

79. Employees whose performance is substandard

- (1) For the purposes of this section, the performance of an employee is substandard if and only if the employee does not, in the performance of the functions that he or she is required to perform, attain or sustain a standard that a person may reasonably be expected to attain or sustain in the performance of those functions.
- (2) Without limiting the generality of the matters to which regard may be had for the purpose of determining whether or not the performance of an employee is substandard, regard —
 - (a) shall be had —
 - (i) to any written selection criteria or job specifications applicable to;
 - (ii) to any duty statement describing; and
 - (iii) to any written work standards or instructions relating to the manner of performance of,
the functions the employee is required to perform; and
 - (b) may be had —
 - (i) to any written selection criteria or job specifications applicable to;
 - (ii) to any duty statement describing; and
 - (iii) to any written work standards or instructions relating to the manner of performance of,
functions similar to those functions.
- (3) Subject to subsections (4), (5) and (6), an employing authority may, in respect of one of its employees whose performance is in the opinion of the employing authority substandard for the purposes of this section —
 - (a) withhold for such period as the employing authority thinks fit an increment of remuneration otherwise payable to that employee;
 - (b) reduce the level of classification of that employee; or
 - (c) terminate the employment in the Public Sector of that employee.
- (4) The Governor may, on the recommendation of the Minister of the Crown responsible for the relevant public sector body, terminate the employment in the Public Sector of an employee —
 - (a) who was appointed to his or her employment by the Governor; and
 - (b) whose performance is in the opinion of his or her employing authority substandard for the purposes of this section.
- (5) If an employee does not admit to his or her employing authority that his or her performance is substandard for the purposes of this section, that employing authority shall, before forming the opinion that the performance of the employee is substandard for those purposes, cause an investigation to be held into whether or not the performance of the employee is substandard.

- (6) If an employee to whose performance this section is applied is a chief executive officer —
- (a) the reference in subsection (4) to the Minister of the Crown responsible for the relevant public sector body shall be taken to be a reference to the Minister; and
 - (b) an investigation held under subsection (5) into whether or not the performance of the chief executive officer is substandard shall take the form of an assessment referred to in section 48(1)(d), and for that purpose section 48(1)(d) and (2) applies to and in relation to the chief executive officer as if references to non-recommendation of reappointment or to removal from office were references to termination of the employment in the Public Sector of the chief executive officer under subsection (4).