

LEGAL NOTICE NO.

THE SERVICE COMMISSIONS ACT

(Cap. 185)

IN EXERCISE of the powers conferred by section 13 of the Service Commissions Act, the Public Service Commission makes the following Regulations -

THE PUBLIC SERVICE COMMISSION (PRISONS SERVICE) REGULATIONS, 2006

PART I - PRELIMINARY

Citation and application.

1.(1) These Regulations may be cited as the Public Service Commission (Prisons Service) Regulations, 2005.

(2) These Regulations shall apply to all prison officers in the Kenya Prisons Service, and to the exercise of the powers and the performance of the duties and the functions of the Commission in relation to such officers.

Interpretation

2 (1) In these Regulations, unless the context otherwise requires -

“the Chairman” means the person appointed under section 106 of the Constitution as the chairman of the Commission and includes the Deputy Chairman or a member of the Commission who acts as the chairman of the Commission in accordance with subsection (10) of that section;

“the Commission” means the Public Service Commission established under section 106 (1) of the Constitution;

“the Commissioner of Prisons” means the person appointed as the Commissioner of Prisons;

“the Deputy Chairman” means the person appointed under section 106 (1) of the Constitution as the deputy chairman of the Commission;

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“disciplinary powers” includes powers in so far as it relates to any of the punishments specified in regulation 24 and, as the case may be, disciplinary action in accordance with the Prisons Act or the Prisons Rules;

“member” includes any person appointed as a member of the Commission under section 106 of the Constitution or any person for the time being appointed to act as a member under section 106 (11) of the Constitution;

“official document” means any document or paper prepared by any public officer in the course of his employment or any document or paper which comes into the custody of any public officer in the course of such employment;

“pensions benefits” means any pensions, compensation, gratuities or other similar allowances payable to persons in respect of their service as public officers, or to the widows, children, dependants or personal representatives of such persons, in respect of that service;

, “Prison Officer”, “Senior Prison Officer” “Service” and “Subordinate Prison Officer” have the meanings assigned to them respectively in section 2 of the Prisons Act;

“promotion” means the conferment upon a Prison officer of an office to which is attached a higher salary or higher salary scale than that attached to the office to which he was last substantively appointed;

“public officer” means any person holding or acting in any public office;

“the Secretary” means the person appointed as secretary to the Commission under section 3(1) of the Act;

“seniority” means the relative seniority of prison officers and, except as may be otherwise provided by the Commission or in these Regulations, shall be determinable and shall be regarded as having always been determinable as follows -

- (a) as between prison officers of the same grade -
 - (i) by reference to the dates on which they respectively entered the grade;
 - (ii) if any officers entered that grade on the same day, by reference to their seniority on the day immediately preceding that day;
 - (iii) if any officers who entered the same grade on the same day did so by appointment and not by promotion (excluding promotion from a non-pensionable to a pensionable grade), their seniority relative to each other shall be determinable by reference to their respective ages;
- (b) as between prison officers of different grades on the same salary scale or the same flat rate of salary, by reference to the dates on which they respectively entered their grades;
- (c) as between prison officers of different grades on different salary scales, by reference to the maximum point on their salary scales, a flat rate of salary being regarded for this purpose as a salary scale with a maximum point equivalent to the flat rate:

(2) Nothing in these Regulations empowering the Commissioner of Prisons or any other person to perform any function vested in the Commission shall preclude the Commission from itself performing that function in any particular case.

PART II - GENERAL

Decisions may be made by circulation of papers.

3. Decisions may be made by the Commission without a meeting by circulation of the relevant papers among the members and the expression of their views in writing, but any member shall be entitled to require that any such decision shall be deferred until the subject matter shall be considered at a meeting of the Commission.

Dissent by members.

4. Any member who dissents from a decision of the Commission shall be entitled to have his dissent and his reason therefor set out in the records of the Commission.

Record of meetings.

5. A record shall be kept of the members present and of the business transacted at every meeting of the Commission.

Commission may require attendance and production of documents.

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

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

(3) Any public officer who without reasonable excuse fails to appear before the Commission when notified to do so, or who fails to comply with any request lawfully and properly made by the Commission, shall be guilty of a breach of discipline and the Commission may direct the person responsible for initiating disciplinary proceedings against such public officer that disciplinary proceedings should be instituted against him.

