

NO. 10 OF 2017

THE PUBLIC SERVICE COMMISSION ACT

SUBSIDIARY LEGISLATION

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**PUBLIC SERVICE COMMISSION REGULATIONS, 2005**

[Legal Notice 28 of 2005, Legal Notice 49 of 2014]

***Revoked by Legal Notice 3 of 2020 on 31st January, 2020***



**PUBLIC SERVICE COMMISSION (COUNTY GOVERNMENT PUBLIC SERVICES APPEALS PROCEDURES) REGULATIONS, 2016**

[Legal Notice 70 of 2016]

*Revoked by Legal Notice 92 of 2022 on 10th June, 2022*



**THE PUBLIC SERVICE COMMISSION (REMOVAL OF THE  
DIRECTOR OF PUBLIC PROSECUTIONS) REGULATIONS**

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**THE PUBLIC SERVICE COMMISSION (REMOVAL OF THE DIRECTOR OF PUBLIC PROSECUTIONS) REGULATIONS**

[Legal Notice 168 of 2017]

**1. Citation**

These Regulations may be cited as the Public Service Commission (Removal of the Director of Public Prosecutions) Regulations.

**2. Purpose**

The purpose of these Regulations is to give effect to Article 158(2) of the Constitution by providing a procedure for receiving, processing, hearing and determining a petition for the removal of the Director of Public Prosecutions.

**3. Interpretation**

In these Regulations—

"Act" means the Public Service Commission Act (Cap. 185);

"Board" means the full sitting of the Commission;

"Chairperson" means the chairperson of the Commission;

"Commission" means the Public Service Commission;

"Committee" means an adhoc committee of the Commission constituted to hear a petition;

"Director" means the Director of Public Prosecutions;

"hearing" means an oral or written representation;

"petition" means a complaint referred to the Commission under the provisions of Article 158 of the Constitution;

"petitioner" means a person who has presented a petition to the Commission under the provisions of Article 158 of the Constitution; and

"respondent" means the Director of Public Prosecutions.

**4. Guiding principles**

The Commission hearing the petition for removal of the Director shall be guided by the following principles—

- (a) respect and promotion of the values and principles prescribed in the Constitution;
- (b) fairness and respect for the rule of law;
- (c) adherence to the rules of natural justice; and
- (d) the application of substantive justice, without undue regard to technicalities of procedure and without undue delay to the decisions of the Commission.

**5. Saving of inherent powers of the Commission**

Nothing in these Regulations shall limit or otherwise affect the inherent power of the Commission either on its own motion or on the application of a party to make such orders as may be necessary for the fair and expeditious disposal of a petition or to prevent an abuse of its process.

**6. Co-ordination of petition Process**

The Chairperson shall—

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- (a) with the approval of the Commission, constitute a Committee to hear and determine a petition for removal of the Director;
- (b) assign the petitions for removal of the director to the committees; and
- (c) perform such other functions as are necessary for hearing and determination of a petition for the removal of the Director.

## **7. Jurisdiction**

The Commission shall have the power to receive and hear all the petitions for removal of the Director.

## **8. Grounds for removal**

The Commission shall consider petitions under these Regulations based on the grounds set out in Article 158(1) of the Constitution.

## **9. Filing a petition**

(1) A person desiring the removal of the Director of Public Prosecutions may present a petition to the Public Service Commission which, shall be in writing, setting out the alleged facts constituting the grounds for the removal of the Director.

(2) The petitioner shall, where applicable, attach copies of all material or documentary evidence supporting the petition.

## **10. Processing the Petition**

(1) The Commission shall, within fourteen days of receipt of the petition, consider it in the first instance and shall either—

- (a) disallow it summarily for lacking in merit or for failing to disclose any valid ground for removal of the Director;
- (b) require the petitioner to provide further particulars; or
- (c) require the Director to respond to the allegations.

(2) Where the Commission requires the Director to respond to the allegations, the Commission shall forward to the Director, a copy of the petition together with a copy of the affidavit and all other supporting documents.

(3) The Director shall, within fourteen days of the date of the Commission's letter, respond to the petition in writing.

(4) The Committee shall, within fourteen days of receipt of the response by the Director, convene a preliminary meeting to determine whether the Commission shall—

- (a) call for additional documents or information;
- (b) undertake further investigations;
- (c) hear the petitioner and the Director in person; and
- (d) if the Commission decides to hold a hearing, set the hearing date and venue:

Provided that the Committee shall have the power to summarily determine the petition at the preliminary meeting.

(5) Within seven days of the preliminary meeting, the Commission may—

- (a) call for additional documents from the parties;
- (b) facilitate investigations into the allegations made in the petition; or
- (c) issue a hearing notice as determined by the Committee.

(6) The Committee shall convene a hearing of the petition or a meeting to consider the petition within twenty-one days from the date of the preliminary meeting.

## **11. Form of Notice**

When the Committee determines a hearing date, the Commission shall, within seven days issue a hearing notice in Form PDPP 1 set out in the Schedule.

**12. Service of notices**

- (1) Any notices issued under these Regulations shall be served through—
  - (a) personal service;
  - (b) registered mail to the last known postal address of the petitioner and the Director and shall be deemed to have been received within seven days from the date of postage; the Public Service Commission website; or
  - (c) advertising in at least two daily newspapers with nationwide circulation:

Provided that the Commission shall at all times use the most cost efficient mode of service.

(2) Where a notice is served through an advertisement, a copy of the newspaper advertisement shall be filed for record.

(3) Where a notice is served personally the same shall be recorded stating the time and manner in which the notice was served.

**13. Hearing the petition**

- (1) The Commission shall determine the venue and time for hearing of a petition.
- (2) A petition may be heard orally or through written submissions.

(3) Where the petition is heard through written submissions, the Commission shall require—

- (a) the petitioner to first file written submissions within fourteen days of the Commission's direction for the same and which shall be forwarded to the Director within seven days of receipt thereof; and
- (b) the Director to file written submissions in response to the petitioner's submissions within fourteen days of receipt thereof.

**14. Oral hearing**

(1) An oral hearing shall take place—

- (a) where the Committee determines that it is necessary to hear witnesses in the matter; or
- (b) where the petitioner or the Director makes a written request to the Commission.

(2) Where the petition is heard orally, the parties shall be given an opportunity to address the Committee and shall, present any witnesses before the Committee.

**15. Absence of the parties**

If the petitioner or the Director is absent during the hearing, the Committee may—

- (a) adjourn the hearing; or
- (b) hear and determine the petition in the absence of either party or both parties.

**16. Indisposition of a member**

If by reason of resignation from the Commission, illness, death, or for any other reason, a member of the Committee is unable to continue sitting in a part-heard petition, the Chairperson shall appoint another member to the Committee and order either the rehearing or continuation of the proceedings.

**17. Recordings of proceedings**

(1) The proceedings of a petition heard orally shall be recorded in verbatim.

(2) Proceedings of a petition heard through written submissions shall be recorded in the minutes of the meetings of the Committee.

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**18. Findings and recommendations**

(1) The Committee shall make its recommendations to the Commission within twenty-one days of hearing the petition.

(2) The Commission shall consider the recommendations of the Committee and shall make a final decision on the petition within seven days of receipt of recommendations of the Committee.

**19. Powers of the Commission on receipt of recommendations**

(1) Upon receiving the recommendations from the Committee, the Commission may—

- (a) uphold the decision;
- (b) set aside the decision;
- (c) vary the decision as it considers just; or
- (d) give such directions as it may consider appropriate in the interest of justice.

(2) If the Commission finds that the petition discloses sufficient grounds for removal of the Director, the Commission shall, within twenty one days of the finding, forward the decision together with the petition to the President in accordance with the provisions of Article 158(3) of the Constitution.

(3) The decision of the Commission shall be communicated to the petitioner and the Director in writing within seven days from the date the Commission makes the decision.

**20. Delivery of documents of the Commission**

(1) A document may be lodged at the Commission by—

- (a) delivering it to the Commission registry; or
- (b) sending it to the Commission by registered post, or by courier service providing proof of delivery;
- (c) facsimile; or
- (d) e-mail.

(2) A document is deemed lodged on the date it is received and stamped by the Commission.

(3) The sender of a document by facsimile shall produce the original document or the transmission report if directed by the Commission.

(4) The sender of a document by email shall produce the original document and proof of the date and time of transmission of the email.

**21. Powers of the Commission in relation to service of documents**

Nothing in these Regulations affects the power of the Commission, if the circumstances so permit and in the interests of justice to—

- (a) authorize service of a document in a manner that is not expressly provided for in these Regulations; or
- (b) find that a document served in a manner not expressly provided for in these Regulations has been duly served.

**22. Rights of the parties**

The parties have a right to—

- (a) be heard in person subject to the provisions of Regulation 14(1)(b);
- (b) legal representation;
- (c) access information, materials and evidence relevant to the petition;
- (d) have adequate time to prepare evidence;
- (e) request for adjournment of the case where necessary for fair hearing;

- (f) apply for review of the Commission's decision in writing within seven days from the date of receipt of the Commission's decision.

**23. Commission to keep full records of proceedings**

The Commission shall cause to be made and preserved a full and accurate record of all its proceedings including handwritten or typed transcripts and, where applicable, audio and video recordings.

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SCHEDULE

FORMS  
(r. 11)

FORM PDPP. 1  
THE PUBLIC SERVICE COMMISSION  
PETITION NO. .... OF 2 .....  
..... PETITIONER

To:

.....  
.....

HEARING NOTICE

TAKE NOTICE that you are required to appear before the Commission for hearing of the petition on the ..... day of ..... 20 ..... at ..... O'clock in the ..... noon.

The hearing shall be held at .....

TAKE NOTICE that the Commission may proceed to make such determination or take any action as it deems just and prudent, your absence notwithstanding.

Dated at ..... this ..... day of ....., 20 .....

BY ORDER OF THE COMMISSION

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**PUBLIC SERVICE COMMISSION REGULATIONS, 2019**

[Legal Notice 65 of 2019]

***Revoked by Legal Notice 179 of 2019 on 13th December, 2019***



**THE PUBLIC SERVICE REGULATIONS**

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**THE PUBLIC SERVICE REGULATIONS**

[Legal Notice 3 of 2020]

**PART I – PRELIMINARY****1. Citation**

These Regulations may be cited as the Public Service Commission Regulations.

**2. Interpretation**

In these Regulations, unless the context otherwise requires—

"acting appointment" means temporary conferment upon a public officer, by the Commission or the relevant appointing authority, the power to perform duties of a public office other than the office the officer is substantively appointed to hold, while the public officer continues to hold the substantive appointment;

"appointing authority" means an officer or public body having power to make appointments to a position in the public service;

"appointment" means engagement of a person to a position or a job and includes acting appointment, re-appointment, promotion and re-designation in the public service;

"authorised officer" means a member of the commission, any officer, body or authority in the public service, appointed by the Commission in writing to perform its delegated functions;

"code of conduct" means any written standard that is issued by any lawful authority—

- (a) that guides the behaviour of any category of public officers or public bodies; and
- (b) is aimed at ensuring ethical, efficient and effective performance of the public service;

"conditions of service" means any right or obligation relating to a public officer;

"confirm in appointment" means the placement of a public officer on permanent and pensionable terms or on contract, as the case may be, upon completion of the probation period;

"deployment" means the distribution of public officers within a public body and without change of grade;

"disciplinary control" means the due process in handling of discipline matters in accordance with the Constitution, legislation and these Regulations;

"interim body" means a public body that has been legally established under the Constitution or an Act of Parliament to perform a function that is of a temporary nature;

"member" means a member of the Commission appointed in accordance with Article 233(2) of the Constitution and includes the chairperson and vice-chairperson;

"merit" means consideration for an appointment, a reward or a benefit based on abilities, aptitudes, skills, qualifications, knowledge, experience and personal qualities relevant to the carrying out of duties;

"pensionable public officer" means a public officer who has been confirmed in appointment and admitted to the permanent and pensionable establishment;

"pension benefits" means any pension, compensation, gratuity or other similar allowance payable to a person in respect of such person's service as a public officer, or to the widows, children, dependants or personal representatives of such person, in respect of that service;

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"promotion" means the conferment upon a person in the public service of an office to which is attached added responsibility, higher salary or higher salary scale than that attached to the office to which the person was last substantively appointed;

"public body" includes—

- (a) any corporation, council, board, committee or other body which has power to act under and for purposes of any written law relating to the undertakings of a public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any such law;
- (b) a corporation, the whole or a controlling majority of shares which are owned by a person or entity that is a public body by virtue of any of paragraph (a) of this definition;
- (c) statutory public bodies; or
- (d) any public body brought under the jurisdiction of the Commission by an Act of Parliament for a specified function to the extent of that function;

"publicise", in relation to a document, means to make known to the public, through electronic, print and other media;

"publish", in relation to a document, include—

- (a) preparing and issuing a document in a newspaper with national circulation, the *Gazette* or other publication of general circulation;
- (b) publication of an abridged or summary version of the document without losing the core content of the document; and
- (c) posting the document on a Government website;

"re-designation" means the movement of a public officer from one career path or cadre to another at a grade equal to or substantially equal to the one held before the movement, to facilitate the public officer's horizontal mobility;

"representative" in reference to a public officer means any person who represents the public officer on any matter related to the employment of the public officer;

"reprimand" means a severe written rebuke or reproof to an officer after disciplinary process that determines an officer's improper conduct;

"resignation" means the action of a public officer's exit from the public service in accordance with Section 78 of the Act;

"retirement" means the exit of an officer from the public service with full separation benefits, including pension benefits as may be provided for in the applicable law, contract of service or a special retirement scheme agreed upon between the public officer and the relevant lawful authority;

"scholarship" means a grant or payment made by the Government, a local or foreign training institution or a development partner to support the education or training of a public officer;

"secondment" means the temporary release of a pensionable employee from an organisation within the public service to another organisation, to provide critical skills or acquire new skills while preserving the pension rights of the employee;

"stipend" means a fixed payment to an intern occurring at regular intervals;

"transfer" means the movement of an officer from one ministry to another or from one duty station to another with change of pay point;

"transfer of service" means the movement of a pensionable public officer from one public body to another, which has been declared a "Public Service" for purposes of preserving the employee's previous pensionable services; and

"vetting" means the background check on a person, by the Commission or other competent authority, before being offered an employment, promotions or conferring an award and includes verification of academic certificates and identification document.

### 3. Application of Regulations

(1) Subject to Articles 155(3)(a), 158 and 234 of the Constitution, these Regulations shall apply to public bodies and all persons holding or acting in an office in a public body.

(2) For the purposes of these Regulations, "public body" includes—

- (a) a state department, state corporation, statutory commission, public university or any public institution of tertiary or higher learning, statutory board or body, Office of the Attorney-General, Office of the Director of Public Prosecutions, Controller of Budget, Auditor-General, National Intelligence Service, National Youth Service, Kenya Prisons Service and other correctional services, and any agency, department, public entity or commission established under the Constitution or legislation and is not exempted under Articles 234(3) and 252(1)(c) of the Constitution; and
- (b) any public body brought under the jurisdiction of the Commission by an Act of Parliament for a specified function to the extent of that function.

### 4. Values and principles of the public service

(1) The public service shall be guided by the national values and principles of governance in Article 10 and the values and principles of public service in Article 232 of the Constitution.

(2) Every public officer shall uphold and promote the values and principles in Articles 10 and 232 of the Constitution and shall be guided by codes of conduct and guidelines issued by the Commission.

(3) Every public officer shall uphold the principle that it is the right of every person to be accorded ethical, responsive, prompt, effective, efficient, impartial and equitable public service.

