

NO. 10 OF 2011

THE SALARIES AND REMUNERATION COMMISSION ACT

SUBSIDIARY LEGISLATION

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THE SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND PUBLIC OFFICERS) REGULATIONS

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THE SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND PUBLIC OFFICERS) REGULATIONS

[Legal Notice 2 of 2013]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Commission" means the Salaries and Remuneration Commission established under Article 230 of the Constitution;

"expert" means a person with a special skill in or knowledge of a particular field;

"labour productivity index" means rate of output per worker per unit of time as compared with an established standard or expected rate output;

"organization" means public service organization;

"public office" has the meaning assigned to it under Article 260 of the Constitution;

"public service organization" means a State organ, a state corporation or national or county government entity and includes any organization in the public service established by law;

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

"review cycle" means the period of four years after which, remuneration and benefits for State and public officers are reviewed to allow for budgeting and planning;

"State organ" has the meaning assigned to it under Article 260 of the Constitution;

"trade union" has the meaning assigned to it under section 2 of the Labour Relations Act (Cap. 233); and

"unionisable employee" has the meaning assigned to it under section 2 of the Labour Relations Act (Cap. 233).

3. Object and purpose

The object and purpose of these Regulations shall be to enable the Commission manage, harmonise and rationalise remuneration and benefits of State and public officers and in particular provide procedure for—

- (a) submission of remuneration and benefits proposals for State and public officers to the Commission;
- (b) reviewing of remuneration and benefits of State and public officers by the Commission;
- (c) setting and reviewing of remuneration and benefits for State officers; and
- (d) advising on remuneration and benefits for all other public officers.

**PART II – REVIEW OF REMUNERATION AND BENEFITS
AND PROCEDURE FOR SUBMISSION OF PROPOSALS****4. Review cycle**

(1) The Commission shall undertake a review of remuneration and benefits of State and public officers every four years.

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(2) A review under paragraph (1) shall be conducted at the same time across the public sector.

5. Study to precede review

(1) The Commission shall, at least one year before the review, cause the following to be conducted—

- (a) a study on labour market efficiency and dynamics;
- (b) a survey of the prevailing economic situation; and
- (c) a comprehensive job evaluation.

(2) The Commission shall prepare a report on the findings under paragraph (1) and the report shall form the basis for review.

(3) The review shall be communicated to the Cabinet Secretary responsible for matters relating to finance, the Judicial Service Commission, the Parliamentary Service Commission and the national and county governments for inclusion in the subsequent budgetary estimates.

(4) Subject to the budgetary allocations approved by Parliament, a review may be implemented in phases across the public sector.

(5) Despite paragraph (4), an approved review shall vest in full in respect of State or public officers retiring from a public service organization before full implementation.

6. Special review

(1) Despite regulation 4, the Commission shall undertake special reviews to —

- (a) ensure attraction and retention of critical or scarce professional skills required to effectively execute the functions of the public service; or
- (b) compensate for increased cost of living.

(2) A special review under paragraph (1) shall not interrupt or replace the four year review cycle, but its results shall inform the review.

7. Application to the Commission by a public office

Nothing under these Regulations may be construed as precluding a State or public office from making an application, in writing, to the Commission seeking guidance or advice on the remuneration and benefits accruing to its officers.

8. Procedure for submission of proposals

(1) Whenever a review is due, the Commission shall by notice in the Kenya Gazette and at least two daily newspapers with national circulation, call for proposals from every public service organization, on remuneration and benefits for their respective State and public officers.

(2) Submission of proposals under paragraph (1) shall be made—

- (a) in writing; and
- (b) by the fourth quarter of the third year of the review cycle.

(3) The proposals under this regulation shall be submitted in a predetermined format by the Commission.

PART III – FACTORS TO BE CONSIDERED BY PUBLIC SERVICE ORGANIZATIONS WHEN SUBMITTING PROPOSALS TO THE COMMISSION

9. Factors to be considered when preparing and submitting proposals for review

(1) When submitting proposals on the review of remuneration and benefits under regulation 4, a public service organization shall take the following factors into account—

- (a) components of remuneration;
- (b) social, economic and environmental issues;

- (c) results of job evaluation;
- (d) key elements and factors of pay for consideration;
- (e) prevailing market rates from the result of comparative market surveys;
- (f) existing collective bargaining agreements;
- (g) specific cost of employment in relation to the resource capacity of the organization;
- (h) affordability and sustainability of compensation or proposed award to the organization, and available budgetary provisions;
- (i) performance or the productivity of the employee;
- (j) benchmark with similar local, regional or international organizations;
- (k) equity and competitiveness;
- (l) prevailing labour productivity index;
- (m) household market rate surveys; and
- (n) any other matter relevant to determination and advice on remuneration.

(2) In addition to the factors mentioned in paragraph (1), a state corporation or national or county government entity shall also take into account its nature of service, performance or financial turnover.

10. Factors to be considered when preparing and submitting proposals for allowances and other remunerative benefits

(1) When submitting proposals on the review of allowances and other remunerative benefits under regulation 4, a public service organization shall take the following factors into account—

- (a) existing legal provisions;
- (b) comparative market surveys;
- (c) prevailing market rates;
- (d) justification for the allowances or benefits;
- (e) best practices;
- (f) objectives of the allowances or benefits;
- (g) impact on salary package;
- (h) ratio of the allowance or benefits to the salary;
- (i) affordability and sustainability;
- (j) prevailing policy on allowances and other remunerative benefits; and
- (k) any other issue relevant in determination and advice on allowances and other remunerative benefits.