(4) Notwithstanding paragraphs (1), (2) and (3), a public officer may withhold information on any matter or production of an official document when directed by the President in writing to do so.

Correspondence. 7. All correspondence for the Commission shall be addressed to the Secretary or, in special cases, to the Chairman.

Right of Commissioner of Prisons to be heard. 8. The Commission shall, at the request of the Commissioner of Prisons, hear him or his representative personally in connexion with any matter he has referred to the Commission.

PART III – APPOINTMENTS (INCLUDING ACTING APPOINTMENTS EXCEEDING A PERIOD OF ONE MONTH AND TEMPORARY APPOINTMENTS), PROMOTIONS, CONFIRMATION OF APPOINTMENTS AND TERMINATION OF APPOINTMENTS (OTHERWISE THAN BY DISCIPLINARY PROCEEDINGS).

Delegation of powers to Commissioner of Prisons 9.(1) The following powers vested in the Commission are, subject to these Regulations and to such instructions as the Commission may, from time to time issue, delegated to the Commissioner of Prisons-

(a) in respect of all offices of subordinate prison officers and Prison Officers below the rank of assistant superintendent-

- (i) the power of appointment, including acting appointment and promotion;
 - (ii) the power of extension of the probationary period of any such officer;
 - (iii) the power to terminate the probationary appointment of any such officer under these Regulations and any other regulations which may be in force;
- (b) in respect of all offices of any prison officer disregard the rank, the power of confirmation in appointment of any prison officer appointed on probation;

Provided that nothing in these Regulations shall affect the power of the Commission to terminate the appointment of such officer in accordance with a term or condition contained in his contract or letter of appointment.

(2) The Commissioner of Prisons exercising the powers conferred on him by this regulation shall act in accordance with these Regulations and any other regulations which may be in force, as appropriate.

(3) A prisons officer affected by the decision of the Commissioner of Prison under this regulation may, through the Commissioner of Prisons, appeal to the Commission within forty-two days from the date of receiving the decision appealed against.

(4) Notwithstanding the provisions of this regulation, the Commission may, when necessary, institute an enquiry to determine whether or not the powers delegated under this regulation have been properly exercised by the Commissioner of Prisons.

Notification of vacancies.

10.(1) The Commissioner of Prisons exercising the powers conferred by regulation 9 (1) (a) (i) shall -

- (a) at least twenty-one days before the exercise of the powers, notify the Commission of the vacancies or the particulars respecting the appointment or promotion, as the case may be; and
- (b) within twenty-one days after exercising the powers, notify the Commission of the particulars of the subordinate prison officer appointed or promoted as the case may be.

(2) For Senior Prison officers of or above the rank of Assistant Superintendent, if a vacancy occurs or it is known that a vacancy will occur, the Commissioner of Prisons shall notify the Commission and the Commission shall take the appropriate steps to fill that vacancy.

Vacancies dependent on examinations.

11. Where vacancies are to be filled according to the results of examinations held under the authority of the Commission, the Commission shall make such arrangements and issue such instructions as may be appropriate.

Advertisement of vacancies.

12.(1) Subject to paragraph (2), applications for appointment to vacancies shall be invited by public advertisement in such manner as the Commission may determine.

(2) A vacancy need not be advertised where -

- (a) the Commission is satisfied that the vacancy should be filled by the appointment or re-engagement or promotion of a Prison officer; or

(b) the Commission is satisfied that there is no reasonable likelihood of any application being received in response to advertisement from a candidate who is likely to be qualified.

(3) Where the Commissioner of Prisons is conferred with the delegated powers of appointment and promotion, the Commissioner shall exercise such powers in the manner determined by the Commission under paragraph (1).

Criteria concerning appointments

13.(1) In selecting candidates for appointment, promotion and transfer, the Commission or the Commissioner of prisons as the case may be, shall have regard to the efficiency of the service and, in considering the claims of prison officers for promotion, merit and ability shall be taken into account as well as seniority, experience and official qualifications; and as between prison officers of equal official qualifications, proved merit and suitability for the vacancy in question shall be given greater weight than seniority.