(4) The Commission shall promote the values and principles in sub-paragraph (1) with respect to the public service as provided for in the Constitution, any legislation and these Regulations.

(5) A public body may forward acts of professional misconduct by an officer to the relevant professional body for disciplinary action as per the professional body's regulations in addition to undertaking any disciplinary action.

(6) Where a professional body has conducted a disciplinary process against a public officer and found the public officer guilty, the professional body shall immediately inform the employer of the public officer.

(7) Any person has a right to complain individually or collectively, and to make representation to the Commission regarding the violation of the values and principles in Articles 10 and 232 of the Constitution.

## PART II – GENERAL MATTERS

### 5. Delegation

(1) Subject to section 31 of the Act, a delegation of a power or an assignment of a function by the Commission to an authorised officer shall be in writing.

(2) Where the Commission has delegated any of its powers or duties, it shall retain the power to take corrective measures regarding the exercise of that power or performance of that function on its own motion or upon complaint or request on appeal or review.

(3) Where the Commission has delegated any of its powers or duties, the person exercising the delegated power or function shall be entitled to be heard by the Commission personally or through a representative on any issue in respect of the delegation.

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(4) Where the Commission has delegated any of its powers or duties, it shall establish mechanisms to ensure that the person to whom the power or function has been delegated complies with the conditions of the delegation imposed by the Commission.

(5) The Commission may monitor and evaluate the exercise of delegated powers through inquiry, investigation, audits or visits.

(6) Where the Commission has delegated the power to terminate the probationary appointment of an officer, this shall not prevent the Commission from exercising its power to terminate the probationary employment in accordance with these Regulations or the terms set out in the officer's contract or letter of appointment.

## **6. Decisions may be made by circulation of papers**

(1) Where majority of members of the Commission are unable to attend a meeting and an urgent matter arises, a decision in respect of the matter may be made by the Commission without a meeting of the members.

(2) A decision under paragraph (1) shall only be made after—

- (a) the relevant documents in respect of the matter have been provided to the members of the Commission; and
- (b) at least five of the members of the Commission support, in writing, the decision intended to be taken.

(3) A decision of the Commission under paragraph (1) shall be recorded in the minutes of the next meeting of the Commission.

(4) Where the majority of the members of the Commission are unable to attend a meeting of the Commission in person and an urgent matter arises, the Commission may hold a virtual meeting and any decision made at the virtual meeting shall be recorded in the minutes of the next meeting of the Commission.

(5) For the purposes of this regulation, "virtual meeting" means a meeting that is held through teleconference, video conference or any other electronic means without the physical presence of one or more participants at the same location.

## **7. Dissent by members**

A member of the Commission who dissents from a decision of the Commission shall have the dissent and the reason thereof set out in the minutes of the meeting at which the decision was made.

## **8. Record of meetings**

The Secretary shall keep a record of the members present and the business transacted at every meeting of the Commission.

## **9. Implementation of Commission decisions**

(1) The decisions of the Commission shall be implemented within thirty days from the date they are communicated to the relevant persons.

(2) For the purposes of this regulation, decisions of the Commission include decisions made by persons to whom a power or function of the Commission has been delegated.

(3) A person who refuses or fails to implement the decisions of the Commission commits an act of misconduct and shall be subject to the penalties specified in section 68 of the Act or disciplinary proceedings in accordance with his or her terms of service.

(4) Where the refusal or failure to implement a decision is by an authorised officer who does not fall within the jurisdiction of the Commission, the Commission may recommend to that person's appointing authority to take disciplinary action in accordance with his or her terms of service.

(5) Where an authorised officer to whom the Commission has delegated a power or a function refuses or fails to implement a decision of the Commission, the Commission may revoke the delegation of the power or function.

## 10. Contravention of these regulations

(1) A public officer who contravenes any provision of these regulations shall be subject to disciplinary proceedings in accordance with his or her terms of service and liable to the penalties specified in section 68 of the Act.

(2) Where an authorised officer who is not under the jurisdiction of the Commission and to whom the Commission has delegated a power or a function contravenes any provision of these regulations, the Commission may recommend to that authorised officer's appointing authority to subject the officer to disciplinary action in accordance with his or her terms of service.

## 11. Attendance and production of documents

(1) The Commission may require any public officer to attend and give information before it concerning any matter which the Commission is required to consider in exercise of its functions.

(2) The Commission may require the production of any official document relevant to any exercise of its functions, and any public officer who submits any matter for consideration of the Commission shall ensure that all relevant documents and papers are made available to the Commission.

(3) Any public officer who, without reasonable excuse—

- (a) fails to appear before the Commission when notified to do so; or
- (b) fails to comply with any request lawfully and properly made by the Commission, commits a breach of discipline and the Commission may on its own motion institute disciplinary proceedings.

(4) For the purposes of this regulation, "official document" means any document or paper prepared by any public officer in the course of employment or any document or paper which comes into the custody of any public officer in the course of employment.

## 12. Committees

(1) A committee of the Commission established under section 12(1) of the Act shall consist of at least three members and the quorum of the committee shall be two members.

(2) The Secretary shall assign to a committee such staff of the Secretariat as may be necessary for the effective working of the committee.

### PART III – APPOINTMENTS, PROMOTIONS, RE-DESIGNATIONS, TRANSFERS, SECONDMENTS AND DEPLOYMENTS

## 13. Authorised officer's request to be in writing

(1) A request by an authorised officer under section 33(2) of the Act for the exercise of the Commission's power to appoint shall be in writing.

(2) A request under paragraph (1) shall be accompanied by a human resource plan for the institution, an indent for the position and a confirmation of the availability of funds.

(3) The Commission may, in the best interests of the service, efficiency, effectiveness or parity of treatment, and on a case by case basis, recommend to an authorised officer the need to appoint persons to hold offices established by the Commission.

(4) A recommendation under paragraph (3) shall be in writing and shall be accompanied by a human resource plan for the institution, indents for the positions to which the recommendation relates and a confirmation of the availability of funds.

(5) For the purposes of this regulation, "indent" means an instrument for declaration of a vacancy to be filled and includes job descriptions and specifications.

## 14. Delegation of authority to appoint

(1) The Commission may delegate its power to appoint to an authorised officer in terms of section 31 as follows—

- (a) in respect of public offices at levels to be determined by the Commission—

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- (i) the power of appointment, including acting appointment, re-designation, promotion, transfer and initial appointment;
  - (ii) the power to extend the probationary period of appointment; and
  - (iii) the power to end the probationary period of appointment and confirm a person in appointment;
- (b) in respect of all public officers irrespective of rank or seniority, the power to confirm in appointment of public officers appointed on probation;
  - (c) in respect of all public officers irrespective of rank or seniority, the power to deploy; and
  - (d) in respect of public officers serving on contract, the power to terminate other than by dismissal in accordance with the terms of the contract:

Provided that nothing in these Regulations shall affect the power of the Commission to terminate the appointment of public officers in accordance with the terms of service.

(2) An authorised officer exercising the powers conferred under paragraph (1) shall act in accordance with these Regulations and any other relevant written law.

(3) A public officer affected by a decision of an authorised officer exercising delegated powers in terms of this regulation may appeal in writing to the Commission within thirty days of being notified of the decision of the authorised officer.

(4) An appeal under paragraph (3) shall be made through the authorised officer.

(5) Notwithstanding paragraph (4), a public officer who intends to appeal to the Commission in terms of paragraph (3) shall submit an advance copy of the appeal to the Commission.

(6) The Commission may, at any time, audit, investigate, inquire into or visit an institution to determine how an authorised officer exercises any power delegated to him or her by the Commission.

#### **15. Record to be kept in paper form or electronic format**

The record required to be maintained under section 39 of the Act shall be maintained in paper form, electronic format or both.

#### **16. Criteria for appointment and promotion**

In selecting candidates for appointment or promotion, the provisions of section 36 of the Act and section 10 of the Public Service (Values and Principles) Act (Cap. 185A) shall apply and the Commission or authorized officer, as the case may be, shall have regard to—

- (a) merit, equity, aptitude and suitability;
- (b) the prescribed qualifications for holding or acting in the office including abilities, skills, knowledge, experience and personal qualities relevant to carrying out of the duties;
- (c) the efficiency of the public service;
- (d) the provable experience and demonstrable milestones attained by the candidate and potential for development;
- (e) integrity of the candidate; and
- (f) the standards, values and principles set out in Articles 10, 27, 54(2), 55(c), 56(c), 232 and Chapter 6 of the Constitution:

Provided that the Commission or authorized officer shall ensure that officers at entry level and at other levels to be determined by the Commission shall be vetted by competent state agencies before taking up positions in the public service.

#### **17. Vetting of candidates**

(1) The Commission or authorised officer, as the case may be, may determine the suitability of a person for the purposes of section 36 of the Act by—

- (a) conducting aptitude or other competency tests; or
  - (b) vetting by relevant State agencies before taking up positions in the public service.
- (2) The Commission may conduct suitability interviews in the following instances—
- (a) where posts have been upgraded;
  - (b) on re-designation;
  - (c) where an officer is being considered for promotion on merit; or
  - (d) on redeployment upon reorganisation of Government or of a public entity.
- (3) In determining whether an appointment has been undertaken in a fair and transparent manner, the Commission shall consider the following factors—
- (a) competitiveness;
  - (b) meritocracy;
  - (c) absence of nepotism, cronyism and political influence; and
  - (d) non-discrimination.
- (4) For the purposes of this regulation, "suitability interview" means the non-competitive assessment of the degree to which an employee possesses the knowledge, ability, skills and other characteristics identified as important for successfully performing the position being filled.

### **18. Effective date of appointment, promotion and re-designation**

The effective date of appointment, acting appointment, promotion or re-designation shall be the date of the decision to appoint, promote or re-designate or such other date as the Commission or authorised officer may determine:

Provided that a fresh appointment shall take effect on the date the officer reports to his or her work station.

### **19. Probation before confirmation in appointment**

All persons recruited to the public service on first appointment shall, before confirmation in appointment on permanent and pensionable terms or on contract, serve on probationary terms as provided in section 41 of the Act.

### **20. Promotions**

(1) The Commission or other lawful authority vested with the function of making the decision to promote a public officer shall enhance succession management by making the decision in anticipation of the concerned public office falling vacant at least six months before the vacancy occurs.

(2) Paragraph (1) shall not apply where a decision to promote an officer is made to fill in a vacancy in a public office that in the circumstances could not be anticipated including a vacancy created by the death of the office holder.

(3) Where a public officer has been promoted to a public office in a public body other than that in which the officer is serving, the officer shall be released to take up the new appointment within sixty days from the date of the decision to promote.

(4) Where a public officer has been promoted to a public office in a public body other than that which the officer is serving, the authorised officer shall provide the receiving institution with the relevant documents relating to the release within sixty days from the date of the decision to promote.

(5) Notwithstanding paragraph (4) or (5), if the public officer who has been promoted to a public office in a public body other than that which the officer is serving is not released, the officer shall be considered to have been released on the expiry of sixty days from the date of the decision to promote.

(6) Except where a public officer is on secondment, if the public officer fails to take up the promotion, the decision to promote the officer shall lapse on the expiry of sixty days

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from the date of the decision and the officer shall continue to serve in the office held prior to the decision.

### **21. Recognition of exceptional performance**

(1) Where an officer demonstrates exceptional competencies, qualities, abilities, innovation, creativity and leadership, the officer may be considered for promotion on merit, an award and commendation, or both.

(2) All promotions on merit shall be made by the Commission.

(3) An officer may be considered for promotion on merit on recommendation by the relevant human resource committee of a public body and a request to the Commission by the authorized officer.

(4) An officer may be considered for promotion on merit where a vacancy exists:

Provided that where no vacancy exists, the Commission may consider any other appropriate reward.

(5) An officer may be considered for an award and commendation for that officer's experience, competence, personal qualities, exceptional abilities, innovation, tangible creativity, leadership, demonstrable milestones and integrity.

(6) In this regulation, "promotion on merit" means promotion through evaluation based on experience, competencies, personal qualities, exceptional abilities, innovation, tangible creativity, leadership, demonstrable milestones and integrity.

### **22. Management of rare, scarce and specialized human resource**

(1) The Commission shall develop manuals for management of rare, scarce and specialized human resource.

(2) In these regulations "rare, scarce and specialized human resource" means knowledge and skills not readily available in the job market.

### **23. Acting appointments**

Where a person has been appointed in an acting capacity, the appointing authority shall make the appointment in accordance with the provisions of section 34 of the Act and regulation 16.

### **24. Appointment of expatriates**

(1) Where an expatriate is appointed under the Act, the appointment shall be in accordance with the provisions of section 36 (6) and (7) of the Act.

(2) Where an authorised officer intends to appoint an expatriate, the authorised officer shall apply in writing to the Commission for approval accompanied by written confirmation that there is no Kenyan with the required qualification who is available for the appointment.

(3) In granting the approval to appoint non-citizen expatriates, the Commission shall first satisfy itself that there are no citizens with the requisite qualifications to meet the staffing needs of the public body.

(4) The appointment of an expatriate shall be on contractual terms for a period that shall not exceed three years which may be renewed only once for a period that shall not exceed three years with the approval of the Commission.

(5) Expatriates shall be appointed on such terms and conditions of service as shall be determined by the Commission and be subject to the code of conduct, policies and regulations applicable to public officers.

### **25. Authorised officers to notify Commission of contracts eligible for renewal**

Authorised officers shall notify the Commission at least six months before expiry of any contracts of employment that are eligible for or require renewal.

**26. Appointment of Principal Secretaries**

(1) The Commission shall, in recommending persons to be appointed as Principal Secretaries under section 47 of the Act, use a competitive recruitment process.

(2) Within twenty-one days of a presidential election, the Commission shall commence a competitive recruitment process for the purpose of identifying persons to be recommended for nomination by the President for appointment as Principal Secretaries:

Provided that the Commission may, on request and if circumstances warrant it, carry out a recruitment and selection process at any other time.

(3) Within twenty-one days after the President has been elected or upon the request of the President for the purpose of filling a vacancy in an office of a Principal Secretary, the Commission shall publish a notice in the *Gazette*, the Commission's website and in at least one newspaper of nationwide coverage, inviting eligible persons to apply for the position of Principal Secretary.

(4) A person is eligible to be appointed as a Principal Secretary if that person satisfies the conditions set out in section 47(2) of the Act.

**27. Appointment of advisors**

(1) The Commission shall be responsible for the appointment of advisors to the President, Deputy President and Cabinet Secretaries.

(2) The Commission shall determine the number of advisors who shall be appointed for the President and Deputy President as may be needed for carrying out the functions of office.

(3) Where the Commission appoints advisors for a Cabinet Secretary, it shall not appoint more than two advisors at a time.

(4) A person may be appointed as an advisor only if that person—

- (a) has the relevant qualification, experience, competencies and skills necessary for the performance of his or her duties as advisor; and
- (b) meets the requirement of Chapter Six of the Constitution.

(5) The Commission shall appoint an advisor only upon request in writing by the relevant State officer.

(6) The written request under paragraph (5) shall state—

- (a) that the technical competencies, skills and experience possessed by the proposed advisor do not exist in the public service;
- (b) that the competencies and experience of the proposed advisor match the job requirements;
- (c) the functions, duties and responsibilities of the proposed advisor.

(7) An advisor shall be responsible to, and support, the requesting State officer and shall not be assigned any role that is performed by other officers in the public body.

(8) Advisors shall be bound by the Public Service Code of Conduct and sign the oath of secrecy under the Official Secrets Act (Cap. 187).

