

CAYMAN ISLANDS



Supplement No. 6 published with Gazette No. 22  
Dated 26 October, 2009.

**A BILL FOR A LAW TO AMEND THE PUBLIC SERVICE  
MANAGEMENT LAW (2007 REVISION) TO REVISE THAT LAW IN  
LIGHT OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009  
AND THE FREEDOM OF INFORMATION LAW (2007 REVISION); AND  
FOR INCIDENTAL AND CONNECTED PURPOSES**

**THE PUBLIC SERVICE MANAGEMENT (AMENDMENT) BILL, 2009**

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24. Amendment of section 63 - provisions relating to Portfolio of Legal Affairs
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**THE PUBLIC SERVICE MANAGEMENT (AMENDMENT) BILL, 2009**

**MEMORANDUM OF OBJECTS AND REASONS**

This Bill seeks to amend the Public Service Management Law (2007 Revision), the “principal Law”, so as to make a number of changes that are necessary to facilitate the entry into force of the Cayman Islands Constitution Order 2009 UK Statutory Instrument No. 1379 of the same year. The 2009 Constitution replaces the 1972 Constitution.

**General references in the two Constitutions**

A number of government positions that exist under the 1972 Constitution will continue to exist under the 2009 Constitution. However, the sections in which these positions are referred to in the principal Law have changed. Therefore, there are a number of clerical amendments that give effect to this. Consequent upon the replacement of the Constitution, even the definition of “Constitution” which currently exists in section 2(1) of the principal Law has to change. Thus clause 3(f) of this Bill amends that definition so that it refers to the 2009 Constitution.

The 2009 Constitution provides for the office of Cabinet Secretary and the Director of Public Prosecution. Further, the Office of Information Commissioner (which is not in either Constitution) did not exist at the time of enactment of the principal Law. Thus it is necessary to amend the definitions of “appointing officer”, “chief officer” and “civil service entity” to make provision for these changes. This is done in clause 3(a), (c) and (d), respectively.

**Changes consequent upon the creation of the office of Deputy Governor under section 34 of the 2009 Constitution**

Under the 2009 Constitution the office of Chief Secretary will cease to exist. That role will be taken over by the Deputy Governor, who will perform many of the functions formerly undertaken by the Chief Secretary. Clause 8(a)(i) of this Bill provides for the appointment of the Deputy Governor. Also, clause 3(i) of the Bill effectively amends the definition of “Official Member” to include the Deputy Governor. Clause 10 gives effect to this change.

**Changes relating to the office of Cabinet Secretary referred to in section 48 of the 2009 Constitution.**

The office of Cabinet Secretary, which exists in Government, is now referred to in the Constitution for the first time. He will be appointed by the Governor under

section 48(1)(b) of the 2009 Constitution. This power is mirrored in the provision inserted by section 6(f) of this Bill. As alluded to above, the Cabinet Secretary will be a chief officer.

**Changes consequent upon creation of the office of Premier under section 49 of the 2009 Constitution**

In section 22 (Political pressure from Ministers and Official Members) and section 23 (Political pressure from Members of the Legislative Assembly) of the principal Law there are references to the Leader of Government Business. These are being replaced by references to the Premier, a new office created under section 49 of the 2009 Constitution.

**Changes consequent upon section 55 of the 2009 Constitution relating to the special responsibilities of the Governor**

The “appointing officer” for the Information Commissioner is the Governor under section 35(1) of the Freedom of Information Law (No. 10 of 2007). The Governor is also the appointing officer for the Director of Public Prosecution and the Cabinet Secretary, as well as officers who fall under the Judicial and Legal Services Commission under section 106 of the Constitution. The latter are basically officers on the Bench or the government, who are required to hold legal qualifications.

Clause 8(b) of this Bill amends section 9(5) of the principal Law. The effect is to empower the Governor to appoint a civil servant to act whenever an Official Member is, by illness, absence from the Islands or for any other reason, incapable of performing the functions of his office.

Under section 55(1)(d) of the 2009 Constitution, the Governor’s ability to undertake personnel related activities is to be changed by adding a condition that this can only be done where there is already financial provision for the same. This is given effect in clause 7(b) of the Bill.

**Changes relating to the creation of the office of Director of Public Prosecution by section 57 of the 2009 Constitution**

By virtue of amendments to section 2(1) of the principal Law relating to the definition of “civil service entity” is amended to include the Office of the Director of Public Prosecution and the definition of “chief officer” is also amended to include the Director of Public Prosecution. The procedures provided for under section 26 for the appointment of the Director of Public Prosecution will apply to the appointment of the Director except that the functions of the Head of the Civil Service shall be performed by the Governor. This is effected

through clause 17 of this Bill. Clause 18 of the Bill introduces a provision that makes section 28(2)(b), relating to performance-related remuneration, applicable to the Director of Public Prosecution, as it is with other chief officers.

