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LAWS OF KENYA

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**THE PUBLIC SERVICE COMMISSION ACT**

NO. 10 OF 2017

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**PUBLIC SERVICE COMMISSION ACT**

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

*Section*

1. Short title
2. Interpretation
3. Scope and application
4. Guiding principles

PART II – COMPOSITION AND ADMINISTRATION

5. Powers of the Commission generally
6. Access to Commission services
7. Composition and appointment of members to the Commission
8. Qualifications for appointment as chairperson and member of Commission
9. Oath or affirmation of office
10. Vacancy
11. Filling of Vacancy
12. Committees of the Commission
13. Organisation of the Commission
14. Conduct of business and affairs of the Commission
15. Secretary to the Commission
16. Secretariat
17. Seal of the Commission
18. Legal proceedings against the Commission
19. Protection from personal liability
20. Code of conduct of members and employees of the Commission

PART III – FINANCIAL PROVISIONS

21. Funds of the Commission
22. Annual estimates
23. Financial year of the Commission
24. Accounts and audit

PART IV – ESTABLISHMENT AND ABOLITION  
OF OFFICES IN THE PUBLIC SERVICE

25. Application of this Part
26. Meaning of establishment of offices
27. Conditions for establishment of offices
28. Conditions for abolition of office
29. Commission may act on its motion
30. Recommendation to the President

PART V – DELEGATION

31. Delegation of powers

PART VI – APPOINTMENTS, CONFIRMATION  
OF APPOINTMENTS, AND TRANSFERS

32. Appointment of an authorized officer
33. Commission's authority to appoint
34. Acting appointments
35. Effective date of appointment, promotion and re-designation
36. Criteria for appointment and promotion
37. Advertisement of vacancies
38. Decision to be in writing
39. Record of applicants
40. Re-designation
41. Confirmation of appointment
42. Secondment
43. Transfer
44. Casual service
45. Service on contractual terms
46. Nomination or recommendation for appointment
47. Recommendation for appointment of Principal Secretaries
48. Affirmative action
49. Staff of partnerships and joint ventures
50. Protection of accrued rights and benefits
51. Vacancies dependant on exams

PART VII – REVIEWING AND MAKING RECOMMENDATIONS  
TO THE NATIONAL GOVERNMENT ON CONDITIONS OF  
SERVICE, CODE OF CONDUCT AND QUALIFICATIONS

52. Application of this Part
53. Conditions of service
54. Code of conduct
55. Review of qualifications

PART VIII – DEVELOPMENT OF HUMAN  
RESOURCE IN THE PUBLIC SERVICE

56. Human resource development

PART IX – INVESTIGATION, MONITORING AND  
EVALUATION OF THE ORGANIZATION, ADMINISTRATION  
AND PERSONNEL PRACTICES OF THE PUBLIC SERVICE

57. Monitoring and evaluation of the administration of the public service
58. Organization of the public service
59. Personnel practices in public service
60. Investigation
61. Reporting and use of findings

PART X – EFFICIENCY AND  
EFFECTIVENESS OF THE PUBLIC SERVICE

62. Promotion of efficiency and effectiveness of the public service

PART XI – PROMOTION OF AND REPORTING ON  
VALUES AND PRINCIPLES OF GOVERNANCE AND  
VALUES AND PRINCIPLES OF PUBLIC SERVICE

- 63. Promotion of values and principles of governance
- 64. Report on national values and principles

PART XII – EXERCISE OF DISCIPLINARY  
CONTROL IN THE PUBLIC SERVICE

- 65. Delegation of disciplinary powers to authorized officers
- 66. Authorized officer may impose penalties
- 67. Absence from duty without leave
- 68. Types of penalties
- 69. General principles of disciplinary process
- 70. Interdiction
- 71. Suspension
- 72. Duty to update interdicted or suspended officer
- 73. Officer convicted of criminal offence
- 74. Appeals
- 75. Reviews

PART XIII – PETITION FOR THE REMOVAL OF  
THE DIRECTOR OF PUBLIC PROSECUTIONS

- 76. Petition for removal of the Director of Public Prosecutions

PART XIV – RESIGNATION,  
RETIREMENT AND RELATED MATTERS

- 77. Application of this Part
- 78. Resignation
- 79. Grounds for retirement and entitlement to pensions benefits
- 80. Retirement on the basis of age
- 81. Retirement on attainment of fifty years
- 82. Retirement on grounds of ill health
- 83. Retirement based on special contractual terms or a special retirement scheme
- 84. Retirement decisions reviewable

PART XV – HEARING AND DETERMINATION OF APPEALS  
IN RESPECT OF COUNTY GOVERNMENT PUBLIC SERVICE

- 85. Appeal from County Government public service
- 86. Procedure for appeal
- 87. The Commission may co-opt experts
- 88. Procedure for review of a decision in respect of a county public service board
- 89. Enforcement of appeal decision

PART XVI – COMMISSION'S REPORTS  
TO THE PRESIDENT AND PARLIAMENT

- 90. Annual Report
- 91. Report to be published

PART XVII – PROVISIONS ON DELEGATED POWERS

92. Regulations

PART XVIII – MISCELLANEOUS PROVISIONS

93. Communication of Commission's decisions

94. Service of notices, etc

95. Advance copies to the Commission

96. Special obligations of the authorized officer

97. Scheduled exercise of powers and functions of the Commission

98. Commission may assign alternative Job Groups

99. Management of information

100. Offences

101. Disclosure of interest

102. Repeal of Act No. 13 of 2012.

103. Transition

104. Transfer of assets, etc

SCHEDULES

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**NO. 10 OF 2017**

**PUBLIC SERVICE COMMISSION ACT**

[Date of assent: 7th April, 2017.]

[Date of commencement: 26th April, 2017.]

**AN ACT of Parliament to make further provision as to the functions, powers and the administration of the Public Service Commission established under Article 233 of the Constitution; to give effect to Article 234 of the Constitution and for connected purposes**

[Act No. 10 of 2017.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Public Service Commission Act, 2017.

**2. Interpretation**

In this Act, 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;

**"affirmative action"** means any measure designed to overcome or ameliorate an inequity or the systemic denial of opportunities;

**"appointment"** includes appointment, acting appointment, re-appointment, promotion and re-designation;

**"authorized officer"** in relation to the Commission, means any officer, body or authority appointed by the Commission to perform its delegated functions in a Ministry or State department, or any member of the Commission;

**"Cabinet Secretary"** means the Cabinet Secretary responsible for matters relating to the public service;

**"casual employee"** has the meaning assigned to it in the Employment Act (No. 11 of 2007);

**"Chairperson"** means the chairperson of the Commission appointed in accordance with Article 233(2) of the Constitution;

**"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;

**"Commission"** means the Public Service Commission established under Article 233 of the Constitution;

**"conditions of service"** means any right or obligation relating to a public officer including—

- (a) appointment;
- (b) standards of conduct;
- (c) removal;
- (d) working hours;
- (e) leave;
- (f) grievances;
- (g) disciplinary control;
- (h) medical care;
- (i) water;
- (j) welfare;
- (k) working environment;
- (l) housing; and
- (m) pension benefits.

**"confirmation in appointment"** means the placement of a public officer on permanent and pensionable terms of service upon completion of the probation period;

**"county government"** means a county government established under Article 176(1) of the Constitution;

**"Director"** means the Director of Public Prosecutions appointed under Article 157 of the Constitution;

**"disciplinary control"** includes control in so far as it relates to due process of justice and any of the lawful penalties that are provided for in this Act or specified in any written law;

**"Judicial Service Commission"** means the Judicial Service Commission established under Article 171(1) of the Constitution;

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

**"minor offence"** means any crime which upon conviction, the prescribed sentence is a fine or in default, imprisonment for a period not exceeding six months;

**"National Police Service Commission"** means the National Police Service Commission established under Article 246(1) of the Constitution;

**"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;

**"Parliamentary Service Commission"** means the Parliamentary Service Commission established under Article 127(1) of the Constitution;

**"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;

**"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;

**"a 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;

**"public service"** has the meaning assigned to it in Article 260 of the Constitution;

**"public officer"** means any person other than a state officer who holds a public office;

**"publicise"**, in relation to a document, means to make known to the public, through the national, local media and other lawful means;

**"publish"** in relation to a document, includes—

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

Provided that the posting, deployment or secondment of a public officer from one duty station to another in the same grade in the public service shall not be regarded as a re-designation;

**"representative"** means any person who represents a public officer on any matter related to the employment of the public officer and excludes an advocate or union representative;

**"reprimand"** means a form of disciplinary action imposed after formal charges that declares an officer's conduct improper;

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

**"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 and upon between the public officer and the relevant lawful authority;

**"secondment"** means an arrangement in which a pensionable employee is temporarily released from an organisation within the public service to another organisation which does not have reciprocal pension arrangements, to provide critical skills or acquire new skills while preserving the pension rights of the employee;

**"Secretary"** means the Secretary to the Commission appointed in accordance with Article 233(6) of the Constitution and the procedure set out in section 15;

**"State office"** has the meaning assigned to it in Article 260 of the Constitution;

**"Teachers Service Commission"** means the Teachers Service Commission established under Article 237(1) of the Constitution;

**"transfer"** means the deployment of an officer from one ministry to another or from one duty station to another;

**"transfer of service"** means the movement of appointment of a pensionable employee from one public service organization to another, which has reciprocal pension arrangements and has been declared a "Public Service" for purposes of preserving the employee's previous pensionable services; and

**"vice-chairperson"** means the vice-chairperson of the Commission appointed under Article 233(2) of the Constitution.

### 3. Scope and application

Subject to Articles 155(3)(a), 158(3), 234(2)(a), 234(3) and 252(1) of the Constitution and section 28 of the Kenya Defence Forces Act (No. 25 of 2012), this Act shall apply to all public bodies and persons holding office in the public service.

### 4. Guiding principles

The Commission shall in fulfilling its mandate, be guided by the national values and principles of governance in Article 10 of the Constitution and the values and principles of public service in Article 232 of the Constitution.