(9) Each advisor shall be appointed on contract for a period not exceeding three years and may be renewable only once for a period not exceeding three years:

Provided that the appointment of an advisor for a State officer shall not extend beyond the tenure of the State officer.

(10) The Commission shall determine the grading and terms of service of each advisor.

(11) A person appointed as an advisor shall undergo security and other vetting by the relevant State agencies before taking up the appointment.

(12) Advisors shall undergo induction training by the Commission before taking up appointment.

(13) Advisors shall not have or hold any supervisory role over any public officers.

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## **28. Appointment of the personal staff of the President, Deputy President or retired President**

(1) Subject to the provisions of Article 234(4) of the Constitution, the Presidential Retirements Benefits Act (Cap. 197A) and the Retirement Benefits (Deputy President and Designated State Officers) Act (Cap. 197B), the Commission shall appoint the personal staff of the President, Deputy President and retired Presidents in accordance with the establishment approved by the Commission.

(2) Personal staff shall serve at the pleasure of the President, Deputy President or retired President as the case may be and for such period as shall be determined by the Commission.

(3) Notwithstanding paragraph (2), a person shall not serve on the personal staff of the President or Deputy President for longer than the term of office of the President or Deputy President.

(4) A person shall cease to serve on the personal staff of a retired President upon the death of the retired President unless otherwise dismissed from service in accordance with the Act, these regulations or any other written law.

(5) For the purposes of this regulation, "personal staff" includes—

- (a) personal assistants;
- (b) health fitness instructors;
- (c) support staff;
- (d) cooks;
- (e) housekeepers; and
- (f) gardeners.

## **29. Appointment or assignment of personal assistants for Cabinet Secretaries, Principal Secretaries and chief executive officers**

(1) A Cabinet Secretary may request the Commission in writing to appoint a personal assistant for the Cabinet Secretary.

(2) A Principal Secretary may request the Commission to assign a personal assistant for the Principal Secretary:

Provided that a personal assistant assigned to a Principal Secretary shall only be assigned from among public officers serving in the public service.

(3) A chief executive officer may request the Board of Directors in writing to assign a personal assistant to the chief executive officer:

Provided that a personal assistant assigned to a chief executive officer shall only be assigned from among the staff of the public body in which the chief executive officer is serving.

(4) The Commission shall determine the terms of service for personal assistants appointed or assigned under this regulation.

## **30. Nomination and recommendation for appointment**

(1) The Commission shall, subject to provisions of the Constitution or any other written law, determine the qualifications and disqualifications in respect of which it is required to nominate or recommend a person for appointment under section 46 of the Act.

(2) The Commission shall publish on its website and in at least one newspaper of nationwide coverage, the qualifications in respect of which it is required to nominate or recommend a person for appointment under section 46 of the Act.

(3) A nomination or recommendation under section 47 of the Act shall comply with the provisions of section 37.

## **31. Appointments to interim bodies**

(1) This regulation shall—

- (a) apply to the appointment of any person in an interim body established under the Constitution or any relevant written legislation; and
- (b) not apply to the appointment of any person to an interim body conferred with the power to establish offices or appoint persons to serve in those offices.

(2) The authority to appoint persons to hold office in an interim body shall vest in the Commission.

(3) No person shall be appointed in the interim body unless the Commission is satisfied that in the circumstances, there is no available public officer for secondment, deployment or appointment to that interim body.

(4) No person shall be appointed to an office in an interim body unless the Commission has established a public office in the establishment of that body for that purpose.

### 32. Affirmative Action

A public institution shall—

- (a) develop and implement employment equity plans;
- (b) review their recruitment policies to ensure that the mode of advertisement of job vacancies, the pre-selection and conducting of interviews do not in any way disadvantage any particular group; and
- (c) take deliberate measures including targeted advertisements to bring on board marginalized groups.

### 33. Staff of partnerships and joint ventures

(1) Any public body which enters into a partnership or joint venture with any other body outside the public service in which public officers will be deployed, or staff of such partnership or joint venture shall in any way utilise any public resources, the public body shall seek the approval of the Commission before executing the partnership or joint venture agreement as the case may be.

(2) For the purposes of these regulations, the Commission may consider any undertaking, joint venture or partnership between a public body and any other body outside the public service to be a public body within the meaning of these regulations, if—

- (a) at least thirty percent of the staff of the undertaking, joint venture or partnership are public officers;
- (b) the undertaking, joint venture or partnership substantially provides a service or performs a function on behalf of the Government where the government is the sole traditional provider of that service or performer of that function;
- (c) at least thirty percent of the funding for the undertaking, joint venture or partnership is drawn out of public funds;
- (d) at least thirty percent of the assets of the undertaking, joint venture or partnership are public assets; or
- (e) at least thirty percent of the liabilities incurred by the undertaking, joint venture or partnership are public liabilities.

(3) The authority to appoint and exercise disciplinary control over public officers serving in undertakings, joint ventures or partnerships on behalf of the Government shall vest in the Commission.

### 34. Promotional examinations

(1) Where vacancies are to be filled according to the results of examinations held under the authority of the Commission in accordance with section 51 of the Act, the Commission shall—

- (a) develop and, by notice in the *Gazette*, publish a curriculum for the examinations;
- (b) provide manuals to govern the administration of the examinations;

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- (c) prescribe any administrative fees in respect of the examinations;
- (d) by notice in the *Gazette*, publish the results of the examinations;
- (e) issue certificates to successful candidates; and
- (f) institute any other measures for the efficiency, effectiveness and integrity of the administration of the examinations.

(2) The examinations administered by the Commission shall be designed to achieve fair competition and merit as the basis of appointments and promotions in the public service and officers who pass the exams shall be promoted with effect from the date of publication of the results in the *Gazette*.

(3) Nothing in these regulations shall prevent the Commission from administering any other competitive and objective method for the recruitment or selection of officers.

### 35. Re-designation

(1) The Commission may delegate to an authorised officer the power to re-designate officers up to a rank as may be determined by the Commission.

(2) An officer may be re-designated if the officer possesses the requisite qualifications, experience, skills and competencies and the re-designation shall take effect from the date the decision is made.

(3) An officer who is due for promotion and who is eligible for re-designation shall first be considered for promotion before the officer's re-designation is processed.

(4) Re-designation with continuous service shall be allowed only for technical cadres whose job specifications are similar for both graduate and non-graduate officers.

### 36. Deployment

(1) Deployment within a public body shall be undertaken by the authorised officer.

(2) In making a deployment decision, the authorised officer shall take into account the—

- (a) efficiency and effectiveness of public service delivery;
- (b) promotion of national integration and cohesion; and
- (c) representation of Kenya's diverse communities, gender, ethnic communities and persons with disabilities.

### 37. Secondment

(1) Subject to section 42 of the Act, where a public officer is appointed on contract to a public body or an international public body to which Kenya is a State party or has an existing bilateral agreement, the officer may make a request to the Commission, through the authorised officer, to be seconded to that public body or international public body.

(2) Secondment shall be restricted to officers on permanent and pensionable terms of service.

(3) The Commission shall determine the job levels in the public service eligible for secondment in accordance with these regulations.

(4) Secondment shall be for a period not exceeding three years and may be renewed once for a further period not exceeding three years after which the provisions of section 42(6) of the Act shall apply:

Provided that upon expiry of the secondment period the officer on secondment may opt to transfer service, resign or retire in accordance with the Act and these Regulations.

(5) Organisations to which officers are seconded shall remit pension contributions of the seconded officer to the relevant pension scheme at the prevailing rates during the period of secondment, to avoid loss of pension.

(6) Where the organisation to which an officer has been seconded pays the pension contribution for the seconded officer, such amount shall be recovered from the officer's service gratuity.

(7) Public officers on secondment shall be eligible for promotion in their parent public body during the period of secondment.

(8) Where the parent public body from which an officer has been seconded intends to terminate the secondment, the public body shall notify the officer and the organisation to which he or she has been seconded at least one month before the termination.

(9) Where an officer on secondment commits a breach of discipline, the case shall be handled by the organization to which the officer is seconded and the recommendations and decision thereof shall be forwarded to the parent public body for additional action in accordance with these regulations.

(10) Upon completion of the secondment period, a public officer shall—

- (a) revert to the terms and conditions of service appropriate to their substantive position in the public body; and
- (b) not be eligible for another secondment within a period of three years from the last secondment.

(11) An officer on secondment shall not be seconded to another organization during the period of the secondment.

(12) Subject to relevant transitional statutory provisions, where a new public body is established from an existing public body, public officers who shall be retained in the new public body shall be deemed to be on secondment pending the establishment of a retirement benefits scheme for the officers of that new body.

(13) A public officer shall not proceed on secondment before being notified in writing by the Commission.

### **38. Leave of absence**

(1) The Commission may grant leave of absence to a public officer on recommendation of the authorised officer through the relevant Human Resource Management Advisory Committee for a period not exceeding three years which may be extended only once for a period not exceeding three years.

(2) Where an officer is appointed on contractual terms to a public body for a period exceeding three years, the Commission may grant leave of absence for the duration of the contract.

(3) Leave of absence may be granted to a public officer for purposes of taking up contractual appointments within a public body, private corporation or international organisation to which the officer cannot be seconded or to which service cannot be transferred:

Provided that an officer may only be granted leave of absence to a private corporation where the Commission determines that the experience and expertise that the officer shall gain from the private organisation shall be of benefit to the public body which the officer is from.

(4) Leave of absence may be granted to a spouse of a foreign service officer who has been posted outside Kenya during the tour of service of the foreign service officer.

(5) Leave of absence shall not be increment-earning.

(6) During a leave of absence, the public body will not make a contribution of its portion towards an officer's pension under contributory pension scheme.

(7) Despite paragraph (6), an officer undertaking a leave of absence may continue to contribute towards the officer's pension under a contributory pension scheme during the leave of absence.

(8) The period of leave of absence shall not be pension-earning within the provisions of the Pensions Act (Cap. 189).

(9) Upon completion of the period of leave of absence, a public officer shall revert to the terms and conditions of service appropriate to their substantive position in the public body

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and shall not be eligible for another leave of absence within a period of three years from the period of the last leave of absence.

### **39. Unpaid leave**

(1) An authorised officer may, on recommendation of the respective Human Resource Management Advisory Committee, grant a public officer unpaid leave for a period not exceeding six months which may be extended only once for a period not exceeding six months for the purpose of attending to urgent private affairs of exceptional nature.

(2) Unpaid leave shall not be increment-earning.

(3) During the period of unpaid leave, the public body shall not make a contribution of its portion towards the officer's pension under a contributory pension scheme.

(4) Despite paragraph (3), an officer on unpaid leave may continue to contribute towards the officer's pension under a contributory pension scheme during the unpaid leave.

(5) The period of unpaid leave shall not be pension-earning under the Pensions Act (Cap. 189).

### **40. Transfer**

(1) Transfers of public officers shall be in accordance with section 43 of the Act.

(2) For purposes of section 43(4)(b) of the Act, where—

- (a) there is reorganisation of Government;
- (b) there is a change in Government policy; or
- (c) a transfer affects officers at levels to be determined by the Commission,

an authorised officer shall seek approval from the Commission for the transfer of public officers in the public body.

(3) A transfer shall not be a promotion unless expressly authorised by the Commission.

(4) Subject to these Regulations, in making a decision to transfer a public officer, the Commission or the authorised officer referred to in section 43(4)(b) of the Act, shall take into account the—

- (a) efficiency and effectiveness of public service delivery;
- (b) existing skills and competencies in the receiving public body or department so as not to disadvantage public officers already serving in the receiving public body or department;
- (c) promotion of national integration and cohesion; and
- (d) promotion of representation of Kenya's diverse communities, men and women, the members of all ethnic groups and persons with disabilities.

### **41. Transfer of service**

(1) Where a public officer has been appointed in another public body with a separate retirement benefits scheme, the public officer may apply in writing to the Commission, through the authorised officer from which the officer is coming, for a transfer of service.

(2) Applications for transfer of service shall be considered by the Commission for approval subject to any relevant written law in force relating to retirement benefits.

### **42. Protection of benefits**

For the purposes of section 50 of the Act, benefits include—

- (a) accrued pension in accordance with relevant written law in force relating to pension;
- (b) retirement benefits;
- (c) accrued leave; or
- (d) any other benefit as may be determined by the Commission.

**43. Volunteer service**

(1) The authorised officer of a public body may, with the approval of the Commission, appoint a qualified person to serve on voluntary basis.

(2) No person shall be engaged on voluntary basis in a public body as—

- (a) a revenue collector;
- (b) an officer involved in any aspect of procurement;
- (c) a cashier;
- (d) a caretaker of any premises belonging to a public body;
- (e) a security officer;
- (f) a holder of any strategic public office including any office established by the Constitution or an Act of Parliament; or
- (g) such other position as may be determined by the Commission.

(3) A volunteer in the public service shall be issued with a letter of engagement as a volunteer for a non-renewable period not exceeding twelve months.

(4) A volunteer shall be bound by these regulations, and the code of conduct, rules and regulations applicable to other public officers.

(5) A person engaged as a volunteer shall be deployed to perform duties relevant to the volunteer's area of qualification, experience or expertise.

(6) Volunteer service shall not be a guarantee of employment in the public service.

**44. Short-term contracts of service**

(1) Where a service is required for more than twenty-four hours but not exceeding twenty-one days, the relevant authorised officer may engage a qualified person on a contract not exceeding twenty-one days.

(2) Where there is need for temporary services not contemplated under this paragraph, the relevant authorised officer may procure the services of independent service providers in accordance with the procurement laws and regulations.

(3) Where a service is required for not more than twenty-four hours, the relevant authorised officer may engage a qualified person on a casual service basis.

(4) In these Regulations, "casual service" refers to employment of a person on terms where payment for services rendered shall be at the end of each workday and the person is engaged for a period not exceeding twenty-four hours.

**45. Internship**

(1) Under this paragraph "intern" means a supervised trainee working to gain experience or satisfy requirements for an academic, professional, technical, occupational or trade certification, registration or licensing.

(2) The relevant authorised officer of a public body, with the approval of the Commission, may engage any qualified person as an intern.

(3) A public body shall notify the Commission of the available opportunities for internship before engaging any person as an intern.

(4) Subject to any other written law, all opportunities for internship shall be advertised in accordance with the provisions of section 37 of the Act.

(5) The engagement of interns in the public service shall be through a competitive process, be transparent and accountable and accord equal opportunity for all qualified applicants.

(6) Interns shall be deemed to be public officers for the purposes and duration of the internship and shall be subject to these regulations and prevailing code of conduct for public officers in the public body to which the intern is attached.

(7) Interns may be paid such stipends as the Commission may approve or prescribe.

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(8) An internship shall be for a non-renewable period not exceeding one year and shall not be a guarantee for employment in the public service.

(9) The Commission shall monitor and evaluate internship programmes for the public service.

(10) No public body shall engage interns for another public body without the written approval of the Commission.

#### PART IV – CONDITIONS OF SERVICE, CODE OF CONDUCT AND QUALIFICATIONS

##### **46. Conditions of service**

(1) In exercising the power to review the conditions of service in the public service, the Commission shall be guided by the Constitution and the provisions of section 53 of the Act.

(2) In this regulation, "conditions of service" include any right or obligation relating to a public officer including any right or obligation relating to—

- (a) appointment;
- (b) standards of conduct;
- (c) removal and exit from service;
- (d) salaries and allowances;
- (e) working hours;
- (f) leave;
- (g) grievances;
- (h) disciplinary control;
- (i) medical care;
- (j) transport;
- (k) water;
- (l) food;
- (m) welfare;
- (n) working environment;
- (o) training and development;
- (p) membership of trade unions;
- (q) housing;
- (r) pensions and retirement benefits; and
- (s) staff performance management.