**Changes relating to the role of the Judicial and Legal Services Commission, a body created by section 105 of the 2009 Constitution**

Section 105 of the 2009 Constitution establishes for the first time a body known as the Judicial and Legal Services Commission. This body will advise the Governor on the appointment of public officers who hold offices requiring the holding of legal qualifications. Clause 9 inserts a new clause 12(3), which ensures that the Commission will be consulted in the appointment of the Attorney-General, as is the case with other officers to be appointed under section 106 of the Constitution. Clauses 22 and 23 insert provisions that ensure that similar consultation takes place in relation to staff members referred to in section 106 of the Constitution in relation to procedures for appointment (by inserting a new section 41(16)), and the power to discipline, dismiss, retire staff early or otherwise terminate (by inserting a new section 44(9)).

Clause 24 of the Bill amends clause 63(1) to ensure that before appointing a chief officer for the Portfolio of Legal Affairs, the Head of the Civil Service shall consult not just the Attorney-General but also the Judicial and Legal Services Commission, regarding the legal qualifications of the preferred candidate for the position. Clause 24 also amends clause 63(2) to ensure that chief officer consults not just the Attorney-General but also the Judicial and Legal Services Commission with respect to matters referred to in sections 40, 41, 44, 45 and 47 of the principal Law, which collectively relate to appointment, promotion, transfer of staff and related matters.

**Changes relating to the powers of the Governor in relation to appointment of public officers under section 109 of the 2009 Constitution**

Section 109 of the Constitution now vests in the Governor, subject only to the Constitution, the power to make appointments to public offices, and to transfer, remove or exercise disciplinary control over persons holding or acting in such offices. This is unlike under the 1972 Constitution whereby such powers were only delegated to the Governor by the Secretary of State. In the circumstances, subsections (3) and (4) of the principal Law are no longer necessary.

**Changes concerning the change of the role of the Financial Secretary as now reflected in section 115 of the 2009 Constitution**

Clause 8(a)(iii) makes a change that is now necessary in the light of section 115 of the 2009 Constitution, by virtue of which the Financial Secretary will be

appointed by the Governor as principal adviser to the Minister responsible for finance.

**Amendments arising from delay in the implementation of performance-related pay under the principal Law**

Section 2(1) of the principal Law effectively provided for performance-related remuneration to be introduced by 1<sup>st</sup> July, 2009. Clause 2 of the Bill deletes this date and inserts “1<sup>st</sup> July, 2010”.

**Miscellany of changes**

Clause 3(h) and (j) respectively delete the definitions of “ministry manager” and “portfolio manager” as they are not used in the principal Law.

There are also a number of other minor changes that allow for easier reading and use of the Law.

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MANAGEMENT LAW (2007 REVISION) TO REVISE THAT LAW IN  
LIGHT OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009  
AND THE FREEDOM OF INFORMATION LAW (2007 REVISION); AND  
FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Public Service Management (Amendment) Law, 2009. Short title and commencement
  
- (2) This Law shall come into force on the day that the Cayman Islands Constitution Order 2009 comes into force. UKSI 1379 of 2009
  
2. The Public Service Management Law (2007 Revision), in this Law referred to as the “principal Law”, is amended in section 1 by deleting “1<sup>st</sup> July, 2009” and substituting “1<sup>st</sup> July, 2010”. Amendment of section 1 of the Public Service Management Law - short title and commencement  
  
(2007 Revision)
  
3. The principal Law is amended in section 2(1) as follows - Amendment of section 2 - definitions and interpretation
  - (a) in the definition of “appointing officer” by inserting after the words “Deputy Commissioner of Police” the words “,Information Commissioner, Director of Public Prosecution, Cabinet Secretary”;

- (b) by inserting the definition of “chief officer” in its appropriate alphabetical sequence;
- (c) in the definition of “chief officer”-
  - (i) by deleting respectively at the end of paragraphs (d) and (e) the word “and”;
  - (ii) by inserting after paragraph (f) the following paragraphs -
    - “(g) in the case of the Information Commissioner’s Office - the Information Commissioner;
    - (h) in the case of the Cabinet Office - the Cabinet Secretary; and
    - (i) in the case of the Office of Public Prosecution - the Director of Public Prosecution.”.
- (d) in the definition of “civil service entity” by inserting after “Audit Office” the words “, the Cabinet Office, the Office of Public Prosecution and the Judicial Administration”;
- (e) in the definition of “Complaints Commissioner” by deleting “section 49N” and substituting “section 120(2)”;
- (f) by repealing the definition of “Constitution” and substituting the following definition -
  - “ “Constitution” means Schedule 2 of the Cayman Islands Constitution Order 2009;”;
- (g) by inserting in the appropriate alphabetical sequence, the following definition -
  - “ “Information Commissioner” means the Information Commissioner appointed under section 35 of the Freedom of Information Law, 2007;”;
- (h) by repealing the definition of “ministry manager”;
- (i) by repealing the definition of “Official Member” and substituting the following definition -
  - “ “Official Member” means the Deputy Governor, Attorney General or Financial Secretary;”;
- (j) by repealing the definition of “portfolio manager”.

