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PUBLIC SERVICE COMMISSION

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4th August, 2021

Mr. Michael R. Sialai, CBS
Clerk to the National Assembly
Parliament Buildings
Parliament Road
NAIROBI

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CMA
9/8/21

Dear Michael,

RE: THE PUBLIC SERVICE COMMISSION (PERFORMANCE MANAGEMENT) REGULATIONS, 2021

Pursuant to the provisions of Section 13 of the Statutory Instruments Act, we attach herewith the Public Service Commission (Performance Management) Regulations, 2021 together with the Explanatory Memorandum for approval by the National Assembly.

Yours faithfully
Simon K. Rotich

SIMON K. ROTICH, CBS
SECRETARY/CEO
PUBLIC SERVICE COMMISSION

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10/08/2021

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SPECIAL ISSUE

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4th August, 2021

(Legislative Supplement No. 54)

LEGAL NOTICE NO. 114

THE PUBLIC SERVICE COMMISSION ACT

(No. 10 of 2017)

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THE PUBLIC SERVICE COMMISSION ACT

(No. 10 of 2017)

IN EXERCISE of the powers conferred by section 92 of the Public Service Commission Act, 2017, the Public Service Commission makes the following Regulations—

THE PUBLIC SERVICE COMMISSION (PERFORMANCE MANAGEMENT) REGULATIONS, 2021

PART I—PRELIMINARY

1. These Regulations may be cited as the Public Service Commission (Performance Management) Regulations, 2021. Citation.
2. (1) These Regulations shall apply to— Scope.
 - (a) public bodies; and
 - (b) all persons holding or acting in an office in a public body.
- (2) These Regulations shall not apply to public bodies or persons holding or acting in an office in a public body specified in Article 234 (3) (c) and (d) of the Constitution.
3. In these Regulations, unless the context otherwise requires— Interpretation

“authorised officer” means—

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

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

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

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

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

“output” means the immediate results from an activity;

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

“public body” includes—

 - (a) any corporation, council, board, committee or other body which has power to act under or for the purposes of any written law relating to the undertakings of a public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any such law;

- (b) a corporation, the whole or a controlling majority of shares which are owned by a person or entity that is a public body by virtue of any of paragraph (a) of this definition;
- (c) statutory public bodies; or
- (d) any public body brought under the jurisdiction of the Commission by any written law for a specified function to the extent of that function;

“Secretariat” means the Performance Contracting Secretariat established under regulation 9;

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

“State agency” means a public body other than a Ministry; and

“supervisor” means the immediate person to whom an employee reports.

4. The objects of these Regulations are to—

Objects of the Regulations.

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

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

Service delivery standards.

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

- (a) provide for efficiency, impartiality and the equitable provision of services;
 - (b) facilitate the introduction or adoption of modern and innovative service delivery systems and procedures; and
 - (c) ensure the adaptability of the delivery of public services to the needs of the public.
- (3) The standards developed under paragraph (1) shall—
- (a) include an effective feedback mechanism;

- (b) specify mechanisms for monitoring and evaluating the effectiveness of service delivery; and
 - (c) specify mechanisms or strategies to be utilized to improve access to services.
- (4) The standards developed under paragraph (1) shall inform the annual performance targets of the public body.
- (5) A person may lodge a complaint with the Commission against a public body or an employee in a public body that fails to adhere to the service delivery standards developed under paragraph (1).
- (6) Public bodies shall review the standards developed under paragraph (1) at least once every two years.

PART II—ROLES AND RESPONSIBILITIES

6. For the purpose of implementing these Regulations in each Ministry, each Cabinet Secretary shall— Cabinet Secretaries.
- (a) ensure that the performance contracts for all State departments and State agencies in the Ministry are signed by 15th August of every financial year;
 - (b) identify performance targets to be achieved by the State departments and State agencies in the Ministry in a given financial year;
 - (c) ensure annual staff performance appraisal;
 - (d) nominate employees to be considered for annual honours and awards; and
 - (e) submit performance reports to the Public Service Commission and the secretariat as required.
7. A Principal Secretary who is responsible for the administration of a State department shall— Principal Secretaries.
- (a) prepare a strategic plan for the State department;
 - (b) ensure that there is adequate budgetary allocation for implementation of the strategic plan;
 - (c) set performance targets for the department in accordance with the plan prepared under paragraph (a);
 - (d) supervise employees in the department for the delivery of outputs in accordance with the department's service delivery standards;
 - (e) ensure that employees meet their performance targets; and
 - (f) prepare performance reports of the department and submit the reports to the Cabinet Secretary.
8. Each board of a State agency shall be responsible for— Board of State agencies.

