

LEGAL NOTICE NO. ----- OF 2012

THE PUBLIC SERVICE COMMISSION ACT

IN EXERCISE of the powers conferred by Section 31 of the Public Service Commission Act, the Public Service Commission makes the following Regulations –

**THE PUBLIC SERVICE COMMISSION
REGULATIONS, 2012**

PART I - PRELIMINARY

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| Citation | 1. These Regulations may be cited as the Public Service Commission Regulations, 2012. |
| Scope and application. | 2. (1) Subject to Article 234 (2) (a) of the Constitution, these Regulations shall apply to public bodies and all persons holding or acting in an office in a public body except –

(a) state offices;

(b) an office of high commissioner, ambassador or other diplomatic or consular representative of the Republic;

(c) an office or position subject to –
(i) the Parliamentary Service Commission;
(ii) the Judicial Service Commission;
(iii) the Teachers Service Commission;
(iv) the National Police Service Commission; or

(d) an office in the service of a county government, except for the purpose of the Commission hearing and determining appeals in respect of county governments' public service as provided for under Article 234 (2) (i). |

(2) For avoidance of doubt, under these Regulations, “a public body” includes

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(a) a state department, state corporation, statutory commission, public university or any public institution of tertiary or higher learning, statutory board or body, Attorney General’s department, Director of Public Prosecutions’ department, Controller of Budget’s department, Auditor-General’s department, National Intelligence Service department, Prisons and Correctional Services department and any agency, department or a commission established under the Constitution or legislation and is not exempted under Article 234 (3) of the Constitution; and

(b) any public body brought under the jurisdiction of the Commission by an Act of Parliament for a specified function to the extent of that function.

Interpretation.

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

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

“appointment” includes appointment, acting appointment, reappointment, promotion and re-designation or transfer;

“Attorney General” means the Attorney General appointed under Article 156 of the Constitution;

“authorized officer” includes –

- (a) for a state department, the holder of the office of principal secretary established under Article 155 (1) of the Constitution;
- (b) in case of a department which is not assigned or under direct administration of a principal secretary, the head of that department; and
- (c) any other public officer appointed by the Commission to be an authorized officer with respect to a specified public body for the purpose of these Regulations.

“chairperson” means the person appointed under Article 233 (2) of the Constitution as chairperson of the Commission and includes the vice chairperson or any member of the Commission discharging the functions of the chairperson on temporary basis;

“Commission” means the Public Service Commission established under Article 233 (1) of the Constitution;

“confirmation in appointment” means placement to continued service on non-probationary terms of an officer initially serving on probationary terms;

“Constitution” means the Constitution of Kenya, 2010 ratified at the referendum held on 4th August, 2010 as promulgated by the President on 27th August, 2010 and as amended from time to time;

“county government” means the county government provided for under Article 176 (1) of the Constitution;

“deployment” also to be referred to as “posting” means a written decision requiring a public officer to move between duty stations while the officer holds the same public office in the same grade in the public service usually without change in the pay point;

“disciplinary control” includes control in so far as it relates to due process of justice and any of the lawful punishments that are provided for in these Regulations or specified in other legislation;

“Judicial Service Commission” means the Judicial Service Commission established under Article 171 (1) of the Constitution;

“member” includes any person appointed as a chairperson, vice-chairperson or a member of the Commission under Article 233 (2) of the Constitution;

“minor offence” means any crime which upon conviction, the prescribed sentence is imprisonment of six months or below;

“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 such employment;

“Parliamentary Service Commission” means the Parliamentary Service Commission established under Article 127 (1) of the Constitution;

“pensionable public officer” means any public officer who has been confirmed in appointment and admitted to the permanent and pensionable establishment;

“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;

“promotion” means the conferment upon a person in the public service of an

office to which is attached a higher salary or higher salary scale than that attached to the office to which the person was last substantively appointed;

“public office” means an office in the public service subject to the Constitutional or statutory functions of the Commission and includes any office in a public body except an office specifically removed by the Constitution from the functions and powers of the Commission;

“public officer” means any person holding or acting in any public office whether paid, unpaid, on contractual or permanent terms but does not include casual workers engaged on a part-time basis in a public body and paid at an hourly or daily rate;

“public service” means all public officers, any service provided or facilitated by a public officer, or, all services provided or facilitated by public officers;

“re-designation” means conferment upon a person already employed in the public service, a public office at a grade equal to or substantially equal to the one held before the re-designation and whose major consequence is only to cross from one cadre to the other to facilitate the officer’s horizontal mobility characterized with change in career path:

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

“removal” with reference to public service means cessation from being a public officer with or without disciplinary process, with or without loss of pensions benefits and it includes resignation, dismissal and retirement;

“Salaries and Remuneration Commission” means the Salaries and Remuneration Commission established under Article 230 (1) of the Constitution;

“secondment” means a temporary leave of absence from discharging the duties of a public office to another public body or outside the public service.

“secretary” means the person holding and appointed to the office of secretary to the Commission in accordance with Article 233 (5) and (6) of the Constitution and includes a person lawfully exercising the functions of the office of the secretary in an acting capacity;

“state office” means state office within the meaning of Article 260 of the Constitution;

“seniority” means the relative seniority of public 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 public officers of the same grade -

- (i) by reference to the dates on which they respectively entered the grade;
- (ii) if any public officers entered that grade on the same day, by reference to their seniority on the day immediately preceding that day;
- (iii) if any public 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 public 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 public 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:

Provided that when assessing the seniority of a pensionable public officer, service by the officer or any other person in a non-pensionable capacity shall not be taken into account;

“Teachers Service Commission” means the Teachers Service Commission established under Article 237 (1) of the Constitution;

“transfer” means the conferment, whether permanently or otherwise, of some public office other than that to which the person concerned was last substantively appointed, not necessarily being a promotion; but the posting or secondment of a public officer between duty posts in the same grade in the public service shall not be regarded for this purpose as a transfer.

PART II – GENERAL

Commission’s oversight over its delegated functions and powers etc.

4.(1) Nothing in these Regulations empowering an authorized officer 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.

(2) Where the Commission has delegated any of its functions and powers, the Commission shall retain the power to take corrective measures on its own motion or upon complaint or request on appeal or review.

(3) Where the Commission has delegated any of its functions and powers, the authority or person exercising the delegated function or power shall be entitled to be heard by the Commission personally or through a

representative on any issue touching on the delegation.

- (4) Where the Commission has delegated any of its functions and powers, the Commission shall institute mechanisms for regular feedback by the authority or person exercising the delegated function or power including appeals, right to complain, right to a review, inquiry, investigation, audits and visits.

Values and principles of public service etc.

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

- (2) Every public officer shall uphold and promote the guiding values and principles in subparagraph (1).

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

- (4) The Commission shall be the custodian of the guiding values and principles in subparagraph (1) with respect to the public service and shall promote them as provided for in the Constitution, any legislation and these Regulations.

- (5) Any person has a right to complain individually or collectively, and to make representation to the Commission regarding the violation of the guiding values and principles in subparagraph (1).

Decisions may be made by circulation of papers.

6. (1) 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.

(2) Where a decision is made by the Commission without a meeting by circulation of the relevant papers among the members, the chairperson shall cause the secretary to record the decision.

Dissent by members.

7. Any member who dissents from a decision of the Commission shall be entitled to have the dissent and the reason for dissenting set out in the records of the Commission.

Record of meetings.

8. 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.

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

(2) The Commission may require the production of any official document relevant to any exercise of its functions, and any public officer who submits any matter for 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, commits 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 the officer.

Correspondence.

10. All correspondence for the Commission shall be addressed to the Secretary or, in special cases, to the Chairperson.

PART III – ESTABLISHMENT AND ABOLITION OF OFFICES

IN THE PUBLIC SERVICE

Application of Part.

11. The provisions of this Part shall apply to all cases of exercise of the Commission's constitutional function to establish and abolish offices in the public service.

Scope of establishment of offices.

12. The function of establishment of offices in the public service shall entail the determination of the number and kinds of offices in the service.

Conditions for establishment of offices.

13. (1) The Commission shall not make a decision to establish a public office unless the Commission is satisfied that the following conditions have been proved by the authorized officer of the concerned public body, namely –

- (a) the request is based on comprehensive plans informed by the public body's workload analysis;
- (b) an indication of the financial implications but, it will not be necessary to provide evidence of adequate funding for the office to be established;
- (c) the office to be created must relate to the core functions of the public body or support its functions;
- (d) the suitability of the office to be created to be domiciled in the requesting public body and not any other;
- (e) submission of the current authorized establishment, level of grading, designation, extra post required and evidence of optimum utilization of existing posts;
- (f) the office to be established is not for casual service but is permanent, usually required for a period of over twelve months;
- (g) the office when established shall not lead to unfair competition for

staff; and

(h) the office when established shall promote equal pay and motivation for holders of similar grades.

(2) A written request for establishment of an office verifying the conditions in this paragraph shall be submitted to the Commission by the concerned authorized officer.

Conditions for abolition of office.

14. (1) The Commission shall not abolish a public office unless the Commission is satisfied that any of the following conditions have been proved by the authorized officer of the concerned public body, namely –

(a) the office to be abolished relates to provisions of a public service which has ceased to be necessary or cannot continue to be rendered efficiently and effectively in view of prevailing better methods for service delivery;

(b) the request is based on a comprehensive plan informed by the department's workload analysis;

(c) an indication of the financial implications including any savings to be made in relation to services attached to the office;

(d) submission of the current authorized establishment, level of grading, designation, extra post required and evidence of optimum utilization of existing posts;

(e) the office when abolished shall eliminate unfair competition for staff; and

(f) the office when abolished shall promote equal pay and motivation for

holders of similar grades.