## PART II – COMPOSITION AND ADMINISTRATION

### 5. Powers of the Commission generally

The Commission has power to—

- (a) issue summons as may be necessary for the fulfilment of its mandate;
- (b) require that statements be given under oath or affirmation and to administer such oath or affirmation;
- (c) obtain, by lawful means, information it considers relevant, including requisition of reports, records, documents and any information from a person, including public bodies, and to compel the production of such information for the proper discharge of its functions;
- (d) interview a person or group of persons;

- (e) call upon a person to meet with the Commission or its staff, or to attend a session of the Commission subject to adequate provision being made to meet the expenses for that purpose;
- (f) compel the attendance of a person who fails to respond to a request of the Commission to appear before the Commission and to answer questions relevant to the subject matter of the session or hearing;
- (g) acquire, hold, charge and dispose movable and immovable property;
- (h) conduct audits in a public institution except those institutions excluded under Article 234 (3) of the Constitution, in order to establish the level of compliance of such institutions with the values and principles in Articles 10 and 232 of the Constitution;
- (i) require any public institution to provide a special report on matters relating to the institution's compliance with the values and principles in Articles 10 and 232 of the Constitution; and
- (j) do or perform all such other things or acts for the proper discharge of its functions under the Constitution, this Act and any written law as may lawfully be done or performed by a body corporate.

#### **6. Access to Commission services**

The Commission shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so, having regard to the nature of its services.

#### **7. Composition and appointment of members to the Commission**

(1) The Commission shall consist of a chairperson, vice-chairperson and seven other members.

(2) The members in subsection (1) shall be representative in terms of persons with disabilities, gender and ethnicity.

(3) The procedure set out in the First Schedule shall apply to the appointment of the members of the Commission.

(4) The members of the Commission shall serve on full-time basis for a term of six years and shall not be eligible for reappointment.

(5) Subject to Article 250(1) of the Constitution and the Third Schedule on the quorum of the Commission, the Commission shall be properly constituted notwithstanding a vacancy in its membership.

#### **8. Qualifications for appointment as chairperson and member of Commission**

(1) Subject to Article 233(3) of the Constitution, a person shall be qualified for appointment as the chairperson or vice-chairperson of the Commission if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years experience in their respective profession;
- (d) has at least six years experience in a managerial position either in the public or private sector; and
- (e) meets the requirements of leadership and integrity in Chapter Six of the Constitution.

- (2) A person shall be qualified for appointment as a member if such person—
- (a) is a citizen of Kenya;
  - (b) holds a degree from a university recognized in Kenya;
  - (c) has at least ten years experience in their respective profession; and
  - (d) meets the requirements of leadership and integrity in Chapter Six of the Constitution.

#### **9. Oath or affirmation of office**

The members of the Commission shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Second Schedule.

#### **10. Vacancy**

- (1) The office of a member of the Commission shall become vacant if the holder

- (a) dies;
- (b) resigns from office by notice in writing, addressed to the President; or
- (c) is removed from office in accordance with Article 251 of the Constitution.

(2) The President shall, within fourteen days after the occurrence of a vacancy in the office of a member, publish such vacancy in the newspaper and in the *Kenya Gazette*.

#### **11. Filling of Vacancy**

(1) Where a vacancy occurs in the office of the chairperson, vice-chairperson or member, the appointment procedure provided for in the Constitution and the First Schedule shall apply.

(2) In filling vacancies of the chairperson, vice chairperson and members of the Commission, the President shall have due regard to continuity of service.

(3) In accordance with sub section (2), the President shall ensure that the terms of the persons nominated do not lapse at the same time.

#### **12. Committees of the Commission**

(1) The Commission may from time to time establish such committees as may be necessary for the better carrying out of its functions and the exercise of its powers.

(2) The Commission may co-opt into the membership of any of the committees established under subsection (1), any person or persons whose knowledge and skills are necessary for the proper performance of the functions of the Commission.

(3) A person co-opted under subsection (2), shall have no right to vote at any meeting of the committee.

#### **13. Organisation of the Commission**

(1) The Commission may establish such directorates, departments, divisions or units as it may determine for the better carrying out of its functions.

(2) Every directorate, department, division or unit created by the Commission shall act in accordance with the mandate approved by the Commission and directives given by the Secretary.

**14. Conduct of business and affairs of the Commission**

(1) The conduct and regulation of the business and affairs of the Commission are as provided for in the Third Schedule but subject thereto, the Commission may regulate its own procedure.

(2) The Commission may invite any person to attend any of its meetings and to participate in its deliberations, but such a person shall not have a vote in any decision of the Commission.

**15. Secretary to the Commission**

(1) There shall be a Secretary to the Commission.

(2) The Secretary shall be recruited by the Commission through an open, transparent and competitive recruitment process.

(3) A person shall be qualified for appointment as the Secretary under subsection (1), if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years relevant professional experience;
- (d) has at least five years experience in a leadership position at senior management level in a public service or private sector organization; and
- (e) meets the requirements of leadership and integrity as prescribed in Chapter Six of the Constitution.

(4) The Secretary shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Fourth Schedule.

(5) The Secretary shall hold office for a term of five years and shall be eligible for re-appointment once.

(6) The Secretary shall be—

- (a) the chief executive officer;
- (b) the head of the secretariat of the Commission;
- (c) the accounting officer of the Commission;
- (d) the custodian of the records and seal of the Commission;
- (e) responsible for —
  - (i) the execution of the decisions of the Commission;
  - (ii) assignment of duties and supervision of the staff of the Commission;
  - (iii) the preparation and submission of the programmes necessary for the achievement of the Commission's mandate for approval by the Commission;
  - (iv) ensuring compliance by the staff with the values and principles of the public service; and
  - (v) the performance of such other duties as may be assigned by the Commission or any other written law.

(7) The Secretary may be removed from office on the following grounds—

- (a) inability to perform functions of the office arising out of physical or mental infirmity;

- (b) incompetence;
- (c) gross misconduct;
- (d) bankruptcy; or
- (e) violation of the Constitution.

(8) Before removal under subsection (7), the Secretary shall be informed, in writing, of the reasons for the intended removal, and shall be given an opportunity to put a defence against any such allegations, either in person or through a representative.

(9) The Secretary appointed under subsection (2) shall be a State officer.

#### **16. Secretariat**

(1) There shall be a secretariat of the Commission which shall be headed by the Secretary.

(2) The secretariat shall comprise of—

- (a) such professional, technical and administrative officers and support staff as may be appointed by the Commission; and
- (b) such public officers as may be seconded to the Commission upon its request.

(3) The Commission shall ensure that the appointments made under subsection (2), comply with Article 232 (g), (h) and (i) of the Constitution.

#### **17. Seal of the Commission**

(1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson and the Secretary or any other person authorized in that behalf by a resolution of the Commission.

(3) Any document purported to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

#### **18. Legal proceedings against the Commission**

The Government Proceedings Act (Cap. 40) shall apply with respect to any proceedings against the Commission.

#### **19. Protection from personal liability**

(1) Nothing done by a member, officer, member of staff or agent of the Commission shall, if done in good faith for the purpose of executing the powers, functions or duties of the Commission under the Constitution or this Act, render such member, officer, member of staff or agent personally liable for any action, claim or demand.

(2) Subsection (1) shall not relieve the Commission of the liability to pay compensation or damages to a person for an injury suffered by the person, their property, or any of their interests arising directly or indirectly from the exercise of any power conferred by this Act.

**20. Code of conduct of members and employees of the Commission**

Members and employees of the Commission shall subscribe to such code of conduct as the Commission may prescribe, by regulations.

**PART III – FINANCIAL PROVISIONS****21. Funds of the Commission**

The funds of the Commission shall consist of—

- (a) monies allocated by Parliament for purposes of the Commission;
- (b) any grants, gifts, donations or other endowments from legitimate sources given to the Commission; and
- (c) such funds as may vest in or accrue to the Commission in the performance of its functions under this Act or under any other written law.

**22. Annual estimates**

(1) At least three months before the commencement of each financial year, the Commission shall cause to be prepared estimates of revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Commission for the financial year concerned and in particular, shall provide for the—

- (a) payment of remuneration in respect of the staff of the Commission;
- (b) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Commission;
- (c) acquisition of assets and maintenance of the buildings and grounds of the Commission;
- (d) funding of training, research and development activities of the Commission; and
- (e) creation of such funds that may be necessary to meet future or contingent liabilities of the Commission in respect of benefits, insurance or replacement of buildings, installations, equipment and in respect of such other matters as the Commission may consider necessary.

(3) The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary responsible for finance for tabling in Parliament.

**23. Financial year of the Commission**

The financial year of the Commission shall be the period of twelve months ending on the thirtieth June in each year.

**24. Accounts and audit**

(1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Commission.

(2) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the Public Audit Act (No. 34 of 2015).

PART IV – ESTABLISHMENT AND ABOLITION  
OF OFFICES IN THE PUBLIC SERVICE

**25. Application of this Part**

This Part shall apply in the exercise of the Commission's constitutional function to establish and abolish offices in the public service under Article 234(2) (a) of the Constitution.

**26. Meaning of establishment of offices**

For the purpose of this Part, "establishment of offices in the public service" means the determination and creation of the number and kinds of offices in the public service.

**27. Conditions for establishment of offices**

(1) The Commission may establish an office in the public service after receipt of a written request by an authorized officer of a public body if the Commission is satisfied that—

- (a) the request is based on comprehensive plans informed by the public body's workload analysis;
- (b) the financial implications of creating the office are indicated;
- (c) the office to be created relates to or supports the core functions of the public body;
- (d) the office to be created is to be domiciled in the requesting public body;
- (e) information on the current authorized establishment, level of grading, designation, extra posts required and evidence of optimum utilization of existing posts has been submitted;
- (f) the office including its level of grading, qualification and remuneration shall not disadvantage similar offices in the public service or occasion unfair competition for staff among public bodies; and
- (g) the functions of the office to be established are consistent with the Constitution or any other legislation.

(2) The written request for establishment of an office shall include a statement by the respective authorized officer verifying that the conditions in subsection (1) have been met.

**28. Conditions for abolition of office**

(1) The Commission shall abolish an office in the public service upon receiving a written request by an authorised officer.

(2) The Commission in making a determination as to whether to abolish an office, shall satisfy itself that—

- (a) the office relates to the provision of public services that are no longer necessary in view of improved methods for service delivery;
- (b) the request is based on a comprehensive plan informed by the department's workload analysis;
- (c) there is an indication of the financial implications of abolishing the office, including savings to be made in relation to services relating to the office;



- (d) information on the current authorized establishment, level of grading, designation, and evidence of optimum utilization of existing posts is submitted;
- (e) the office when abolished shall eliminate duplication and overlaps of functions by public bodies; and
- (f) the functions of the office, if not abolished are inconsistent with the Constitution or any other legislation.