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

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

Performance Contracting Secretariat.

(2) The Secretariat shall be responsible for—

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

10. (1) Each public body shall establish a Performance Contracting Committee.

Performance Contracting Committees.

(2) The Performance Contracting Committee of a State department shall comprise of—

- (a) the Principal Secretary, who shall be the chairperson of the Committee;
- (b) the head of administration in the State department;
- (c) three heads of technical departments designated by the Principal Secretary; and
- (d) the head of the planning unit of the State department who shall be the secretary to the committee.

(2) The Performance Contracting Committee of a State agency shall comprise of—

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

PART III—PLANNING FOR EFFICIENT AND EFFECTIVE DELIVERY OF SERVICES

11. (1) Every public body shall develop and implement a strategic plan which shall contain—

- (a) the nature and scope of the public body's mandate;
- (b) the strategic direction for the plan period;
- (c) an overview of the operating environment;
- (d) a description of the goals, objectives and targets to be attained in the medium term;
- (e) the programmes and initiatives for attaining the goals, objectives and targets;
- (f) a description of how the goals and objectives will be achieved including a description of the operational

Strategic
planning.

processes, skills and technology, human capital and other resources required to meet the goals and objectives; and

- (g) key challenges that affect the body's ability to achieve its strategic objectives and deliver its outputs and how the challenges will be addressed.

(2) The public body shall develop the strategic plan in a participatory manner.

(3) The programs and activities included in the strategic plan of a public body shall be—

- (a) in line with the guidelines issued by the Ministry responsible for the planning mandate of the public body; and
- (b) aligned with the national development agenda and policy priorities.

(4) The strategic plan period shall be aligned to the national medium-term plan.

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

Strategic plans to be published.

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

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

Approved organisational structure, etc.

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

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

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

- (a) assess the public body's human resource in order to determine the gap in skills and competencies, and the public body's training needs;
- (b) assess the public body's optimal staffing levels necessary for the discharge of its mandate, including the required skills and competencies, the required number of employees, the grading structure and the terms of service of employees;
- (c) plan within the public body's budget for the recruitment retention, deployment and development of human resource according to the body's requirements;

- (d) determine the training needs for the public body, set targets for the capacity-building of employees, and establish specific plans to address the body's training needs; and
- (e) develop a career progression and succession management strategy for the public body.

14. (1) The authorised officer shall ensure that the public body's objectives—

Objectives and indicators.

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

PART IV—INSTITUTIONAL PERFORMANCE MANAGEMENT

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

Performance Contract to be signed annually.

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

(2) The performance contract shall provide for—

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

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

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

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

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

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

16. Each authorized officer of a public body shall ensure—

Performance targets.

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

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

Independent Negotiation and Evaluation Committee.

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

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

- (a) possesses a minimum of a bachelor's degree from a university recognised in Kenya;
- (b) has at least ten years' professional experience in a relevant field;

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

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

Parties to negotiations.

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

a representative of the National Treasury and the tertiary institution team comprising the chairperson of the board, one independent member of the board, the principal of the institution and heads of departments.

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

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

(5) For the purposes of this regulations, "pre-negotiation stage" means the negotiations entered into between two or more public bodies whose performance affects the performance to the other public body or bodies to arrive at a consensus on the nature and limits of commitments one public body shall make to another with respect to the performance targets of each.

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

Negotiation of performance targets.

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

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

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

Vetting of performance contracts.

(2) The Secretariat shall ensure that—

- (a) the performance contract complies with these Regulations;
- (b) the performance contract is in line with the public body's strategic plan and national government development agenda;

- (c) the performance indicators are in line with the public body's mandate and factored into its approved budget for the financial year; and
- (d) the public body's performance targets are growth-oriented and citizen-focused.

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

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

Signing of performance contracts.

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

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

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

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

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

(4) The performance contracts for a tertiary institution shall be signed—

- (a) at the first level, between the relevant Cabinet Secretary on behalf of the Ministry and the chairperson of the board of the tertiary institution and an independent director;
- (b) at the second level, between the chairperson of the board of the tertiary institution and the principal; and
- (c) at the third level, between the principal of the tertiary institution and the heads of departments.

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

Performance contract to be published.

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

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

Annual work plans.

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

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

Departmental and other work plans.

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

PART V—PERFORMANCE MONITORING, REPORTING AND EVALUATION

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

Quarterly reports.

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

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

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

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

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

Mid-year reviews.

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

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

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

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

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

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

Reports to specialized agencies.

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

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

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

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

Annual Internal Performance Evaluation Report.