(3) The Commission may, upon request by any public officer or the officer's representative, review and make recommendations on conditions of service with respect to the public officer, the category of public officers the officer belongs to or all public officers in the public body the officer belongs to.

(4) Where the Commission has undertaken a review and made recommendations under this regulation, the concerned public body or authorised officer shall implement the recommendations—

- (a) immediately or when next a decision relating to the conditions of service falls due; or
- (b) if it relates to remuneration and other payments, it shall be effected in accordance with the Commission's recommendations and advice from the Salaries and Remuneration Commission.

##### **47. Code of conduct**

(1) The Commission shall review codes of conduct in the public service in accordance with the provisions of section 54 of the Act.

(2) Subject to any other written laws, an authorised officer or any other lawful authority shall not implement or impose any code of conduct unless the Commission has reviewed and made recommendations on the code.

#### **48. Qualifications for positions in the public service**

(1) The Commission shall determine the qualifications for all positions in the public service except where the Constitution has vested in another authority the function of determining qualifications attached to a public office.

(2) Qualifications for positions in public office shall be contained in the applicable career progression guidelines.

(3) The Commission shall review qualifications for position in the public service in accordance with the provisions of section 55 of the Act.

(4) The Commission shall give interested or affected parties a chance to make representations before making a review or recommendation under this regulation.

(5) Nothing in this regulation shall prevent the Commission from determining, reviewing or recommending qualifications on a case by case basis with respect to a public office or category of public offices.

(6) Every public body or authorised officer shall, unless a waiver has been obtained from the Commission, comply with the qualifications prescribed in accordance with this regulation.

(7) In these regulations, "qualifications" means any prescribed requirement of eligibility or ineligibility attached to holding or acting in a public office.

#### **49. Grading structure and career progression**

(1) The Commission shall review and issue a grading structure for the public service.

(2) The Commission shall provide career progression guidelines for all cadres in the public service which shall—

- (a) provide norms and standards for the specific cadres for the determination of qualifications and progression;
- (b) prescribe relevant competencies for all cadres; and
- (c) advise on relevant technical and professional training for all cadres.

(3) The Commission shall—

- (a) initiate the review of career progression guidelines in accordance with the provisions of section 55(7) of the Act;
- (b) in the case of professional cadres in the public service, partner with professional bodies to ensure compliance with the standards of each profession;
- (c) require facilitation, by a public body, for the registration and annual subscription of public officers as members of professional bodies;
- (d) cluster cadres in the service into relevant job families; and
- (e) ensure the institutionalisation of human resource planning, career and succession management.

(4) Except as provided by any other written law, career progression guidelines shall be administered by the respective authorised officer in the public body.

(5) In these regulations—

- (a) "career progression guidelines" means a tool that facilitates the recruitment, retention, training and development of officers in the public service;
- (b) "job families" means the clustering of cadres with related functions; and
- (c) "professional body" means a statutory body representative of members of a given profession.

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PART V – DEVELOPMENT OF HUMAN RESOURCE IN THE PUBLIC SERVICE

**50. Human resource development**

(1) The Commission shall be guided by the provisions of section 56 of the Act when developing human resource in the public service.

(2) The Commission shall determine and recommend to the national government the percentage of the recurrent budget for the public service that shall be set apart for the purpose of the development of human resource in the public service.

(3) The Commission shall issue an Annual Training Policy Statement to address training needs in the public service for each financial year.

(4) Authorised officers shall abide by policies and guidelines issued by the Commission for the development of human resource in public bodies.

**51. Scholarships**

(1) The Commission shall publish the procedures and instruments governing the development of human resource, the measures for prudent utilization of training funds in public bodies and for ensuring merit in the selection and award of training opportunities for public officers at least once in each year.

(2) Except for public universities and research institutions, all awards of scholarships available to public officers shall be presented to the Commission for approval by authorised officers.

(3) In seeking approval under paragraph (2), the authorised officer shall present to the Commission a report containing the following information—

- (a) the nature and scope of the scholarship;
- (b) the date of receipt of information on the scholarship;
- (c) the date and particulars of advertisement of the scholarship;
- (d) list of all applicants;
- (e) the shortlisted applicants;
- (f) the criteria for shortlisting; and
- (g) criteria for award.

(4) Scholarships opportunities for public officers shall be advertised for a period of at least twenty-one days in at least two daily newspapers of nationwide circulation, the public body's website and in such other form as the human resource committee of the public body shall determine.

(5) Public officers shall not be permitted to proceed to study on scholarship without the approval of the Commission.

**52. Training**

(1) Authorised officers shall present to the Commission the training projections for public officers in the public body for approval and monitoring.

(2) Training opportunities for public officers shall be considered and awarded by the relevant human resource committee of the public body.

(3) An officer may be eligible to at least one short term training opportunity in a financial year, which shall be sponsored by the public body and shall not exceed a period of three months.

(4) Officers shall be eligible to training opportunities which exceeds a period of six months:

Provided that an officer shall not be eligible for training that exceeds a period of six months until after the lapse of a period of two years from the date of the last training opportunity undertaken by the officer that exceeded a period of six months.

(5) Public officers who undertake any training sponsored by the public body shall be bonded for a period to be determined by the Commission.

(6) The Commission shall identify and recommend to public bodies the institutions with the capacity to undertake human resource development for the public service in consultation with the relevant accrediting bodies.

(7) The Commission shall monitor and evaluate the effectiveness of learning and training programmes that lead to qualifications required to hold a public office and recommend to the concerned institutions any matter necessary to improve the programmes.

(8) Authorised officers shall submit a report to the Commission on any training undertaken by public officers within a financial year.

(9) The report referred to in paragraph 8 shall be submitted on or before the 31st July of each year and shall contain the following information in relation to officers who have been trained—

- (a) personal number;
- (b) name;
- (c) gender;
- (d) ethnicity;
- (e) disability;
- (f) age;
- (g) designation;
- (h) duty station;
- (i) training undertaken;
- (j) cost of training;
- (k) duration and location of training;
- (l) status of the training or certification issued; and
- (m) training impact assessment report.

### **53. Induction and orientation**

(1) The Commission shall develop manuals for the effective orientation and induction of public officers into the public service.

(2) Newly appointed public officers shall undergo an induction prior to assignment of any duties.

(3) For the purposes of this regulation—

- (a) "orientation" means familiarization and socialization of a public officer in a new work environment; and
- (b) "induction" means training provided to a new appointee by the employer in order to assist in adjustment to the new work environment and responsibilities.

#### **PART VI – ORGANISATION, ADMINISTRATION AND PERSONNEL PRACTICES OF THE PUBLIC SERVICE**

### **54. Organization of public service**

(1) The Commission shall investigate, monitor and evaluate the organization, administration and personnel practices of the public service set out in the policies, guidelines and manuals issued by the Commission in accordance with the provisions of section 57(3) of the Act.

(2) The Commission shall, upon investigation, monitoring and evaluation of the organisation of the public service with respect to any public body, issue specific recommendations to the public body for implementation where necessary.

(3) The Commission shall consider the following factors when investigating, monitoring or evaluating the organisation of the public service—

- (a) the functions of the National Government set out in the Fourth Schedule to the Constitution;

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[Subsidiary]

- (b) the functions of the respective public body;
- (c) national sustainable development; and
- (d) the policies of the National Government.

### **55. Commission's duties in administration of public service**

The Commission shall, in addition to the provisions of section 57(2) of the Act and with respect to any public body, investigate, monitor, evaluate and report on a public body's—

- (a) prevailing systems, processes and instruments for the performance of the body's functions;
- (b) co-ordination of measures towards delivery of the body's core functions;
- (c) reporting systems including supervisory, accountability and appraisal functions; and
- (d) financial implications in the performance of the functions and powers of the Commission by the body's authorised officer.

### **56. Reports to complainants**

Pursuant to sections 60 and 61 of the Act, the Commission shall, as far as practicable in the circumstances, communicate its findings on the investigation of a complaint to the complainant.

## **PART VII – PUBLIC SERVICE EFFICIENCY AND EFFECTIVENESS**

### **57. Promotion of public service efficiency and effectiveness**

(1) The standards in service delivery of the public service shall include—

- (a) establishment of service delivery baseline information;
- (b) setting of service delivery benchmarks;
- (c) publication of citizen service delivery charters;
- (d) determination of the citizen service delivery satisfaction levels;
- (e) annual evaluation of citizens' satisfaction levels; and
- (f) grievance management procedures.

(2) The Commission shall, when evaluating the organization and core functions of a public body, assess the efficiency and effectiveness of standards, norms and practices of the public body set out in section 59 of the Act.

(3) The Commission shall, when evaluating the organisation and core functions of a public body, assess the efficiency and effectiveness of internal processes including—

- (a) governance structures;
- (b) documentation and automation of processes;
- (c) knowledge management practices;
- (d) e-government presence;
- (e) decentralization of services;
- (f) economic use of resources;
- (g) transparency and accuracy; and
- (h) timeliness.

(4) The Commission shall, when evaluating the organisation and core functions of a public body, assess the efficiency and effectiveness of citizen satisfaction by—

- (a) setting citizen satisfaction indicators;
- (b) undertaking citizen satisfaction surveys; and
- (c) establishment a citizen satisfaction index.

(5) Performance management guidelines shall include—

- (a) commitments of the Government;

- (b) commitments of the public body;
- (c) commitments of the public officer;
- (d) commitments of the citizen;
- (e) period of contract;
- (f) expected outcomes;
- (g) cost of service delivery;
- (h) evaluation criteria;
- (i) mitigation measures;
- (j) monitoring, evaluation and reporting; and
- (k) rewards and sanctions.

(6) Performance appraisal guidelines for public bodies and individual public officers shall include—

- (a) development of strategic objectives;
- (b) preparation of work plans;
- (c) setting of performance targets;
- (d) determination of evaluation criteria;
- (e) determination of evaluation benchmarks;
- (f) use of assessment tools and instruments;
- (g) prescription of performance improvement plans;
- (h) use of productivity assessment tools;
- (i) prescription of applicable rewards and sanctions; and
- (j) mechanisms for monitoring, evaluation and reporting.

(7) The Commission shall evaluate the performance, efficiency and effectiveness of the public service not later than six months after the end of the financial year.

(8) In evaluating performance and performance agreements between the Government and public bodies or individual public officers, the Commission shall, in addition to other mechanisms—

- (a) set methodologies for evaluation;
- (b) set criteria for evaluation; and
- (c) prescribe rewards and sanctions.

(9) The recommendations of the Commission made pursuant to section 62(1)(f) of the Act shall be binding.

(10) Where an authorised officer fails to ensure efficiency and effectiveness of a public body, the Commission shall, pursuant to the provisions of section 62(2) of the Act, recommend to the President the imposition of one or more of the following sanctions—

- (a) reprimand;
- (b) surcharge;
- (c) removal from office; or
- (d) any other sanction as the Commission may recommend.

#### PART VIII – VALUES AND PRINCIPLES OF GOVERNANCE AND PUBLIC SERVICE

### 58. Promotion of values and principles

(1) The Commission shall, in promoting the national values and principles of governance under Article 10 of the Constitution and the values and principles of public service under Article 232—

- (a) visit, investigate, monitor and evaluate any public office or body with a view to determining the status of compliance with the values and principles;

[Subsidiary]

- (b) investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of any of the values and principles;
- (c) take or recommend to the relevant lawful authority any necessary action in view of the violation of the values and principles by any person or public body;
- (d) inform and educate public officers and the public about the values and principles for the purpose of enhancing respect for the values and principles by means of—
  - (i) a continuing program of research;
  - (ii) publication including in braille and Kenya Sign Language;
  - (iii) conferences;
  - (iv) lectures and symposia;
  - (v) exhibitions;
  - (vi) print and electronic media;
  - (vii) radio and television; and
  - (viii) such other means as may be appropriate; and
- (e) investigate and undertake conciliation, mediation or negotiation upon a complaint or on its own initiative if, the nature of the alleged violation of the values and principles makes conciliation, mediation or negotiation both possible and appropriate in the circumstances of the case;

(2) The Commission shall consider the following factors in promoting values and principles—

- (a) financial requirements for the successful promotion of the values and principles;
- (b) training and capacity building requirements;
- (c) the meaning and application of the values and principles with respect to the various public bodies;
- (d) channels for the effective dissemination of values and principles;
- (e) relevant partners for cooperation towards successful promotion of the values and principles;
- (f) protection of human rights;
- (g) any relevant written laws, regulations, procedures, instruments and standards;
- (h) any relevant conventions or treaties to which Kenya is a party; and
- (i) the prevailing value systems that may undermine the values and principles.

### **59. Report on values and principles**

(1) The Commission shall submit to the President and Parliament, once in each year, the report of the evaluation on the extent to which the values and principles in Articles 10 and 232 of the Constitution have been complied with in the public service in respect of the preceding financial year.

(2) The report by the Commission under paragraph (1) shall—

- (a) be delivered by the Commission, every December, to the President and the Speakers of the Houses of Parliament;
- (b) specify all the steps taken and decisions made by the Commission under this Part;
- (c) specify any recommendations on the promotion and reporting of the values and principles;
- (d) specify the decisions and particulars of public bodies who have violated the values and principles including the nature of violation and action taken or recommended against them;

- (e) specify the constraints encountered by the Commission in promoting and reporting on the values and principles; and
- (f) specify any programmes the Commission is undertaking or has planned to undertake in the medium term towards the promotion of the values and principles.

(3) The Commission's report to the President and Parliament shall be published by the Commission in the *Gazette* by the 31st December of every year.

(4) The Commission shall publicise the report.

(5) The Commission, in the performance of its duties under this Part may require any public or state officers to produce any document or information relevant in the circumstances of the case.

#### PART IX – DISCIPLINARY CONTROL

### 60. Disciplinary control

(1) The Commission shall exercise disciplinary control in the public service in accordance with Article 47 of the Constitution, the Fair Administrative Action Act (Cap. 7L), Part XII of the Act and any other written law.

(2) The Commission may delegate in writing the power of dismissal or reduction in rank or seniority of officers to authorised officers subject to section 65(2)(b) and the law relating to pensions or retirement benefits.

### 61. Types of penalties

(1) The Commission and authorised officers may impose the penalties prescribed in section 68 of the Act.

(2) Subject to the provisions of section 68(1)(c) of the Act, where a salary increment has been deferred, the deferred increment shall not be paid retrospectively upon the lapse of the period of deferment.

(3) Pursuant to the provisions of section 68(2)(3) of the Act, where an officer has been found to have committed an act of misconduct, the Commission or other lawful authority shall communicate to the officer the options available to the officer and he or she shall be required to select one of the options within a period of fourteen days from the date of communication or, where the officer fails to choose within the fourteen days, the Commission or that other lawful authority may impose any of the penalties specified in section 68(1) of the Act.

### 62. Compulsory leave

(1) The authorised officer of a public body may, with the written approval of the Commission, send on compulsory leave for a period not exceeding thirty working days a public officer in a public body in which an investigation is being conducted, where it is feared that the officer may influence or interfere with the investigation.

(2) The authorised officer shall notify in writing the officer being sent on compulsory leave of the reasons for the decision and the duration of the compulsory leave.

(3) An officer on compulsory leave shall be entitled to full pay and benefits.

(4) Compulsory leave shall not be counted as part of an officer's annual leave.

