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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- THIRD SESSION (2019)

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON
THE CONSIDERATION OF THE
PUBLIC SERVICE COMMISSION
REGULATIONS, 2019
(Legal Notice No. 65 of 2019)

NOVEMBER 2019

THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 08 NOV 2019

DAY:
Wednesday

Hon. Gitonga Murugara, MP
Getrude Chebet

Directorate of Committee Services
The National Assembly,
Parliament Buildings,
NAIROBI.

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ABBREVIATIONS

LN	Legal Notice
PSC	Public Service Commission
RMA	Regulatory Making Authority
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD

In exercise of the powers conferred by section 92 of the Public Service Commission Act, 2017, the Chairperson of the Public Service Commission published the Public Service Commission Regulations, 2019 vide *Legal Notice No 65* of 2019 on the 24th of May, 2019. The Regulations were submitted to the Clerk of the Assembly on 5th August, 2019 and tabled before the House on 11th August 2019.

The Regulations seek to operationalise the Public Service Act, 2017 by giving effect to the mandate of the Commission pursuant to Section 92. The Regulations provide a framework to assist in better running of the public service.

Pursuant to section 16 of the Statutory Instruments Act, 2013, the Committee held a meeting with the regulation making authority, i.e., the Public Service Commission (PSC) and the Ministry of Public Service, Youth and Gender on the 4th October, 2019 in Mombasa.

The Committee having scrutinized the Public Service Commission Regulations, 2019 against the Constitution, the Interpretations and General Provisions Act (Cap 2) Laws of Kenya, the Public Service Act (No. 10 of 2017) and the Statutory Instruments Act (No 23 of 2013), the Committee resolved to **annul the Regulations for contravening sections 5, 5A, 11(1), 13(j) and 13 (m) of the Statutory Instruments Act, 2013.**

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to section 15 (1) of the Statutory Instruments Act, 2013 and Standing Order 210 (4) (b), it is my pleasure and duty to present to the House the Committee's Report on the Consideration of the Public Service Commission Regulations, 2019 (*Legal Notice 65* of 2019).

HON. GLADYS BOSS SHOLLEI CBS MP

1.0 PREFACE

1.1. Establishment and Mandate of the Committee

The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.

The Committee is mandated to consider in respect of any statutory instrument, whether it:

- a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
- b) infringes on fundamental rights and freedoms of the public;
- c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
- d) contains imposition of taxation;
- e) directly or indirectly bars the jurisdiction of the court;
- f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
- g) it involves expenditure from the consolidated fund or other public revenues;
- h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
- i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
- j) appears to have had unjustifiable delay in its publication or laying before Parliament;
- k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
- l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- m) inappropriately delegates legislative powers;
- n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- o) appears for any reason to infringe on the rule of law;
- p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
- q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises -

Chairperson

Hon. Gladys Boss Shollei CBS MP
Uasin Gishu County Woman Representative

Jubilee Party

Vice- Chairperson

Hon. Fatuma Gedi, MP
Wajir County Woman Representative
Party for Development and Reforms