(2) Any decision by the Commission to abolish an office in the public service shall be subject to the due process of removing or retiring the affected public officer as prescribed under these Regulations or the terms and conditions applicable to the officer.

(3) Where a public office has been abolished by the Commission and any affected public officer who by reason of such abolition has not been retired or otherwise removed from the service and the officer is in doubt whether the officer continues to be a public officer, the Commission shall, if the officer requests, declare the officer to be an existing public officer until any further decision shall be made in that regard.

Commission may act on its motion.

15. (1) Taking into account the provisions of this Part the Commission may on its own motion establish or abolish any office in the public service in the discharge of its functions as provided for in the Constitution.

(2) The Commission shall give the authorized officer of the concerned public body an opportunity to make representation in respect of the action to be taken under this paragraph before making the decision in that regard.

Part applies to recommendation to the President.

16. (1) Where the Commission is requested or considers it necessary to make a recommendation to the President to establish an office in the public service as envisaged under Article 132 (4) (a) of the Constitution, the Commission shall, with necessary modification, act in accordance with the conditions provided for in this Part on establishment or abolition of offices in the public service.

(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 IV – APPOINTMENTS, ACTING APPOINTMENTS, PROMOTIONS, RE-
DESIGNATIONS, CONFIRMATION OF APPOINTMENTS, TRANSFERS,
SECONDMENTS AND DEPLOYMENTS**

Delegation of powers to authorized officers.

17.(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 authorized officers -

- (a) in respect of public offices which have been assigned Job Groups “A” to “N” or their respective equivalents -
 - (i) the power of appointment, including acting appointment, re-designation, promotion and transfer (but excluding the power of initial appointment or re-designation of public officers in Job Groups “J”, “K”, “L”, “M” or “N”);
 - (ii) the power of extension of the probationary period of any such officer;
 - (iii) the power to terminate the probationary appointment of any such public officer under these Regulations and any other regulations which may be in force;
- (b) in respect of all public officers, irrespective of their rank or seniority, the power of confirmation in appointment of any public officer appointed on probation;
- (c) in respect of all public officers, irrespective of their rank or seniority, the power to deploy;
- (d) in respect of public officers serving on written contracts or letters of temporary appointment, the power to terminate, otherwise than by dismissal, in accordance with the provisions of a written contract or a letter of temporary appointment, the appointment of a public officer serving on such contract or letter of temporary appointment:

Provided that nothing in these Regulations shall affect the power of

the Commission to terminate the appointment of such public officer in accordance with a term or condition contained in the officer's contract or letter of temporary appointment.

(2) An authorized officer exercising the powers conferred under this Part shall act in accordance with these Regulations and any other law which may be in force, as appropriate.

(3) A public officer affected by the decision of the authorized officer under this Part may, through the authorized officer, appeal to the Commission within thirty days from the date of receiving the decision appealed against.

(4) Notwithstanding the provisions of this paragraph, the Commission may, when necessary, institute an audit, investigation, inquiry or visit to determine whether or not the powers delegated under this paragraph have been properly exercised by the authorized officer.

Commission's
authority to
appoint.

18. (1) Except as provided for in the Constitution or legislation, the Commission shall have the authority to make appointments in respect of offices in the public service.

(2) The Commission's authority under subparagraph (1) shall be exercised

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(a) at the request of the authorized officer of the public body to which the appointment needs to be made; or

(b) at the Commission's own motion on account of best interest of the service and parity of treatment of a public officer taking into account the circumstances of each case.

Acting
appointments.

19. (1) Where it is absolutely necessary to appoint an officer in an acting capacity, such an appointment shall not be for less than thirty days or exceed a term of six months.

(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) Acting appointments shall be –

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

(4) Nothing in this paragraph shall prevent a public officer from –

- (a) delegating a duty for which the law does not prohibit delegation; or
- (b) deploying another officer to perform duties vested in another officer during a temporary absence of the other officer.

(5) A delegation or deployment under subparagraph (5) shall –

- (a) be in favour of an 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) Where it comes to the attention of the Commission that a public officer has purportedly made an acting appointment, delegation or deployment as the case may be, contrary to the provisions of this paragraph, the Commission shall -

- (a) take corrective action; and

- (b) initiate disciplinary action in accordance with the procedures applicable to the officer.

Effective date of appointment promotion and re-designation.

20. (1) The effective date of appointment or acting appointment shall be the date of the decision to appoint or such future date as the Commission or competent appointing authority shall appoint in any particular case.

(2) The effective date of promotion shall be the date of the decision to promote.

(3) The effective date of re-designation shall be the date of the decision to re-designate.

Criteria for appointment, promotion, etc.

21. (1) In selecting candidates for appointment the Commission or concerned lawful authority shall have regard to –

(a) merit, equity, aptitude and suitability;

(b) the prescribed qualifications for holding or acting in the office;

(c) the efficiency of the public service;

(d) the provable experience and demonstrable milestones attained by the candidate;

(e) integrity of the candidate; and

(f) the standards, values and principles set out in Articles 10, 27 (4), 56 (c) and 232 (1) of the Constitution.

(2) In evaluating whether an appointment has been undertaken in a fair and transparent manner, the overriding factors shall be –

- (a) presence of competitiveness;
- (b) presence of merit;
- (c) absence of nepotism;
- (d) absence of tribalism;
- (e) absence of cronyism; and
- (f) absence of political influence.

(3) In public service employment, merit with reference to a person who is a candidate or public officer means that the person –

- (a) has 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 subparagraph (1).

(4) Subject to compliance with the prescribed procedures for appointment, the Commission or other lawful appointing authority is not required to consider more than one person in order for an appointment to be made on the basis of merit.

(5) Where the Commission or other lawful appointing authority prescribes a standard application form for submitting applications for employment, due care shall be taken so that the provisions of this paragraph are fully provided for in the form.

Advertisement of vacancies.

22. (1) Where a public office is to be filled, the Commission or other lawful appointing authority shall invite applications through public advertisement so as to reach, as efficiently and effectively as possible, the entire pool of potential applicants especially persons who for any reason have been or may be disadvantaged.

(2) An advertisement inviting applications to fill any 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) where necessary, the background and context of the work;
- (d) the period or tenure 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 of transmitting the application including the deadline;
- (l) any consideration that may occasion disqualification; and
- (m) any consideration of equity or affirmative action.

(3) Applications for appointment to vacancies shall be invited by public advertisement inviting candidates from both public and private sectors but, a vacancy need not be advertised where the Commission or other lawful appointing authority is satisfied that –

- (a) the vacancy should be filled by the appointment or reappointment or re-designation of a public officer held against the establishment of the public body in which the vacancy exists so as to achieve

better efficiency and effectiveness in the public body; or

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

(c) there is a qualified serving public officer who can be appointed to the vacancy in furtherance of affirmative action in accordance with the values and principles of national governance and public service set out in the Constitution.

(4) Where, in the opinion of the Commission or other lawful appointing authority, it would be likely to find a qualified public officer in some public body including county governments but not in the public body in which the vacancy has occurred or is anticipated to occur, applications may be invited only from serving public officers.

Appointment etc
to be in writing.

23. No appointment, acting appointment, promotion, re-designation, transfer, deployment or any delegation or assignment of a duty in public service shall be valid unless, it is evidenced in writing.

Record of
applicants etc.

24. (1) The Commission or any other lawful appointing authority shall maintain a record of all applications received in response to an advertisement inviting applications and such record shall be published or on demand, be inspected by any person.

(2) A person who is qualified and has submitted an application in response to an advertisement inviting applications shall, on demand be entitled to receive reasons from the Commission or any other lawful appointing authority in respect of failure to be considered for the selection process.

Re-designation.

25. (1) In selecting public officers for re-designation, the criteria for appointment as prescribed under this Part shall apply.

(2) Where a public officer desires to re-designate, the officer shall make a written application to the concerned authorized officer or to the Commission through the concerned authorized officer as the case may be.

(3) Where the decision to re-designate is made by the authorized officer in exercise of the delegated powers, the decision shall not take effect unless the Commission's approval has been obtained.

(4) A public officer shall not be re-designated to hold or act in a public office if –

(a) the office is not vacant; or

(b) the public officer does not meet all the qualifications (except for experience at a lower grade in the relevant cadre) attached to the public office; or

(c) the decision to re-designate the officer shall disadvantage or is calculated to disadvantage any public officer already serving in the relevant cadre; or

(d) the officer subject to the re-designation has not consented to such a decision.

(5) A decision to redesignate a public officer shall not be made if the effect of the decision is to reduce the public officer's salary.

(6) The decision to re-designate a public officer shall take effect on the date it is made.

Promotions.

26. (1) The Commission or any other lawful authority vested with the function of making a promotional decision shall enhance succession

management by making the decision in anticipation of the concerned public office falling vacant and not after the vacancy has already occurred.

(2) The provisions of sub-paragraph (1) shall apply in all promotional decisions except where, with due diligence, the occurrence of the vacancy could not be foreseen.

(3) Where a public officer has been promoted, the authorized officer must within thirty days from the date of the promotion release the public officer to take up the promotion and if the officer is not so released, the officer shall stand released upon lapsing of the thirty days.

(4) Where a public officer has been promoted and has failed to take up the promotion, the promotional decision shall lapse upon the expiration of sixty days from the date of the decision and the officer shall revert to the office held prior to the decision.

Confirmation in appointment.

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

(2) Where it is necessary to extend a probationary period, the concerned authorized officer shall –

(a) notify the affected officer of that intention not less than thirty days before the expiration of the probationary period; and

(b) give reasons as to why the probation is to be extended.

(3) Where the notice in subparagraph (2) is not served, the officer shall stand confirmed in appointment upon the expiration of the initial probationary period of six months.

(4) Where the relevant authority fails to confirm in appointment a public officer initially appointed on probationary term and the term has lapsed with or without an extension, the officer shall stand confirmed in appointment on the due date.

