.

### **1. Ministerial Appointments**

The Department of Finance *Instructions relating to the Appointment of Ministerial Private Office Staff - June 2007* sets out the arrangements applicable to the appointment of ministerial private office staff to posts such as personal assistant, personal secretary and civilian driver. Service in such posts is co-terminus with the term of office of the relevant Minister and it is appropriate that (all such appointments are made by way of Excluding Order) they will continue to be eligible for the Excluding Order Process.

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.

### **2. Specialist Professional / Technical Skills**

Departments/Offices should be in a position to plan their manpower needs including recruitment to temporary posts without the need for recourse to the exclusion process. In general, recruitment to Specialist Professional / Technical temporary positions should be subject to the CPSA Codes of Practice. Accordingly, requests for Orders to exclude such posts will only be considered by the CPSA in exceptional circumstances such as where:

- a) There is an urgent need to make an appointment prior to organising an open competition to fill the vacancy.
- b) There is a valid business reason to appoint a successful candidate prior to the completion of the pre-employment checks.
- c) There is a requirement to fill a temporary post for a special short term project where the normal recruitment procedures are not feasible given the expected duration of the project or the specialised skills required.

In cases such as a) and b) above, the exclusion process may be used for a period with a maximum span of three months. Departments / Offices will be required to complete their recruitment procedures for appointment to the post under the CPSA codes of practice within that time frame. Where an Excluding Order has been issued to allow for an appointment to such posts, the Department / Office involved should put measures in place to ensure that a recruitment process, conducted under licence and in accordance with the Codes of Practice, takes place prior to the completion of the exclusion period.

### **3. Family Friendly Policies**

The introduction in recent years of family friendly policies on a Civil Service-wide basis e.g. term time / maternity leave etc. has generated a demand for a significant intake of temporary clerical staff. Departments / Offices as part of the manpower planning process should be able to anticipate the likely demand for temporary clerical officers on an annual basis and make arrangements for recruitment under licence of these staff by way of open competition under the CPSA Codes of Practice. The PAS hold open competitions to fill term time vacancies on an annual basis. Accordingly, requests for Orders to exclude such posts will only be considered by the CPSA in circumstances where the PAS are not in a position to respond to local demand.

### **4. Seasonal Appointments**

Where Departments / Offices need to recruit staff on a seasonal basis recruitment should take place under licence and in accordance with the CPSA Codes of Practice.

### **5. Work Experience and Student Placement Programmes**

It is important that the recruitment process for Student Placements should be transparent and free from any perception of bias. In general, Student Placements, other than those that clearly fulfil the work experience needs of an academic programme or that enable a specific piece of research to be carried out as part of an academic programme, should be carried out under licence and in accordance with the CPSA Codes of Practice. An Excluding Order is required for appointment to posts such as those covered by the WAM (Willing and Able Mentoring) Programme and for Traveller placements.

### **6. EU Associated Appointments**

In respect of certain EU-related appointments, the EU Commission may require that special conditions should apply. The need for such conditions may arise in respect of EU projects where a particular type of expertise is required to monitor programme expenditure. Applications for Excluding Orders in these cases will be considered on the basis of the business case.

### **7. Renewal of Existing Orders**

Requests are received on a regular basis for the extension of existing Excluding Orders. Such requests will continue to be considered in light of the business case underpinning the request, the existing contractual situation and commitments made by Departments / Offices. Where appropriate, the Order may be renewed. Departments should review the circumstances applying to such posts with a view to identifying those cases where the continued need for an Order can be phased out thereby allowing regular recruitment procedures to take place. Requests for an extension of an existing Order should be made to the CPSA in sufficient time (approx 1 month before expiry date)) to enable it to be extended as an Excluding Order cannot be extended after the expiry date.

### **8. Lapsed Excluding Orders**

Excluding Orders which have lapsed cannot be extended and must be replaced by a new order made by the CPSA. Departments/Offices should note that it is not possible to backdate an Excluding Order.

### **9. Other cases**

The CPSA will consider requests for the granting of an Excluding Order where a Department / Office considers that there is a valid business case in an instance not covered above. The prior approval of the Minister for Finance should be sought in all such cases.

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Michael Errity  
Assistant Secretary

## Appendix A

### **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 Administrative Budget Section, (Administrative Budget Section, Organisation Management and Training Division, Department of Finance, Merrion St, Dublin 2),
- b) Request approval from Careers and Appointments Section to submit application to the CPSA to fill the position by way of an Excluding Order, (Careers and Appointments Section, Personnel and Remuneration Division, Department of Finance, 73-79 Lower Mount St, Dublin 2 ([Careersandappointments@finance.gov.ie](mailto:Careersandappointments@finance.gov.ie)))
- c) Submit application to CPSA. (Commission for Public Service Appointments, Chapter House, Upper Abbey St, Dublin 1).

2: The request for approval submitted to Careers and Appointments Section should include: the title of the post to be excluded and the period of time (both start and finish) during which the post is to be excluded; the business case supporting the request; and a copy of the proposed contract. (In drafting contracts of employment, Departments / Offices should be mindful of the provisions of the Protection of Employees (Fixed Term Work) Act 2003 and should seek to ensure that no unintended employment rights are created.).

3: Careers and Appointments Section having considered the request in the context of the *Guidelines* will respond in writing to the Department/Office giving the Minister's consent where appropriate to proceed with submitting an application to the Commission for Public Service Appointments (CPSA). Normally Careers & Appointments Section would approve the contract of employment at this time also. Careers and Appointments will also send a copy of the letter of approval to the CPSA for their records.

4: The requesting Department/ Office then submits its application to the CPSA to issue an Excluding Order for the stated position and for the approved period of time. The request to the CPSA should include the business case and copy of approval received from Careers and Appointments Section. It's important that the request be sent in sufficient time (approx 1 month in advance of when it's needed) to enable the Order to be made before the excluded period commences. **No appointment should be made to the position concerned until an Order is made by the CPSA.**

5: It should be noted that the position itself is excluded from the Act and not the person appointed to the position. This means that, where the post is vacated it may be filled under the same Excluding Order. Where a post is filled in this manner, the contract of employment should not extend beyond the expiry date of the Excluding Order.