MEMBERS

Hon. Waihenya Ndirangu, MP
Roysambu Constituency
Jubilee Party

Hon. Ronald Tonui, MP
Bomet Central Constituency
Jubilee Party

Hon. Alice Wahome, MP,
Kandara Constituency
Jubilee Party

Hon. William Kamoti, MP
Rabai Constituency
Orange Democratic Movement

Hon. Robert Mbui, MP
Kathiani Constituency,
Wiper Democratic Movement -Kenya

Hon. Martha Wangari, MP
Gilgil Constituency
Jubilee Party

Hon. Daniel Maanzo, MP
Makueni Constituency
Wiper Democratic Movement -Kenya

Hon. Gideon Mulyungi, MP
Mwingi Constituency
Wiper Democratic Movement – Kenya

Hon. Muriuki Njagagua, MP
Mbeere North Constituency
Jubilee Party

Hon. William Kassait Kamket, MP
Tiaty Constituency
KANU

Hon. Timothy Wanyonyi, MP
Westlands Constituency
Orange Democratic Movement

Hon. (Dr.) Wilberforce Oundo, MP
Funyula Constituency
Orange Democratic Movement

Hon. George G. Murugara, MP
Tharaka Constituency
Jubilee Party

Hon. Jennifer Shamalla, MP
Nominated
Jubilee Party

Hon. Munene Wambugu, MP
Kirinyaga Central Constituency
Jubilee Party

Hon. Muturi Kigano, MP
Kangema Constituency
Jubilee Party

Hon. Patrick Kariuki Mariru, MP
Laikipia West Constituency
Jubilee Party

Hon. Sammy Seroney, MP
Nominated
Wiper Democratic Movement – Kenya

Hon. Tindi Mwale, MP
Butere Constituency
Amani National Congress

Hon. Alfred W. Sambu, MP
Webuye East
Amani National Congress

Hon. Abdi Koropu Tepo, MP
Isiolo South Constituency
Kenya Patriots Party

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises –

Ms. Susan Maritim
Senior Clerk Assistant (Team Leader)

Mr. Jimale Mohamed
Second Clerk Assistant

Mr. Wilson Dima Dima
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Anne Njeri Kigoro
Research Officer III

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superintendent of Electronics

Ms. Mary Otieno
Office Superintendent

2.0 CONSIDERATION OF THE PUBLIC SERVICE COMMISSION REGULATIONS, 2019

2.1 Introduction

5. The Public Service Commission Regulations, 2019 were made by the Chairperson of the Public Service Commission pursuant to section 92 of the Public Service Commission Act, 2017.
6. The Regulations were published in the Kenya Gazette vide *Legal Notice No 65* of 2019 on the 24th of May, 2019. The Regulations were submitted to the Clerk of the National Assembly on 5th August, 2019 and tabled before the House on 11th August 2019.

2.2 Purpose of the Regulations

7. The Regulations seek to operationalise the Public Service Act, 2017 by giving effect to the mandate of the Commission pursuant to Section 92. The Regulations also provide a framework to assist in better running of the public service.
8. Specifically, the Regulations seek to –
 - (i) provide for the appointment, discipline and removal of staff in the public service;
 - (ii) provide the form and method of keeping records under the Act;
 - (iii) provide criteria on the qualifications of persons entering the public service;
 - (iv) guide the administration of the career progression and professional development programs for public officers;
 - (v) provide for the exercise of disciplinary control in the service;
 - (vi) guide the promotion and reporting on values and principles of public service;
 - (vii) provide operations and procedures of a committee established under the Act; and
 - (viii) provide guidelines on retirement.

2.3 Scrutiny of the Instrument

9. The Committee considered the Regulations against, the Constitution, the Interpretations and General Provisions Act (Cap 2) Laws of Kenya, the Public Service Act (No. 10 of 2017) and the Statutory Instruments Act (No 23 of 2013).
10. Pursuant to section 16 of the SI Act, the Committee held a meeting with the regulation making authority and the Ministry of Public Service, Youth and Gender Affairs on 4th October, 2019 in Mombasa.
11. The Committee raised the following concerns in relation to the Regulations –

3.0 COMMITTEE OBSERVATIONS AND GROUNDS FOR RECOMMENDING ANNULMENT

12. Having scrutinized the Regulations, the Committee observed THAT –

- (i) **Consultations / Public participation:** Articles 10 and 118 of the Constitution, section 5, 5A and the Schedule to the Act and Standing Order 210 requires the

regulation making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations. The outcomes of such consultations are to be indicated within the explanatory memorandum in detail.

The Committee observed that the explanatory memorandum submitted by the regulation making authority did not demonstrate that sufficient public consultation was conducted as required under Articles 10 and 118 of the Constitution and sections 5, 5A and the schedule of the Statutory Instruments Act.