(2) Recommendations made to the Commission by the Commissioner of Prisons for promotion of Senior Prison Officers shall state whether the person recommended is the senior officer in the service or grade eligible for promotion and, where this is not the case, detailed reasons shall be given in respect of each person in the service or grade over whom it is proposed that the person recommended should be promoted and the Commission shall make a decision.

Probationary appointments.

14.(1) Where a senior prison officer has been appointed on probation the Commissioner of Prisons shall, not less than three months before the expiration of the probationary period, inform the Commission whether in his opinion -

- (a) the probationary period should be extended so as to afford the senior prison officer further opportunity to pass any examination, the passing of which is a condition of the confirmation, his service otherwise being satisfactory; or
- (b) the probationary period should be extended to afford the senior prison officer the opportunity of improvement in any respect in which his work or conduct have been adversely reported on; or
- (c) the senior prison officer's appointment should be terminated.

(2) The Commissioner of Prisons shall not recommend the extension or termination of an appointment under subparagraph (b) or subparagraph (c) of paragraph (1) unless he has first, by letter, informed the officer of his intention and of the right of the officer to make representations thereon within a period to be specified in such letter and required the officer to acknowledge receipt of such letter in writing within that period; the Commissioner of Prisons shall attach copies of all such correspondence to his recommendation.

(3) Notwithstanding paragraph (1) but subject to paragraph (2), the Commissioner of Prisons may, at any time, recommend to the Commission that a probationary appointment be terminated.

Further
engagement on
contract of senior
prison officers

15.(1) Where a senior prison officer is serving on contract and willing to engage for a further term of service, the Commissioner of Prisons shall notify the Commission of the date when such contract will expire and his recommendation whether it should be renewed or not.

(2) So far as is practicable, every such notification shall be forwarded to the Commission in sufficient time to enable the Commission to give its decision not less than three months before the officer's current contract is due to expire.

Acting
appointments.

16. The regulations and procedures which apply to appointments and promotions shall also apply, where appropriate, to all acting appointments exceeding a period of one month, subject to such instructions as the Commission may, from time to time, issue

Compulsory
retirement on
reaching retiring
age.

17.(1) If it appears to the Commissioner of Prisons that there is reason why a prison officer who has been confirmed in a pensionable office and who has reached the age at which he can lawfully be required to retire under the pensions legislation should be required to retire from the service, the Commissioner of Prisons shall advise the officer that his compulsory retirement is under consideration and ask whether he wishes to make any representations on such a step.

(2) The Commissioner of Prisons shall forward such representations, if any, together with his own observations to the Commission, and the Commission shall decide whether the officer should be called upon to retire.

(3) On being advised of the decision of the Commission, the Commissioner of Prisons shall notify the officer and, if the officer is to be retired, he shall notify the Pensions Branch of the Treasury.

(4) A Prison Officer whose compulsory retirement is under consideration under this regulation may, where possible, be given the option to retire voluntarily provided that the reasons for requiring his retirement do not involve disciplinary action.

Retirement on grounds of ill health.

18. (1) Where it appears to the Commissioner of Prisons that a prison officer is incapable by reason of any infirmity of mind or body of discharging the functions of his public office, he may (and shall if the officer so requests) call upon the officer to present himself before a medical board (which shall be appointed by the Director of Medical Services) with a view to it being ascertained whether or not the officer is incapable as aforesaid.

(2) After the officer has been examined, the Director of Medical Services shall forward the medical board's proceedings, together with his comments thereon, to the Commissioner of Prisons, who in turn shall forward them, together with any representations which the officer desires to make and his own recommendation, to the Commission.

(3) Unless the Commission considers that further inquiry is necessary, in which case it shall issue directions to the Commissioner of Prisons accordingly, it shall decide forthwith whether the officer should be called upon to retire on the grounds of ill health.

(4) On being advised of the decision of the Commission, the Commissioner of Prisons shall notify the officer and, if the officer is to be retired on the grounds of ill health, he shall notify the Pensions Branch of the Treasury.

Retirement on abolition of office or on re-organization of the Kenya Prisons Service

19.(1) Where a prison officer, who is one of a number of prison officers holding similar offices in the service, is to be retired, either -

(a) on the abolition of the office he holds; or

(b) upon the re-organization of the service for better efficiency or economy,

but one or more of such officers is to remain in office, the Commissioner of Prisons shall inform the officer that his compulsory retirement is under consideration and invite him to make representations thereon, if any.