(3) Any decision by the Commission to abolish an office in the public service shall be subject to the due process of deployment, transfer, removing or retiring the affected public officer as prescribed under this Act or the terms and conditions applicable to the public officer.

### **29. Commission may act on its motion**

(1) Subject to the provisions of this Part, the Commission may on its own motion establish or abolish any office in the public service.

(2) The Commission shall, before establishing or abolishing an office under subsection (1), give the authorized officer of the concerned public body an opportunity to make representation in respect of the action to be taken under subsection (1).

(3) The Commission's decision to act on its own motion shall be based on the need to facilitate improvement in service delivery and shall comply with the conditions prescribed in section 28.

### **30. Recommendation to the President**

(1) Where the President, under Article 132 (4) (a) of the Constitution, requests the Commission to recommend the establishment of an office in the public service, the Commission shall act in accordance with the conditions provided for in this Part.

(2) Where the President considers it necessary to establish an office in the public service under Article 132 (4) (a) of the Constitution, a request to the Commission for recommendation for establishment of an office shall be in writing.

## **PART V – DELEGATION**

### **31. Delegation of powers**

(1) The Commission may, where appropriate and in writing, delegate any power or assign a duty conferred to it under the Constitution or this Act to its members, an officer, body or authority in the public service.

(2) A delegation or assignment under subsection (1) shall not prevent the Commission from exercising the power.

(3) A delegation under this section—

- (a) shall be subject to any conditions that the Commission may impose;
- (b) shall not divest the Commission of the responsibility concerning the exercise of the powers or the performance of the duty delegated, and
- (c) may be withdrawn, and any decision made by the person to whom the delegation is made may be withdrawn or amended by the Commission.

(4) The Commission may, at any time, institute an audit, investigation, inquiry or visit to determine whether the delegated powers are properly exercised by the authorized officer.

(5) Where the audit, investigation, inquiry or visit establishes that an authorized officer has breached any condition or improperly exercised delegated powers, the Commission shall take corrective measures including revoking the delegation.

PART VI – APPOINTMENTS, CONFIRMATION  
OF APPOINTMENTS, AND TRANSFERS

**32. Appointment of an authorized officer**

The Commission shall in writing, designate authorized officers to be responsible for the proper management of its delegated functions in ministries or state departments.

**33. Commission's authority to appoint**

(1) The Commission shall have such powers as may be necessary to discharge its functions under Article 234(2) (a) (ii) of the Constitution.

(2) The Commission's authority under subsection (1) shall be exercised at the request of the authorized officer of the public body to which the appointment needs to be made.

**34. Acting appointments**

(1) Acting appointments shall be—

- (a) made by the lawful appointing authority; and
- (b) subject to the prescribed regulations and procedures which apply to appointments.

(2) A person shall not be appointed to hold a public office in an acting capacity unless the person satisfies all the prescribed qualifications for holding the public office.

(3) An officer may be appointed in an acting capacity for a period of at least thirty days but not exceeding a period of six months.

(4) A public officer may be assigned to perform duties vested in another public officer during a temporary absence of the other public officer.

(5) An acting appointment under subsection (4) shall—

- (a) be in favour of a public officer who is duly qualified and competent to perform the duty; and
- (b) not undermine the expeditious appointment or deployment of a competent person to the public office concerned.

(6) The Commission shall, whenever it comes to its attention that an authorised officer has purportedly made an acting appointment or assignment, in contravention of the provisions of this section, take corrective action.

**35. 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 date as the Commission or authorised officer may determine.

**36. Criteria for appointment and promotion**

(1) In selecting candidates for appointment or promotions, the Commission or other lawful appointing authority shall have regard to—

- (a) merit, equity, aptitude and suitability;
- (b) the prescribed qualifications for holding in the office;

- (c) the efficiency of the public service;
- (d) the provable experience and demonstrable milestones attained by the candidate; and
- (e) the personal integrity of the candidate.

(2) For the purposes of this section, "merit" in regard to a person means, the person—

- (a) has the abilities, aptitude, skills, qualifications, knowledge, experience and personal qualities relevant to the carrying out of the duties in question;
- (b) has potential for development; and
- (c) meets the criteria set out in subsection (1).

(3) In making appointments or promotions, the Commission or authorized officer are bound by the constitutional principles which require that—

- (a) no applicant or candidate is discriminated on any ground;
- (b) no one gender constitutes more than two thirds of those appointed;
- (c) at least five percent of the appointments constitute persons with disabilities;
- (d) there is proportionate representation of all ethnic communities; and
- (e) the youth are appointed.

(4) For purposes of ensuring representation of the diverse Kenyan Communities in the public service, the Commission or authorized officer shall, where necessary, adopt affirmative action measures in line with Articles 27(6) and 56(c) of the Constitution.

(5) Where the Commission or other authorized officer prescribes a standard application form for submitting applications for employment, the Commission or other lawful appointing authority shall ensure that the form meets the requirements of this Act.

(6) Where an expatriate is to be appointed to a position that falls within the Commission's jurisdiction, the Commission shall approve such an appointment.

(7) The Commission shall approve the appointment of an expatriate only where the expertise sought is not locally available.

### **37. Advertisement of vacancies**

(1) Where a vacancy in a public office is to be filled, the Commission or authorized officer shall invite applications by advertising the vacancy in the Commission's website, at least one daily newspaper of nationwide coverage, the radio and other modes of communication, so as to reach as wide a population of potential applicants as possible.

(2) The Commission or an authorised officer shall ensure that an invitation for application does not discriminate against any person.

(3) The advertisements in subsection (1) shall be conducted in an efficient and effective manner so as to ensure that the applicants, including persons who for any reason have been or may be disadvantaged, have an equal opportunity to apply for the advertised positions.

(4) An advertisement inviting applications to fill any vacancy in a public office shall provide for—

- (a) the title and rank of the public office;

- (b) the public body in which the office is tenable;
- (c) the background and context of the work, where necessary;
- (d) the terms of employment;
- (e) the applicable remuneration including salary, allowances and other benefits;
- (f) the prescribed qualifications applicable, including any desired previous achievements;
- (g) the core duties of the office;
- (h) the expected deliverables of the office;
- (i) the supervision, accountability and reporting arrangements;
- (j) any added advantage applicable;
- (k) the mode and deadline of transmitting the application;
- (l) any consideration that may occasion disqualification; and
- (m) any consideration of equity or affirmative action.

**38. Decision to be in writing**

Any appointment, acting appointment, promotion, re-designation, transfer, deployment, delegation or assignment of a duty in the public service shall be in writing.

**39. Record of applicants**

The Commission or any other lawful appointing authority shall maintain a record of all applications received in response to an advertisement inviting applications.

**40. Re-designation**

(1) The criteria for appointment of public officers prescribed under this Part shall apply when selecting public officers for re-designation.

(2) A public officer who wishes to re-designate shall apply, in writing, to the respective authorized officer or to the Commission through the concerned authorized officer, as the case may be, for re-designation.

(3) A public officer may be re-designated to hold or act in a public office if—

- (a) the office is vacant;
- (b) he or she meets all the qualifications;
- (c) the re-designation shall not disadvantage any public officer who is already serving in the particular cadre;
- (d) the officer has consented to such a decision; and
- (e) the decision shall not reduce the public officer's salary.

(4) A re-designation shall take effect on a date to be determined by the Commission or authorized officer.

**41. Confirmation of appointment**

(1) Where it is necessary to appoint a public officer on probationary terms before confirmation of appointment, the probationary period shall not exceed six months but may be extended, with the consent of the public officer, for a further period of not more than six months.

(2) The probationary period of service shall not be extended except on account of—

- (a) affording the public officer further opportunity to fulfil a condition for confirmation of appointment prescribed in writing prior to the appointment of the public officer; or
- (b) affording the public officer an opportunity to improve with respect to any matter in which the public officer's work or conduct have been adversely reported on.

(3) An authorized officer or the Commission shall, where it is necessary to extend a probationary period—

- (a) notify the affected public officer of the intended extension at least thirty days before the expiration of the probationary period; and
- (b) give reasons for the intended extension.

(4) Where the affected public officer is not notified in accordance with subsection (3), or where the authorized officer has failed to confirm the appointment of the public officer who was initially appointed on probationary terms and the probationary period has lapsed, the officer shall stand confirmed in appointment upon the expiry of the probationary period.

(5) The period served on probationary terms shall be taken into account when computing the period of service for the purpose of payment of pension benefits, gratuity or any other terminal benefits.

(6) Appointment on probationary terms shall only apply to a person appointed from outside the public service and shall not apply to any person already employed in the service of the county governments, the national government or any public body.

#### **42. Secondment**

(1) The authority to second a public officer shall vest in the Commission and shall be carried out on the request of an authorised officer or a public officer.

(2) Unless there is an agreement to the contrary, the public body or the organization to which a public officer is seconded shall bear all the costs, remuneration, allowances and other benefits due to the officer during the period of secondment.

(3) Where it is no longer necessary for a public officer on secondment to remain seconded and the secondment period has not lapsed, the public officer shall be entitled to revert to the public office held before the secondment.

(4) The Commission shall not approve secondment of a public officer, if—

- (a) the public officer to be seconded has not served in the public service for at least three consecutive years after the initial appointment;
- (b) the public body or organization to which the public officer is to be seconded presents a conflict of interest with the public office held by the public officer or the core functions of the public body in which the public officer is employed;
- (c) the public officer may be exposed to undesirable experience in view of the core functions of the organization to which the public officer is to be seconded ; or
- (d) the secondment, if permitted, would bring the public service or the public officer into disrepute.

(5) An authorised officer or other lawful authority shall not approve a request for secondment unless the Commission has approved the secondment in writing.

(6) The period of secondment shall vary from case to case depending on the overall assessment under this Act but shall not in any case exceed the prescribed period:

Provided that a public officer who intends to remain on secondment after the expiry of six consecutive years, shall retire from the public service with accrued retirement and other terminal benefits in accordance with the relevant law or agreement.

#### **43. Transfer**

(1) Where an authorized officer intends to transfer a public officer from the ministry or department where such a public officer is currently deployed to another ministry or department without a change of designation or grading, the recommendations and comments of the authorized officer concerned shall be sent to the Commission, which shall decide whether the transfer should be approved.