(2) In addition to the factors mentioned in paragraph (1), a state corporation or national or county government entity shall also take into account its nature of service, performance or financial turnover.

11. Requirement to submit data annually

Despite regulation 8, a public service organization whether or not it seeks to review remuneration or benefits, is required to submit data of the prevailing remuneration and benefits of its employees annually to the Commission.

PART IV – FACTORS TO BE CONSIDERED IN PAY DETERMINATION AND ADVICE AND COMMUNICATION BY THE COMMISSION

12. Factors for pay determination for State Officers and advice on remuneration for other public officers

In setting and reviewing the remuneration of State Officers and advising on remuneration for other public officers, the Commission shall consider the prevailing—

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- (a) fixed and variable components of the remuneration;
- (b) legal, social, economic and environmental issues;
- (c) results of job evaluation, performance and productivity;
- (d) results of market studies;
- (e) key elements and factors of pay for consideration;
- (f) market rates from the results of comparative market surveys;
- (g) collective bargaining agreements;
- (h) overall and specific cost of employment, relating it to the resource capacity of the organization;
- (i) affordability and sustainability of compensation or award to Government and within the job market;
- (j) linkage to the national objectives, priorities and the human resource management strategy;
- (k) level of performance or productivity of the officer or level of performance and achievement of the national objectives by the organization;
- (l) salary structures in the public service;
- (m) benchmark with similar organizations or those organizations to which the organization loses staff to;
- (n) equity and competitiveness; and
- (o) any other relevant matter to remuneration setting and advice.

13. Factors for determination of allowances or benefits for State officers and advising on allowances for other public officers

(1) In determining and advising on allowances and other remunerative benefits, the Commission shall consider—

- (a) the factors highlighted under regulations 10 and 12; and
- (b) any other relevant issue in determination of allowances or benefits.

(2) The Commission shall undertake its mandate through consultations with its stakeholders.

14. Communication of set remuneration and benefits

(1) The Commission shall communicate the set remuneration and benefits for State Officers or advice thereon for other public officers not later than the second quarter of the fourth year of the review.

(2) Where a reviewed remuneration or benefit has been approved and is due, it shall be granted with effect from the 1st of July of the subsequent financial year after being factored in the national or respective county government budget.

(3) The communication under paragraph (1) shall be by notice in the Gazette.

PART V – MISCELLANEOUS

15. Annual increment

(1) A State or public officer shall be entitled to an annual salary increment based on productivity and performance.

(2) The effective date of an annual increment under paragraph (1) shall be based on the policy of each public service organization.

(3) An annual increment under this regulation shall be awarded at least after one year of service.

16. Pension reviews

(1) The Commission shall, in consultation with the National Treasury and other relevant parties, undertake periodic reviews and make recommendations on pensions to compensate for the rise in the cost of living.

(2) Recommendations on pension reviews under paragraph (1)—

- (a) shall be subject to the prevailing economic conditions, affordability and fiscal sustainability; and
- (b) may be conducted during a salary review for State and public officers.

17. Hearings

(1) The Commission may conduct a hearing whenever—

- (a) it considers a request to advise the national or a county government; or
- (b) it reviews the remuneration for State officers.

(2) The Commission may request for written or oral representations during the hearings.

(3) The Commission may conduct a hearing in any part of the country.

(4) In the conduct of a hearing, the Commission shall consider views from—

- (a) representatives from the organization seeking the advice of the Commission;
- (b) relevant unions and professional bodies; and
- (c) members of public.

(5) Nothing under paragraph (4) shall preclude any interested party from submitting views to the Commission during a hearing.

18. Negotiations with Trade Unions

(1) The Commission shall not negotiate with a trade union when determining, reviewing or advising on remuneration and benefits of State or public officers.

(2) The management of a public service organization with unionisable employees shall seek the advice of the Commission before the commencement of any collective bargaining process with the respective union on the sustainability of the proposal of the union.

(3) Where the collective bargaining process referred to in paragraph (2) is successful, the management shall, before the signing of the agreement, confirm the fiscal sustainability of the negotiated package with the Commission.

19. Hiring of an expert

(1) Where a public service organization seeks to acquire the services of an expert whose remuneration and benefits is likely to be outside the public service remuneration structure, the concerned organization shall refer the issue of the expert's remuneration and benefits to the Commission.

(2) An expert referred to under paragraph (1) shall be—

- (a) recruited competitively from the labour market, including the international labour market; and
- (b) hired for a fixed term of not more than three years and remunerated for the assignment as advised by the Commission.

(3) In determining the remuneration of the expert hired under this regulation, the Commission shall, in addition to the provisions under paragraph (2), take into consideration the—

- (a) prevailing market rate for such expertise;
- (b) need for such expertise;
- (c) sustainability of such expertise;
- (d) duration; and
- (e) scope of the assignment.

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(4) Where the service period of the expert requires extension or the job subsequently takes a permanent nature, the special remuneration package shall cease and the expert shall be paid the prevailing remuneration and benefits package of an equivalent existing position in the public service.

20. Transition

A collective bargaining agreement concluded before the commencement of these Regulations but which was not registered and implemented shall be deemed to have been concluded under these Regulations and shall be submitted to the Commission for advice as provided under Article 230(4)(b) of the Constitution.

21. Varying of advice

The advice of the Commission in relation to the remuneration and benefits of all other public officers will hold and only be varied within the provisions of Article 259(11) of the Constitution.