(2) The Commissioner of Prisons shall forward the representations, if any, together with his own observations thereon to the Commission, and the Commission shall decide whether the officer should remain in the office he holds in the service or should be transferred or seconded to another department or ministry, or the officer should be retired on abolition of office or on reorganization of the service for greater efficiency or economy.

(3) On being advised of the decision of the Commission, the Commissioner of Prisons shall notify the officer and, if the officer is to be retired, he shall prepare and forward the officer's pensions claims to the Pensions Branch of the Treasury.

(4) The provisions of this regulation shall not apply to any officer who has reached the age at which he can lawfully be required to retire from the service under the pension's legislation in accordance with regulation 17.

(5) The provisions of this regulation shall not apply to any subordinate prison officer to whom rule 123 of the Prisons Rules may apply accordingly.

(6) Any officer dissatisfied with the decision of the Commission under this regulation may, in writing through the Commissioner of Prisons, seek a review of the decision within forty-two days from the date of receiving the communication of the Commission's decision:

Provided the Commission may entertain a request for a review of the decision out of time if the circumstances warrant it.

Special
procedure

20. Where the Commission is satisfied that the public interest requires that any matter relating to the appointment, promotion, transfer, secondment or confirmation in his appointment of a prison officer be dealt with otherwise than in accordance with the procedure laid down in this Part, it shall take such action or issue such directions with regard to that matter as appears to it to be most appropriate in the circumstances.

PART IV – DISCIPLINE

Delegation of
disciplinary
powers to
Commissioner of
Prisons

21. (1) The following disciplinary powers vested in the Commission are, subject to these Regulations and to such instructions as the Commission may, from time to time issue, hereby delegated to the Commissioner of Prisons -

(a) in respect of all subordinate prison officers and prison officers below the rank of assistant superintendent-

(i) the power to take disciplinary action against such officers in accordance with the Prisons Act or the Prisons Rules and to inflict any of the punishment mentioned in regulation 24 or any other punishment which may be provided for in the Prisons Act or the Prisons Rules, or to retire the officer in the public interest in accordance with regulation 32:

Provided that if at the time of exercise of disciplinary powers the prison officer is a pensionable public officer who has qualified for pension benefits under the pensions legislation and the Commissioner of Prisons is of the opinion that disciplinary action is likely to lead to the dismissal of the officer, the Commissioner of Prisons shall not exercise the delegated disciplinary powers, but shall apply regulation 31;

(ii) the power to inflict any of the punishments mentioned in paragraph (i) of regulation 24 on any such officer who is convicted in any court of a criminal offence in accordance with regulation 33;

(b) In respect of all Prison officers -

- (i) the power to interdict any officer in accordance with Regulation 22;
- (ii) the power to suspend any officer in accordance with Regulation 23;
- (iii) the power to stop, withhold or defer a normal increment of any officer or to inflict a reprimand or a severe reprimand in accordance with Regulation 25;
- (iv) the power to stop from the pay or salary of any officer who has been absent from duty without leave or reasonable or lawful cause an amount which bears the same relation to his annual pay or salary as such period of absence bears to one year in accordance with Regulation 25:

Provided that in respect of subordinate prisons officers, the powers and functions delegated to the Commissioner of Prisons under this part, other than the power of dismissal, may be exercised by the officers authorized under the Prisons Act or the Prisons Rules to exercise such disciplinary power over such officers.

(2) The Commissioner of Prisons exercising the powers conferred on him by this regulation shall act in accordance with these Regulations and any other relevant provisions of the law for the time being in force.

Interdiction.

22. (1) If in any case the Commissioner of Prisons is satisfied that the public interest requires that a prison officer should cease forthwith to exercise the powers and functions of his office, he may interdict the officer from the exercise of those powers and functions, provided proceedings which may lead to his dismissal are being taken or are about to be taken or that criminal proceedings are being instituted against him.

(2) An officer who is interdicted under this regulation shall receive such salary, not being less than half his salary, as the Commissioner of Prisons shall think fit.

(3) Where disciplinary or criminal proceedings have been taken or instituted against a prison officer under interdiction and such officer is neither dismissed nor otherwise punished under these Regulations, the whole of any salary withheld under paragraph (2) shall be restored to him upon the termination of such proceedings.