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

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

Annual performance evaluation.

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

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

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

- (a) the performance contracting guidelines;
- (b) copies of the signed performance contract;
- (c) the approved budget of the public body;
- (d) the annual internal performance evaluation report;
- (e) supporting documents for achievement of the targets; and
- (f) supporting documentation of external factors that may have affected the achievement of performance targets.

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

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

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

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

Rating the performance of public bodies.

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

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

Complaints handling.

PART VI—EMPLOYEE PERFORMANCE MANAGEMENT

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

Employee Performance Management Committee.

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

- (a) The Secretary responsible for administration who shall be the chairperson;

- (b) heads of departments; and
 - (c) the head of the human resource function who shall be the secretary to the committee.
- (3) In the case of a State agency, the Committee shall comprise of—
- (a) a senior manager appointed by the Chief Executive Officer, who shall be the chairperson;
 - (b) the heads of departments; and
 - (c) the head of human resource function who shall be the secretary to the committee.
- (4) The functions of the Employee Performance Management Committee shall be to—
- (a) consider and moderate individual performance scores and make recommendations to the authorised officer;
 - (b) make recommendations to the authorized officer on rewards or sanctions to be imposed on an employee; and
 - (c) make recommendations on planned performance improvement for an employee.
- (5) The performance of members of the Employee Performance Management Committee shall be considered by the authorised officer who shall make a decision on rewards, sanctions or performance improvement plans.

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

Employee performance work plan.

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

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

Performance appraisal instruments.

- (2) The authorized officer of each public body shall, at the beginning of the performance period, designate in writing—
- (a) the performance appraisal instrument prescribed by the Commission; and
 - (b) the date on or by which the appraisal of the performance of employees shall be conducted.

PART VII—PERFORMANCE SUPERVISION

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

(2) The supervisor shall—

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

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

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

36. Each employee shall—

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

Responsibilities of employees.

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

Joint mid-year review.

(2) During the joint review—

- (a) the employee may identify any issues affecting performance;
- (b) the supervisor may review the learning and development plan with the employee and, where necessary, update the plan;

- (c) the supervisor and employee may agree to vary the initial targets if there has been a significant change in the nature of functions or duties performed by the employee;
- (d) the supervisor shall, after discussion with the employee, provide feedback and adjust the performance targets if required; and
- (e) the supervisor may, after discussion with the employee, recommend a talent management plan for the improvement of the employee's performance.
38. The appraisal of the performance of an employee shall be on *pro rata* basis if the employee is redeployed or leaves the public body. *Pro rata appraisal.*
39. (1) The supervisor shall, at the end of the performance period, conduct a formal year-end appraisal of each employee under his or her supervision and rate the employee's performance. *End of year appraisal.*
- (2) The performance appraisal shall be conducted at a meeting held between the supervisor and employee.
- (3) The employee shall, prior to the meeting, prepare a preliminary report on the extent to which the employee's targets were achieved.
40. (1) The employee's supervisor shall notify the employee of the outcome of the performance appraisal at the end of the appraisal period and after conducting the end of year appraisal. *Communication of results.*
- (2) Both the employee's supervisor and the employee shall sign the appraisal form.
- (3) An employee who is not satisfied with appraisal ratings may seek reasons for the rating in writing from the supervisor.
- (4) An employee who is dissatisfied with the appraisal will indicate the reasons for the dissatisfaction on the appraisal form.
- (5) In the event of a dispute in the outcome of the appraisal, the supervisor shall advise the employee to appeal to the Authorized Officer.
41. (1) A duly completed Performance Appraisal Instrument shall be presented to the Performance Management Committee for moderation and recommendations. *Performance appraisal.*
- (2) The appraisal shall be based only on the information contained in the designated performance appraisal instrument developed by the Public Service Commission.
- (3) The recommendations of the Performance Management Committee shall be submitted to the authorized officer for determination on the reward, sanction or performance improvement plan for each employee.
- (4) The Authorised Officer shall consider the performance appraisal reports and make a determination regarding probation, rewards, promotion and skills development of the employee.