### 63. Provision of information on interdictions and suspensions

An authorised officer shall provide to the Commission a quarterly report on the status of the cases of interdicted and suspended officers pursuant to section 72 of the Act containing the following information—

- (a) personal number, name, age and gender of the officer;
- (b) designation and job group of the officer;
- (c) date of interdiction or suspension;
- (d) nature of disciplinary proceedings;

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[Subsidiary]

- (e) status of the proceedings;
- (f) status of court matter if any; and
- (g) where the interdiction or suspension has exceeded six months, the reasons for the delay in concluding the proceedings.

#### **64. Administrative disciplinary process**

(1) Pending criminal proceedings shall not bar a public body from undertaking an administrative disciplinary process against a public officer and imposing any of the penalties specified in section 68 of the Act.

(2) An acquittal or discharge by a court of competent jurisdiction on a criminal offence shall not supersede an administrative disciplinary process.

#### **65. Information on suits arising from disciplinary proceedings**

Pursuant to the provisions of section 69(12) of the Act, where a case is filed against a public body or authorised officer relating to a disciplinary case involving a public officer, the authorised officer shall, within fourteen days of receipt of summons in the case, notify the Commission and provide copies of court documents filed for and against the public body.

#### **66. Protection of public officer**

Pursuant to Article 236 of the Constitution, public officers shall not be disciplined for performing the functions of office in accordance with the Constitution or any other law.

#### **67. Pending disciplinary process**

Where a disciplinary process has not been concluded administratively or before the Commission or in court, a public body shall not recruit an officer to substantively fill the position.

#### **68. Appeals and reviews**

(1) A public officer who is dissatisfied with a disciplinary process may appeal against the process or the decision in accordance with section 74 of the Act.

(2) A public officer who is dissatisfied with the outcome of an appeal may apply for review in accordance with section 75 of the Act.

### **PART X – RESIGNATION, RETIREMENT AND RELATED MATTERS**

#### **69. Resignation**

(1) Resignations in the public service shall be handled in accordance with section 78 of the Act.

(2) In this regulation—

- (a) "resignation" means exit from the public service at the instance of a public officer; and
- (b) "salary" referred to in section 78(2) of the Act means gross salary.

(3) Subject to section 78(2) of the Act, a resignation letter may be sent by electronic mail or registered post or delivered by hand to the authorised officer and, where sent by registered post, relevant evidence of postage shall be produced as proof of delivery where required.

(4) Resignation shall take effect thirty days from the date of the delivery or registration of the resignation letter at the post office.

(5) The Commission or any other appointing authority shall not reject a resignation except on account of—

- (a) fraud or conspiracy where the concerned public officer is innocent;
- (b) duress where the concerned public officer has proved that the resignation was occasioned by threats or coercion by a person in authority over the officer;

- (c) involuntary decision by the concerned public officer by reason of infirmity of mind arising from ill health or involuntary intoxication;
- (d) resignation is aimed at avoiding anticipated or on-going disciplinary case; or
- (e) outstanding liabilities owed by the officer to the public body.

(6) Upon the submission or delivery of a resignation letter, the officer shall be required to settle any outstanding liabilities to the Government and obtain a clearance certificate.

(7) Subject to the relevant written law, where a public officer resigns after completing a period of at least five years pensionable service, the officer shall be eligible to pension benefits.

(8) An officer who has resigned shall not, if subsequently re-employed after a break of service, count his previous service when determining his or her pensionable service.

(9) An officer who has resigned may only re-enter the public service on new appointment in accordance with section 78(4) of the Act and shall be required to produce a clearance certificate obtained after resignation.

## 70. Retirement on age grounds

(1) Subject to the Constitution, section 80 of the Act, any other relevant written law or a specific government policy, the mandatory retirement age in the public service shall be—

- (a) sixty years;
- (b) sixty-five years for persons with disability; and
- (c) such age as may be determined by the Commission for lecturers and research scientists serving in public universities, research institutions or equivalent institutions as determined by Commission in consultation with such universities, research institutions or equivalent institutions.

(2) A public officer shall be considered for retirement as a person with disability if the officer—

- (a) has a disability of a permanent nature that can be perceived by significant sectors of the community and the disability has a substantial impact on the ability of the officer to carry out ordinary day to day activities;
- (b) has been registered in the public body's human resource database as a person with disability for at least three years before the date of retirement:

Provided that the Commission may consider cases of disability that occur less than three years before the date of retirement; and

- (c) is registered by the National Council for Persons with Disabilities and has a tax exemption certificate from the Kenya Revenue Authority as a person with disability:

Provided that registration by the Council or possession of a tax exemption certificate shall not be considered as automatic evidence of disability.

(3) Where there is doubt as to the disability of a public officer, the Commission shall seek a second medical assessment from a panel consisting of a representative of the Commission and three eminent doctors appointed by the Director-General of Health and the second medical assessment shall supersede any other assessment.

(4) A person shall not be retained in the public service on account of disability beyond the mandatory retirement age without the approval of the Commission.

(5) Subject to the Constitution, the Retirement Benefits Act (Cap. 197), the rules of a retirement benefits scheme or a specific government policy, where an officer attains the mandatory retirement age while undergoing disciplinary proceedings, the officer shall retire with the applicable pension benefits.

(6) Subject to section 80(2) of the Act, in determining whether to engage an officer after attainment of retirement age, the Commission shall determine and document the rare knowledge, skills or competencies that the officer possesses.

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[Subsidiary]

(7) In this regulation—

- (a) "rare knowledge, skills and competencies" means knowledge, skills and competencies that are scarce, unique and not readily available in the job market.; and
- (b) "disability" means a permanent physical or other impairment or condition that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day to day activities.

### **71. Retirement on attainment of fifty years**

(1) Subject to section 81 of the Act, a public officer who elects to retire on the attainment of fifty years of age shall apply in writing to the authorised officer.

(2) An application for retirement may be sent by electronic mail or registered post or delivered by hand to the authorised officer and relevant evidence of registered postage shall be produced as evidence of delivery where required.

(3) Retirement shall take effect at the expiry of three months from the date of the delivery or registration of the application for retirement at the post office.

(4) The Commission or any other appointing authority shall not reject a request for retirement on attainment of fifty years except on account of—

- (a) fraud or conspiracy where the concerned public officer is innocent;
- (b) subject to the provisions of section 68(2) and (3) of the Act and regulation 50(3), duress where the public officer has proved that the application for retirement was occasioned by threats or coercion by a person in authority over the officer;
- (c) involuntary decision by the public officer by reason of infirmity of mind arising from ill health or involuntary intoxication; or
- (d) retirement aimed at avoiding anticipated or on-going disciplinary cases.

(5) The authority to approve an application for retirement upon attainment of fifty years of age by a public officer shall vest in the Commission.

### **72. Retirement on grounds of ill health**

(1) Subject to section 82(2) of the Act, where by reason of infirmity of mind arising from ill health, a public officer is incapable of consciously following the procedural steps under section 82 of the Act, the authorised officer shall notify in writing the Commission, setting out the authorised officer's observations and the Commission shall determine whether or not to retire afflicted officer on the ground of ill health or make any other relevant determination.

(2) The Commission shall conduct an investigation to confirm the illness and the impact of the illness on the officer's ability to perform his or her duties before exercising the powers contemplated in section 82(5) of the Act.

(3) The Commission may require the next of kin of the officer to present the officer for a medical examination.

(4) A public officer who retires on the ground of ill health shall be eligible for applicable retirement benefits.

(5) The authority to retire a public officer on medical grounds shall vest in the Commission.

### **73. Retirement on grounds of abolition of office**

(1) Subject to the provisions of section 28(3) of the Act, where the Commission intends to retire a public officer on the ground of abolition of office, the authorised officer shall inform the officer that the his or her retirement is being considered and invite the officer, within reasonable time, being not less than thirty days, to make representation thereon, if any.

(2) Upon receiving the representation under paragraph (1) or failing to receive any representation within the prescribed time, the authorised officer shall notify in writing

the Commission together with the officer's representation, if any, with recommendations justifying the retirement or retention of the officer.

(3) The Commission shall promptly determine whether the public officer should be retired on grounds of abolition of office:

Provided that where the Commission requires further information from the authorised officer or the officer intended to be retired, it shall direct the authorised officer or officer intended to be retired to provide the information before the Commission determines the matter.

(4) The Commission shall not retire any public officer on grounds of abolition of office unless there is written evidence that the specified public office has been abolished.

#### **74. Voluntary retirement**

(1) A public officer may, pursuant to section 79(1)(f) of the Act, voluntarily retire from service upon serving for a period of five years in a public body and shall be entitled to a pension in accordance with the written law relating to pensions.

(2) A public officer who opts to voluntarily retire from service shall give the authorised officer one months' notice in writing.

#### **75. Retirement decisions reviewable**

A retirement decision may be reviewed by the Commission in accordance with the provisions of section 84 of the Act.

### PART XI – COMMISSION'S REPORT TO THE PRESIDENT AND PARLIAMENT

#### **76. Commission's Report to the President and Parliament**

(1) The annual report by the Commission to the President and Parliament required under Article 254 of the Constitution shall be submitted in accordance with section 90 of the Act.

(2) The report by the Commission shall—

- (a) be delivered by the Commission to the President and the Speakers of both the National Assembly and the Senate by the thirtieth day of September each year; and
- (b) be published in the *Gazette* and publicised in at least one daily newspaper with nationwide circulation within fourteen days of submission to the President and Parliament.

### PART XII – MISCELLANEOUS

#### **77. Complaints and grievances**

(1) The Commission may, on its own initiative or on a complaint made by any person, investigate any issue relating to the Commission's constitutional or statutory functions and powers and make such determination as may be just in the circumstances.

(2) The Commission, in conducting an investigation under paragraph (1), shall afford every relevant party an opportunity to be heard before the Commission makes a determination in the matter.

#### **78. Conciliation, mediation and negotiation**

(1) The Commission may, on its own initiative or on the request of any person, facilitate conciliation, mediation or negotiation in respect of any issue relating to the Commission's constitutional or statutory functions, and shall encourage the parties to arrive at an amicable resolution.

(2) The Commission in facilitating conciliation, mediation or negotiation under paragraph (1) shall ensure that every party to the conciliation, mediation or negotiation has an opportunity to make representations in respect of the matter.

#### **79. Communication of Commission's decisions**

(1) Any decision of the Commission shall be communicated by the Secretary in writing.

[Subsidiary]

(2) Subject to section 93 of the Act, a public officer affected by a decision of the Commission or the officer's representative shall be entitled to receive information about the decision or the reasons for the decision from the Commission on request by the officer or the officer's representative.

(3) Despite paragraphs (1) and (2), a decision of the Commission may be communicated in writing by the Chairperson if circumstances warrant it.

#### **80. Cases not covered by regulations**

(1) Any matter not addressed by these regulations shall be dealt with in accordance with such special or general instructions issued by the Commission.

(2) Subject to the Constitution and any other written law, nothing in these regulations shall preclude the Commission from considering and determining any matter that is within the Commission's mandate but has not been addressed in these regulations.

#### **81. Records**

Authorised officers shall be responsible for keeping and maintaining any records required under the Act or these regulations on behalf of the Commission.

#### **82. Revocation of Regulations**

The Public Service Commission Regulations (L.N. 28/2005) are revoked.

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**THE PUBLIC SERVICE COMMISSION  
(PERFORMANCE MANAGEMENT) REGULATIONS**

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**THE PUBLIC SERVICE COMMISSION  
(PERFORMANCE MANAGEMENT) REGULATIONS**

[Legal Notice 114 of 2021]

## PART I – PRELIMINARY

**1. Citation**

These Regulations may be cited as the Public Service Commission (Performance Management) Regulations.

**2. Scope**

(1) These Regulations shall apply to—

- (a) public bodies; and
- (b) all persons holding or acting in an office in a public body.

(2) These Regulations shall not apply to public bodies or persons holding or acting in an office in a public body specified in Article 234 (3)(c) and (d) of the Constitution.

**3. Interpretation**

In these Regulations, unless the context otherwise requires—

"authorised officer" means—

- (a) in the case of a Ministry or State department, an officer appointed by the Commission to perform its delegated functions in the Ministry or State department;
- (b) in the case of a State agency, a Chief Executive Officer or any other person in charge of the State agency; and
- (c) in the case of a public university, a Vice-Chancellor;

"Committee" means the Independent Performance Negotiation, Vetting and Evaluation Committee appointed under regulation 17;

"excellence" means performance which exceeds the standards expected from the public body or an employee;

"indicator" means a specific observable and measurable characteristic of achievement of the output;

"Inspector-General" means the Inspector-General (Corporations) appointed under section 18 of the State Corporations Act (Cap. 446);

"output" means the immediate results from an activity;

"performance period" means the period between the first date and the last date of the financial year;

"public body" includes—

- (a) any corporation, council, board, committee or other body which has power to act under or for the purposes of any written law relating to the undertakings of a public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any such law;
- (b) a corporation, the whole or a controlling majority of shares which are owned by a person or entity that is a public body by virtue of any of paragraph (a) of this definition;
- (c) statutory public bodies; or
- (d) any public body brought under the jurisdiction of the Commission by any written law for a specified function to the extent of that function;

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[Subsidiary]

"Secretariat" means the Performance Contracting Secretariat established under regulation 9;

"specialised agency" means a public body charged with oversight of a cross-cutting issue or indicator;

"State agency" means a public body other than a Ministry; and

"supervisor" means the immediate person to whom an employee reports.

#### **4. Objects of the Regulations**

The objects of these Regulations are to—

- (a) improve the quality of public services offered by public bodies;
- (b) improve the efficiency and effectiveness of service delivery by public bodies;
- (c) provide mechanisms for holding public bodies to account for performance results;
- (d) provide guidelines to link planning, budgeting, implementation and the achievement of results by public bodies;
- (e) provide for the measurement of the performance of public bodies in relation to set performance targets; and
- (f) provide a framework for the development of standards to facilitate the objective appraisal of performance results.

#### **5. Service delivery standards**

(1) Every public body shall develop service delivery standards with respect to the services provided by the public body and shall submit the standards to the Commission for approval.

(2) The standards developed under paragraph (1) shall—

- (a) provide for efficiency, impartiality and the equitable provision of services;
- (b) facilitate the introduction or adoption of modern and innovative service delivery systems and procedures; and
- (c) ensure the adaptability of the delivery of public services to the needs of the public.

(3) The standards developed under paragraph (1) shall—

- (a) include an effective feedback mechanism;
- (b) specify mechanisms for monitoring and evaluating the effectiveness of service delivery; and
- (c) specify mechanisms or strategies to be utilized to improve access to services.

(4) The standards developed under paragraph paragraph (1) shall inform the annual performance targets of the public body.

(5) A person may lodge a complaint with the Commission against a public body or an employee in a public body that fails to adhere to the service delivery standards developed under paragraph (1).

(6) Public bodies shall review the standards developed under paragraph (1) at least once every two years.

### PART II – ROLES AND RESPONSIBILITIES

#### **6. Cabinet Secretaries**

For the purpose of implementing these Regulations in each Ministry, each Cabinet Secretary shall—

- (a) ensure that the performance contracts for all State departments and State agencies in the Ministry are signed by 15th August of every financial year;

- (b) identify performance targets to be achieved by the State departments and State agencies in the Ministry in a given financial year;
- (c) ensure annual staff performance appraisal;
- (d) nominate employees to be considered for annual honours and awards; and
- (e) submit performance reports to the Public Service Commission and the secretariat as required.