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

(6) A probationary period of service shall not be extended except on account of –

(a) incompetence on the part of the officer characterized with lack of sufficient potential to cope with the demands of the duties of the public office;

(b) affording the public officer further opportunity to fulfil a pre-condition for confirmation prescribed in writing prior to the probationary appointment the officer's service otherwise being satisfactory; or

(c) affording the public officer an opportunity of improvement in any respect in which the officer's work or conduct have been adversely reported on:

Provided that the concerned public officer shall be informed the reason for the extension by the Commission or relevant authorised officer.

(7) Appointment on a probationary term 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.

Deployment.

28. (1) The authority to deploy a public officer within a public body is hereby delegated to the relevant authorized officer.

(2) The authority to deploy a public officer from one public body to the other is hereby delegated to the authorized officers of the respective public bodies exercised through their respective consultation with the approval of the Commission.

(3) In making a deployment decision, the concerned authorized officer shall take into account the –

- a) efficiency and effectiveness of public service delivery;
- b) promotion of national integration and cohesion; and
- c) promotion of representation of Kenya's diverse communities, men and women, the members of all ethnic groups and persons with disabilities.

Secondment.

29. (1) The authority to second a public officer shall vest in the Commission and shall be carried out in view of a specific request by the relevant authorised officer or the public officer for that purpose.

(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 for any reason it is not necessary for an officer on secondment to so remain seconded and the secondment period has not lapsed, the officer

shall nevertheless be entitled to revert to the public office held before the secondment.

(4) The Commission shall not allow a public officer to proceed on secondment if –

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

(5) The relevant authorised officer or other lawful authority making a decision on secondment shall not allow the secondment unless the Commission has approved the secondment in writing.

(6) The period of time a public officer may be allowed to remain on secondment shall vary from case to case in view of the overall assessment of the provisions of this paragraph but shall not in any event exceed six years:

Provided that where an officer intends to remain on secondment beyond six consecutive years, the officer shall retire from the public service with

accrued retirement and other terminal benefits in accordance with the relevant law or agreement.

Internship.

30. (1) Under this paragraph “intern” means a supervised student or trainee working to gain experience or satisfy requirements for an academic, professional, technical, occupational or trade for purposes of graduating, certification, registration or licensing.

(2) Subject to these Regulations and the instructions the Commission may issue from time to time, the power to engage any person as an intern shall vest in the relevant authorised officer.

(3) The engagement of interns in the public service shall be transparent and accountable so as to accord equal opportunity for all.

(4) Subject to provisions of this paragraph, interns may be engaged in any public body but subject to instructions and conditions as may be issued by the Commission from time to time.

(5) Interns shall not be paid any money out of public funds provided for a public body except such allowance as the Commission may approve or prescribe by order in the gazette.

(6) This paragraph shall apply in cases of internship programmes specifically provided for under an Act of Parliament but subject to provisions of the Act.

(7) Save for an intern who is a public officer, in these Regulations an intern is not a public officer, however the Commission or the concerned authorized officer shall provide for measures for the good conduct of interns.

Volunteer service.

31. (1) Subject to the Commission's delegated power to appoint, the power to appoint a person to serve on voluntary basis shall vest in the Commission.

(2) The Commission may by an order in the gazette prohibit engagement of volunteers in any specified public body.

(3) No person shall be employed on voluntary basis as –

- (a) a revenue collector for any public body;
- (b) an officer involved in any aspect of procurement;
- (c) a cashier;
- (d) a caretaker of any premises belonging to a public body;
- (e) a security officer;
- (f) a holder of any strategic public office including any office established in the Constitution or an Act of Parliament; and
- (g) a holder of a public office excluded by the Commission under this paragraph.

(4) Every volunteer in the public service shall be issued with a letter to that effect.

(5) A volunteer in the public service on voluntary basis shall be bound by the code of conduct, rules and regulations applicable to other public officers.

(6) A person engaged on voluntary service shall not be paid any money out of public funds provided for a public body.

Casual service.

32. (1) In these Regulations, "casual service" refers to employment of a person on terms of engagement where payment is at the end of each day and

the person is engaged for a period of less than twenty four hours at a time and in any event for not more than twenty one continuous days.

(2) No person shall be engaged in a public body on casual service.

(3) Where there is need for temporary services, the concerned authorized officer shall not engage persons on casual terms but shall procure services of independent service providers in accordance with the procurement law.

Service on term contract.

33. (1) Where a public officer is not engaged on permanent terms but is engaged for a term of contract, the term shall not be less than twelve months and shall not be more than five years.

(2) Further engagement on a term of contract shall not be allowed by the Commission or other appointing authority unless –

- (a) the workload justifies further engagement;
- (b) the performance of the 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 officers employed on permanent terms; and
- (e) the decision is made at least three months before the lapsing of the current term.

(3) No person shall be engaged to serve on a term of contract as envisaged under this paragraph unless the public office against which the person is to be engaged is duly established by the Commission or other lawful authority.

(4) The Commission may by order in the gazette publish a public office or a category of public offices for which employment on a term of contract as envisaged under this paragraph shall not be allowed.

(5) For purposes of this paragraph, a person may be engaged to serve on a

term of contract only if the person -

- (a) belongs to a profession or technical occupation governed by statutory provisions;
- (b) is not a citizen of Kenya and is engaged as an expatriate or under any international agreement; or
- (c) is engaged to impart knowledge or skills or any competencies as their core duty.

Commission's
nomination and
recommendation
for appointment.

34. (1) Where the Commission is required by the Constitution or legislation to make a nomination or recommendation of a person for appointment, as far as possible, the provisions of this Part governing appointment shall apply.

(2) The provisions of subparagraph (1) shall apply to all cases of the Commission's nomination or recommendation as provided for under -

- (a) Article 155 (3) (a) of the Constitution on recommendation of persons by the Commission for nomination by the President for appointment as a Principal Secretary;
- (b) Article 171 (g) of the Constitution on nomination of a person by the Commission to be appointed as a member of the Judicial Service Commission;
- (c) Article 230 (2) (b) (ii) of the Constitution on nomination of a person by the Commission to be appointed as a member of the Salaries and Remuneration Commission; and
- (d) any provision of the Constitution or legislation requiring the Commission to make a recommendation or nomination of a person for appointment to a state or public office.

(3) The Commission shall, subject to provisions of the Constitution or any legislation, set the qualifications and disqualifications attached to the public office for which it is required to make a nomination or recommendation for appointment.

(4) The Commission shall, by a notice in the gazette, publish the qualifications determined in subparagraph (3) and any alteration of the qualifications shall similarly be published.

Recommending persons to be appointed as a principal secretary.

35. (1) In recommending persons for nomination by the President for appointment as a Principal Secretary, the Commission shall –

(a) in exercise of the function and powers under Article 234 (2) (a) and (d) as read together with Article 132 (4) (a) of the Constitution determine or recommend the number of the offices of Principal Secretaries;

(b) determine and publish in the gazette the criteria including the qualifications, disqualifications, experience and other requirements for recommending persons to be appointed as Principal Secretaries; and

(c) observe the provisions of Article 10 on national values and principles of governance, Article 232 on values and principles of public service and Chapter six of the Constitution on leadership and integrity in making the recommendation.

(2) The Commission shall, subject to any qualifications, disqualifications, experience and other requirements that may be prescribed in the Constitution or legislation prescribe, by a notice in the gazette, the qualifications, disqualifications, experience and other requirements for the office of a

Principal Secretary.

(3) Where the Commission alters the qualifications, disqualifications, experience and other requirements for the office of a Principal Secretary, the Commission shall publish the alteration in the gazette.

Provisions to apply to interim bodies.

36. (1) The provisions of this Part shall apply to the appointment of any staff of an interim body established under the Constitution or any legislation.

(2) Unless an interim body in the public service is specifically conferred with the constitutional or statutory power to establish offices or appoint its staff -

(a) all staff of the body shall be appointed by the Commission;

(b) no person shall be appointed in the interim body unless the Commission is satisfied that in the circumstances of the case, there is no available public officer for secondment, deployment or appointment to that interim body; and

(c) the interim body shall not appoint any person unless the Commission has established a public office in the establishment of that body for that purpose.

Staff of partnerships and joint ventures.

37. (1) The authority to appoint and exercise disciplinary control of staff on behalf of the government in joint ventures between any public body and any other body outside the public service shall vest in the Commission.

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

be.

(3) The Commission may by order in the gazette declare any undertaking of a joint venture or partnership between a public body and any other body outside the public service to be a public body within the meaning of these Regulations, if it is established by the Commission that –

- (a) at least thirty percent of the staff are public officers;
- (b) the undertaking involved is substantially provision of a service or function on behalf of the government, the government being the sole traditional provider;
- (c) at least thirty percent of the funding is drawn out of the public funds;
- (d) at least thirty percent of the assets are public; or
- (e) at least thirty percent of the liabilities are public.

Protection of
accrued rights
and benefits.

38. (1) Subject to provisions of these Regulations, where a public officer is appointed or re-designated or seconded from one public body to another, the officer's accrued benefits with respect to the previous public service shall not be lost unless the officer has consented to such loss or the loss is permitted under any written law or policy.

(2) The Commission shall issue instructions for full realization of the provisions of subparagraph (1) from time to time.

Vacancies
dependent on
examinations.

39. (1) 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.

(2) Where vacancies are to be filled according to the results of examinations held under the authority of the Commission, the Commission shall in that regard -

- (a) develop and by a notice in the gazette, publish a relevant curriculum for such examinations;
- (b) prescribe rules to govern the administration of such examinations;
- (c) prescribe any examination administrative fees;
- (d) facilitate the candidate's efficient and effective preparation for the examinations;
- (e) by a notice in the gazette, publish the results of the examinations;
- (f) issue certificates to successful candidates ; and
- (g) institute any other measures for the integrity, efficient and effective administration of such examinations.