(2) Where an authorized officer intends to transfer a public officer from the office where such a public officer is currently deployed to another office of different designation but of similar grading, either in the same ministry or department, the authorized officers concerned shall forward their recommendations and comments to the Commission, which shall decide whether the transfer should be approved.

(3) In effecting a transfer the following shall be taken into account—

- (a) the transfer shall lead to improved service delivery;
- (b) the interest of the children, if any, of the affected public officer; and
- (c) the transfer shall not be arbitrary.

(4) Nothing in this Part shall apply to—

- (a) the posting of public officers from one station to another in their substantive capacities within ministries or departments; or
- (b) the transfer between ministries or departments of public officers in any office which is common to departments generally, which shall be effected by the authorized officers concerned in consultation, where necessary, with the Commission.

#### **44. Casual service**

The Commission shall prescribe the terms and conditions for employment of casual employees within the public service.

#### **45. Service on contractual terms**

(1) A person may be engaged on a term of contract, for a period of at least twelve months but not exceeding five years.

(2) A person may be engaged on a term of contract if the following requirements are met—

- (a) the office where such a person is to be deployed has been created by the Commission;
- (b) the office where such a person is to be deployed exists in the contractual establishment;
- (c) the person has expressed the desire to serve on a term of contract;
- (d) there is no other public officer performing the function; and
- (e) the person does not qualify to be employed under any other terms of service.

(3) The extension of a term of contract may be allowed by the Commission or other appointing authority if—

- (a) the workload justifies further engagement;
- (b) the performance of the public officer is satisfactory;
- (c) the public officer has expressed, in writing, the willingness to engage for a further term of service;
- (d) the decision shall in no way disadvantage any public officer employed on permanent terms; and
- (e) the decision is made at least three months before the expiry of the affected public officer's term of contract.

(4) The Commission shall regulate the employment of persons on a term of contract as contemplated under this section.

#### **46. Nomination or recommendation for appointment**

(1) Where the Commission is required by the Constitution or any legislation to nominate or recommend a person for appointment, the Commission shall—

- (a) abide by the Constitutional requirement of fair competition and merit as a basis of appointment; and
- (b) ensure that the appointment facilitates achievement of a representative public service.

(2) The Commission shall, subject to the Constitution or any other legislation prescribe, in regulations, the qualifications and criteria for nomination to the public office for which it is required to nominate a person for appointment.

#### **47. Recommendation for appointment of Principal Secretaries**

(1) This section applies to the recommendation of persons for nomination by the President for appointment as Principal Secretary under Article 155 (3) (a) of the Constitution.

(2) A person is eligible for appointment as a Principal Secretary if the person—

- (i) is a citizen of Kenya;
- (ii) holds a degree from a university recognized in Kenya;
- (iii) has at least ten years relevant professional experience, five years of which should have been in a leadership position or at a top management level in the public service or private sector;
- (iv) possesses general knowledge of the organization and functions of Government;
- (v) demonstrates an understanding of the goals, policies and developmental objectives of the nation;
- (vi) has demonstrable leadership and management capacity including knowledge of financial management and strategic people management; and
- (vii) meets the requirements of Chapter Six of the Constitution.

(3) The Commission shall, in making the recommendations under this section, submit to the President a list of nominees for appointment, paying attention to inclusiveness in terms of gender, Kenya's diverse communities, persons with disabilities and the youth.

(4) In case of a rejection of a nominee or nominees by the President, the Commission shall recommend a fresh list of nominees from those interviewed by the Commission.

**48. Affirmative action**

The Commission shall make regulations to give effect to the requirements of the Constitution regarding inclusiveness in terms of gender, Kenya's diverse communities, persons with disabilities and the youth.

**49. Staff of partnerships and joint ventures**

The terms of contract with respect to staff in a joint venture or partnerships shall apply for the period of joint venture or partnership.

**50. Protection of accrued rights and benefits**

Subject to this Act, where a public officer is appointed, re-designated or seconded from one public body to another public body, the public officer's accrued benefits relating to the previous period in public service shall not be lost.

**51. Vacancies dependant on exams**

Where vacancies are to be filled in accordance with the results of examinations approved by the Commission, the Commission shall make such arrangements and issue such directions as may be appropriate.

PART VII – REVIEWING AND MAKING RECOMMENDATIONS  
TO THE NATIONAL GOVERNMENT ON CONDITIONS OF  
SERVICE, CODE OF CONDUCT AND QUALIFICATIONS

**52. Application of this Part**

This Part shall apply to the discharge of the functions and powers of the Commission under Article 234(2)(g) of the Constitution.

**53. Conditions of service**

(1) Except where conditions of service applicable to a public officer are more favourable than those prescribed in any written law governing employment, the provisions of the written law shall apply to public officers.

(2) The Commission may on its own initiative or upon request by any authorized officer, make recommendations on the conditions of service relating to public officers to the Cabinet Secretary.

(3) The Commission shall give any interested party an opportunity to make representations before reviewing or making any recommendation under this section.

(4) The Commission shall establish a framework for the continuous review of the conditions of service of the public service by taking into account the priorities and changing needs of the public service.

(5) The factors that shall guide the Commission when reviewing and making any recommendation under this section shall include—

- (a) parity of treatment of public officers;
- (b) any current or future needs of a public body;
- (c) legitimate expectations of respective public officers including the accrued or accruing benefits;



- (d) the need to harmonise the conditions of service of public officers;
- (e) fiscal sustainability;
- (f) the need to attract and retain qualified and motivated public officers;
- (g) the need to compensate rare, unique, innovative or talented performers;
- (h) productivity;
- (i) legislation; and
- (j) the cost of living.

**54. Code of conduct**

(1) The Commission may, on its own initiative, on request by any authorized officer or request by a professional body, review and make recommendations on any code of conduct applicable to any public body, category of public officers or all public officers in a public body.

(2) The Commission shall from time to time take measures to review the codes of conduct by taking into account the priorities and changing needs of the public service.

(3) The Commission shall, when reviewing and making recommendations relating to any code of conduct, take into account—

- (a) the national values and principles of governance in Article 10 of the Constitution;
- (b) the values and principles of public service in Article 232(1) of the Constitution;
- (c) the provisions of Chapter Six of the Constitution;
- (d) any statutory provisions governing the conduct of a profession or occupation;
- (e) any views of affected parties; and
- (f) any applicable legislation, convention or treaty.

**55. Review of qualifications**

(1) The Commission may on its own initiative, upon request by any authorized officer, public officer, professional body or association, review and make recommendations to the Cabinet Secretary on qualifications relating to a public office, category of public offices or all public officers in a public body.

(2) The Commission or any other lawful authority shall not appoint any person to hold or act in a public office for which qualifications have not been determined.

(3) The Commission may in reviewing the qualifications, consult the relevant professional bodies.

(4) The Commission shall afford interested or affected persons an opportunity to make representations before reviewing or making recommendation under this section.

(5) The Commission shall be guided by the following factors when reviewing and making recommendations on qualifications under this section including—

- (a) parity of treatment of public officers;
- (b) the human resource needs of the public office;
- (c) legitimate expectations of the public officers concerned, including career progression;

- (d) the need to eliminate unfair competition for available human resource among public bodies;
- (e) the prevailing and projected workload status of the concerned public body;
- (f) the capacity of the country to generate persons holding the desired competencies and skills attached to the concerned public office;
- (g) the need to attract and retain competent, qualified and motivated public officers;
- (h) the need to build a service that embraces continuous improvement and innovation;
- (i) the need to standardize qualifications in the service; and
- (j) any applicable convention or treaty relating to employment.

(6) The Commission shall, when recommending qualifications establish the necessary framework to ensure that the qualifications do not in any way disadvantage either gender, persons from marginalized and minority communities, persons with disabilities or the youth.

(7) In reviewing the qualifications, the Commission shall—

- (a) specify the public offices, category of public offices, profession or occupation that the qualification applies to;
- (b) indicate the date on which the qualification was approved by the Commission;
- (c) specify the effective date of the qualification;
- (d) clearly define job descriptions and specifications, and clearly delineate duties and responsibilities at all grades or ranks within the grading structure, to enable a public officer to understand the requirements and demands of the job; and
- (e) clearly indicate likely career progression and mobility.

(8) The Commission shall every three years review, publish qualifications relating to all public offices established by the Commission or under the authority of the Commission.

(9) The Commission shall issue a report of its review made under this section to the National Government.

(10) The Cabinet Secretary or any authorised officer, to whom the report has been issued, shall publicise the information to public officers working under them.

(11) A determination, review or recommendation of qualifications shall not apply retrospectively to a public officer who is already holding or acting in the public office with respect to which the qualifications relate.

(12) Where a qualification is reviewed, the review shall not have the effect of automatically promoting the affected serving public officers to the upgraded grade or rank.

(13) A decision to promote the public officers affected by the review shall be made by the Commission or other lawful appointing authority in accordance with the provisions of this Act.

PART VIII – DEVELOPMENT OF HUMAN  
RESOURCE IN THE PUBLIC SERVICE**56. Human resource development**

(1) The Commission shall, in the discharge of its Constitutional mandate of developing human resources in the public service—

- (a) review and issue human resource training and development policy and guidelines;
- (b) prescribe procedures and instruments governing the development of human resources in the public service;
- (c) prescribe measures for prudent utilization of the training funds in public bodies;
- (d) ensure that training needs assessment and projections are undertaken by every authorized officer;
- (e) ensure the training of public officers in accordance with this Part;
- (f) ensure equity in the provision of training opportunities to public officers;
- (g) prescribe measures for ensuring merit in the selection and award of training opportunities for public officers;
- (h) ensure that every authorized officer undertakes annual assessment of the impact of training programmes in the concerned public body;
- (i) prescribe measures to guarantee effective orientation and induction programmes in the public service; and
- (j) monitor and evaluate the effectiveness of Government training programmes geared towards improvement of performance and qualifying to hold a public office.

(2) The human resources in the public service shall be developed in order to—

- (a) continuously improve professional knowledge and skills needed for better performance of duties by public officers and public bodies;
- (b) bring about the right attitudinal orientation of public officers;
- (c) promote responsiveness to the prevailing socioeconomic and political environment in which the public bodies operate and scientific and technological developments;
- (d) enhance commitment to democratic values, partnership and participative decision making;
- (e) achieve a factual and scientific approach to decision making;
- (f) achieve high performance in every public body or public office;
- (g) promote and protect human rights and freedoms as provided for in the Constitution; and
- (h) promote an ethical environment for public service delivery in accordance with the national values and principles of governance and principles and values of public service as provided for in the Constitution.