## **7. Principal Secretaries**

A Principal Secretary who is responsible for the administration of a State department shall—

- (a) prepare a strategic plan for the State department;
- (b) ensure that there is adequate budgetary allocation for implementation of the strategic plan;
- (c) set performance targets for the department in accordance with the plan prepared under paragraph (a);
- (d) supervise employees in the department for the delivery of outputs in accordance with the department's service delivery standards;
- (e) ensure that employees meet their performance targets; and
- (f) prepare performance reports of the department and submit the reports to the Cabinet Secretary.

## **8. Board of State agencies**

Each board of a State agency shall be responsible for—

- (a) the approval, development of, and overseeing the implementation of a strategic plan for the agency;
- (b) setting performance targets for employees of the agency;
- (c) approving the budget of the agency and overseeing its implementation with respect to planned activities;
- (d) deploying and building capacity of employees to achieve performance targets;
- (e) conducting annual employee performance appraisal;
- (f) nominating employees to be considered for annual honours and awards;
- (g) constituting a Performance Management Committee; and
- (h) submitting annual performance reports to the Commission.

## **9. Performance Contracting Secretariat**

(1) There is established a secretariat to be known as the Performance Contracting Secretariat.

(2) The Secretariat shall be responsible for—

- (a) co-ordinating performance contracting in the public service;
- (b) providing technical support to performance contracting parties;
- (c) monitoring the performance of contracting parties;
- (d) building the capacity of contracting parties on performance contracting;
- (e) providing logistical and technical support to the Independent Negotiation and Evaluation Committee;
- (f) submitting quarterly reports to the Commission on the development and implementation of performance contracts in the public service;
- (g) conducting research and development on performance contracting; and
- (h) performing any other functions as may be prescribed by the Commission.

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## **10. Performance Contracting Committees**

- (1) Each public body shall establish a Performance Contracting Committee.
- (2) The Performance Contracting Committee of a State department shall comprise of—
  - (a) the Principal Secretary, who shall be the chairperson of the Committee;
  - (b) the head of administration in the State department;
  - (c) three heads of technical departments designated by the Principal Secretary; and
  - (d) the head of the planning unit of the State department who shall be the secretary to the committee.
- (3) The Performance Contracting Committee of a State agency shall comprise of—
  - (a) a senior manager of the agency designated by the Chief Executive Officer, who shall be the Committee's chairperson;
  - (b) the heads of department in the agency; and
  - (c) the head of the planning department or equivalent who shall be the secretary to the Committee.
- (4) The Performance Contracting Committee of a public university shall comprise of—
  - (a) the Deputy Vice-Chancellor responsible for administration;
  - (b) one dean designated by the Vice-Chancellor;
  - (c) the registrar responsible for administration;
  - (d) the registrar responsible for academic affairs; and
  - (e) the head of the planning department or equivalent who shall be the secretary to the committee.
- (5) The functions of the Performance Contracting Committee shall be to—
  - (a) co-ordinate the performance contracting process for the public body;
  - (b) co-ordinate the achievement of the public body's performance targets;
  - (c) monitor and evaluate the public body's annual performance; and
  - (d) prepare the public body's performance reports.
- (6) The authorised officer shall ensure that not more than two-thirds of the members of the the Performance Contracting Committee are of the same gender.

### **PART III – PLANNING FOR EFFICIENT AND EFFECTIVE DELIVERY OF SERVICES**

## **11. Strategic planning**

- (1) Every public body shall develop and implement a strategic plan which shall contain—
  - (a) the nature and scope of the public body's mandate;
  - (b) the strategic direction for the plan period;
  - (c) an overview of the operating environment;
  - (d) a description of the goals, objectives and targets to be attained in the medium term;
  - (e) the programmes and initiatives for attaining the goals, objectives and targets;
  - (f) a description of how the goals and objectives will be achieved including a description of the operational processes, skills and technology, human capital and other resources required to meet the goals and objectives; and
  - (g) key challenges that affect the body's ability to achieve its strategic objectives and deliver its outputs and how the challenges will be addressed.
- (2) The public body shall develop the strategic plan in a participatory manner.
- (3) The programs and activities included in the strategic plan of a public body shall be—
  - (a) in line with the guidelines issued by the Ministry responsible for the planning mandate of the public body; and

- (b) aligned with the national development agenda and policy priorities.
- (4) The strategic plan period shall be aligned to the national medium-term plan.

## 12. Strategic plans to be published

A public body shall, after the approval of its strategic plan—

- (a) publish the strategic plan on its website within one month of the approval; and
- (b) disseminate the strategic plan to its stakeholders within one month after the approval.

## 13. Approved organisational structure, etc.

(1) a strategic plan developed under regulation 12 shall contain the organisational structure of the public body as shall have been approved by the relevant authority.

(2) The authorised officer of the public body shall, with the approval of the Commission, establish a job title and description of each post or category of posts that indicates—

- (a) the main duties and responsibilities of the post or category of posts; and
- (b) the qualifications for the post or category of posts.

(3) The authorised officer shall develop a human resource plan for the public body that shall be aligned to the strategic plan and shall, in particular—

- (a) assess the public body's human resource in order to determine the gap in skills and competencies, and the public body's training needs;
- (b) assess the public body's optimal staffing levels necessary for the discharge of its mandate, including the required skills and competencies, the required number of employees, the grading structure and the terms of service of employees;
- (c) plan within the public body's budget for the recruitment retention, deployment and development of human resource according to the body's requirements;
- (d) determine the training needs for the public body, set target: for the capacity-building of employees, and establish specific plans to address the body's training needs; and
- (e) develop a career progression and succession management strategy for the public body.

## 14. Objectives and indicators

The authorised officer shall ensure that the public body's objectives—

- (a) are related to the public body's mandate;
- (b) are aligned to the national development agenda;
- (c) are directly linked to the public body's outputs;
- (d) are fully provided for in the public body's budget; and
- (e) clearly identify intended beneficiaries, desired achievements, and the timeframe for the achievement of the objectives.

### PART IV – INSTITUTIONAL PERFORMANCE MANAGEMENT

## 15. Performance Contract to be signed annually

(1) Every public body shall, at the commencement of each financial year, sign a performance contract which shall—

- (a) be related to the programs, activities and performance targets specified in the public body's approved strategic plan; and
- (b) be aligned to the approved budget estimates of the public body for the financial year to which the performance contract relates.

(2) The performance contract shall provide for—

- (a) the strategic goals and objectives of the public body;

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- (b) performance outputs and indicators;
- (c) quantifiable and measurable performance targets for each performance indicator;
- (d) explanatory notes of the results to be achieved at the end of the contract period; and
- (e) a basis for comparing actual program results with the corresponding performance targets.

(3) A public body may aggregate, disaggregate or consolidate program activities.

(4) The aggregation, disaggregation or consolidation referred to in paragraph (3) shall not omit or minimise the significance of any program activity that constitutes a major function or operation of the public body.

(5) The performance contracting process shall commence not later than 15th June of each financial year.

(6) A public body shall, not later than the 15th August, or the 15th February or the 15th May, as the case may be, of each financial year—

- (a) identify the performance targets of the public body;
- (b) ensure that the performance targets of the body are negotiated in accordance with these Regulations;
- (c) ensure that the performance contract is vetted in accordance with these Regulations; and
- (d) ensure that the performance contract is signed.

## **16. Performance targets**

Each authorized officer of a public body shall ensure—

- (a) that the public body's performance targets are aligned to—
  - (i) the mandate of the public body;
  - (ii) the Government's development agenda;
  - (iii) the public body's goals and objectives as specified in its strategic plan;
  - (iv) the public body's approved service delivery standards;
  - (v) the performance contract guidelines issued by the Commission; and
  - (vi) the public body's approved budget estimates.
- (b) that for each performance target there shall be a mix of quality, quantity, timeliness and cost effectiveness;
- (c) the cost of delivering targets that have a financial implication is identified and that departmental operational costs are allocated to the targets; and
- (d) that where there the cost of delivering a target has to be varied, the variation shall be in line with the provisions of the law relating to public procurement and financial management.

## **17. Independent Negotiation and Evaluation Committee**

(1) There shall be an Independent Negotiation and Evaluation Committee made up of a pool of not more than fifty members who shall be competitively recruited and appointed by the President on the recommendation of the Commission.

(2) The members of the Committee shall serve on a part-time basis for a period not exceeding three years and may be reappointed for one further period not exceeding three years based on satisfactory performance.

(3) A person shall be qualified to be appointed as a member of the Committee if that person—

- (a) possesses a minimum of a bachelor's degree from a university recognised in Kenya;

- (b) has at least ten years' professional experience in a relevant field;
  - (c) has knowledge of national development goals;
  - (d) has experience in performance management; and
  - (e) satisfies the requirements of Chapter Six of the Constitution.
- (4) The Committee shall be responsible for—
- (a) negotiating performance contracts with public bodies;
  - (b) ensuring that the performance targets of public bodies and indicators are aligned to the strategic plan;
  - (c) ensuring that performance targets of public bodies are aligned to the performance indicators provided in the strategic plan;
  - (d) ensuring that the public bodies' indicators are aligned to results that are citizen-focussed;
  - (e) undertaking mid-year performance reviews of public bodies; and
  - (f) evaluating the performance of public bodies.

### 18. Parties to negotiations

(1) Each public body shall engage in negotiations with respect to its performance contract in accordance with these Regulations.

(2) The performance contract shall be negotiated—

- (a) in the case of a State department, between the Independent Negotiating Team comprising at least two members of the committee and the Ministerial team comprising the Cabinet Secretary, the Principal Secretary and heads of directorates in the State department;
- (b) in the case of a state corporation, between the Ministerial team comprising the Cabinet Secretary for the parent Ministry, the Principal Secretary for the relevant State Department, a representative of the National Treasury and the state corporation team comprising the chairperson of the board of the state corporation, one independent director, the chief executive officer and heads of departments;
- (c) in the case of a public university, the Ministerial team comprising the Cabinet Secretary, the Principal Secretary for the relevant State Department and a representative of the National Treasury and the university team comprising the chairperson of the university's council, an independent council member, the Vice-Chancellor, deputy Vice-Chancellors, principals, deans of faculty, heads of institutes and heads of administrative departments; and
- (d) in the case of tertiary institutions, the Ministerial team comprising the Cabinet Secretary responsible for education, the Principal Secretary for the relevant State Department and a representative of the National Treasury and the tertiary institution team comprising the chairperson of the board, one independent member of the board, the principal of the institution and heads of departments.

(3) The Cabinet Secretary and the Principal Secretary may be represented during the negotiation of a performance contract by an appointed nominee who shall not be below job group CSG-5 or its relevant equivalent.

(4) Each Performance Contract Committee shall involve the parties or agencies whose operations may affect the achievement of the objectives of the public body in the pre-negotiation stage in order to ensure that there is consensus on the commitments by one public body to another.

(5) For the purposes of this regulations, "pre-negotiation stage" means the negotiations entered into between two or more public bodies whose performance affects the performance to the other public body or bodies to arrive at a consensus on the nature and limits of

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commitments one public body shall make to another with respect to the performance targets of each.

### **19. Negotiation of performance targets**

(1) During the negotiation of a performance contract, the parties shall take into consideration the core mandate of the public body, its operations, its financial and human resources, emerging issues or external factors which may affect performance.

(2) The parties to a performance contract shall ensure that the objectives, outputs, targets and performance indicators specified in the contract—

- (a) support the achievement of the mandate of the public body;
- (b) are aligned to the public body's strategic plan and the national development agenda;
- (c) are aligned to the approved public body's service delivery standards;
- (d) are factored into the approved budget estimates of the public body for the financial year; and
- (e) contribute to sustainable development.

### **20. Vetting of performance contracts**

(1) The performance contract negotiated between the Independent Negotiating Team made up of at least two members of the committee and the relevant Performance Contracting Committee shall be initialled by the representatives of the negotiating parties and presented to the Secretariat for vetting before the contract is signed.

(2) The Secretariat shall ensure that—

- (a) the performance contract complies with these Regulations;
- (b) the performance contract is in line with the public body's strategic plan and national government development agenda;
- (c) the performance indicators are in line with the public body's mandate and factored into its approved budget for the financial year; and
- (d) the public body's performance targets are growth-oriented and citizen-focused.

(3) In this regulation, "citizen focus" means service delivery based on a clear understanding of what the citizens' priorities and expectations from government are.

### **21. Signing of performance contracts**

(1) The performance contract for a Ministry shall be signed—

- (a) at the first level, between the President and the Cabinet Secretary responsible for the respective Ministry;
- (b) at the second level, between the Cabinet Secretary and the Principal Secretary for the respective State Department; and
- (c) at the third level, between the Principal Secretary and every head of department.

(2) The performance contract for a state agency shall be signed—

- (a) at the first level, between the Cabinet Secretary for the parent Ministry and the chairperson of the board and an independent director for the State agency and shall be countersigned by the Cabinet Secretary responsible for matters relating to finance;
- (b) at the second level, between the chairperson of the board of the state agency and the chief executive officer; and
- (c) at the third level, between the chief executive officer of the state agency and the heads of departments.

(3) The performance contract for a public university shall be signed—

- (a) at the first level, between the Cabinet Secretary responsible for matters relating to education, and the chairperson of the university's council and an independent council member on behalf of the university and shall be countersigned by the Cabinet Secretary responsible for matters relating to finance;
  - (b) at the second level, between the chairperson of the university's council and the Vice-Chancellor;
  - (c) at the third level, between the Vice-Chancellor of the university and deputy Vice-Chancellors; and
  - (d) at the fourth level, between each deputy Vice-Chancellor of the university and each relevant principal or dean of faculty as the case may be.
- (4) The performance contracts for a tertiary institution shall be signed—
- (a) at the first level, between the relevant Cabinet Secretary on behalf of the Ministry and the chairperson of the board of the tertiary institution and an independent director;
  - (b) at the second level, between the chairperson of the board of the tertiary institution and the principal; and
  - (c) at the third level, between the principal of the tertiary institution and the heads of departments.

## 22. Performance contract to be published

(1) The authorized officer of a public body shall cause the signed performance contract to be published in the public body's website not later than the 30th August of every year.

(2) The Secretariat shall publish each performance contract it has entered into with a public body on its website not later than the 30th August of every year.

## 23. Annual work plans

Each public body shall develop an annual work plan for the implementation of the performance contract which shall include activities necessary for the achievement of—

- (a) targets in the performance contract; and
- (b) other targets in the public body's strategic plan for that financial year.

## 24. Departmental and other work plans

Within fifteen days after the signing of a performance contract, each head of a department or directorate in a public body shall—

- (a) develop a work plan specifying the performance targets derived from the public body's performance contract and the strategic plan; and
- (b) ensure that individual annual work plans and performance appraisal tools are linked to the targets and deliverables in the performance contract and strategic plan.

## PART V – PERFORMANCE MONITORING, REPORTING AND EVALUATION

### 25. Quarterly reports

(1) The Authorized Officer shall within fifteen days after the end of each quarter, submit a performance report—

- (a) in the case of a Ministry, to the Secretariat;
- (b) in the case of state agencies, to the Inspector-General and the Secretariat; and
- (c) in the case of tertiary institutions, to the Ministry responsible for tertiary institution and the Secretariat.

(2) The performance report shall be in a format prescribed by the Commission.

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(3) The Secretariat, the Inspector-General or the relevant Ministry as the case may be, shall review the reports and provide feedback on areas for improvement to the public body.

(4) The Inspector-General and Ministry shall forward the reports submitted by the State agencies and Inspector-General, as the case may be, to the Secretariat.

## **26. Mid-year reviews**

(1) The Committee shall conduct a mid-year performance review of public bodies that have signed performance contracts under these Regulations for the purpose of tracking progress and ensuring that the implementation of the performance contracts is on course, identify challenges and propose remedial action where necessary.