UKSI 1379 of 2009

Amendment of section 2  
- definitions and  
interpretation

4. The principal Law is amended in section 2 by repealing subsections (3) and (4).

5. The principal Law is amended in section 5 -

Amendment of section 5  
- Public Servant's Code  
of Conduct

- (a) by repealing subsection (2)(h) and substituting the following paragraph -

“(h) a public servant shall not directly or indirectly disclose information which comes into his possession in his official capacity unless authorised or allowed to do so under this section, the Freedom of Information Law, 2007 or any other Law”; and

- (b) by inserting after subsection (2) the following subsections -

“(3) The Governor in Cabinet may establish policies and procedures for the release to the public of records that may or may not be divulged under the Freedom of Information Law (2007 Revision), so long as those policies or procedures do not prevent the divulging of records that must be divulged under that or any other Law.

(4) The duty imposed by subsection (2)(h) continues after a public servant leaves the public service.”.

6. The principal Law is amended in section 6 -

Amendment of section 6  
- personnel authorities of  
Governor

- (a) by repealing subsection (1) and substituting the following subsection -

“(1) In accordance with section 55(1)(d) of the Constitution, the power to employ all civil servants rests with the Governor acting in his discretion.”;

- (b) in subsection (2) by deleting “section 49B(2)” and inserting “section 100(2)”;
- (c) in subsection (3) by deleting “section 49I(2)” and substituting “section 95(3)”;
- (d) in subsection (6) by deleting “section 55B” and substituting “section 114(1)”;
- (e) in subsection (7) by deleting “section 49N” and substituting “section 120(2)”;
- (f) by inserting after subsection (8) the following subsections -

“ (8A) The Governor shall retain personal responsibility for the employment of the Cabinet Secretary in accordance with section 48 of the Constitution and Part VI of this Law.”;

(8B) The Governor shall retain responsibility for the employment of the Information Commissioner in accordance with section 35 of the Freedom of Information Law, 2007 and Part VI of this Law.”;

(8C) The Governor shall retain responsibility for the employment of any office referred to in section 106(4) of the Constitution in accordance with section 106 of the Constitution and this Law;

(8D) The Governor shall ensure that financial provision already exists for any action that he may take in regard to the employment of civil servants, in accordance with section 55(1)(d) of the Constitution.”.

Amendment of section 7  
- Governor may delegate  
employment powers

7. The principal Law is amended in section 7 as follows -

- (a) in subsection (1) by deleting “Where an instruction has been issued by the Secretary of State under section 9(1) of the Constitution in relation to section 7(1)(c)(v) of the Constitution,” and substituting “In accordance with section 109(2) of the Constitution.”; and
- (b) by inserting after subsection (2) the following subsection -

“ (3) A delegation issued by the Governor under subsection (1) shall include the requirement that financial provision must already exist for any action taken under the authority of the delegation, in accordance with section 55(1)(d) of the Constitution.”.

Amendment of section 9  
- appointment of Official  
Members

8. The principal Law is amended in section 9 as follows -

- (a) in subsection (1) as follows-
  - (i) by repealing paragraph (a) and substituting the following paragraph -

“(a) The Deputy Governor shall be appointed by the Governor acting in accordance with section 34 of the Constitution.”;

- (ii) in paragraph (b) by deleting “in accordance with section 55A of the Constitution” and substituting “as advised by the Judicial and Legal Services Commission in accordance with section 56 of the Constitution.”; and
- (iii) by deleting the full stop at the end of paragraph (b) and substituting “;and” and inserting a new paragraph as follows -

“(c) the Financial Secretary shall be appointed by the Governor acting in his discretion under section 109(4) of the Constitution and in accordance with this Law;”;

- (b) in subsection (5), by deleting “may, in accordance with section 10(1)(a) of the Constitution, appoint a temporary Member of the Cabinet” and substituting “may appoint a civil servant to temporarily act in the office of the Official Member”.

9. The principal Law is amended in section 12 by inserting after subsection (2) the following subsection -

Amendment of section 12 - dismissal or early retirement of Official Members

“(3) The Governor shall seek the advice of the Judicial and Legal Services Commission before undertaking any action in relation to the employment of the Attorney-General under subsections (1) and (2).”.

10. The principal Law is amended in section 15 as follows -

Amendment of section 15 - duties of Head of Civil Service

- (a) in subsection (1), by deleting “Chief Secretary” and substituting “Deputy Governor”; and
- (b) in subsection (2) -
  - (i) in paragraphs (d) and (e), by deleting “ministries” wherever it occurs and substituting “ministries and portfolios”; and
  - (ii) in paragraph (g), by deleting “portfolio” and substituting “portfolios”.