(3) The examinations administered by the Commission shall be designed to achieve fair competition and merit as the basis of appointments and promotions in the public service.

(4) Nothing in this paragraph shall preclude the Commission from administering other competitive and objective methods of recruitment and selection in addition to or in isolation from the examinations.

Special
procedure.

40. Where the Commission is satisfied that the public interest requires that any matter relating to the appointment, confirmation in appointment or

secondment of a public 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 V – REVIEWING AND MAKING OF RECOMMENDATIONS TO THE NATIONAL GOVERNMENT ON CONDITIONS OF SERVICE, CODE OF CONDUCT AND QUALIFICATIONS.

Application of Part.

41. This Part shall apply to the discharge of the Commission’s function and power provided for in Article 234 (2) (g) of the Constitution.

Conditions of service.

42. (1) In these Regulations, “conditions of service” include any right or obligation relating to a public officer including any right or obligation relating to –

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

(2) Except where conditions of service applicable to a public officer are more favourable than those prescribed in the legislation governing employment generally, the provisions of the legislation shall apply to the public officer.

(3) The Commission may on its own initiative or upon request by any authorized officer, review and make recommendations on conditions of service with respect to a public officer, category of public officers or all public officers in a public body.

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

(5) The Commission shall give every interested or affected party a chance to make representations before making a review or recommendation under this paragraph.

(6) The Commission shall take measures to achieve continuous review of conditions of service taking into account the changing and priority needs of the public service.

(7) Where the Commission has undertaken a review and made recommendation under this paragraph, the concerned public body or authorized officer shall implement the recommendation –

(a) immediately or when next a decision relating to the condition of service falls due; or

(b) if it relates to remuneration and other payment, it shall be effected

in accordance with the Commission's terms and directions for implementation.

(8) The factors that shall guide the Commission in making a review and recommendation under this paragraph shall include –

- (a) parity of treatment of public officers;
- (b) the current and future operational requirements of the public body;
- (c) any current or future needs of the public body;
- (d) legitimate expectations of the public officer concerned including the accrued or accruing benefits;
- (e) the need to eliminate unfair competition for available human resource among public bodies;
- (f) the prevailing and projected status of the national economy;
- (g) the national development priorities that may justify disparities in conditions of service;
- (h) the need to attract and retain qualified and motivated public officers;
- (i) the need to compensate rare, unique, innovative or talented performers;
- (j) the need to encourage mutual and sustainable labour market forces through co-operation between the public service on the one hand, and, the private sector, civil society and communities on the other;
- (k) the need to build a financially sustainable public service that is prudent and not wasteful or extravagant; and
- (l) any applicable convention or treaty.

Code of conduct. **43.** (1) In these Regulations “code of conduct” means any written standard that guides the behaviour of any category of public officers or public bodies issued by any lawful authority aimed at ethical, efficient and effective performance of the public service.

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

(3) The Commission may, upon request by any public officer or representative of the officer or any person, review and make recommendations on code of conduct with respect to any public officer, category of public officers or all public officers in a public body.

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

(5) The Commission shall take measures to achieve continuous review of codes of conduct taking into account the changing and priority needs of the public service.

(6) The Commission shall, in reviewing and making recommendations on 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.

(7) Subject to any Act of Parliament, an authorized officer or any other lawful authority shall not implement or impose any code of conduct unless the Commission has reviewed and made recommendations on the code.

Qualifications.

44. (1) In these Regulations, “qualifications” means any prescribed requirement of eligibility or ineligibility attached to holding or acting in a public office.

(2) Except where the Constitution or an Act of Parliament has vested in another authority the function of determining qualifications attached to a public office, the function of determining qualifications shall vest in the Commission.

(3) 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.

(4) The Commission may on its own initiative or shall upon request by any authorized officer or person, review and make recommendations on qualifications with respect to a public office, category of public offices or all public officers in a public body.

(5) The Commission may, upon request by any public officer, review and make recommendations on qualifications with respect to a public office, category of public offices the officer belongs to or all public offices in the public body the officer belongs to.

(6) The Commission shall give interested or affected party a chance to make representations before making a review or recommendation under this

paragraph.

(7) The factors that shall guide the Commission in making a review and recommendation on qualifications under this paragraph shall include -

- (a) parity of treatment of public officers;
- (b) the current or future 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 sustain mutual co-operation between the public service on the one hand, and, the private sector, professional bodies, civil society and communities on the other;
- (i) the need to build a public service that embraces continuous improvement and innovation; and
- (j) any applicable convention or treaty especially on qualifications relating to employment rights, anti-corruption, ethics and integrity.

(8) The Commission or other lawful authority determining qualifications shall take into account measures for affording adequate and equal opportunities for appointment, promotion, training and advancement in the public service of –

- (a) men and women;
- (b) the members of all ethnic groups; and

(c) persons with disabilities.

(9) Subject to provisions of this paragraph, the Commission shall publish in the gazette the prescribed qualifications applicable in the public service with respect to any public office, category of public offices, profession or occupation.

(10) A qualification prescribed under sub-paragraph (10) shall contain –

- (a) the public office, category of public offices, profession or occupation it applies to;
- (b) date of issue of the qualification by the Commission;
- (c) the effective date of the qualification;
- (d) provision for clearly defined job descriptions and specifications with clear delineation of duties and responsibilities at all grades or ranks within the grading structure to enable a public officer understand the requirements and demands of the job; and
- (e) provision on likely career progression and mobility of the officer.

(11) The Commission shall regularly review and publish qualifications for all public offices for the time being established by the Commission or under the authority of the Commission.

(12) Nothing in this paragraph shall prevent the Commission from determining, reviewing or recommending qualifications on case by case basis with respect to a public office or category of public offices as occasion may demand.

(13) No determination or review or recommendation of qualifications shall

operate retroactively in relation to a public officer already holding or acting in the public office with respect to which the qualifications apply.

(14) Every public body or authorized officer shall, unless a waiver has been obtained from the Commission based on a justifiable reason, comply with the qualifications prescribed in accordance with this paragraph:

(15) Where a qualification is reviewed with the consequence of upgrading a grade or rank, the coming into force of the qualification shall not have the effect of automatically promoting the affected serving officers to the upgraded grade or rank unless, the Commission or other lawful appointing authority has made a specific promotional decision in accordance with the provisions of these Regulations.

PART VI – DEVELOPMENT OF HUMAN RESOURCE IN THE PUBLIC SERVICE

Human resource
development etc.

45. (1) The development of human resources in the public service shall aim at achieving the following objectives –

- (a) keeping up-to-date and improving professional knowledge and skills needed for better performance of individual public officers and public bodies;
- (b) promoting better understanding of professional requirements and sensitization to professional, socio-economic and political environment in which public bodies operate;
- (c) bringing about right attitudinal orientation of public officers;
- (d) promoting responsiveness to the prevailing scientific and technological developments;
- (e) commitment to democratic values, partnership and participative decision making;
- (f) achievement of factual and scientific approach to decision making;

- (g) achievement of high performance in every public body, public office, category of public offices and profession or occupation;
- (h) promotion and protection of human rights and freedoms as provided for in the Constitution; and
- (i) nurturing of habits that promote the national values and principles of governance and principles and values of public service provided for in Articles 10 and 232 of the Constitution, respectively.

(2) The Commission and any other lawful authority shall take into account the objectives in sub-paragraph (1) in discharging the function of development of human resources in the public service.

(3) The duties of the Commission in the discharge of its Constitutional function of development of human resources in the public service shall include –

- (a) issuing human resource development policy for the public service;
- (b) prescribing procedures and instruments governing development of human resources in the public service;
- (c) determining and recommending to the government the percentage of the salary budget for each public body that shall be set apart solely for the purpose of development of human resources in the public body and shall not be diverted for use elsewhere without the approval of the Commission;
- (d) sourcing and allocating government and other training scholarships;
- (e) issuing instructions for –
 - i. prudent utilization of the training fund in public bodies;
 - ii. achievement of the objectives set out in subparagraph (1);
- (f) prescribing measures for merit, adequate and equal opportunity in selection and award of training opportunities at all levels of the public service for all persons including:
 - (i) men and women;
 - (ii) members of all ethnic groups; and

- (iii) persons with disabilities;
- (g) prescribing measures to guarantee effective orientation and induction programmes in the public service;
- (h) approving training needs assessment and projections for public bodies and officers as developed by every authorized officer;
- (i) providing for approval of courses for individual public officers before proceeding for any training including both short and long term courses;
- (j) carrying out assessment of the impact of learning and training programmes in the public service; and
- (k) monitoring and evaluating the effectiveness of learning and training programmes that lead to qualifications attached to holding a public office and recommending any relevant improvements to concerned learning and training institutions.

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

Commission's
duties in
organization of
public service.

46. (1) In these Regulations, "organization of the public service" means the organizational structures and establishments of public bodies or divisions, directorates, units, sections, public offices and other 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 President and Parliament and in view of the report issue specific instructions to the concerned public body for implementation where necessary.

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

- (a) establishment or abolition of any public office;
 - (b) establishment of a public body;
 - (c) amalgamation of any public bodies;
 - (d) addition to or subtraction from a public body or division, directorate, unit, section or other organizational arrangement;
 - (e) naming or renaming of any public body, division, directorate, unit, section or other organizational arrangement;
 - (f) abolition of any public body, division, directorate, unit, section or other organizational arrangement; or
 - (g) reviewing the span of control and chain of command or accountability in a public body.
- (4) The factors the Commission shall consider in investigating, monitoring and evaluating the organization of the public service shall include -
- (a) the functions of the public bodies;
 - (b) the functions of the National Government as set out in the Constitution;
 - (c) the priorities of national sustainable development; and
 - (d) the policies of the government of the day.
- (5) Where the Commission is vested with the Constitutional function to abolish the public offices that would be subject to a recommendation under sub-paragraph (3), instead of making the recommendation, the Commission shall by itself take the necessary action.
- (6) Where the Commission's recommendations under sub-paragraph (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.