(3) The Commission and any other lawful authority shall take into account the objectives set out in subsection (2) when developing human resources in the public service.

PART IX – INVESTIGATION, MONITORING AND  
EVALUATION OF THE ORGANIZATION, ADMINISTRATION  
AND PERSONNEL PRACTICES OF THE PUBLIC SERVICE

**57. Monitoring and evaluation of the administration of the public service**

(1) In this Part, 'administration' includes the management of policies, resources, systems and procedures and the provision of professional advisory services in the public service, to achieve integrity, efficiency, effectiveness, uniformity and improvement of service delivery.

(2) The Commission shall discharge its duty under this section by monitoring, evaluating and reporting on a public body's—

- (a) core functions;
- (b) medium and long term plans for the delivery of the core functions;
- (c) structural organization;
- (d) direction taken in terms of goals and objectives; and
- (e) staffing needs including establishment and terms and conditions of service.

(3) The Commission shall by regulations set criteria for carrying out these duties.

**58. Organization of the public service**

(1) In this Act, "organization of the public service" means the organizational structures and establishment of departments, divisions, directorates, units, sections and other organizational or governance arrangements in the public service.

(2) The Commission shall investigate, monitor and evaluate the organization of the public service with respect to any public body and make recommendations to the public body, the President and Parliament.

(3) The recommendations of the Commission under subsection (2) may include

- (a) establishment of any public body including a state department;
- (b) amalgamation of any public bodies including state departments;
- (c) addition to or subtraction from a department or division, directorate, unit, section or other organizational arrangement;
- (d) naming or renaming of any public body, department or division, directorate, unit, section or other organizational arrangement; or
- (e) abolition of any public body, department or division, directorate, unit, section or other organizational arrangement.

(4) Where the Commission is vested with the constitutional function to abolish the public offices that would be subject to a recommendation under subsection (3), instead of making the recommendation, the Commission shall take the necessary action.

(5) Where the Commission's recommendations under subsection (3)(a) are addressed to the President, such recommendations may be construed to be recommendations for establishment of an office in the public service within the meaning of Article 132(4)(a) of the Constitution.

**59. Personnel practices in public service**

For the purposes of this section, "personnel practices" means the standards, norms and practices applicable to entry, conduct, retention and removal of a public officer with respect to—

- (a) personnel records management;
- (b) human resource planning and management;
- (c) succession planning and talent management;
- (d) advertisement of vacancies, recruitment and selection procedures and criteria;
- (e) appointment, promotion, re-designation and related processes;
- (f) job and occupational classification and grading;
- (g) remuneration and other conditions of service;
- (h) salary and payroll administration;
- (i) job assignments;
- (j) working environment;
- (k) qualifications attached to a public office;
- (l) training and development;
- (m) employee performance management systems;
- (n) deployment and secondment;
- (o) disciplinary control;
- (p) removal from service;
- (q) grievance management;
- (r) management of cases of ill health;
- (s) staff welfare; and
- (t) any other duty that is undertaken by a human resource officer in a public body.

**60. Investigation**

The Commission may, upon a complaint or on its own motion, investigate the organization, administration and personnel practices of the public service.

**61. Reporting and use of findings**

Upon investigation, monitoring and evaluation under this Part, the Commission shall communicate its findings to the respective authorised officer, public body or office, and where necessary, take appropriate action.

**PART X – EFFICIENCY AND EFFECTIVENESS OF THE PUBLIC SERVICE****62. Promotion of efficiency and effectiveness of the public service**

(1) The Commission shall promote efficiency and effectiveness of the public service by—

- (a) setting standards in service delivery for evaluating performance in the public service;
- (b) evaluating the organization and core functions of public bodies with respect to human resources, internal processes, citizens' satisfaction and recommending measures for improved performance;

- (c) setting the performance contract guidelines in the public service and ensuring compliance with the Commission's set standards;
- (d) providing guidelines on performance appraisal systems for public bodies and the individual public officers;
- (e) evaluating performance agreements between the government and public bodies or individual public officers; and
- (f) investigating and making recommendations to the authorized officer on its own motion or upon receipt of a complaint on inefficiency and ineffectiveness of service delivery in public bodies including—
  - (i) general practices that lead to inefficiency in the public service; and
  - (ii) reported breach of any law, code of conduct or values and principles of governance and public service; or
  - (iii) making recommendations to the respective authorised officer, public body or office for improved efficiency and effectiveness of the public service.

(2) The Commission may impose sanctions and make recommendations to the President on any penalty to be imposed on an authorized officer who does not ensure efficiency and effectiveness of a public body.

**PART XI – PROMOTION OF AND REPORTING ON  
VALUES AND PRINCIPLES OF GOVERNANCE AND  
VALUES AND PRINCIPLES OF PUBLIC SERVICE**

**63. Promotion of values and principles of governance**

(1) The Commission shall, in accordance with Article 234 (2) of the Constitution, promote within the public service the national values and principles of governance and values and principles of public service in Articles 10 and 232 (1) of the Constitution by—

- (a) integrating the values and principles in the regulations, procedures, policies and instruments for delivery of the Commission's powers and functions;
- (b) informing and educating public officers and the public about the values and principles for the purpose of practicing the values and principles;
- (c) formulating and implementing programmes intended to inculcate in the public officers and citizens awareness of their civic responsibilities and appreciation of their duty to uphold the values and principles;
- (d) overseeing the implementation and effectiveness of the programmes in paragraph (c);
- (e) assessing and reporting on the public bodies' compliance with their obligations under international treaties and conventions on good governance, integrity and anti-corruption;
- (f) collaborating with other institutions working in the field of good governance, integrity and anti-corruption for the purpose of promoting and protecting the values and principles of governance in public service;
- (g) reporting or recommending to the President and Parliament on action taken or effective measures for promotion of the values and principles; and

- (h) performing such other functions as the Commission may consider necessary for the promotion and protection of the values and principles.

#### **64. Report on national values and principles**

(1) The Commission shall evaluate and prepare a report to the President and Parliament on the extent to which the values and principles referred to in Articles 10 and 232 of the Constitution are complied with in the public service.

(2) The Commission shall publish and publicize the report made under this Part.

(3) The Commission shall communicate to an authorized officer or public body on instances of non compliance with values and principles stipulated in Articles 10 and 232 of the Constitution, and require such compliance within a specified period.

(4) Any authorized officer or public body who refuses, fails or neglects to comply with the national values and principles shall be liable to disciplinary action in accordance with the applicable laws including removal from office.

### PART XII – EXERCISE OF DISCIPLINARY CONTROL IN THE PUBLIC SERVICE

#### **65. Delegation of disciplinary powers to authorized officers**

(1) The power to exercise disciplinary control within the public service shall vest in the Commission.

(2) The Commission may subject to this Act and to such instructions as it may determine, delegate the following disciplinary powers to its authorized officers—

- (a) in respect of all public officers the power—
  - (i) to interdict any public officer;
  - (ii) to suspend any public officer;
  - (iii) to stop, withhold or defer a normal increment of any public officer;
  - (iv) to reprimand a public officer; or
  - (v) to stop a public officer's pay or salary.
- (b) in grades as may be determined by the Commission in the regulations, the power of dismissal or reduction in rank or seniority as provided for under this Part.

(3) Where a public officer, at the time of the proceedings for dismissal or reduction in rank or seniority, has served for an aggregate of fifteen years or more, the authorized officer shall not exercise the delegated power of dismissal or reduction in rank or seniority but shall, after the investigations, forward the case to the Commission for determination.

(4) Any authorized officer exercising the powers delegated under subsection (2) shall act in accordance with—

- (a) this Act;
- (b) the Constitution or any other written law; and
- (c) such directions as the Commission may, from time to time, issue.

#### **66. Authorized officer may impose penalties**

(1) Despite any other provisions of this Act, an authorized officer may, without reference to the Commission—

- (a) after investigation and after giving a public officer an opportunity to make representation, which shall be recorded, reprimand the public officer; or
- (b) stop the pay or salary of a public officer who has been absent from duty without leave, lawful cause or reasonable excuse, an amount equivalent to the public officer's pay or salary for such period of absence.

(2) An authorized officer exercising delegated powers under this section shall act in accordance with provisions of this Part.

#### **67. Absence from duty without leave**

Where a public officer is absent from duty without leave, reasonable or lawful cause for a period exceeding twenty-four hours and the public officer cannot be traced within a period of ten days from the commencement of such absence, or if traced, no reply to a charge of absence without leave is received from the public officer within ten days after the dispatch of the charge to such public officer, the authority empowered to dismiss the public officer may summarily dismiss the public officer:

Provided that if the public officer replies to the charge, the disciplinary process as prescribed under this Part shall apply to the case and if the public officer cannot be traced within a period of ten days from the commencement of such absence, the authorised officer shall stop the payment of salary and other remunerative allowances and report the case of the missing public officer to the officer's next of kin and the Commission for appropriate action, including relevant investigation.

#### **68. Types of penalties**

(1) Subject to any other Act of Parliament, the penalties which may be imposed on a public officer as a result of disciplinary proceedings include—

- (a) recovery of the cost or part of the cost for any loss or breakage caused by default or negligence, provided no such cost has been recovered by surcharge action under the appropriate financial instructions or regulations;
- (b) reprimand;
- (c) deferment of increment in salary;
- (d) deferment of a promotion:

Provided that where deferment of a promotion is imposed, the imposition shall not persist for a period exceeding twelve months and the deferred promotion shall take effect on the date the deferment lapsed;

- (e) dismissal; and
- (f) reduction in rank or seniority.

(2) Nothing in this section shall limit the powers conferred on the Commission or any other lawful authority discharging a disciplinary function to, instead of imposing a penalty, require a public officer to retire from public service on any of the grounds of retirement prescribed under this Act.

(3) For purposes of this section, retirement on any ground may be allowed instead of a penalty if the prescribed conditions and procedures for such retirement as prescribed under this Act have been satisfied and the Commission or any other



lawful authority discharging a disciplinary function considers upon proof of the misconduct that—

- (a) the public officer has nevertheless raised a mitigating factor which renders imposition of a penalty too harsh in view of the circumstances of the case;
- (b) the length of service, benefits accrued and previous good record of the public officer justifies the retirement;
- (c) imposing a penalty against the public service officer is likely to adversely affect the reputation of the public body concerned or the public service generally:

Provided that the Commission or other lawful authority shall cause the relevant procedure for the intended retirement to be adhered to in view of the circumstances of the case.