(2) The authorized officer of a public body shall not later than 15th January of each year submit to the Secretariat the second quarter performance report.

(3) The second quarter report shall be the mid-year report and shall include the—

- (a) cumulative level of achievements on the targets;
- (b) challenges that have impacted on the achievement of the targets; and
- (c) proposed remedial actions to overcome the challenges.

(4) An evaluation committee comprised of at least two members of the Committee and the Secretariat shall, at a meeting with the public body—

- (a) review the performance of the public body; and
- (b) give feedback to the public body.

## **27. Reports to specialized agencies**

(1) Each public body shall, within fifteen days after the end of every three months, submit a report on the body's performance targets in the performance contract to the specialised agency relating to the mandate of the public body.

(2) A copy of the report referred to in paragraph (1) shall also be submitted to the Secretariat.

(3) The specialized agency shall analyse the report under paragraph (1) and provide feedback on areas for improvement to the public body not later than the end of the following period of three months.

(4) A copy of the feedback referred to in paragraph (3) shall be submitted to the Secretariat.

## **28. Annual Internal Performance Evaluation Report**

(1) Each public body shall, within thirty days after the end of the performance period, conduct an annual internal performance evaluation and submit a report thereon to the Secretariat.

(2) The report under paragraph (1) shall indicate the level of achievement for each performance target.

## **29. Annual performance evaluation**

(1) The Commission shall constitute a Performance Evaluation Team comprising members of the Committee to evaluate the performance of each public body.

(2) The annual performance evaluation shall be conducted between the 1st August and the 15th October of each year.

(3) The Secretariat shall develop a programme specifying the dates on which the annual evaluation of each public body shall be conducted.

(4) In conducting the annual performance evaluation, the Committee and the relevant public body shall rely on—

- (a) the performance contracting guidelines;
- (b) copies of the signed performance contract;
- (c) the approved budget of the public body;

- (d) the annual internal performance evaluation report;
- (e) supporting documents for achievement of the targets; and
- (f) supporting documentation of external factors that may have affected the achievement of performance targets.

(5) The Performance Evaluation Team shall prepare and submit a consolidated performance report on the public body to the Commission on or before the 31st October of every year.

(6) The consolidated performance report shall include the performance rating for the public body which may be classified as—

- (a) excellent;
- (b) very good;
- (c) good;
- (d) fair; or
- (e) unsatisfactory.

### **30. Rating the performance of public bodies**

(1) The Commission shall constitute a moderation team comprising members of the Committee to moderate the performance evaluation reports and rate the public bodies.

(2) In moderating the reports and rating the public bodies, the Committee shall be assisted by the Secretariat.

### **31. Complaints handling**

The moderation team shall be responsible for receiving and addressing any complaints by public bodies regarding the moderation and rating process.

#### **PART VI – EMPLOYEE PERFORMANCE MANAGEMENT**

### **32. Employee Performance Management Committee**

(1) Each public body shall establish an Employee Performance Management Committee.

(2) In the case of a State department, the Committee shall comprise of the—

- (a) The Secretary responsible for administration who shall be the chairperson;
- (b) heads of departments; and
- (c) the head of the human resource function who shall be the secretary to the committee.

(3) In the case of a State agency, the Committee shall comprise of—

- (a) a senior manager appointed by the Chief Executive Officer, who shall be the chairperson;
- (b) the heads of departments; and
- (c) the head of human resource function who shall be the secretary to the committee.

(4) The functions of the Employee Performance Management Committee shall be to—

- (a) consider and moderate individual performance scores and make recommendations to the authorised officer;
- (b) make recommendations to the authorized officer on rewards or sanctions to be imposed on an employee; and
- (c) make recommendations on planned performance improvement for an employee.

(5) The performance of members of the Employee Performance Management Committee shall be considered by the authorised officer who shall make a decision on rewards, sanctions or performance improvement plans.

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### 33. Employee performance work plan

(1) At the beginning of the performance period, every employee shall develop a work plan derived from the departmental annual work plan.

(2) The work plan shall describe—

- (a) the performance targets or expected results on specific assignments and activities for which the employee performance will be measured; and
- (b) the targets shall be set as agreed between the supervisor and the appraisee not later than the 30th August of each year.

### 34. Performance appraisal instruments

(1) The Commission shall design performance appraisal instruments to be used by public bodies to assess the performance of the public bodies' employees.

(2) The authorized officer of each public body shall, at the beginning of the performance period, designate in writing—

- (a) the performance appraisal instrument prescribed by the Commission; and
- (b) the date on or by which the appraisal of the performance of employees shall be conducted.

## PART VII – PERFORMANCE SUPERVISION

### 35. Supervision

(1) Each employee shall be supervised in the performance of his or her functions or duties.

(2) The supervisor shall—

- (a) be accountable for the performance of all employees under his or her supervision;
- (b) ensure necessary facilitation for the employee to deliver on agreed targets;
- (c) on a regular basis, meet with the employee to discuss the employee's targets;
- (d) before the appraisal cycle commences or within one month after appointment or promotion to a post, explain the performance appraisal procedure to the employee and criteria used for the employee's performance appraisal; and
- (e) where necessary, facilitate coaching and mentoring of an employee in order to deliver on the agreed performance targets.

(3) The supervisor shall monitor the employee's performance on a continuous basis and give feedback on performance—

- (a) at least once every three months; and
- (b) at the end of the performance period.

### 36. Responsibilities of employees

Each employee shall—

- (a) in consultation with the employee's supervisor, prepare an individual workplan derived from the departmental workplan;
- (b) fill in and execute the approved performance appraisal tool with the employee's supervisor;
- (c) meet the set performance targets and, where there are challenges in meeting the targets, discuss with the employee's supervisor the mechanisms for addressing the challenges; and
- (d) ensure that the employee is appraised by the employee's supervisor in accordance with these Regulations.

**37. Joint mid-year review**

(1) The supervisor and employee shall conduct a joint mid-year review to determine the progress made by the employee in achieving work objectives and competencies.

(2) During the joint review—

- (a) the employee may identify any issues affecting performance;
- (b) the supervisor may review the learning and development plan with the employee and, where necessary, update the plan;
- (c) the supervisor and employee may agree to vary the initial targets if there has been a significant change in the nature of functions or duties performed by the employee;
- (d) the supervisor shall, after discussion with the employee, provide feedback and adjust the performance targets if required; and
- (e) the supervisor may, after discussion with the employee, recommend a talent management plan for the improvement of the employee's performance.

**38. Pro rata appraisal**

The appraisal of the performance of an employee shall be on *pro rata* basis if the employee is redeployed or leaves the public body.

**39. End of year appraisal**

(1) The supervisor shall, at the end of the performance period, conduct a formal year-end appraisal of each employee under his or her supervision and rate the employee's performance.

(2) The performance appraisal shall be conducted at a meeting held between the supervisor and employee.

(3) The employee shall, prior to the meeting, prepare a preliminary report on the extent to which the employee's targets were achieved.

**40. Communication of results**

(1) The employee's supervisor shall notify the employee of the outcome of the performance appraisal at the end of the appraisal period and after conducting the end of year appraisal.

(2) Both the employee's supervisor and the employee shall sign the appraisal form.

(3) An employee who is not satisfied with appraisal ratings may seek reasons for the rating in writing from the supervisor.

(4) An employee who is dissatisfied with the appraisal will indicate the reasons for the dissatisfaction on the appraisal form.

(5) In the event of a dispute in the outcome of the appraisal, the supervisor shall advise the employee to appeal to the Authorized

Officer.

**41. Performance appraisal**

(1) A duly completed Performance Appraisal Instrument shall be presented to the Performance Management Committee for moderation and recommendations.

(2) The appraisal shall be based only on the information contained in the designated performance appraisal instrument developed by the Public Service Commission.

(3) The recommendations of the Performance Management Committee shall be submitted to the authorized officer for determination on the reward, sanction or performance improvement plan for each employee.

(4) The Authorized Officer shall consider the performance appraisal reports and make a determination regarding probation, rewards, promotion and skills development of the employee.

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(5) An appraiser who is dissatisfied with the appraisal process and results may appeal to the authorized officer.

(6) The authorized officer shall submit a consolidated annual performance report for the public body to the Commission.

#### PART VIII – REWARDS AND SANCTIONS

### 42. Rewards

(1) A public body may, with the approval of the Commission, administratively establish a rewards' scheme for employees.

(2) The scheme referred to in paragraph (1) may include financial and non-financial rewards.

(3) Where a public body establishes a financial rewards scheme, the public body shall—

- (a) first seek the advice of the Salaries and Remuneration Commission for the proposed financial rewards;
- (b) ensure that the financial rewards are provided for in the public body's budget;
- (c) specify the nature, rules and control measures of the scheme before it is implemented;
- (d) communicate the nature and rules of the scheme to all employees; and
- (e) ensure that employees who implement the quality and quantity control measures of the scheme are not entrusted with the implementation of that scheme when they are the intended beneficiaries of the scheme.

### 43. Managing unsatisfactory performance

(1) A public body may, with respect to the unsatisfactory performance of an employee, subject the employee to a performance improvement plan where the authorised officer determines that an employee's performance may improve after remedial action is taken.

(2) The remedial action referred to in paragraph (1) may include—

- (a) training or re-training;
- (b) re-assignment of responsibilities;
- (c) redeployment;
- (d) job enrichment;
- (e) job rotation;
- (f) coaching and mentoring; and
- (g) counselling.

(3) Where the performance of an employee fails to improve after taking remedial action under paragraph (1), the public body may—

- (a) impose sanctions on the employee including, warning, deferment of increment, demotion, withholding promotion and non-renewal of contract in accordance with the Act; or
- (b) consider steps towards termination of service in accordance with the Act.

### 44. Rewards for public bodies

(1) Upon receipt of the report referred to in regulation 29 (5) , the Commission shall—

- (a) prepare and submit a report to the President; and
- (b) in consultation with the President, organise a public ceremony which shall be held on or before the 30th November of each year.

(2) The ceremony referred to in paragraph (1) shall include the release of the performance report and rewarding of excellent performance by public bodies.

(3) A public body shall, within seven days of the release of the performance evaluation results, publish the results on its website.

**45. Sanctions for public bodies**

Where the performance of a public body is unsatisfactory, the President may take such action as may be appropriate to improve service delivery.

**46. Public service awards scheme**

(1) The Commission shall establish an awards' scheme for excellent performance and innovation by public officers.

(2) The objective of the scheme shall be to—

- (a) reward excellent performance by public officers;
- (b) acknowledge and showcase in the public service and reward innovators whose innovations have improved efficiency and effectiveness in public service delivery; and
- (c) reward consistent ethical practices by individual public officers.

(3) The Commission shall seek the advice of the Salaries and Remuneration Commission where the Commission intends to award cash prizes under the awards scheme.

**47. Awards Committee**

(1) Pursuant to the provisions of section 12, the Commission Awards shall constitute an Awards Committee.

(2) The Awards Committee shall comprise of—

- (a) two members of the Commission appointed by the Chairperson of the Commission, one of whom shall be the chairperson of the committee;
- (b) one person representing the Cabinet Secretary responsible for matters relating to the public service;
- (c) one person representing Cabinet Secretary responsible for matters relating to finance;
- (d) two persons from selected public bodies; and
- (e) the head of the department in the Commission responsible for performance management in the public service.

(3) The Secretary of the Commission, shall provide the secretariat.

(4) The Committee shall be responsible for managing the awards' scheme under regulation 46 including—

- (a) receiving nominations from public bodies of public officers for excellent performance;
- (b) receiving nominations from public bodies for innovations from public officers which have led to improved efficiency and effectiveness in the delivery of public services;
- (c) receiving nominations from public bodies for ethical performance by public officers;
- (d) developing criteria for identifying and rewarding public officers for excellence; and
- (e) recommend to the Commission the public bodies and public officers to be rewarded for excellence and innovation.

**PART X – MISCELLANEOUS****48. Complaints and grievances**

(1) The Commission may, on its own initiative or on a complaint by any person, investigate any issue relating to performance management under these Regulations.

(2) The Commission, in conducting an investigation under paragraph (1), shall afford the parties to the complaint an opportunity to be heard before the Commission makes a determination.

[Subsidiary]

**49. Contravention of Regulations**

(1) A person other than a person excluded under regulation 2(2) who contravenes any provision of these Regulations may be subjected to disciplinary proceedings in accordance with the terms of service and liable to any of the penalties specified in section 68 of the Act.

(2) Where an authorised officer who is not under the jurisdiction of the Commission to whom the Commission has delegated a power or a function contravenes any provision of these Regulations, the Commission may recommend to that authorised officer's appointing authority that the authorised officer be subjected to disciplinary action in accordance with the terms of service.

**50. Matters not covered by Regulations**

(1) Any matter relating to performance management that is not addressed by these Regulations shall be dealt with in accordance with such special or general instructions issued by the Commission.

(2) Subject to the Constitution and any other written law, nothing in these Regulations shall prevent the Commission from considering and determining any matter relating to performance management that is within the Commission's mandate but has not been provided for in these Regulations.

**51. Records**

Each authorised officer shall be responsible for keeping and maintaining any records required to be kept or maintained under these Regulations.

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**THE PUBLIC SERVICE COMMISSION (COUNTY APPEALS PROCEDURES) REGULATIONS**

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SCHEDULES

SCHEDULE —

FORMS



**THE PUBLIC SERVICE COMMISSION (COUNTY APPEALS PROCEDURES) REGULATIONS**

[Legal Notice 92 of 2022]

**1. Citation**

These Regulations may be cited as the Public Service Commission (County Appeals Procedures) Regulations.

**2. Interpretation**

In these Regulations, unless the context otherwise requires—

"appeal" means an application to the Commission against a decision of a county executive, county public service or county assembly service;

"appellant" means a person who appeals against decision of a county executive, member of a county executive committee, county public service board or county assembly service board;

"pleadings" means documents relating to an appeal filed by parties to the appeal with the Commission; and

"respondent" means a person against whom an appeal has been filed with the Commission.

**3. Purpose of these Regulations**

The purpose of these Regulations shall be to regulate the hearing and determination of appeals filed with the Commission by public officers or other persons in respect of county governments public service.

**4. Application of the Regulations**

Subject to Article 234(3)(a) of the Constitution, these Regulations shall apply—

- (a) to any person working in a county public service;
- (b) to each county public service board;
- (c) to each county assembly service board;
- (d) to the decisions of a county government executive or a member of a county government executive committee; and
- (e) to any other person dissatisfied or affected by a decision of a county government executive, member of a county government executive committee, county public service board or county assembly service board.

**5. Governing Principles**

The Commission shall be guided by the following principles when hearing and determining an appeal or when considering an application for review—

- (a) the promotion of the purposes, values and principles of the Constitution;
- (b) justice and fairness;
- (c) the rules of natural justice;
- (d) the application of substantive justice that does not rely on undue regard to technicalities of procedure; and
- (e) the timely disposal of appeals.

**6. Inherent powers of the Commission**

The Commission may, on its own motion or the application of any person, make such orders as are necessary for—

[Subsidiary]

- (a) the fair and expeditious determination of appeals or applications;
- (b) the just conclusion of appeals or applications; or
- (c) the prevention of abuse of the processes of the Commission.

### **7. Conciliation, mediation and negotiation**

(1) The Commission may, on its own motion or the application of any person make such orders as may be necessary for conciliation, mediation or negotiation in respect of any appeal filed with the Commission.

(2) The conciliation, mediation or negotiation referred to in subregulation (1) shall be concluded within sixty days after the order of the Commission.