Commission's duties in administration of public service.

47. The Commission's duties in the discharge of its constitutional function to investigate, monitor and evaluate administration of the public service shall, with respect to any public body, include the investigation, monitoring, evaluation and reporting on the public body's –

- (a) core functions;
- (b) medium and long term plans for the delivery of the core functions;
- (c) prevailing systems, processes and instruments for delivery of the public body's functions;
- (d) structural organization;
- (e) direction taken in terms of goals and objectives;
- (f) staffing needs including establishment and terms and conditions of service;
- (g) co-ordination of efforts towards delivery of the core functions;
- (h) reporting systems including supervisory, accountability and appraisal functions; and
- (i) financial implications in the delivery of the functions and powers of the Commission in the public body.

Commission's duties in relation to personnel practices in public service.

48. In these Regulations, "personnel practices" means the norms applicable to entry, conduct, retention and removal of a public officer with respect to the officer's service in any public body including norms for –

- (a) personnel records management;
- (b) advertisement of vacancies, recruitment and selection procedures and criteria;
- (c) appointment, promotion, re-designation and related process;
- (d) job and occupational classification and grading;
- (e) remuneration and other conditions of service;
- (f) salary and payroll administration;
- (g) job assignments;
- (h) working environment;

- (i) qualifications attached to a public office;
- (j) training and development;
- (k) employee performance management systems;
- (l) deployment and secondment;
- (m) disciplinary control;
- (n) removal;
- (o) grievance management;
- (p) management of ill health;
- (q) staff welfare;
- (r) pensions benefits; and
- (s) any other duty usually undertaken by a personnel officer in a public body.

Reporting and use of findings.

49. (1) Upon investigation, monitoring and evaluation under this Part, the Commission shall communicate its findings to the concerned authorised officer, public body or office for appropriate action.

(2) The Commission's findings under sub-paragraph (1) shall be taken into account by the Commission in the delivery of its constitutional and any relevant statutory functions and powers.

PART VIII – PUBLIC SERVICE EFFICIENCY AND EFFECTIVENESS

Commission's duties in promotion of public service efficiency and effectiveness.

50. (1) The duties of the Commission in ensuring public service efficiency and effectiveness shall include –

- (a) initiating and co-ordinating reforms towards improved performance and service delivery by public bodies and officers;
- (b) evaluating the organization and core functions of public bodies in terms of human resources, internal processes, citizens' satisfaction and financial management, and, recommending measures for improved performance;

- (c) developing and implementing performance appraisal systems for public bodies and the individual public officers;
- (d) formulating and evaluating performance agreements between the government and public bodies or individual public officers and applicable measures for assessing levels of specific performance of the agreements;
- (e) investigating and making recommendations on its own motion or upon a complaint of inefficiency and ineffectiveness of service delivery in public bodies especially in view of indicators of inefficiency including-
 - i) excessive red tape in service delivery;
 - ii) delay in provision of services particularly in comparison to earlier standards or standards in other similar public bodies or offices;
 - iii) increasing backlogs and workload as shown by officers working overtime;
 - iv) citizens' criticism on service delivery;
 - v) longer processing time as compared to standards in other public bodies or offices;
 - vi) adverse financial and other resource utilization audit reports;
 - vii) reported breach of any law, code of conduct or values and principles of good governance in the public service; or
 - viii) reported persistent waste of resources and failure to meet targets by a public body or officer; and
- (f) making recommendations to the concerned authorised officer, public body or office for improved efficiency and effectiveness of the public service.

(2) In discharging its function under this paragraph, the Commission shall focus on –

- (a) the working of the public service in terms of coherence, purpose

and applicable procedures; and

(b) guiding public bodies to achieve results.

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

Commission
duties in
promotion of
values and
principles.

51. (1) The Commission's duties in the discharge of its Constitutional function under Article 234 (2) (c) to promote national values and principles of governance in Article 10 and values and principles of public service in Article 232 (1) of the Constitution shall include to –

- (a) investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of any of the values and principles;
- (b) take or recommend to the relevant lawful authority any necessary action in view of the violation of the values and principles by any person or public body;
- (c) visit, investigate, monitor and evaluate any public office or body with a view to determining the status of compliance with the values and principles;
- (d) inform and educate public officers and the public about the values and principles for the purpose of enhancing respect for the values and principles by means of a continuing program of research, publication, conferences, lectures and symposia, exhibitions, print media, internet, Braille, Kenya sign language, radio, television and such other means as the Commission may deem appropriate;
- (e) formulate, implement and oversee programmes intended to

inculcate in the public officers and citizens awareness of their civic responsibilities and appreciation of their right and duty to uphold the values and principles;

(g) integrate the values and principles in the regulations, procedures, policies and instruments for delivery of the Commission's powers and functions;

(h) assess and report on the public bodies' compliance with their obligations under international treaties and conventions on good governance, integrity and anti-corruption in the public service;

(i) support the efforts of other institutions working in the field of good governance, integrity and anti-corruption and co-operate with the institutions for the purpose of promoting and protecting the values and principles in public service;

(j) investigate and undertake conciliation, mediation or negotiation upon a complaint or on its own initiative if, the nature of the alleged violation of the values and principles makes conciliation, mediation or negotiation both possible and appropriate in the circumstances of the case;

(k) report or recommend to the President and Parliament on action taken or effective measures for promotion of the values and principles including remedies to victims or families of the victims of violations and punishment of violators;

(l) perform such other functions as the Commission may consider necessary for the promotion and protection of the values and principles.

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

principles include –

- a) state of preparedness in the public service for the appreciation, application and implementation of the values and principles;
- b) public bodies and officers under the Commission's powers and functions;
- c) financial requirements for the successful promotion of the values and principles;
- d) training and capacity building requirements for the Commission, public bodies and officers;
- e) meaning and application of the values and principles with respect to the various public bodies;
- f) channels for effective dissemination of values and principles;
- g) relevant partners for cooperation towards successful promotion of the values and principles;
- h) protection of human rights;
- i) relevant legislation, regulations, procedures, instruments and standards;
- j) relevant ratified conventions and treaties; and
- k) prevailing negative value systems that may undermine the values and principles.

(3) In the performance of its functions under this paragraph, the Commission shall observe the rules of natural justice if the matter involves action against violators of the values and principles.

(4) Subject to the Constitution, the Commission shall, in accordance with Article 234 (2) (c) of the Constitution, discharge its duties under this paragraph throughout the public service.

Report to the
President and
Parliament on
values and

52. (1) The record of evaluation and report by the Commission to the President and Parliament on the extent to which the values and principles in Articles 10 and 232 are complied with in the public service shall be submitted

principles.

annually and in respect of every preceding financial year.

(2) The report by the Commission under this paragraph shall –

- (a) except for absence on account of ill health, be signed by every sitting member of the Commission;
- (b) be delivered by the Commission, every December, to the President and the Speakers of both the National Assembly and the Senate;
- (c) include all the steps taken and decisions made by the Commission under this Part;
- (d) include specific recommendations that require to be implemented in the promotion and protection of the values and principles;
- (e) include specific decisions and particulars of persons who have violated the values and principles including action taken or recommended against them;
- (f) include the constraints the Commission has encountered in the promotion and protection of the values and principles; and
- (g) include the programmes the Commission is undertaking or has planned to undertake in the medium term towards the promotion of the values and principles.

(3) The Speakers of the National Assembly and the Senate shall cause, in accordance with their respective standing orders, the report by the Commission submitted in accordance with this paragraph to be debated by the respective Houses of Parliament with a view to implementing the recommendations in the report including necessary corrective measures.

(4) The President or the Parliament may request the Commission to make any clarification relating to the content of the report made under this paragraph.

(5) The Commission's report to the President and Parliament shall be published by the Commission in the gazette before or during the respective December.

(6) The Commission's report under this Part shall be published and publicised by the Commission.

(7) The Commission's report made under this Part may form part of the report by the Commission made and submitted to the President and Parliament under Article 254 of the Constitution.

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

PART X –REMOVAL FROM THE PUBLIC SERVICE OTHER THAN BY DISCIPLINARY PROCESS

Application of
Part.

53. This Part shall apply to resignation, retirement and related matters.

Resignation.

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

(2) A resignation letter shall be delivered to the officer's appointing authority by hand delivery or registered mail.

(3) Resignation shall take effect thirty days from the date of the delivery or

registering the resignation letter.

(4) Where a public officer resigns from the public service, the officer shall be entitled to all terminal benefits in accordance with the –

(a) terms and conditions applicable or contained in the contract of service; or

(b) provisions of law or policy governing resignation of public officers; or

(c) provisions of employment law governing resignations generally.

(5) A person who has resigned from the public service may rejoin the service in accordance with the provisions of these Regulations or relevant legislation and procedures governing appointment to the public service.

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

(a) fraud or conspiracy whereby the concerned public officer is innocent;

(b) involuntary decision by the concerned public officer by reason of infirmity of mind arising from ill health or involuntary intoxication; or

(c) resignation is aimed at avoiding anticipated or ongoing disciplinary case.

(7) In this paragraph, resignation entails the action of a public officer's self removal from the public service subject to the provisions of this paragraph.

Grounds for

55. (1) In these Regulations, "retirement" means removal of an officer

retirement and entitlement to pensions benefits.

from the public service with full separation benefits including pensions benefits as may be provided for in the applicable law or the contract of service or a special retirement scheme agreed upon between the public officer and the relevant lawful authority.