(4) Subject to any law or such agreement as may be in force, a public officer who is dismissed shall forfeit all rights or claims to a pension, gratuity, annual allowance or other retiring award, and any rights or claims that the public officer enjoys in regard to leave or passages at the public expense.

#### **69. General principles of disciplinary process**

(1) A public officer who commits an act of misconduct shall be dealt with immediately in accordance with this Part.

(2) If any case comes to the attention of the Commission and the Commission is of the opinion that disciplinary proceedings should be instituted against a public officer, the Commission shall, despite any other provisions of this Act, direct the authorized officer to initiate such proceedings.

(3) The Commission or any other lawful authority shall not prescribe any disciplinary process that offends the rules of natural justice.

(4) No penalty shall be imposed against a public officer unless—

- (a) the public officer has been notified, in writing, of the particulars of the misconduct as preferred, including the applicable provision of the Constitution, legislation or code of conduct alleged to have been breached;
- (b) the officer has been given a reasonable opportunity to respond to the allegations;
- (c) the allegations have been investigated by a public officer or officers who are senior to the officer subject to the proceedings or by any other lawful authority, and the findings are such that the public officer has committed the misconduct as alleged;
- (d) the person or authority investigating the case has not been directly or indirectly involved in the case as a witness or complainant or otherwise as an interested party; and
- (e) the mitigating or aggravating circumstances of the case have been considered.

(5) Where a penalty is imposed in a disciplinary process, the affected public officer or the representative shall be informed of the outcome of the disciplinary process, including such penalty that may have been imposed and any right of appeal or review, in writing.

(6) Every alleged case of misconduct that is likely to lead to the commencement of a disciplinary action shall be—

- (a) promptly recorded and reported by the relevant supervisor; and
- (b) investigated without delay and a report which shall be submitted together with relevant evidence compiled.

(7) In every investigation of an alleged misconduct, the lawful authority or public officer undertaking the investigation shall—

- (a) establish and maintain a record relating to the investigation;
- (b) give every party involved especially the affected public officer a chance to produce relevant documents, call and examine witnesses, and peruse any documents that may have been produced;
- (c) record all relevant and material oral and documentary evidence;
- (d) record details of any matter which may aggravate or mitigate the case; and
- (e) sum up the case and record the comments in order to clearly show the findings and opinion on the issues under investigation in view of the evidence and the mitigating or aggravating factors on record.

(8) A person involved in investigating a disciplinary case shall not impose any penalty but only make findings and recommendations reserving imposition of penalty, if any, to be decided by the Commission or the authorized officer or other person vested with authority to do so.

(9) A member of the Commission, an authorised officer or any other person vested with the function and power to impose a penalty in a disciplinary process shall not be involved as an investigator of any disciplinary case.

(10) Where disciplinary proceedings have been taken against a public officer under this Act, the public officer shall be informed, by the Commission, authorized officer or other lawful authority, of—

- (a) the findings on each alleged misconduct which has been preferred against the public officer;
- (b) the penalty, if any, to be inflicted upon the public officer; and
- (c) the right to appeal or application for review with the Commission or other lawful authority within the time prescribed in the applicable disciplinary procedures.

(11) Any disciplinary proceeding against any public officer shall uphold the right to a fair administrative action as provided for in Article 47 of the Constitution and the Fair Administrative Action Act (No. 4 of 2015).

(12) Where a case is filed in any court against a public body or an authorized officer relating to a disciplinary case involving a public officer, the concerned authorized officer shall, as soon as possible, notify the Commission.

## **70. Interdiction**

(1) Where an authorized officer is satisfied that public interest requires that a public officer should immediately cease to exercise the powers and functions of public office, the authorised officer may, where proceedings which may lead to the public officer's dismissal are being taken or are about to be taken or criminal proceedings are being instituted against the public officer, interdict the public officer from the exercise of those functions and powers.

(2) A public officer who is interdicted shall receive half basic salary and full house allowance but other benefits shall be withheld by the authorised officer:

Provided that a public officer on interdiction shall be paid medical allowance or medical insurance premium remitted, whichever is the case.

(3) Where disciplinary or criminal proceedings have been instituted against a public officer under interdiction and the public officer is not dismissed or otherwise punished, any benefit withheld under subsection (2) shall be restored to the public officer upon the termination of such proceedings.

(4) A public officer who is under interdiction shall not leave the duty station without the permission of the authorized officer or any public officer who is vested with the powers to give such permission on behalf of the authorized officer.

(5) Under this Part, "salary" refers to basic salary and, where applicable, includes overseas allowance.

#### **71. Suspension**

(1) Where a public officer has been charged with a serious criminal offence, an authorized officer shall suspend the public officer from the exercise of the functions of the public office pending consideration of the public officer's case under this Act.

(2) An authorized officer may suspend a public officer against whom proceedings for dismissal have been taken if, as a result of those proceedings, the authorised officer determines that the public officer ought to be dismissed.

(3) A public officer who is suspended shall receive a half basic salary and full house allowance but other benefits shall be withheld by the authorised officer:

Provided that an officer on suspension shall be paid medical allowance or medical insurance premium remitted whichever is the case.

(4) Where a public officer has been suspended but is not dismissed or otherwise punished under this Act, any salary, allowances or any other benefit withheld under this section shall be restored to the public officer upon termination of such proceedings.

(5) Where a public officer has been suspended and the public officer is not dismissed but a penalty under this Act is imposed, any salary, allowances or any other benefit withheld under this section shall not be restored upon termination of such proceedings:

Provided that upon termination of such proceedings, the officer shall be reinstated to the public office held at the commencement of the proceedings or demoted in accordance with the prevailing terms and conditions of service applicable to the office and with effect from the date of the decision to terminate the proceedings.

(6) A public officer who is suspended shall not leave the duty station without the permission of the authorized officer or of any public officer who is empowered to give such permission on behalf of the authorized officer.

#### **72. Duty to update interdicted or suspended officer**

(1) Where a public officer has been interdicted or suspended, the public officer may, in writing, request the authorized officer to communicate the progress and action taken towards the conclusion of the disciplinary case.

(2) Where a public officer has made a request in accordance with subsection (1), the authorized officer shall reply within thirty days from the date of receipt of the officer's request.

(3) Where a public officer has made a request in accordance with subsection (1) and the authorized officer has failed to respond within the period specified in subsection (2) or the public officer is dissatisfied with the response, the public officer may apply to the Commission for the lifting of the interdiction or suspension.

(4) The Commission shall upon receipt of an application under subsection (3) make a decision which may include the termination of the disciplinary proceedings.

### **73. Officer convicted of criminal offence**

(1) If a public officer is convicted of a criminal offence and in the opinion of the authorized officer, it warrants the imposition of any of the penalties prescribed under this Act, the authorized officer shall forward a copy of the charge sheet and judgment and any judgment or order made on appeal or revision to the Commission for consideration.

(2) The Commission shall consider the documents forwarded under subsection (1) and determine, by relying solely on the court record leading to the conviction, whether the public officer should be dismissed or be subjected to any of the other penalties prescribed under this Act or other legislation.

(3) For the purposes of this section, proceedings for minor offences may be disregarded, and disciplinary proceedings shall be confined to criminal proceedings under the Penal Code (Cap. 63) and other Acts where a prison sentence may be imposed, other than in default of payment of a fine.

### **74. Appeals**

(1) Any person who is dissatisfied or affected by a decision made by an authorized officer or other authority in exercise or purported exercise of disciplinary control against any public officer under this Act may appeal to the Commission.

(2) An appeal under subsection (1) shall be made in writing within ninety days from the date of the decision appealed against:

Provided that the Commission may consider an appeal that was made out of time if, in the opinion of the Commission, the circumstances warrant such consideration.

(3) The Commission shall not entertain an appeal by a public officer or a representative of a public officer, in respect of a particular decision, more than once.

(4) Despite the right of appeal conferred on a public officer by this section, disciplinary action shall not be deferred or suspended pending the determination of the appeal.

(5) After considering an appeal, the Commission may—

- (a) uphold the decision;
- (b) set the decision aside;
- (c) vary the decision as it considers to be just;
- (d) give such directions as it may consider appropriate with respect to the decision;
- (e) direct the refund, reinstatement of remuneration or release of any withheld payments due to the public officer as it considers to be just;
- (f) direct that disciplinary action be taken against any public officer who has failed to discharge a duty that was the public officer's responsibility to perform in relation to the disciplinary case and the concerned public body has suffered a loss; or

- (g) make any other appropriate decision in view of the circumstances of the case.

(6) Where the Commission sets aside a decision under subsection (5)(b), the public officer shall revert to the previous status held and receive the attendant benefits as though the decision set aside was never made.

#### **75. Reviews**

(1) A person who is dissatisfied or affected by a decision made by the Commission on an appeal may apply for review and the Commission may admit the application if—

- (a) fresh material facts arise which with due diligence could not be presented when the decision was initially made; or
- (b) there is an error apparent on the record of the earlier decision.

(2) An application for review under subsection (1) shall be in writing and made within six months from the date of the decision to be reviewed:

Provided that the Commission may entertain an application for review out of time if, in the opinion of the Commission, the circumstances warrant it.

(3) Despite the right to apply for review conferred on a public officer by this section, disciplinary action shall not be deferred or suspended pending the determination of the application for review.

(4) After considering an application for review, the Commission may—

- (a) uphold the decision;
- (b) set the decision aside;
- (c) vary the decision as it considers to be just;
- (d) give such directions as it may consider appropriate with respect to the decision;
- (e) direct the refund, reinstatement of remuneration or release of any withheld payments due to the public officer as it considers to be just;
- (f) direct that disciplinary action be taken against any public officer who has failed to discharge a duty that was the public officer's responsibility to perform in relation to the disciplinary case and the concerned public body has suffered a loss; or
- (g) make any other appropriate decision in view of the circumstances of the case.

(5) Where the Commission sets aside a decision under subsection (4)(b), the public officer shall revert to the previous status held and receive the attendant benefits as though the decision set aside was never made.