11. The principal Law is amended in section 16(1)(a) by deleting “ministry” and inserting “ministry or portfolio”.

Amendment of section 16 - performance agreement responsibilities of Head of the Civil Service

12. The principal Law is amended in section 17(1) by deleting “ministry” and inserting “ministry or portfolio”.

Amendment of section 17 - performance agreement responsibilities of Head of the Civil Service

13. The principal Law is amended in section 18 as follows -

Amendment of section 18 - salaries of certain posts

- (a) at the end of paragraph (e), by deleting “and”;
- (b) at the end of paragraph (f), by deleting the full-stop and substituting a semi-colon;
- (c) by inserting at the end of paragraph (f) the word “and”; and
- (d) by inserting after paragraph (f) the following paragraph -

“(g) any officer referred to in section 106(4) of the Constitution.”.

Amendment of section 22 - political pressure from Ministers and Official Members

14. The principal Law is amended in section 22(1) and (2) by deleting the words “Leader of Government Business” wherever they occur and substituting “Premier”.

Amendment of section 23 - political pressure from Members of the Legislative Assembly

15. The principal Law is amended in section 23(1) and (2) by deleting the words “Leader of Government Business” wherever they occur and substituting “Premier”.

Amendment of section 24 - duties of Portfolio of Civil Service

16. The principal Law is amended in section 24 as follows -

- (a) in paragraph (b) by inserting after the word “Law” the words “as may be required by the Commission”; and
- (b) in paragraph (i) by deleting the words “by chief officers” and substituting the words “by any chief officer”.

Insertion of section 36A - procedure for appointing Director of Public Prosecution

17. The principal Law is amended by inserting after section 36 the following section -

“Procedure for appointing Director of Public Prosecution

36A. Where there is a vacancy for the position of Director of Public Prosecution, section 26 shall apply except that the functions of the Head of the Civil Service shall be undertaken by the Governor. ”.

Amendment of section 37 - remuneration and terms and conditions of employment of Auditor General and Complaints Commissioner

18. The principal is amended in section 37 as follows -

- (a) by inserting after “Auditor-General” wherever it occurs the words “, Director of Public Prosecution”; and
- (b) by inserting after subsection (2) the following -

“(3) Section 28(2)(b) shall apply to the Director of Public Prosecution.”.

Insertion of section 37A - remuneration and terms and conditions of Information Commissioner

19. The principal Law is amended by inserting after section 37 the following section -

“Remuneration and

37A. For the avoidance of doubt and without limiting the

terms and conditions of Information Commissioner	effect of section 37 of the Freedom of Information Law, 2007, section 27(1) and (2) shall apply to the Information Commissioner.	
	20. The principal Law is amended in section 38 by deleting “Subject to sections 55B and 49N of the Constitution, section 29 shall apply to the Auditor-General” and substituting “Sections 114(1), 57 and 120(2) shall apply to the Auditor-General, Director of Public Prosecution”.	Amendment of section 38 – dismissal and early retirement of Auditor – General, Director of Public Prosecution and Complaints Commissioner
	21. The principal Law is amended by inserting after section 38 the following sections -	Insertion of sections 38A and 38B - term of office and removal of Information Commissioner; sections 30, 31 and 32 apply to Director of Public Prosecution
“Term of office and removal of Information Commissioner  (Law No. 10 of 2007)	38A. When the Information Commissioner’s term expires or he is removed under section 35(3) of the Freedom of Information Law, 2007, his employment with the government is terminated concurrently.	
“Sections 30, 31 and 32 apply to Director of Public Prosecution	38B. Sections 30, 31 and 32 shall apply to the Director of Public Prosecution.	
	22. The principal Law is amended in section 41 by inserting after subsection (15) the following subsection -	Amendment of section 41 – procedures and requirements for appointment
	“ (16) In appointing or reappointing any staff member referred to under section 106(4) of the Constitution, the appointing officer shall consult with the Judicial and Legal Services Commission.”.	
	23. The principal Law is amended in section 44 by inserting after subsection (8) the following subsection -	Amendment of section 44 - power to discipline, dismiss, retire staff early or otherwise terminate
	“ (9) In exercising his authorities under this section, an appointing officer shall consult with the Judicial and Legal Services Commission where any action relates to any staff member referred to under section 106(4) of the Constitution.”.	
	24. The principal Law is amended in section 63(1) and (2) by deleting “Attorney General” wherever it occurs and substituting “Attorney-General and Judicial and Legal Services Commission”.	Amendment of section 63 – provisions relating to Portfolio of Legal Affairs
	25. The principal Law is amended in section 69 as follows -	Amendment of section 69 -offences