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

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

PART VIII—REWARDS AND SANCTIONS

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

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

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

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

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

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

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

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

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

- (b) consider steps towards termination of service in accordance with the Act.
44. (1) Upon receipt of the report referred to in regulation 29 (5), the Commission shall—
- Rewards for public bodies.
- (a) prepare and submit a report to the President; and
- (b) in consultation with the President, organise a public ceremony which shall be held on or before the 30th November of each year.
- (2) The ceremony referred to in paragraph (1) shall include the release of the performance report and rewarding of excellent performance by public bodies.
- (3) A public body shall, within seven days of the release of the performance evaluation results, publish the results on its website.
45. Where the performance of a public body is unsatisfactory, the President may take such action as may be appropriate to improve service delivery.
- Sanctions for public bodies.
46. (1) The Commission shall establish an awards' scheme for excellent performance and innovation by public officers.
- Public service awards scheme
- (2) The objective of the scheme shall be to—
- (a) reward excellent performance by public officers;
- (b) acknowledge and showcase in the public service and reward innovators whose innovations have improved efficiency and effectiveness in public service delivery; and
- (c) reward consistent ethical practices by individual public officers.
- (2) The Commission shall seek the advice of the Salaries and Remuneration Commission where the Commission intends to award cash prizes under the awards scheme.
47. (1) Pursuant to the provisions of section 12, the Commission shall constitute an Awards Committee.
- Awards Committee.
- (2) The Awards Committee shall comprise of—
- (a) two members of the Commission appointed by the Chairperson of the Commission, one of whom shall be the chairperson of the committee;
- (b) one person representing the Cabinet Secretary responsible for matters relating to the public service;
- (c) one person representing Cabinet Secretary responsible for matters relating to finance;
- (d) two persons from selected public bodies; and
- (e) the head of the department in the Commission responsible for performance management in the public service.
- (3) The Secretary of the Commission shall provide the secretariat.
- (4) The Committee shall be responsible for managing the awards' scheme under regulation 46 including—

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

PART X—MISCELLANEOUS

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

Complaints and grievances.

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

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

Contravention of these Regulations.

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

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

Matters not covered by Regulations.

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

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

Records.

CHARITY KISOTU,
Ag. Chairperson of the Public Service Commission.

EXPLANATORY MEMORANDUM

PUBLIC SERVICE COMMISSION (PERFORMANCE MANAGEMENT) REGULATIONS, 2021

PART I

- Name of Statutory Instrument:** Public Service Commission
(Performance Management) Regulations, 2021.
- Name of Parent Act:** The Public Service Commission Act, 2017
- Enacted pursuant to:** Article 234 (e) of the Constitution of Kenya &
Section 92(1) of the Public Service Commission Act, 2017.
- Name of Commission:** Public Service Commission

PART II

1. The Purpose of Public Service Commission (Performance Management) Regulations, 2021.

The purpose of these Regulations is to:-

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

2. Policy Background.

Parliament enacted the Public Service Commission Act, in April 2017, and the same has been implemented since 26th April, 2017, being the commencement date. The Act on its own, however, is not sufficient since it does not provide the form, operation procedures and guidelines on all matters relating to the mandate of the Public Service. In order to provide further clarity and give full effect to the mandate of the Commission pursuant to the provisions of Section 92 of the Public Service Commission Act 2017, it is necessary to have regulations to govern the implementation of this mandate.

Article 234 (e) of the Constitution of Kenya mandates the Public Service Commission to ensure that the public service is efficient and effective. Consequently, the Commission developed the draft Performance Management Regulations whose aim is to attain operational effectiveness that allow public sector to better utilize its resources, focus performance results on citizen needs, be accountable for performance results, provide means of measuring performance against the set targets, and link performance to reward.

3. Public Consultations and Future Engagement

The Draft Performance Management Regulations were taken through systematic rigorous process of seeking of views through written memoranda from all stakeholders and the public at large and thereafter held a two cohorts, two day sensitization/validation forum before finalizing the same draft regulations in close consultation with the Office of the Attorney General – Parliamentary Counsel whose views were incorporated to the final draft of the said regulations.

Once the regulations are gazetted, the Public Service Commission shall embark on sensitization of all the public bodies under its mandate to ensure collaboration and uniform implementation through continuous sensitization of all stakeholders on the said regulations.

4. Application of the Regulations.

The Commission shall monitor the application of the Public Service Commission (Performance Management) Regulations, 2021. This will be done through quarterly reports from ministries, departments and State Corporations. In addition, the Commission will also carry out regular monitoring and evaluation of implementation of the specific provisions of these Regulations through interaction with the implementers of these Regulations, studying various reports that will be received from ministries and State Corporations.

It is important to note that the Regulations shall apply from the commencement date of these Regulations. In this respect, a review thereof will be undertaken by the Public Service Commission in consultation with the relevant state agencies as proposed in the draft regulations.

5. Public Service Commission contact person.

The contact person is Ms. Charity Kisotu, Vice-Chairperson, Public Service Commission.

Dated.....*25th May*.....2021



CHARITY KISOTU
VICE - CHAIRPERSON, PUBLIC SERVICE COMMISSION