(2) Whenever a decision to retire a public officer is made under these Regulations, the relevant authorized officer shall notify the public officer and shall prepare and forward the officer's pensions claims to the Pensions Branch of the Treasury or other authority charged with administration of the public officer's pensions benefits.

(3) Retirement from the public service shall be on grounds of –

- (a) attainment of the mandatory retirement age prescribed in the relevant legislation or as agreed upon between the public officer and the relevant lawful authority;
- (b) ill health;
- (c) abolition of public office;
- (d) public interest;
- (e) special retirement scheme agreed between a public officer and the relevant lawful authority; and
- (f) voluntary retirement.

Retirement on age grounds.

56. (1) Subject to provisions of the Constitution or any Act of Parliament or specific government policy, the mandatory retirement age in the public service shall be upon attainment of the age of sixty years.

(2) Where a public officer has attained the mandatory retirement age –

- (a) the officer must retire from the service with effect from the birth 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 birth date of the mandatory retirement age but may engage the officer for service after the retirement upon such terms of contract if –
 - (i) the officer possesses rare knowledge, skills and competencies for the time being required in the service;
 - (ii) the retired officer is willing to be so engaged on contract; and
 - (iii) the officer's performance shall not in any way be impaired in view of the officer's age.

(3) Where a public officer has attained the age of fifty years and has been in the service for an aggregate period of at least ten years, the Commission may retire the officer if, after considering the officer's personal representation, the Commission determines that in view of the officer's age, the officer will not meet the demands of performance attached to the public office:

Provided that -

- (a) where it is intended to retire a public officer under this paragraph, the authorized officer shall require the officer, within reasonable time, to make personal representation in view of the intended retirement;
- (b) the authorized officer shall forward to the Commission the public officer's personal representation together with the authorized officer's observations thereon; and
- (c) the Commission's decision under this sub-paragraph shall take into

account the officer's representations, if any;

(d) the decision shall not take effect unless thirty days have lapsed from the date of the decision.

Retirement on grounds of ill health.

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

(a) the concerned authorized officer considers that the 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 officer to retire; or

(b) the public officer requests to be retired on grounds of ill health, and in this case, the authorized officer must initiate the process for the retirement in accordance with this paragraph.

(2) Where a public officer is considered for retirement or has requested to be retired in accordance with sub-paragraph (1), the concerned authorized officer shall call upon the officer to appear before a medical board constituted by the Director of Medical Services with a view to it being ascertained 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 sub-paragraph (2) and the finding is that the officer should be so retired, the Director of Medical Services shall forward the medical board's records of proceedings together with the Director's comments thereon to the authorized officer who shall –

(a) request the officer to make any personal representation in view of the medical board's record of proceedings;

- (b) make recommendation in view of the medical board's findings on the officer and the officer's representation, if any;
- (c) forward all the documents referred to in this sub-paragraph to the Commission.

(4) Where by reason of infirmity of mind arising from ill health, the concerned public officer is incapable of consciously following the procedural steps under this paragraph, the authorized officer shall forward the case to the Commission together with relevant observations and the Commission shall make appropriate decision which may include retiring the officer on grounds of ill health.

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

(6) Where a public officer, being able to appear before the Medical Board, refuses 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, if deemed appropriate, retiring the officer on grounds of ill health.

Retirement on grounds of abolition of office.

58. (1) Where a public office or offices are abolished in accordance with these Regulations with the effect that less than ten public officers in one cadre are affected, the Commission shall not retire the officers on account of abolition of office but shall reappoint them or re-designate them to an appropriate public office:

Provided that any such officer who opts to retire in view of abolition of the office shall be retired.

(2) Where a public officer is to be retired on grounds of abolition of office, the authorized officer shall inform the public officer that the officer's retirement is under consideration and invite the officer within reasonable time, being not less than thirty days, to make representation thereon, if any.

(3) Upon receipt of the representation in subparagraph (2) or failure to receive any representation within the prescribed time, the authorized officer shall forward the case to the Commission with recommendation justifying the retirement of the officer together with the officer's representation, if any.

(4) Unless the Commission considers that further justification is necessary, in which case it shall issue directions to the authorized officer accordingly, it shall decide forthwith whether the public officer should be called upon to retire on grounds of abolition of office.

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

Retirement on grounds of public interest.

59. (1) If an authorized officer, after having considered every available report with regard to a complaint against a public officer and it is apparent that it is desirable to retire the officer on grounds of public interest, the authorized officer shall –

(a) serve the public officer with a letter setting out the particulars of the complaint as reported and asking the officer to make representation within a reasonable time in view of the intended retirement; and

(b) upon receipt of the representation or if none is received within the prescribed time, forward to the Commission all the details of the case.

(2) Unless the Commission considers that further inquiry into the complaint is necessary, in which case it shall issue directions to the authorized officer accordingly, it shall decide forthwith whether the public officer should be called upon to retire on grounds of public interest.

(3) In this paragraph, for a complaint or report to justify retirement on grounds of public interest, it must be such that in view of the complaint or report, the public officer has offended public policy as protected in –

- (a) prescribed government policy;
- (b) provision of the constitution or legislation; or
- (c) binding decision made by a competent court of law.

Retirement on grounds of agreement or special retirement scheme.

60. (1) The Commission may retire any public officer where the –

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

(2) Except in cases of voluntary retirement or retirement in accordance with contractual terms and conditions, a public officer shall not be retired under this paragraph unless the Commission or other lawful authority has accorded the officer a reasonable opportunity to make relevant representation in view of the intended retirement.

Voluntary

61. (1) Any public officer having served for at least five years of

retirement

pensionable service shall be entitled, at own initiative, to retire from the public service with accrued retirement benefits.

(2) A public officer who intends to voluntarily retire under this paragraph shall serve the concerned authorized officer a thirty days notice or pay one month salary in lieu of notice.

(3) A retirement under this paragraph shall take effect on the date the thirty days notice lapses and there shall be no need for the Commission or other authority's decision for the retirement to so take effect.

(4) An officer who retires voluntarily under this paragraph shall be entitled to accrued pensions benefits less any government liability due from the officer.

Retirement decisions reviewable.

62. (1) A public officer retired under this Part shall be entitled to apply for a review against the decision on account 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 paragraph 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 XI – EXERCISE OF DISCIPLINARY CONTROL IN THE PUBLIC SERVICE

Delegation of disciplinary powers to authorized officers.

63. (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 authorized officers -

(a) in respect of all public officers -

(i) the power to interdict any public officer as provided for under this Part;

(ii) the power to suspend any public officer as provided for under this Part;

(iii) the power to stop, withhold or defer a normal increment of any public officer or to inflict a severe reprimand or a reprimand on the officer or to stop the officer's pay or salary as provided for under this Part;

(b) in respect of all public officers in Job Group "N" or equivalent and below, the power of dismissal or reduction in rank or `seniority as provided for under this Part:

Provided that where the public officer, at the time of the proceedings for dismissal or reduction in rank or seniority, has served as a public officer for an aggregate of fifteen or more years, the authorized officer shall not exercise the delegated power of dismissal or reduction in rank or seniority in accordance with provisions of this Part but shall, after the investigations, forward the case to the Commission for determination.

(2) Any authorized officer exercising the powers delegated under this paragraph shall act in accordance with the provisions of –

(a) these Regulations;

(b) any other relevant provisions of the Constitution or any other law;
and

(c) the Commission's instructions for the time being in force.

Authorized officer may inflict punishment.

64.(1) Notwithstanding any other provisions of these Regulations, an authorized officer may, without reference to the Commission -

(a) stop, withhold or defer a public officer's normal increment 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 the public officer an opportunity to make a defence (which shall be recorded), inflict on a public officer a severe reprimand or a reprimand; or

(c) stop from the pay or salary of a public officer who has been absent from duty without leave or lawful cause or reasonable excuse, an amount which bears the same relation to his annual pay or salary as such period of absence bears to one year.

(2) An authorized officer exercising the powers delegated by this Regulation shall act in accordance with provisions of this Part.

Absence from duty without leave.

65. (1) Where a public officer is absent from duty without leave or reasonable or lawful cause for a period exceeding twenty-four hours and the public officer is traced within a period of ten days from the commencement of such absence, and no reply to a charge of absence without leave is received from the officer within ten days after the despatch of the charge to the officer, the authority empowered to dismiss, may summarily dismiss the officer:

Provided that if the public officer replies to the charge, disciplinary process as prescribed under this Part shall apply to the case.

(2) Where a public officer is absent from duty without leave or 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, the authorised officer shall stop the payment of salary and other remunerative allowances and report the case of the missing officer to the nearest police station and the Commission for appropriate action including relevant investigation.

Nature of
disciplinary
control

66. (1) No punishment shall be inflicted on any public officer if it would be contrary to any provision of the Constitution and any Act of Parliament.

(2) Subject to any other Act of Parliament, the punishments which may be inflicted against a public officer as a result of disciplinary proceedings include

—

- (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;
- (g) deferment of a promotion; and
- (h) dismissal:

Provided that -

(i) where reduction in rank or seniority is imposed, for purposes of promotion based on number of years served, the years shall be computed from the effective date of the reduction in rank or seniority; and

(ii) where deferment of a promotion is imposed, the imposition shall not persist beyond twelve months and the promotion so deferred shall take effect on the date of lapsing of the deferment.

(3) Nothing in this paragraph shall limit the powers conferred to the Commission or any other lawful authority discharging a disciplinary function, instead of imposing a punishment, to require a public officer to retire from public service on any of the prescribed grounds of retirement provided for in these Regulations.

(4) In this paragraph, retirement on any ground may be allowed instead of a punishment if the prescribed conditions and procedures for such retirement as prescribed under these Regulations have been satisfied and the decision maker considers that the misconduct having been proven –

(a) the officer has nevertheless raised a mitigating factor which renders imposition of a punishment too harsh in view of the circumstances of the case; or

(b) the length of service benefits accrued and previous good record of the officer justifies the retirement; or

(c) imposing a punishment against the 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.