(4) If any punishment other than dismissal is inflicted, the officer may be refunded such proportion of the salary withheld as a result of his interdiction, as the Commission in the case of a senior prison officer, or the Commissioner of Prisons in the case of a subordinate prison officer, shall decide.

(5) A prison officer who is under interdiction may not leave his station without the permission of the Commissioner of Prisons or of any prison officer who is empowered to give such permission on behalf of the Commissioner of Prisons.

(6) For the purpose of this regulation and regulation 23, “salary” means basic salary and, where applicable, includes inducement or overseas allowance.

Suspension.

23. (1) Where a prison officer has been convicted of a serious criminal offence, other than such as are referred to in regulation 33 (3), the Commissioner of Prisons may suspend the officer from the exercise of the functions of his public office pending consideration of his case under these Regulations.

(2) The Commissioner of Prisons may suspend from the exercise of the functions of his public office, a prison officer against whom proceedings for dismissal have been taken if, as the result of those proceedings, he considers that the officer ought to be dismissed.

(3) While a prison officer is suspended from the exercise of the functions of his public office under this regulation, he shall not be entitled to any salary:

Provided that the Commissioner of Prisons may, if he thinks fit, direct that any suspended officer shall be granted an alimentary allowance in such amount and on such terms as he may determine.

(4) A prison officer who is suspended may not leave his station without the permission of the Commissioner of Prisons or of any prison officer who is empowered to give such permission on behalf of the Commissioner of Prisons.

Punishments.

24. (1) The following are the punishments which may be inflicted upon a prison officer as a result of disciplinary proceedings under this Part-

- (a) recovery of the cost or part of the cost of 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 (including severe reprimand);
- (c) deferment of increment;
- (d) withholding of increment;
- (e) stoppage of increment;
- (f) reduction in rank or seniority; and
- (g) dismissal.

(2) Nothing in this regulation shall limit the powers conferred by these Regulations to require a prison officer to retire from the public service on the grounds of public interest.

(3) No punishment shall be inflicted on any prison officer which would be contrary to any law.

The
Commissioner of
Prisons may
inflict
punishment

25.(1) Notwithstanding any other provisions of these Regulations, the Commissioner of Prisons may,

- (a) stop, withhold or defer normal increment of a prison officer for a period not exceeding one year on the grounds of unsatisfactory service:

Provided that, if the stoppage or deferment is recommended to be continued beyond one year, the matter shall be referred to the Commission for its decision;

- (b) after investigation and after giving a prison officer an opportunity for making his defence (which shall be recorded), inflict on such officer a severe reprimand or a reprimand; or
- (c) stop from the pay or salary of a prison officer who has been absent from duty without leave or lawful or reasonable cause, an amount which bears the same relation to his annual pay or salary as such period of absence bears to one year.

(2) The Commissioner of Prisons exercising the powers conferred on him by this regulation shall act in accordance with regulation 30.

Absence from duty without leave.

26. Where a prison officer is absent from duty without leave or reasonable or lawful cause for a period exceeding twenty-four hours and the 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 him within ten days after the despatch of the charge to him, the authority empowered to dismiss him may summarily dismiss him.

Pension rights and privileges lost on dismissal.

27. Subject to any law for the time being in force, a prison 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 he enjoys in regard to leave or passages at the public expense.

Prompt Disciplinary procedure.

28. (1) All acts of misconduct by a prison officer shall be dealt with under this Part as soon as possible after the time of their occurrence.

(2) Where, in any case which comes to the attention of the Commission, the Commission is of the opinion that disciplinary proceedings should be instituted against a prison officer, the Commission shall, notwithstanding any other

provisions of these Regulations, direct the Commissioner of Prisons to initiate such proceedings.

Copies of office orders, minutes, reports etc.

29. A prison officer subject to disciplinary action shall not be entitled to copies of office orders, minutes, reports or recorded reasons for decisions of the disciplinary process.

Officer to be informed.

30. Where proceedings have been taken against a prison officer under this Part, he shall be informed by the Commissioner of Prisons -

- (a) of the findings on each charge which has been preferred against him;
- (b) of the punishment, if any, to be inflicted upon him; and
- (c) that an appeal may be lodged within forty-two days from the conclusion of such proceedings:

Provided that failure to communicate such right of appeal shall not invalidate the said findings or punishment.

