

Public Administration Act 2019

The Public Service is regulated primarily by the Constitution and the Public Administration Act. Also of importance are the regulations of the Public Service Commission. Other regulatory instruments governing the Public Service are the directives issued by the Principal Permanent Secretary under the Public Administration Act, and the Public Service Management Code

The Act of 2019

- The current Public Administration Act (chapter 595 of the laws of Malta) was enacted into law in 2019. This Act repealed and superseded an earlier Public Administration Act (chapter 497) which had been enacted in 2009.

The Act of 2019 sets out the values of public administration. It also establishes a code of ethics which applies not only to Public Service employees but also to the employees of entities in the wider public sector. The Act makes it clear that whoever acts in breach of the values or the code of ethics may face disciplinary proceedings.

Principal Permanent Secretary

- The Act also includes provisions for revolving doors and, for the first time, a list of vulnerable positions has been included as a new schedule to further reinforce good governance within the public administration.

The Act defines ministries and departments in organisational terms and specifies how new ministries and departments can be created. This law also deals with the leadership of the Public Service. The Act creates the position of Principal Permanent Secretary (Segretarju Permanenti Ewlieni). The holder of this position is required to provide leadership to the Public Service and to take measures to improve the performance of the Service. The Principal Permanent Secretary has various powers under the Act, notably to issue directives and guidelines on matters relating to the organisation and management of the Service. The Act also sets out the responsibilities of Permanent Secretaries and heads of department.

Not only Public Service

- The Public Administration Act does not only cover the Public Service. It also includes provisions regulating the wider public sector. The Act provides for the creation of “Government agencies” – bodies which are subject to direction by the Permanent Secretary in each ministry, but which are not part of the Public Service. The Act also regulates other Government entities and places such entities under the supervision of Permanent Secretaries too, with a view to improving coordination within public administration.

Directive issued by PPS

- DIRECTIVES ISSUED BY THE PRINCIPAL PERMANENT SECRETARY UNDER THE PUBLIC ADMINISTRATION ACT
- The Public Administration Act empowers the Principal Permanent Secretary to issue directives and guidelines. A directive is binding, and it may also incorporate guidelines which are not binding in themselves but which are intended to assist public employees in interpreting and abiding by the directive.

Several directives have been issued under the Act. Among others, Directive 4 sets out service quality standards to be followed by Government organisations. Directive 8 sets out timeframes within which requests by Public Service employees on matters concerning themselves (such as requests for leave) have to be answered, and states that if the employee does not receive a reply within the prescribed period, his or her request is automatically granted.

Minister-Public Service

- Where a Minister is assigned responsibility for any department, agency or entity of Government in terms of article 82 of the Constitution, that Minister shall, in line with article 92 of the Constitution, and without prejudice to article 6 of the Interpretation Act, have the general direction and control of all departments, agencies and government entities that may be placed under his responsibility and may give directions directly to the head of the department, Chief Executive Officer, Board of Directors or any other employee falling within his responsibilities, on any matter, except matters where the head of department, Chief Executive Officer, Board of Directors or other employee is required by any law to act -(a) independently; or(b) in accordance with the direction of a person or authority other than the Minister:

Agencies –Public Corporations

- 26.(1) The Prime Minister may establish government agencies by order in the Gazette under this Act.
- (2) An order establishing an agency under this Act shall serve as the basic charter governing the agency's operations and it shall:
 - (a) set out the functions and duties of the agency;
 - (b) specify which Minister is responsible therefor;
 - (c) prescribe the financial arrangements applying to the agency
 - (d) set out any other special arrangements applying to the agency; and
 - (e) amend the Fourth Schedule.
- (3) All government agencies established in accordance with sub-article (1) shall be listed in the Fourth Schedule together with an indicative summary of their functions.

- 27.(1) A government agency shall be a body corporate having a separate and distinct legal personality and capable of entering into contracts, of employing personnel, of acquiring, holding and disposing of any kind of property for the purposes of its operations, and of suing and being sued, and to which any function or operation of Government may be assigned under this or any other law.
- (2) The legal and judicial representation of an agency shall lie in its Chief Executive Officer or such other officer of the agency as the Minister responsible for it may from time to time appoint by notice in the Gazette: Provided that for the purposes of article 181B of the Code of Organization and Civil Procedure, where such other officer is duly designated, any reference to the Chief Executive Officer in a judicial action or act shall automatically apply to the officer so designated.
- Directives issued by the Principal Permanent Secretary in relation to agencies.
- 28.(1) Except in so far as expressly precluded by any order establishing an agency under this Act, the Principal Permanent Secretary may, in addition to his powers under articles 4, 5 and 30, issue directives to any or all government agencies to:(a) ensure that agencies coordinate their activities with other agencies, departments, government entities ;
-

Merit Protection Commission

- Title 1 - The Merit Protection Commission
- 22.*(1) There shall be a Merit Protection Commission, hereinafter in this Title referred to as "the Commission", which shall consist of a chairman, a deputy chairman and three other members.(2) The members of the Commission shall be appointed by the President acting in accordance with the advice of the Prime Minister given after he has consulted the Leader of the Opposition;
- (a) to audit the appointment of employees of government agencies, government entities and special units and to oversee the application of the principle of merit in the appointment of such employees; and(b) to hear and determine complaints as provided for in this Act and any regulations made thereunder, which shall specify, inter alia, the term within which a complaint may be lodged, and the procedure thereof.
- *not yet in force (2009-2024) !!!

- In performing its functions in virtue of sub-article (1)(a), the Commission shall operate through **after-the-event scrutiny** and shall not subject any agency or government entity to any requirement to obtain the Commission's clearance or approval in advance of making appointments or taking decisions, except as a temporary measure in cases where the Commission –
 - (a) finds that the principle of merit has been, or is likely to be, breached; and
 - (b) is of the view that such a measure is necessary to prevent further breaches of the principle of merit until such time as the Commission is able to conclude any investigations and take corrective measures.
- (3) The Commission shall not hear and investigate complaints on matters which are assigned exclusively by any other law to any other body or to the jurisdiction of the Industrial Tribunal referred to in the Employment and Industrial Relations Act

-

Remedies

- a) annul the decision in question;(b) issue such directives as it may consider necessary to redress the situation; and(c) recommend the taking of such criminal action or disciplinary action including action that may lead to dismissal as it may consider appropriate in the circumstances.