(5) Subject to any law or agreement for the time being 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 the officer enjoys in regard to leave or passages at the public expense.

General principles of disciplinary process.

67. (1) All acts of misconduct by public officers shall be dealt with under this Part immediately 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 public officer, the Commission shall, notwithstanding any other provisions of these Regulations, 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 punishment shall be imposed against a public officer unless –

- (a) the officer has been notified in writing the particulars of the misconduct as preferred including the applicable provision of the Constitution, legislation or code of conduct alleged to have been breached; and
- (b) the officer has been given, in the circumstances of the case, a reasonable opportunity to reply to the case in response to the allegations; and
- (c) the allegations have been investigated by a public officer or officers senior to the officer subject to the proceedings, or, investigated by any other lawful authority, and the findings are such that the officer has

- committed the misconduct as alleged; and
- (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 taken into consideration.

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

Provided that such information of the right of appeal or review shall not stay the operation of the decision.

(6) Every alleged case of misconduct likely to lead to commencement of a disciplinary action shall be –

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

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

- (a) establish and record the issues for 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 so as 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 punishment but only make findings and recommendations reserving imposition of punishment, 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 punishment in 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 the applicable procedures, the officer shall be informed by the Commission or authorized officer or other lawful authority –

- (a) of the findings on each alleged misconduct which has been preferred against the officer;
- (b) of the punishment, if any, to be inflicted upon the officer; and
- (c) that an appeal or an application for review may be lodged to the Commission or other lawful authority within the time prescribed in the applicable disciplinary procedures:

Provided that failure to communicate such right of appeal or an application for review shall not invalidate the findings or punishment imposed in the case.

(11) Disciplinary proceedings against any public officer shall uphold the fundamental right to a fair administrative action as provided for in Article 47 of the Constitution.

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

Interdiction.

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

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

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

(4) A public officer who is under interdiction may 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.

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

Suspension.

69. (1) Where a public officer has been convicted of a serious criminal offence, other than proceedings for minor offences, an authorized officer may suspend the public officer from the exercise of the functions of the public office pending consideration of the public officer's case under these Regulations.

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

(3) A public officer who is suspended shall receive a quarter 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 and such public officer is neither dismissed nor otherwise punished under these Regulations, any salary, remunerative allowances or any other benefit withheld under this paragraph shall be restored to the officer upon termination of such proceedings.

(5) Where a public officer has been suspended and such public officer is not dismissed but any of the other punishments under these Regulations is imposed, any salary, remunerative allowances or any other benefit withheld under this paragraph 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 office demoted to at 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 may 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.

Duty to update
interdicted or
suspended
officer

70. (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 this paragraph, the authorized officer shall make the appropriate response by writing to the officer 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 this paragraph and the authorized officer has failed to respond within the prescribed thirty days or the public officer is dissatisfied with the response, the officer may apply to the Commission for the lifting of the interdiction or suspension and the Commission shall make an appropriate decision which may include the termination of the disciplinary proceedings.

Officer convicted
of criminal
offence.

71. (1) If a public officer is convicted of a criminal offence which, in the opinion of the authorized officer, warrants imposition of any of the prescribed punishments, the authorized officer shall forward a copy of the charge and judgment and any judgment or order made on appeal or revision to the Commission for consideration, and the Commission shall decide whether the public officer should be dismissed or subjected to any of the other punishments mentioned in these Regulations or other legislation, and, in making a decision the Commission shall rely solely on the court record leading to the conviction.

Appeals and reviews.

(2) For the purposes of this regulation, proceedings for minor offences 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.

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

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

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

(3) The Commission shall not entertain an appeal more than once by the same public officer or a representative in respect to the same decision.

(4) Any person dissatisfied or affected by a decision made by the Commission in any disciplinary case or Commission's decision on an appeal may apply for review and the Commission may admit the application if –

(a) the Commission is satisfied that there appear in the application new and material facts which might have affected its former decision, and if adequate reasons for the non-disclosure of such facts at an earlier date are given; or

(b) there is an error apparent on record of the earlier decision.

(5) An application for review under subparagraph (4) shall be in writing and made within six months from the date of the decision appealed against:

Provided that the Commission may entertain an application for review out of

time if, in the opinion of the Commission, the circumstances warrant it.

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

(7) For avoidance of doubt, an appeal or an application for review under this paragraph may be made against any decision made during a disciplinary proceeding including against interim decisions such as those involving interdiction, suspension and investigation pending the final determination of the case.

(8) The decisions the Commission may make in an appeal or an application for review shall include –

- (a) upholding the decision;
- (b) setting aside the decision;
- (c) varying the decision as it considers to be just;
- (d) making any direction that it considers appropriate with respect to the decision;
- (e) making any decision for refund, reinstatement of remuneration or release of withheld payment due to the public officer as it considers to be just;
- (f) directing that disciplinary action be taken against any public officer who has failed to discharge a duty it was the officer's function to perform in relation to the disciplinary case and the concerned public body has suffered a loss; or
- (g) making any other appropriate decision in view of the circumstances of the case.

(9) In subparagraph (8), "setting aside the decision" shall entail the officer reverting to the officer's status with full attendant benefits as though the

decision set aside was never made.

(10) Where a preliminary investigation or a disciplinary inquiry discloses that a criminal offence may have been committed by a public officer, the concerned authorized officer shall, unless action by the Director of Public Prosecutions has been taken or is about to be taken, inform the Director and whose direction in the matter shall be final.

(11) If criminal proceedings are instituted against a public officer pursuant to subparagraph (10), proceedings for the officer's dismissal or imposition of any other punishment upon any ground involved or substantially involved in the criminal charge shall not be taken until the conclusion of the criminal proceedings and the determination of any appeal there from:

Provided that nothing in this paragraph shall be interpreted as prohibiting or restricting the power of the Commission or the concerned authorized officer or other lawful authority to interdict or suspend or take any interim decision against such a public officer.

(12) Where a public officer has been acquitted of a criminal charge commenced or continued as contemplated under this paragraph, the officer shall not be dismissed or otherwise punished on any alleged misconduct upon which the officer has been acquitted:

Provided that nothing in this subparagraph shall prevent the Commission or the concerned authorized officer or other lawful authority from dismissing or otherwise imposing a punishment against the officer on any other alleged misconduct arising out of the officer's conduct in the matter unless the allegation raises substantially the same issues as those on which the officer has been acquitted.

Protection of

73. As provided for in Article 236 of the Constitution, a public officer shall

public officers not be -

(a) victimized or discriminated against for having performed the functions of office in accordance with the Constitution or any other law; or

(b) dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.

Petition for removal of the Director of Public Prosecutions.

74. (1) Any person desiring the removal of the Director of Public Prosecutions under Article 158 of the Constitution shall present a petition for the desired removal to the Commission.

(2) The petition in subparagraph (1) shall be by way of a letter addressed to the Commission setting out the alleged facts constituting any of the grounds stated in Article 158 (1) of the Constitution for the desired removal of the Director, namely –

- (a) inability to perform the functions of office arising from mental or physical incapacity;
- (b) non-compliance with Chapter Six of the Constitution on leadership and integrity of state officers;
- (c) bankruptcy;
- (d) incompetence; or
- (e) gross misconduct or misbehaviour.

(3) The Chairperson shall cause the petition to be considered by the Commission and if in the opinion of the Commission the petition discloses any of the grounds for removal the Chairperson shall –

- (a) deliver a copy of the petition to the Director within fourteen days from the date the Chairperson received it; and

(b) require the Director to make a written response thereto within fourteen days from the date of the delivery:

Provided that in considering the petition under this subparagraph the Commission may call the petitioner and any other relevant witness or document.

(4) After receiving the Director's response, the Commission shall reconsider the petition to establish whether it discloses the existence of the alleged ground for removal of the Director by –

- (a) framing issues for the inquiry based on the allegations in the petition and the response thereto by the Director; and
- (b) hearing submissions by the person making the allegations together with the relevant witnesses the person may wish to call; and
- (c) hearing submissions by the Director together with the witnesses the Director may wish to call; and
- (d) considering all the relevant documentary evidence produced by any person involved; and
- (e) considering any circumstances that may aggravate or mitigate the gravity of the case.

(5) The Commission shall consider and make a decision on a petition under this paragraph within thirty days from the date it was received by the Commission.

(6) The provisions of these Regulations governing decision making by the Commission shall apply to making of the relevant decision on the petition under this paragraph.

(7) The decision of the Commission on the petition shall be signed by every member of the Commission who attended and participated in the

proceedings and shall include the -

- (a) date the Commission received the petition;
- (b) name of the Director;
- (c) name of the petitioner;
- (d) ground for desired removal and the alleged particulars;
- (e) issues for determination in view of the allegations and the Director's written response thereto;
- (f) names of any witnesses called during the proceedings and a summary of their oral evidence or documents each may have produced ;
- (g) any documentary evidence produced and attach the copies;
- (h) findings on each of the issues for determination in view of the evidence availed by the end of the proceedings;
- (i) statement if the Commission is satisfied or not satisfied that the petition discloses the existence of the ground for removal as alleged;
- (j) names and signatures of each of the members of the Commission present; and
- (k) date of the decision on the petition being the date the members of the Commission have signed.

(8) If the Commission is satisfied that the petition discloses the existence of a ground for removal of the Director, the decision of the Commission as per subparagraph (8) shall be delivered to the President by the Commission within seven days from the date of the decision.

(9) Throughout the process under this paragraph, the Commission shall inform the public of every step and outcome of the process.