### PART XIII – PETITION FOR THE REMOVAL OF THE DIRECTOR OF PUBLIC PROSECUTIONS

#### **76. Petition for removal of the Director of Public Prosecutions**

A petition for the removal of the Director of Public Prosecutions under Article 158 of the Constitution shall be made in accordance with regulations made by the Commission.

## PART XIV – RESIGNATION, RETIREMENT AND RELATED MATTERS

**77. Application of this Part**

Except as otherwise provided for in a contract of service, this Part shall apply to resignation, retirement, pension or other benefits due to a public officer.

**78. Resignation**

(1) A public officer desirous of resigning from a public office shall write a resignation letter to the public officer's appointing authority.

(2) The public officer shall give one month's notice or pay one month's salary in lieu of notice.

(3) Where a public officer resigns from the public service, the public officer shall be entitled to benefits in accordance with the—

- (a) terms and conditions applicable or contained in the contract of service; and
- (b) provisions of law governing the resignation of public officers; or employment law governing resignations generally.

(4) A person who had resigned from the public service may rejoin the service in accordance with the provisions of this Act or any other relevant legislation and procedures governing appointment to the public service.

**79. Grounds for retirement and entitlement to pensions benefits**

(1) A public officer may retire from the public service—

- (a) on attainment of the mandatory retirement age as may be prescribed by regulation;
- (b) on attainment of fifty years;
- (c) on medical grounds;
- (d) where a public office is abolished;
- (e) in accordance with a special retirement scheme agreed between a public officer and the relevant lawful authority; or
- (f) by voluntary retirement.

(2) Whenever a decision to retire a public officer is made in accordance with this Act, the relevant authorized officer shall—

- (a) notify the public officer in writing; and
- (b) prepare and forward the public officer's pensions claims to the pensions branch of the national treasury or other authority charged with administration of the public officer's pensions benefits.

**80. Retirement on the basis of age**

(1) Where a public officer has attained the mandatory retirement age as may be prescribed in regulations—

- (a) the public officer shall retire from the service with effect from the date of attaining the mandatory retirement age; and
- (b) the Commission or other appointing authority shall not extend the service of such retired public officer beyond the mandatory retirement age.

(2) Despite subsection (1)(b), the Commission or other appointing authority may engage the public officer for service after the retirement upon such terms of contract as may be agreed if —

- (a) the public officer possesses rare knowledge, skills and competencies for the time being required in the service;
- (b) the retired officer is willing to be engaged on contract; and
- (c) the retired public officer's performance shall not in any way be impaired by age.

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

Where a public officer has attained the age of fifty years and has been in the service for an aggregate period of at least five years, the public officer may opt to retire by giving the authorized officer at least three months' notice.

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

(1) A public officer may retire from the public service on grounds of ill health if—

- (a) the concerned authorized officer considers that a public officer is incapable by reason of any infirmity of body or mind of discharging the function of the public office and therefore it is in the best interest of the public officer to retire; or
- (b) the public officer requests to be retired on grounds of ill health, and in this case, the authorized officer shall initiate the process for the retirement in accordance with this section.

(2) Where a public officer is considered for retirement or has requested to be retired in accordance with subsection (1), the authorized officer shall call upon the public officer to appear before a medical board constituted by the Director of Medical Services to ascertain whether or not the public officer should be retired on grounds of ill health.

(3) After the public officer has been examined in accordance with subsection (2) and the medical board finds that the public officer should be retired on grounds of ill health, the Director of Medical Services shall forward the medical board's records of proceedings and findings together with the Director of Medical Services' comments to the authorized officer who shall—

- (a) request the public officer to make any personal representation in view of the medical board's record of proceedings and findings;
- (b) make recommendation in view of the medical board's findings on the public officer and the public officer's representation, if any; and
- (c) forward all the documents referred to in this section to the Commission.

(4) Unless the Commission considers that further inquiry is necessary, in which case it shall issue directions to the authorized officer, it shall determine whether the public officer should be called upon to retire on grounds of ill health.

(5) Where a public officer, who has the ability to appear before the medical board, fails to so appear, the authorised officer shall forward the case together with the relevant background information to the Commission and the Commission shall make an appropriate decision, including retiring the public officer on grounds of ill health, where appropriate.

**83. Retirement based on special contractual terms or a special retirement scheme**

The Commission may retire any public officer where the—

- (a) public officer's contractual terms and conditions of service provide for a special retirement clause that has fallen due; or
- (b) public officer is required or is willing to voluntarily retire in accordance with the terms and conditions of the contract.

**84. Retirement decisions reviewable**

(1) A public officer who has been retired under this Part shall be entitled to apply for a review against the decision on grounds of—

- (a) fresh material facts which with due diligence could not be presented when the decision was initially made;
- (b) an error apparent on the record of the initial decision; or
- (c) manifest absence of parity of treatment in view of the circumstances and facts of the case.

(2) An application for review under this section shall be made within six months from the date of the retirement decision

Provided that the Commission may consider an application for review outside the prescribed time if circumstances warrant it.

**PART XV – HEARING AND DETERMINATION OF APPEALS  
IN RESPECT OF COUNTY GOVERNMENT PUBLIC SERVICE**

**85. Appeal from County Government public service**

The Commission shall, in order to discharge its mandate under Article 234(2)(i) of the Constitution, hear and determine appeals in respect of any decision relating to engagement of any person in a County Government, including a decision in respect of—

- (a) recruitment, selection, appointment and qualifications attached to any office;
- (b) remuneration and terms and conditions of service;
- (c) disciplinary control;
- (d) national values and principles of governance, under Article 10 and values and principles of public service under Article 232 of the Constitution;
- (e) retirement and other forms of removal from the public service;
- (f) pension benefits, gratuity and any other terminal benefits; or
- (g) any other decision the Commission considers to fall within its constitutional competence to hear and determine an appeal in that regard.

**86. Procedure for appeal**

(1) Any person who is dissatisfied or affected by a decision made by any authority or person in respect of a County Government public service may appeal to the Commission against the decision.

(2) An appeal under subsection (1) shall be in writing and made within ninety days from the date of the decision:



Provided that the Commission may consider an appeal out of time if, in the opinion of the Commission, the circumstances warrant it.

(3) The Commission shall make regulations to guide the hearing and determination of appeals from the county public service boards.

(4) After considering an appeal under this section the Commission may—

- (a) uphold the decision;
- (b) set the decision aside;
- (c) vary the decision as it considers to be just; or
- (d) give such directions as it may consider appropriate with respect to the decision.

#### **87. The Commission may co-opt experts**

(1) The Commission may in hearing and determining appeals from the County Governments' public service, co-opt relevant experts depending on the nature of the appeal.

(2) A person shall not file any legal proceedings in any Court of law with respect to matters within the jurisdiction of the Commission to hear and determine appeals from county government public service unless the procedure provided for under this Part has been exhausted.

#### **88. Procedure for review of a decision in respect of a county public service board**

(1) A person who is dissatisfied or affected by a decision made by the Commission following an appeal under this section may apply for review and the Commission may admit the application if—

- (a) fresh material facts arise which with due diligence could not be presented when the decision was initially made; or
- (b) there is an error apparent on the record of the earlier decision.

(2) An application for review under subsection (4) shall be in writing and made within six months from the date of the decision.

(3) Notwithstanding sub section (2), the Commission may consider an application for review out of time if, in the opinion of the Commission, the circumstances warrant the consideration.

(4) Despite the right of appeal or the right to apply for review in accordance with this Part, the implementation of the decision shall not be deferred or suspended pending the determination of the appeal or the application for review.

(5) After considering an application for review under this section, the Commission may—

- (a) uphold the decision;
- (b) set the decision aside;
- (c) vary the decision as it considers to be just;
- (d) give such directions as it may consider appropriate with respect to the decision;

(6) The Commission shall state the reason for its decision on an appeal or application for review.

**89. Enforcement of appeal decision**

(1) Any person who is affected by the decision of the Commission made under this Part may file the decision for enforcement by the Employment and Labour Relations Court provided for under Article 162(2)(a) of the Constitution.

(2) Any person who refuses, fails or neglects to implement the Commission's decisions is liable to disciplinary action in accordance with the applicable laws including removal from office.

PART XVI – COMMISSION'S REPORTS  
TO THE PRESIDENT AND PARLIAMENT

**90. Annual Report**

(1) The Commission shall within three months after the closure of the financial year prepare a report for submission to the President and Parliament.

(2) The report shall contain—

- (a) the financial statements of the Commission;
- (b) decisions, observations, findings and recommendations in respect to any Constitutional or statutory function of the Commission;
- (c) any findings of an audit, investigation, evaluation, monitoring, inquiry, research or visits undertaken by the Commission;
- (d) any information that is required by law to be reported on by the Commission;
- (e) any issue the President or Parliament has in writing required the Commission to report upon;
- (f) any impediments to the achievements of the objects and functions of the Commission under the Constitution, this Act or any written law; and
- (g) any other information relating to the Commission's functions that the Commission considers necessary.

**91. Report to be published**

The Commission shall publish and publicize the report submitted to the President and Parliament.

PART XVII – PROVISIONS ON DELEGATED POWERS

**92. Regulations**

(1) The Commission may make regulations prescribing anything required by this Act to be prescribed generally for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for—

- (a) the appointment, discipline and removal of staff in the public service;
- (b) the form and method of keeping records under this Act;
- (c) guidelines or criteria on the qualifications of persons entering the public service;
- (d) administration of career progression and professional development programs for public officers;
- (e) operations and procedures of a committee established under the Act;

- (f) guidelines on retirement; and
  - (g) any other matter incidental to the discharge of the functions and powers of the Commission.
- (3) For the purposes of Article 94(6) of the Constitution—
- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act;
  - (b) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section; and
  - (c) the principles and standards applicable to the delegated power referred to under this section are those found in—
    - (i) the Statutory Instruments Act (No. 23 of 2013);
    - (ii) the Interpretation and General Provisions Act (Cap. 2);
    - (iii) the general rules of international law as specified under Article 2(5) of the Constitution; and
  - (iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

#### PART XVIII – MISCELLANEOUS PROVISIONS

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

A decision of the Commission affecting a public officer shall be communicated to the public officer through the relevant authorized officer.

##### **94. Service of notices, etc**

- (1) Where under this Act—
- (a) it is necessary to serve a notice, charge or other document upon a public officer or any person; and
  - (b) it is not possible to effect such service upon, or communicate such information to the public officer or the person,

the notice, charge or other document, or a letter containing such information, may be sent by electronic mail or registered post addressed to the person's usual or last known place of address or post office box, and, relevant evidence of such postage shall be retained as evidence of delivery.