Disciplinary proceedings for a prison officer of or above the rank of assistant superintendent leading to dismissal or reduction in rank or seniority and, for dismissal of a subordinate prison officer or a prison officer below the rank of assistant superintendent who has qualified for pensions benefits under the pensions legislation.

31.(1) Where the Commissioner of Prisons considers it necessary to institute disciplinary proceedings against a prison officer to whom this regulation applies on the ground of misconduct which, if proved would in his opinion, justify dismissal or reduction in rank or seniority of a senior prison officer or dismissal of a subordinate prison officer, he shall, after such preliminary investigation and consultation as to the terms of the charge or charges as he considers necessary, forward to the officer a statement of the charge or charges framed against him together with a brief statement of the allegations, in so far as they are not clear from the charges themselves, on which each charge is based, and shall invite the officer to state in writing, should he so desire, before a day to be specified, any grounds on which he relies to exculpate himself.

(2) If the officer does not furnish a reply to a charge or charges forwarded under paragraph (1) within the period specified, or if in the opinion of the Commissioner of Prisons he fails to exculpate himself, the Commissioner of Prisons shall forward to the Commission copies of the statement of the charge, or charges, the reply, if any, of the officer and the comments by the Commissioner of Prisons thereon.

(3) If, on consideration of the statement of the charge or charges, the reply, if any, of the prison officer, and the comments of the Commissioner of Prisons, the Commission is of the opinion that no further investigation is necessary, it shall forthwith decide on the punishment, if any, which should be inflicted on the officer, or whether he should be retired in the public interest.

(4) If the Commission, on consideration of the submissions by the Commissioner of Prisons, is of the opinion that the matters should be further investigated, it shall direct the Commissioner of Prisons to conduct such further investigation.

(5) Any investigation carried out under this regulation shall be undertaken by prison officers senior to the accused officer, who have not, directly or indirectly, dealt with the case before.

(6) If, during the course of the investigation, the grounds for the framing of additional charges are disclosed, the Commissioner of Prisons shall follow the same procedure as was adopted in framing the original charges.

(7) After conducting the investigation, the Commissioner of Prisons shall forward a report of the investigation to the Commission together with the record of the charges framed, evidence led, the defence and other proceedings relevant to the inquiry; and the report of the investigation under this

regulation shall include -

- (a) a statement whether the charge or charges against the accused gazetted officer have been proved and the reasons therefor;
- (b) details of any matters which may aggravate or alleviate the gravity of the case; and
- (c) a summing up and such general comments as will indicate clearly the opinion on the matter being investigated;

but the report of the investigation shall not make any recommendation regarding the form of punishment to be inflicted on the accused officer.

(8) The Commission, after consideration of the report, shall, if it is of the opinion that the report should be amplified in any way or that further investigation is desirable, refer the matter back to the Commissioner of Prisons who shall conduct the investigation for a further report.

(9) The Commission shall decide on any of the punishments in regulation 24, if any, which should be inflicted on the accused officer, or whether he should be retired in the public interest.

(10) The provisions of this regulation shall apply to dismissal or reduction in rank or seniority proceedings of a prison officer of or above the rank of assistant superintendent, and, to dismissal proceedings of a subordinate prison officer or a prison officer below the rank of assistant superintendent who has qualified for pensions benefits under the pension's legislation.

Retirement on grounds of public interest.

32. (1) If the Commissioner of Prisons, after having considered every report in his possession made with regard to any prison officer, is of the opinion that it is desirable, in the public interest, that the service of the officer be terminated on grounds which cannot suitably be dealt with under any other provision of these Regulations, he shall notify the officer, in writing, specifying the complaints by reason of which his retirement in the public interest is contemplated, together with the substance of any report or part thereof that is detrimental to the officer.

(2) If, after giving a prison officer of or above the rank of assistant superintendent an opportunity of showing cause why he should not be retired in the public interest, the Commissioner of Prisons is satisfied that the officer should be required to retire in the public interest, he shall, forward to the Commission the report on the case, the prison officer's reply and his own comments, and the Commission shall decide whether the prison officer should be required to retire in the public interest.