PART XII – HEARING AND DETERMINATION OF APPEALS IN RESPECT OF COUNTY GOVERNMENTS' PUBLIC SERVICE

Scope of county government

75. For the purpose of the discharge of the Commission's function and

public service.

power under Article 234 (2) (i) of the Constitution in respect of hearing and determination of appeals in respect of county governments' public service, the Commission shall 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, promotion, re-designation, deployment, and qualifications attached to any office;
- (b) remuneration and other 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) removal from the public service other than by disciplinary process;
- (f) pensions benefits and other terminal benefits; and
- (g) any other decision the Commission considers to fall within its constitutional competence to hear and determine an appeal in that regard.

Procedure for appeal and review of a decision in respect of a county government public service.

76. (1) Any person 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 subparagraph (1) shall be in writing and made within thirty days from the date of the decision:

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

(3) The Commission shall not entertain an appeal more than once by the

same appellant or representative in respect to the same decision.

(4) Any person dissatisfied or affected by a decision made by the Commission following an appeal under this paragraph may apply for review and the Commission may admit the application if –

(a) the Commission is satisfied that there appear in the application, new and material facts which might have affected its former decision, and if adequate reasons for the non-disclosure of such facts at an earlier date are given; or

(b) there is an error apparent on record of the earlier decision.

(5) An application for review under subparagraph (4) shall be in writing and made within six months from the date of the decision subject of the application:

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

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

(7) For avoidance of doubt, an appeal or an application for review under this paragraph may be made against any decision including interim decisions such as those involving interdiction, suspension and investigation pending the final determination of the case.

(8) The decisions the Commission may make in deciding an appeal or an application for review under this paragraph shall include –

- (a) upholding the decision;
- (b) setting aside the decision;
- (c) varying the decision as it considers to be just;
- (d) giving any direction that it considers appropriate with respect to the decision;
- (e) making any decision for account, refund or reinstatement of remuneration or release of withheld payment due to the public officer as it considers to be just;
- (f) directing that disciplinary action be taken against any public officer who has failed to discharge a duty it was the officer's duty to perform in relation to the disciplinary case and the concerned county government has suffered a loss; or
- (g) making any other appropriate decision in view of the circumstances of the case.

(9) In deciding an appeal or application for review under this paragraph, the Commission shall state the reason for its decision.

(10) The Commission shall, before deciding any appeal under this paragraph, give all parties an opportunity to be heard including -

- (a) calling and examining witnesses; and
- (b) production of documents.

(11) The Commission shall determine the venue for hearing of the appeals under this paragraph and shall accord the parties involved reasonable notice to attend accordingly.

(12) The Commission shall establish relevant registries and sub registries for the effective filing and administration of appeals made under this paragraph.

Commission may contract a judicial officer or an advocate to hear the appeal.

77. (1) The Commission may contract the services of an advocate of over five years standing or a judicial officer of the rank of or above a resident magistrate to hear the appeal, make a report and recommendations as the advocate or judicial officer shall deem appropriate in the circumstances of the case.

(2) Where the Commission has contracted the services of an advocate or a judicial officer to hear the appeal, the advocate or judicial officer shall not suggest the decision to be made by the Commission but shall state any circumstances that may inform the Commission's decision.

(3) Upon consideration of the report and recommendations made by the advocate or judicial officer under this paragraph, the Commission shall make its decision:

Provided that the Commission may direct the advocate or judicial officer to make clarifications or further hearing on specific issues before making its decision on the appeal or a related application for review requiring further evidence.

(4) No person shall file legal proceedings in any court of law with respect to matters within the jurisdiction of the Commission to hear and determine appeals from county governments' public service unless the procedure provided for under this Part has been exhausted.

(5) Any person 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.

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

Contents of Commission's

78. The annual report by the Commission to the President and Parliament

report to the President and Parliament.

as prescribed under Article 254 (1) shall include –

- (a) any decision, observation, finding and recommendation in respect to any Constitutional or statutory function of the Commission;
- (b) any findings of an audit, investigation, evaluation, monitoring, inquiry, research or visits undertaken by the Commission;
- (c) any provision under the Constitution, legislation and these Regulations requiring the Commission to report upon;
- (d) any issue the President or the Parliament has in writing required the Commission to report upon;
- (e) any matter the Commission considers appropriate including any constraints in the discharge of its functions and violations of its decisions including action taken or recommended to be taken against the violators;
- (f) the programmes the Commission is undertaking or has planned to undertake towards the discharge of its functions; and
- (g) the utilisation of resources available to the Commission.

Procedure relating to reporting.

79. The report by the Commission under this Part shall –

(a) except for absence on account of ill health, be signed by every sitting member of the Commission; and

(b) be delivered by the Commission every December, to the President and the Speakers of both the National Assembly and the Senate.

Debate and action on Commission's recommendations in the report.

80. The Speakers of the National Assembly and the Senate shall cause, in accordance with their respective standing orders, the report by the Commission submitted in accordance with this Part to be debated by the respective Houses of Parliament with a view to implementing the recommendations in the report including necessary corrective measures.

Clarifications on Commission's report.

81. The President or the Parliament may in writing request the Commission to make any clarification relating to the content of the report made under this Part.

Commission's report to be published.

82. (1) The Commission's report to the President and Parliament under this Part shall be published by the Commission in the gazette before or during the respective December.

(2) The Commission's report under this Part shall be published and publicised by the Commission.

PART XIV – MISCELLANEOUS

Complaints and grievances.

83. (1) The Commission may on its own initiative or on complaint made by any person investigate any issue relating to its Constitutional and statutory functions and powers and, make such decision as it considers just in the circumstances of the case.

(2) The Commission in carrying out investigation under this paragraph shall accord every party involved an opportunity to make a representation of their case.

Conciliation, mediation and negotiation.

84. (1) The Commission may on its own initiative or on request made by any person undertake or facilitate conciliation, mediation and negotiation of any issue relating to its Constitutional and statutory functions and encourage the parties to arrive at an amicable decision that may be just in the circumstances of the case.

(2) The Commission in carrying out conciliation, mediation and negotiation under this paragraph shall accord every party involved an opportunity to make a representation of their case.

Communication of Commission's decisions.

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

(2) Any decision of the Commission affecting an individual public officer shall be communicated to the officer through the relevant authorized officer: Provided that the affected officer or the officer's representative shall be entitled to receive information about the decision or the reasons for the decision from the Commission if, a request is made by the officer or such representative.

(3) Notwithstanding the provisions of this paragraph, any decision of the Commission may be communicated by the Chairperson if circumstances warrant it.

Delegation of Commission's functions and powers during want of quorum or absence of members.

86.(1) Where for any reason there is no quorum of the Commission but one or more of the members are sitting, the Commission hereby delegates all its powers and functions to such one or more of the sitting members to be exercised in the name of the Commission in accordance with the provisions of the Constitution, any relevant legislation and these Regulations.

(2) Where for any reason there is no any sitting member of the Commission, the Commission hereby delegates its powers and functions to the Secretary to be exercised in the name of the Commission in accordance with the provisions of the Constitution, any relevant legislation and these Regulations:

Provided that the Secretary, in such circumstances and delegation, shall not exercise the following functions and powers vested in the Commission, namely –

- (a) establishment and abolition of offices in the public service;
- (b) appointment of persons to hold or act in those offices;

- (c) imposition of dismissal or reduction in rank in disciplinary proceedings;
- (d) recommendation of persons for nomination by the President for appointment as Principal Secretary;
- (e) nomination of persons for appointment by the President as a member of the Judicial Service Commission or the Salaries and Remuneration Commission;
- (f) consideration of a petition for removal of the Director of Public Prosecution; and
- (g) making or revocation of any regulation or instruction made or issued by the Commission.

Service of notices etc.

87. Where under these Regulations –

- (a) it is necessary to serve any notice, charge or other document upon a public officer or any person, or , to communicate any information to any public officer having been absent from duty; and
- (b) it is not possible to effect such service upon, or communicate such information to the public officer or the person,

it shall be sufficient if the notice, charge or other document, or a letter containing such information, is sent by 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.

Commission may act from time to time.

88. Where the Constitution or any legislation confers upon the Commission any function or duty, unless a contrary intention is provided for in the law, the function or duty shall be discharged or performed from time to time as occasion arises.

Advance copies to the Commission.

89. Nothing in these Regulations shall prevent a public 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 relevant authorized officer.

Special obligations of the authorized officer.

90. (1) The authorized officer shall submit to the Commission in every October, January, April and July, 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 these Regulations including -

- (a) the delegated function and power or duty so exercised or performed;
- (b) particulars of the officer or persons subject of the decision made including the name, 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 implementation status; and
- (d) any impediment to the exercise of the function and power or performance of the duty.

(2) The duty to implement any decision of the Commission made under these Regulations shall vest in the authorized officer or other public officer as the Commission may direct.

(3) Where there occurs any difficulty in implementation of any instruction or decision of the Commission, the authorized officer or any other public officer charged with such implementation shall bring the impediment to the attention of the Commission as soon as practicable and in any event not later than seven days from such occurrence.

Scheduled exercise of powers and functions of the Commission

91. The Commission may issue to the authorized officers, every July and at any other time it may deem necessary, a programme setting out an annual schedule on the exercise of any power and function or performance of any duty under these Regulations in accordance with the schedule as the

Commission shall deem necessary.

Audit and investigation.

92. The Commission may institute an audit or investigation of the manner in which any of the authorized officers has exercised any of the powers delegated by the Commission under these Regulations.

Commission may assign equivalency for Job Groups.

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

Cases not covered by Regulations.

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

Commission may prescribe forms.

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

Revocation of Regulations.
Cap.185
(Sub-Leg)

96. The Public Service Commission Regulations, 2005 are revoked.

Made on the 18th day of June, 2012.

MARY GIKUURI,
Chairperson,
Public Service Commission of Kenya.