(3) Where conciliation, mediation or negotiation in respect of an appeal fails, the Commission shall determine the appeal in accordance with these Regulations.

## PART II – APPEALS

### **8. Appeals**

(1) A person who is dissatisfied with a decision of a county government public service may appeal to the Commission against that decision.

(2) A public officer who wishes to file an appeal with the Commission shall do so after all internal processes of the county government public service have been exhausted.

### **9. Commission may hear and determine appeals**

The Commission may hear and determine an appeal against any decision regarding the engagement of any person in a county government, including—

- (a) the recruitment, selection, appointment, promotion, redesignation, deployment and qualifications attached to any office;
- (b) training and development;
- (c) the remuneration, benefits, and terms and conditions of service;
- (d) disciplinary control including dismissal and imposition of any other administrative punishment;
- (e) the national values and principles of governance set out in Article 10 of the Constitution;
- (f) the values and principles of public service as set out in Article 232 of the Constitution;
- (g) retirement or other forms of removal from service; and
- (h) any other decision of a county public service that falls within the Commission's jurisdiction.

### **10. Filing appeals**

(1) A person shall file an appeal against a decision of county public service with the Commission within ninety days after the making of the decision by the county public service.

(2) Notwithstanding the provisions of subregulation (1), the Commission may, upon written request, allow a person to file an appeal after the expiry of ninety days, if the Commission determines that the circumstances of the case warrant it.

(3) An appeal under these Regulations shall be in Form CA 1 as set out in the Schedule and shall—

- (a) where the appellant is a public officer, specify therein —
  - (i) the name and date of birth of the public officer;
  - (ii) name of the respondent;
  - (iii) the public officer's personal number;
  - (iv) the public officer's designation;
  - (v) the public officer's terms of service;

- (vi) the public officer's job group;
  - (vii) a declaration on whether there are or have been proceedings or decisions before any court or tribunal on the subject matter of the appeal;
  - (viii) the grounds of the appeal;
  - (ix) the facts in support of the appeal;
  - (x) the documents in support of the appeal;
  - (xi) the prayers sought; and
  - (xii) the contact details of the public officer including postal address, email address and telephone number; or
- (b) where the appellant is not a public officer, specify therein—
- (i) the name and, where applicable, date of birth, of the appellant;
  - (ii) the description of the appellant;
  - (iii) the name of the respondent;
  - (iv) a declaration on whether there are or have been proceedings or decisions before any court or tribunal the subject matter of the appeal;
  - (v) the grounds of appeal;
  - (vi) the facts in support of the appeal;
  - (vii) the documents in support of the appeal;
  - (viii) the prayers sought; and
  - (ix) the contact details of the appellant including postal address, email address and telephone number.

### 11. Appeal to be served on the respondent

(1) An appellant shall serve the appeal on the respondent after filing the appeal with the Commission.

(2) The respondent that has been served with an appeal under subregulation (1) shall, within fourteen days after being served—

- (a) respond to the appeal by filing with the Commission a replying affidavit or grounds of objection;
- (b) attach to the replying affidavit any relevant records and documents regarding the appeal including any proceedings; and
- (c) serve the response on the appellant within seven days after filing it with the Commission.

(3) The appellant may, where necessary, file a rejoinder within seven days after receipt of the respondent's response.

#### PART III – PRELIMINARY PROCEEDINGS, INTERIM APPLICATIONS AND PRELIMINARY OBJECTIONS

### 12. Preliminary proceedings

After the filing of the response under regulation 11(2), the Commission shall, within twenty-one days—

- (a) where there is insufficient information, require the appellant or respondent to provide additional information or documents in relation to the appeal;
- (b) where an investigation is required to obtain additional information, investigate the matter further in order to obtain the required information; or
- (c) where it is necessary to hold a hearing or where a party requests to be heard in person, notify the parties of the date, time and venue of the hearing.

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[Subsidiary]

### 13. Interim applications

(1) A party to an appeal may, at any time after the filing of an appeal with the Commission but before the final hearing and determination of the appeal, apply in writing to the Commission for directions or orders before the appeal is heard and determined by the Commission.

(2) An application under this regulation shall be in writing and shall be served on the other party or parties within seven days after the application under subregulation (1).

(3) A party served with an application under subregulation (2) shall file with the Commission and serve the applicant with a replying affidavit or grounds of objection within seven days after being served with the application.

(4) Where the Commission determines that there is need for parties to file written submissions regarding an application under this regulation, the provisions of regulation 18(5), with the necessary modifications, shall apply.

(5) The Commission shall determine an application under this regulation—

- (a) within fourteen days after the filing of the replying affidavit under subregulation (3); or
- (b) where the Commission required the parties to file written submissions under subregulation (4), within fourteen days after the written submissions have been so filed.

### 14. Preliminary objections

(1) A party to an appeal filed under these Regulations may raise an objection on any point of law at any time before the appeal is finally heard and determined by the Commission.

(2) The objection referred to in subregulation (1) shall—

- (a) be in writing;
- (b) state the points of law and grounds for the preliminary objection; and
- (c) be served on the other party or parties to the appeal within seven days after being filed with the Commission.

(3) A party served with an objection shall file a written response with the Commission within seven days after receipt of the objection.

(4) Where the Commission determines that there is need for parties to file written submissions regarding a preliminary objection, the provisions of regulation 15(4) shall apply with the necessary modifications.

(5) The Commission shall determine a preliminary objection—

- (a) within seven days after the filing of the response under subregulation (3); or
- (b) where the Commission required the parties to file written submissions under subregulation (4), within fourteen days after the written submissions have been so filed.

#### PART IV – WITHDRAWAL OF APPEALS OR APPLICATIONS, CONSOLIDATION OF APPEALS AND TEST APPEALS

### 15. Withdrawal of appeals or applications

An appellant or applicant may, by written notice to the Commission and respondent, apply to the Commission to withdraw an appeal or application filed under these Regulations.

### 16. Consolidation of appeals

The Commission may, on its own motion or on application by a party to an appeal, consolidate two or more appeals filed under these Regulations on such terms as may be just in the circumstances.

**17. Test appeals**

(1) Where two or more persons have filed appeals against the same respondent, the Commission may, on its own motion or application by any party to the appeal, with written notice to the other party or parties, where it is satisfied that the issues to be determined in each appeal are similar, issue directions that one of the appeals be determined as the test appeal, and the other proceedings in respect of the other appeals shall be stayed until the test appeal is finally heard and determined.

(2) The Commission's decision of the test appeal under subregulation (1) and the Commission's ruling or determination thereof shall apply to the other appeals.

## PART V – HEARINGS

**18. Hearings**

(1) Pursuant to the provisions of section 12 of the Act, where the Commission establishes a Committee to hear an appeal or an application, the quorum of the committee shall be two Commissioners and the recommendations of the committee shall be presented to the Commission for consideration and determination.

(2) The Commission may—

- (a) hold hearings before determining an appeal; or
- (b) receive and consider written submissions from parties to an appeal before determining the appeal.

(3) Where the Commission holds a hearing in respect of an appeal, it shall notify the parties to the appeal of the date, time and venue of the hearing in Form CA 2 as set out in the Schedule.

(4) The hearing notice under subregulation (3) shall be served on the parties to the appeal at least seven days before the date of the hearing.

(5) Where the Commission requires written submissions in respect of an appeal, it shall require the parties to the appeal to make their written submissions in the following manner—

- (a) the appellant shall first file and serve written submissions within fourteen days after the directions of the Commission; and
- (b) the respondent shall file and serve written submissions within fourteen days after receipt of the appellant's submissions or upon expiry of the time granted to the appellant.

(6) The appellant may, with the leave of the Commission, file supplementary submissions within seven days after receipt of the respondent's submissions under subregulation (5) (b).

**19. Parties with special needs**

Where a party to an appeal is a person with disability and requires special arrangements for purposes of a hearing, that party shall notify the Commission of that party's requirements at least three days before the date of the hearing.

**20. Absence of parties**

Where a party to an appeal, after being duly notified of the hearing in accordance with regulation 18, fails to attend the hearing, the Commission may—

- (a) adjourn the hearing to a another date, which date shall be notified to the parties in accordance with regulation 18; or
- (b) if the circumstances of the case warrant it, conduct the hearing in the absence of the absent party.

**21. Decisions of the Commission on appeal**

The Commission may, in relation to an appeal—

- (a) uphold the decision being challenged;

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[Subsidiary]

- (b) set aside the decision being challenged;
- (c) vary the decision as may be just in the circumstances; or
- (d) give such other directions as may be appropriate in the circumstances.

## **22. Decision to be made after hearing or receipt of written submissions**

(1) The Commission shall, within thirty days after the conclusion of a hearing or after receiving written submissions in respect of an appeal, make a decision on the appeal.

(2) Where a decision is not made within the period under subregulation (1), the Commission shall notify the parties to the appeal in writing of the delay and the reasons for the delay.

## **23. Communication of decisions**

The Commission shall communicate its decision regarding an appeal to the parties in writing within seven days after making the decision.

## **24. Review of decisions**

(1) A person who is dissatisfied or affected by the Commission's decision regarding an appeal may apply in writing to the Commission for a review of that decision.

(2) The Commission may consider the application under subregulation (1) where—

- (a) the applicant presents new information that could not be presented at the time the decision was made by the Commission; or
- (b) there is an error apparent on the record of the decision for which a review has been applied.

(3) An application for review shall be made within six months from the date after the decision of the Commission for which a review has been applied.

(4) The Commission may consider an application for review out of time if, in the opinion of the Commission, the circumstances warrant the consideration.

(5) The applicant shall serve the respondent with the application under subregulation (1) within seven days after filing the application with the Commission.

(6) The respondent shall file a response to the application for review with the Commission and serve the applicant with a copy thereof within seven days after receipt of the application.

(7) Where the Commission determines that there is need for the parties to the appeal to file written representations, the provisions of regulation 18 (5) shall apply thereto with the necessary modifications.

(8) The Commission may, in respect of an application for review of a decision of the Commission—

- (a) uphold the decision;
- (b) set aside the decision;
- (c) vary the decision as may be just in the circumstances; or
- (d) give such directions as may be appropriate in the circumstances.

(9) The Commission's decision regarding an application for review shall be made within thirty days after the hearing of the application or receipt of written submissions regarding the application.

(10) Where a decision is not made within the time prescribed under subregulation (9), the Commission shall notify the parties to the appeal in writing of the delay and the reasons for the delay.

## **25. Communication of the decision on review**

The Commission shall communicate its decision to the parties within seven days after making a decision on the application for review.

## PART VI – MISCELLANEOUS PROVISIONS

**26. Filing of pleadings**

(1) Each party to an appeal shall file with the Commission its pleadings by delivering five copies of the pleadings to the Commission.

(2) In addition to the copies of the pleadings filed under subregulation (1), each party to an appeal shall electronically file its pleadings through the Commission's official email address.

(3) Each party shall file its pleadings with the Commission within the period prescribed by these Regulations or as may be permitted by the Commission by order in writing.

**27. Service of pleadings and notices**

(1) Pleadings or notices may be served by—

- (a) hand delivery;
- (b) sending it to the last known address of the recipient by registered post or by courier service;
- (c) email to the recipient's last known email address;
- (d) advertisement in a daily newspaper with nationwide circulation as may be approved by the Commission in writing; or
- (e) Short Messages Services and Mobile Application Service as may be approved by the Commission in writing.

(2) Pleadings or notices shall be deemed to have been delivered or served on the date they are received or stamped by the Commission or recipient as the case may be.

(3) Where pleadings or notices are delivered in person, the same shall be deemed to have been duly served if acknowledged by signing and dating and, where applicable, stamping.

(4) Where pleadings or notices are delivered by registered post or courier service, they shall be deemed to have been received on the seventh day after dispatch.

(5) Where pleadings or notices are delivered by email, they shall be deemed to have been duly received on the twenty-fourth hour after dispatch.

(6) An affidavit of service shall be filed by the person sending or serving pleadings or notices accompanied by evidence of service in the prescribed modes.

**28. Powers of the Commission in relation to service**

Nothing in these Regulations shall affect the power of the Commission, if the circumstances so permit and in the interests of justice, to—

- (a) authorize the service of pleadings in a manner that is not expressly provided for in these Regulations; or
- (b) find that pleadings served in a manner not expressly provided for in these Regulations have been properly served.

**29. Rights of the parties to an appeal**

A party to an appeal filed with the Commission shall have the right to—

- (a) be heard in person;
- (b) be represented by an advocate of the party's choice and the party's expense;
- (c) be accompanied by a representative of the relevant trade union or any other person of the party's choice;
- (d) be assisted by an interpreter if the party does not understand the language being used during the proceedings; and
- (e) access information held by the Commission or a county government that may be relevant to the determination of the appeal.

[Subsidiary]

**30. Record of proceedings**

The Commission shall keep and maintain an accurate record of its proceedings relating to an appeal including typed transcripts and, where applicable, audio and video recordings.

**31. Revocation L.N. 70 of 2016**

The Public Service Commission (County Government Public Services Appeals Procedures) Regulations (L.N. 70/2016) are revoked.

SCHEDULE

FORMS

(r. 10(3))

**FORM CA 1**

PUBLIC SERVICE COMMISSION

THE PUBLIC SERVICE COMMISSION (COUNTY APPEALS PROCEDURES)

REGULATIONS, 2022

County Appeal No. \_\_\_\_\_ of 20 \_\_\_\_\_

BETWEEN

\_\_\_\_\_ APPELLANT

AND

\_\_\_\_\_ RESPONDENT

APPEAL

The Secretary

Public Service Commission

P.O. Box 30095-00100

NAIROBI

The humble appeal of \_\_\_\_\_

***(name of appellant)***

of P.O. Box \_\_\_\_\_ in the Republic of Kenya is as follows:

(a) Name of the appellant:

(b) Job description:

(c) Personal number:

(d) Job group:

(e) Date of birth:

(f) Designation:

(g) Terms of service:

(h) Name of the respondent:

(i) Facts giving rise to the appeal:

\_\_\_\_\_  
\_\_\_\_\_

(j) Grounds in support of the appeal:

\_\_\_\_\_  
\_\_\_\_\_

Public Service Commission

[Subsidiary]

(k) Documents to be relied upon in support of the appeal:

\_\_\_\_\_  
\_\_\_\_\_

(l) Declaration on whether there are/or have been any proceedings or decisions by or before any court or tribunal on the same subject matter:

\_\_\_\_\_  
\_\_\_\_\_

(m) Reliefs sought:

\_\_\_\_\_  
\_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed \_\_\_\_\_

*Appellant/Advocate for the Appellant*

Drawn and filed by:

\_\_\_\_\_

To be served upon:

\_\_\_\_\_

**FORM CA 2**

(r. 18(2))

PUBLIC SERVICE COMMISSION

THE PUBLIC SERVICE COMMISSION (COUNTY APPEALS PROCEDURES)

REGULATIONS

County Appeal No. \_\_\_\_\_ of 20 \_\_\_\_\_

BETWEEN

\_\_\_\_\_ APPELLANT

AND

\_\_\_\_\_ RESPONDENT

**HEARING NOTICE**

TAKE NOTICE THAT your appeal will be heard on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ at \_\_\_\_\_ o'clock in the forenoon/afternoon.

The hearing shall be held at

\_\_\_\_\_  
\_\_\_\_\_

TAKE NOTICE THAT should you or someone duly authorized by law fail to appear on your behalf at the time and place above mentioned, the Commission may proceed to hear the appeal and make such determination as it shall deem fit and just, your absence notwithstanding.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed \_\_\_\_\_

For the Commission

\_\_\_\_\_