(3) In the case of a subordinate prison officer or prison officer below the rank of assistant superintendent, if, after giving the officer an opportunity of showing cause why his service should not be terminated, the Commissioner of Prisons is satisfied that the officer should be retired in the public interest, he shall so decide.

(4) Where an officer is retired in the public interest, the Commissioner of Prisons shall furnish the Pensions Branch of the Treasury with full details of the case.

Officer convicted of criminal offence.

33. (1) If a prison officer of or above the rank of assistant superintendent is convicted of a criminal offence which, in the opinion of the Commissioner of Prisons warrants disciplinary proceedings, the Commissioner of Prisons shall forward a copy

of the charge and of the judgment and any judgment or order made on appeal or revision to the Commission for consideration, and the Commission shall decide whether the senior prison officer should be dismissed or subjected to any of the other punishments mentioned in regulation 24.

(2) If a subordinate prison officer or a prison officer below the rank of assistant superintendent is convicted of a criminal offence which, in the opinion of the Commissioner of Prisons warrants disciplinary proceedings, the Commissioner of Prisons may himself dismiss the officer or subject him to any of the other punishments mentioned in regulation 24:

Provided that if the officer is a pensionable public officer who has qualified for pensions benefits under the pensions legislation and the Commissioner of Prisons is of the opinion that the officer should be dismissed, the Commissioner of Prisons shall forward the matter to the Commission with his recommendation thereon and the Commission shall decide whether the officer should be dismissed or subjected to any of the other punishments mentioned in regulation 24.

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(3) For the purposes of this regulation, proceedings for minor offences, such as those under the Traffic Act and by-laws, may be disregarded, and disciplinary proceedings shall normally be confined to proceedings under the Penal Code and other Acts where a prison sentence may be imposed, other than in default of payment of a fine.

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Appeals and reviews by prison officers

34. (1) An appeal by a prison officer shall lie to the Commission through the Commissioner of Prisons against an order made under these Regulations in relation to him in disciplinary proceedings involving any of the punishments mentioned in regulation 24 of these Regulations, except that no appeal shall be entertained in any case unless it is received within forty two days of the date upon which the decision is addressed to the prison officer:

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

(2) The Commission shall entertain an appeal only once in respect of each case.

(3) A prison officer may, within one year of the date upon which any decision of the Commission under this part of these Regulations is addressed to the officer, apply through the Commissioner of Prisons for review and the application may be admitted if the Commission is satisfied that there appear in the application new and material facts which might have affected a former decision, and if adequate reasons for the non-disclosure of such facts at an earlier date are given, or, there is an error apparent on record of the earlier decision.

(4) An application to review a decision of the Commission made on review shall not be allowed and disciplinary action shall not be deferred or suspended pending determination of appeal or the application for review.

PART VI – MISCELLANEOUS

Transmission of
decision

35. The Secretary of the Commission shall cause the decision of the Commission on any matter to be transmitted to the Commissioner of Prisons, who shall forward such decision through the relevant channels to the concerned prison officer.

Service of notices etc.,

36. Where under these Regulations -

(a) it is necessary -

(i) to serve any notice, charge or other document upon a prison officer; or

(ii) to communicate any information to any prison officer having absented himself from duty; and

(b) it is not possible to effect such service upon, or communicate such information to the prison officer personally or through the relevant service channels;

it shall be sufficient if the notice, charge or other document, or a letter containing such information, is sent by registered post addressed to his usual or last known place of address or post office box.

Advance copies to the Commission.

37. Nothing in these Regulations shall prevent a prison officer from sending, directly to the Commission, an advance copy of a document which under these Regulations is required to be forwarded to the Commission through the Commissioner of Prisons.

Audit and investigation.

38. The Commission may institute an audit or investigation of the manner in which the Commissioner of Prisons has exercised any of the powers delegated by the Commission under these Regulations.

Cases not covered by Regulations.

39. Any case not covered by these Regulations shall be dealt with in accordance with such instructions as the Commission may, from time to time, issue.

Commission may
prescribe forms.

40. The Commission may prescribe forms for the better carrying out of the provisions of these Regulations.

Revocation of
Regulations.
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(Sub-Leg)

41. The Public Service Commission (Prisons Service) Regulations are revoked.

Made on theday of, 2006.

TITUS JUSTUS KAHIGA GATEERE,
Chairman,
Public Service Commission of Kenya.