



E109/36/07

21 May 2024

Circular 05/2024

Guidance Note

**To all HR Units on the use of Excluding Orders as provided for under the
*Public Service Management (Recruitment and Appointments) Act 2004***

A Dhuine Uasail,

Background

The [Public Service Management \(Recruitment and Appointments\) Act, 2004](#), enacted in October 2004, provided 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 PAS act as the centralised recruitment and selection body for the Civil Service and can be contacted at 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 the Code of Practice published by the CPSA available at www.cpsa.ie. The Act provides for recruitment to posts in the Civil Service to be carried out under licence and in accordance with the CPSA's Code of Practice. The Code provides 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 temporary 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 Public Expenditure and Reform (as updated by the 2004 Act).

Requests for the granting of Excluding Orders under Section 8 of the Act must be made online 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 Code 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 **six to twelve** months will only be granted in limited circumstances, and only when supported by a convincing business case.

Licence holders shall keep the CPSA informed of their recruitment activities under section 43 (3)(b)(ii) of the Public Service Management (Recruitment and Appointments) Act, 2004.

This updated Circular replaces Circular 37/2007 and reflects engagement with key stakeholders, including the CPSA.



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Guidelines on the issuing of Excluding Orders

The sanction of the Minister for Public Expenditure, National Development Plan Delivery and Reform (DPENDR) 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 and have been sought are set out below and an outline of the procedure involved is set out in *Appendix A*.

1. Ministerial Appointments

The Department of Public Expenditure, NDP Delivery and Reform's ***Instructions relating to the Appointment of Ministerial Private Office Staff*** set out the arrangements applicable to the appointment of ministerial private office staff to posts such as 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 an Excluding Order.

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 Code 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 these cases, the exclusion process may be used for a maximum period of **six to twelve** months, depending on the business case. Departments/Offices will be required

to complete their recruitment procedures for appointment to the post under the CPSA code 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 Code of Practice, takes place prior to the completion of the exclusion period.

3. Family Friendly Policies

The introduction 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 should be able to anticipate the likely demand for temporary clerical officers on an annual basis as part of their manpower planning process and make arrangements for recruitment under licence of these staff by way of open competition under the CPSA Code of Practice. PAS hold open competitions to fill term time vacancies periodically. Accordingly, requests for Orders to exclude such posts will only be considered by the CPSA in circumstances where PAS are not in a position to respond to local demand.

4. 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 Code of Practice.

An Excluding Order is required for appointment to posts such as those covered by the WAM (Willing and Able Mentoring) programme, the OWL (Oireachtas Work Learning) programme and the Traveller and Roma Internships.

5. 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.

6. 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 Public Expenditure, NDP and Reform should be sought in all such cases.

Renewal/Extension of Existing Orders

Requests for the renewal or extension of existing Excluding Orders will be considered only in exceptional cases in light of the business case underpinning the request. Where appropriate, the Order may be renewed or extended for a limited amount of

time. A business case needs to be submitted for the renewal or extension. Departments should review the circumstances applying to such posts with a view to phase out those cases that require continued need for an Excluding Order, thereby allowing regular recruitment procedures to take place. Requests for the extension of an existing Order should be made to the CPSA, at least one month prior to the expiry date. **An Excluding Order cannot be extended after the expiry date.**

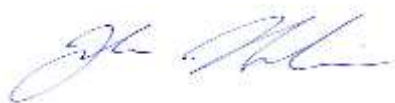
Lapsed Excluding Orders

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.

Potential Displacement

In order to mitigate any risk that temporary appointment of interns might displace potentially permanent posts, the Commission considers that such placements would not normally be for any longer than **6-12 months** in duration and the work assigned to appointees would not be the usual day-to-day work of the units to which they are assigned. Advance approval from the Commission is required for all placement programmes, with recruiters to provide a business case that will demonstrate any programme for which Commission approval is sought does not present a risk of displacement of potentially permanent posts.

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Appendix A

Procedure for Applying for an Excluding Order *or* an Extension to an existing Excluding Order

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

- a) If not explicitly covered by a Department/Office delegated sanction arrangements, request sanction for the post from the relevant expenditure Vote Section in DPENDR.
- b) Request approval from the Civil Service Strategic Recruitment Unit (SRU) to submit application to the CPSA to fill the position by way of an Excluding Order.

The SRU is part of the Public Service Resourcing Division within DPENDR and can be contacted by email at csrecruitmentpolicy@per.gov.ie.

- c) Subject to SRU approval, submit application to the CPSA. Applications can be made from [here](#).

The CPSA are located at 6 Earlsfort Terrace, Dublin 2, D02 W773.

The request for approval submitted to SRU should include:

1. the title of the post to be excluded,
2. the period of time (both start and finish) during which the post is to be excluded,
3. the business case supporting the request. This should include:
 - i. the role,
 - ii. the number of people to be appointed, and
 - iii. how long the post will last.
4. For Internships/Work Placements you should also include:
 - i. how the selection was carried out,
 - ii. the initiative/programme supporting the appointment, and
 - iii. the work to be carried out.

5. For professional/specialist skills and other cases include:
 - i. how the position came about,
 - ii. the efforts taken to fill the post through normal recruitment procedures, and
 - iii. the efforts being made to fill the role on a permanent basis, if this is relevant.
6. 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.)

The SRU, having considered the request in the context of these Guidelines, will respond in writing to the Department/Office giving the Minister's consent, where appropriate, to proceed with submitting an application to the CPSA. The contract of employment should be provided at this stage, and normally the SRU will approve it at this time also. SRU will also send a copy of the letter of approval to the CPSA for their records.

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 SRU. It is important that the request be sent in sufficient time (approximately one month in advance of when it is 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.

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.