(2) If the officer so served does not respond within twenty one days, the Commission or authorized officer may take such action as it may consider necessary.

##### **95. Advance copies to the Commission**

Nothing in this Act shall prevent a public officer from sending, directly to the Commission, an advance copy of a document which under this Act is required to be forwarded to the Commission through the relevant authorized officer.

##### **96. Special obligations of the authorized officer**

(1) An authorized officer shall submit, to the Commission, in the month of October, January, April and July, of every year, with respect to the preceding quarter of the financial year, a quarterly return on the exercise of the delegated functions and powers and performance of any duty under this Act, including—

- (a) the delegated function, duty performed or power exercised;
- (b) particulars of the public officer or persons subject to any decision made by the authorized officer including the name, employment number, national identification card number or passport number, county of birth, rank or seniority, age, gender, race and ethnic group, community, disability status and any other relevant details;
- (c) particulars of the decision made including the status of implementation; and
- (d) any impediment to the exercise of the power and performance of the function or duty.

**97. Scheduled exercise of powers and functions of the Commission**

The Commission may issue to the authorized officers, in the month of July in every year and at any other time it may consider necessary, a programme setting out an annual schedule on the exercise of any power and performance of any function or duty under this Act.

**98. Commission may assign alternative Job Groups**

The Commission may, by notice in the *Gazette*, assign the Job Groups referred to in this Act to public offices in public bodies which do not use such Job Groups, for the proper application of this Act to those offices.

**99. Management of information**

(1) The Commission shall publish and publicize important information within its mandate affecting the nation.

(2) A request for information by a citizen—

- (a) shall be addressed to the Secretary or such other person as the Commission may for that purpose designate and may be subject to the payment of a reasonable fee in instances where the Commission shall incur an expense in providing the information; and
- (b) may be subject to confidentiality requirements of the Commission.

(3) Subject to Article 35 of the Constitution and to the law relating to data protection and freedom of information, the Commission may decline to give information to an applicant where—

- (a) the request is unreasonable in the circumstances;
- (b) the information requested is at a deliberative stage by the Commission;
- (c) there is failure of payment of the prescribed fee; or
- (d) the applicant fails to satisfy any confidentiality requirements by the Commission.

(4) Every member and employee of the Commission shall sign a confidentiality agreement.

**100. Offences**

(1) Without prejudice to any other law, no member or officer of the Commission or any other person shall publish or disclose to an unauthorized person, any document, communication or information which has come to the knowledge of such member or officer in the course of performing their duties under this Act or any regulation made there under.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(3) Without prejudice to any other law, any person who discloses or publishes any information other than in accordance with Article 35 of the Constitution and the law relating to data protection and freedom of information, commits an offence and is liable on conviction, to a fine not exceeding one hundred thousand or imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(4) Any person who gives false or misleading information to the Commission or to any member of the Commission commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(5) A person who fails to produce a document or information required by the Commission on a matter before it, commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

#### **101. Disclosure of interest**

(1) A person present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

#### **102. Repeal of Act No. 13 of 2012.**

The Public Service Commission Act, 2012 is repealed.

#### **103. Transition**

(1) The members of the Public Service Commission existing immediately before the commencement of this Act shall continue in office for the unexpired period of their respective terms.

(2) A person who immediately before the commencement of this Act was an officer of the Public Service Commission existing immediately before the commencement of this Act, may, subject to the provisions of the Constitution, this Act and any other relevant law, be an officer of the Commission.

(3) Any disciplinary proceedings that are pending before the Public Service Commission before the commencement of this Act shall be continued as if the Commission was the Commission before the commencement of this Act.

**104. Transfer of assets, etc**

(1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Public Service Commission existing immediately before the commencement of this Act, shall upon the commencement of this Act subject to the relevant law, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission to the same extent as they were enforceable by or against either of the former Commissions before the commencement of the Act.

(2) Where the transfer of any property transferred to or vested in the Commission under subsection (1) is required by any written law to be registered, the Commission shall, within three months from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Commission or any person by way of registration fees, stamp duty or other duties—

- (a) make such entries in the appropriate register as shall give effect to the transfer;
- (b) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and
- (c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

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**FIRST SCHEDULE**

[Section 7(3), 11(1).]

**PROCEDURE FOR APPOINTMENT OF CHAIRPERSON  
AND MEMBERS OF THE COMMISSION****Selection Panel**

1. (1) Whenever a vacancy arises, the President shall, within fourteen days by notice in the Government *Gazette*, declare vacancies in the Commission and constitute a selection panel comprising of the following—

- (a) a representative from the Office of the President;
- (b) a representative from the office of the Attorney-General;
- (c) a representative from the Ministry responsible for the Public Service;
- (d) a representative from the Institute of Certified Public Accountants of Kenya;
- (e) a representative from the Institute of Human Resource Management who should be knowledgeable in human resource practices;
- (f) a representative from the Federation of Kenya Employers who should be knowledgeable in labour relations; and
- (g) a representative from the National Council for Persons with Disabilities.

(2) The panel shall elect a chairperson and a vice chairperson from amongst its members.

(3) Subject to the provisions of this Schedule, the panel shall determine its own procedure.

(4) The Office of the Secretary to the Cabinet shall provide facilities and any support required by the panel in the performance of its functions.

(5) This procedure shall start at least six months before the expiry of the term of a member of the Commission.

#### **Oath or affirmation of office**

2. The chairperson, vice chairperson and members of the panel shall, before assuming office, take and subscribe the oath or affirmation of office prescribed in the Third Schedule.

#### **Selection of nominees**

3. (1) The panel shall, within fourteen days of appointment, invite applications from qualified persons and publish the names of all applicants and their qualifications in the *Gazette*, at least two newspapers with nationwide circulation and on the Commission's website.

(2) The panel shall consider the applications, shortlist and interview the applicants.

(3) After carrying out the interviews, the panel shall—

- (a) select three persons qualified to be appointed as chairperson;
- (b) select three persons qualified to be appointed as vice-chairperson; and
- (c) select three persons qualified to be appointed as members of the Commission for each vacancy; and
- (d) forward the names of the persons selected under paragraphs (a), (b) and (c) to the President for nomination as the chairperson, vice-chairperson or member respectively or as the case may be.

(4) In nominating or appointing persons as members of the Commission, the panel and the President shall—

- (a) observe the principle of gender equity, ethnic and other diversities of the people of Kenya, and shall ensure equality of opportunity for persons with disabilities; and
- (b) take into account the national values and principles set out in Articles 10 and 232 of the Constitution.

#### **Approval by the National Assembly**

4. (1) The National Assembly shall within fourteen days of its sitting, consider all nominations received and approve or reject any of them.

(2) Upon approval by the National Assembly, the Speaker shall within seven days of the approval, forward the names of the approved persons to the President for appointment.

#### **Rejection by National Assembly**

5. (1) Where the National Assembly rejects any nomination pursuant to paragraph 4(1), the Speaker shall, within seven days, notify the President of the rejection.

(2) The President shall within fourteen days of the rejection, submit to the National Assembly a fresh nomination from amongst the list of nominees received from the panel under paragraph 3(3).

(3) If the National Assembly rejects all or any subsequent nominee submitted under sub-paragraph (2), the panel shall forward to the President fresh names from the persons shortlisted and interviewed under paragraph 3(2) and the provisions of paragraphs 3(4), 4 and 5 shall with necessary modifications, apply.

**Appointment of chairperson, vice-chairperson and members**

6. The President shall by notice in the Government Gazette, appoint the chairperson, vice-chairperson and the members approved and forwarded by the National Assembly within seven days upon receipt of the approved names.

**Dissolution of panel**

7. panel shall stand dissolved when the appointments are made under paragraph 6.

**Extension of Period**

8. Notwithstanding any other provision of this Schedule, the President may, by notice in the Gazette, extend the period specified in respect of any matter under this Schedule by a period not exceeding twenty-one days.

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SECOND SCHEDULE

[Section 9.]

**OATH OR SOLEMN AFFIRMATION OF CHAIRPERSON/  
VICE CHAIRPERSON/ MEMBER OF THE COMMISSION**

I ..... having been appointed as (Chairperson/Vice-Chairperson/Member) of the Public Service Commission, do swear/solemnly affirm, that I will without fear or favour, affection or ill-will, discharge the functions of the office of (Chairperson/Vice-Chairperson/Member) of the Commission, and that I will not, directly or indirectly, reveal any matter relating to such functions to unauthorized persons or otherwise than in the course of duty.

So help me God.

Signed

.....

Sworn/Declared before me this ..... day of ..... 20 .....

.....

**Chief Justice**



THIRD SCHEDULE

[Section 14 (1).]

**THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE COMMISSION**

1. The Commission shall meet in plenary as often as may be necessary for the carrying out of its business but it shall meet at least once every calendar month.
2. A meeting of the Commission shall be held on such date and at such time as the Chairperson shall decide.
3. The Chairperson shall, on the written application of one- third of the members, convene a special meeting of the Commission.
4. Unless the majority of the total membership of the Commission otherwise agree, at least fourteen days written notice of every meeting of the Commission shall be given to every member of the Commission.
5. The quorum for the conduct of business at a meeting of the Commission shall be at least five members of the Commission.
6. The chairperson shall preside at every meeting of the Commission and in the absence of the chairperson, the vice-chairperson shall preside and in the absence of both the Chairperson and the vice-chairperson, the members present shall elect one of the members to preside and who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.
7. Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by concurrence of a majority of all the members.
8. Subject to paragraph 5, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.
9. The Secretary shall be the secretary at all meetings of the Commission.
10. The Commission shall cause minutes of all proceedings of meetings of the Commission to be recorded for that purpose.
11. Except as provided by this Schedule, the Commission may regulate its own procedure.

FOURTH SCHEDULE

[Section 15(4).]

**OATH OR SOLEMN AFFIRMATION OF A SECRETARY OF THE COMMISSION**

I ..... being called upon to exercise the functions of Secretary of the Public Service Commission, do swear/ solemnly affirm that I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of my duties as an officer of the Commission.

**So help me God.**

Signed

.....  
Sworn/Declared before me this ..... day of ..... 20 .....

.....  
**Chief Justice**

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