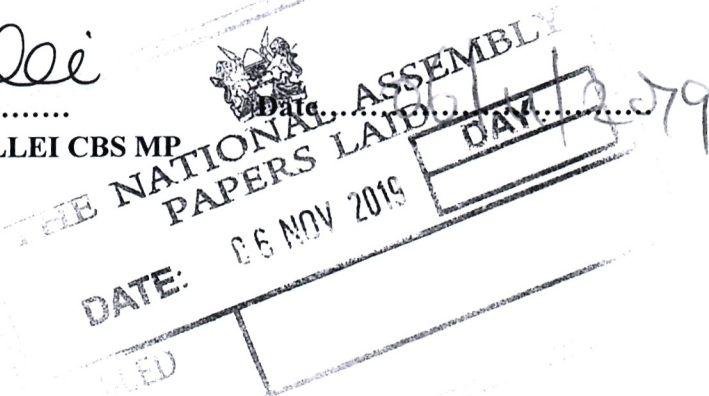
- (ii) **Statutory Timelines:** The Regulations were published in the Kenya Gazette as *Legal Notice No 65* of 2019 on the 24th of May, 2019, submitted to the Clerk of the National Assembly on 5th August, 2019 and tabled before the House on 11th August, 2019. This was outside of the statutory timelines stipulated by section 11 of the Statutory Instruments Act.
- (iii) There was also unjustifiable delay in the transmission of the Regulations to Parliament contrary to section 13(j) of the Statutory Instruments Act, 2013.
- (iv) Regulations 22, 47, 49, 52 and 53 inappropriately delegate legislative powers contrary to Section 13(m) of the Statutory Instruments Act.
- (v) **Regulatory Impact Statement:** Sections 6, 7, and 8 of the Act requires the regulatory making authority to carry out a Regulatory Impact Assessment and submit to Parliament a Regulatory Impact Statement if the proposed Regulations have significant cost or impact to the community or a sect of the community. **The regulation making authority was not required to present a Regulatory Impact Assessment.**

4.0 COMMITTEE RECOMMENDATION

- 13. Pursuant to Standing Order 210 (4) and having examined the Public Service Commission Regulations, 2019 against the Constitution of Kenya, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya, the Statutory Instruments Act, 2013, and the Public Service Commission Act (No. 10 of 2017), the Committee recommends that the House **annuls in entirety** the Public Service Commission Regulations 2019 for contravening sections 5, 5A, 11(1), 13(j) and 13 (m) of the Statutory Instruments Act, 2013.

Signed.....


HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)



ANNEXURES

1. Adoption List
2. Legal Notice 65 of 2019 and the Explanatory Memorandum
3. Committee Minutes

EXPLANATORY MEMORANDUM
TO THE PUBLIC SERVICE COMMISSION REGULATIONS, 2019

1. **The Purpose of Public Service Commission Regulations, 2019**

The purpose of these Regulations is to:

- provide for the appointment, discipline and removal of staff in the public service;
- provide the form and method of keeping records under the Public Service Act;
- provide criteria on the qualifications of persons entering the public service;
- Guide the administration of career progression and professional development programs for public officers;
- Provide for the exercise of disciplinary control in the public service
- Guide the promotion and reporting on values and principles of public service
- Provide operations and procedures of a committee established under the Act; and
- Provide guidelines on retirement;

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.

It is considered that the provisions of the proposed Public Service Commission Regulations, 2019, will provide a framework to assist in proper and better running of the public service.

3. **Public Consultations**

The Regulations were taken through a three day stakeholder consultations wherein views, comments and recommendations from stakeholders were collected, consolidated and included in the current draft Regulations. The Stakeholders who gave their input to better the draft regulations include Ministries, departments, Public Universities and State Corporations.

The Public Service Commission will continue sensitizing all stakeholders on the regulations for proper implementation.

4. **Review of the Regulations.**

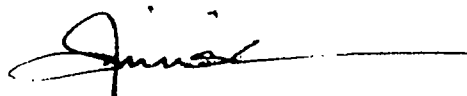
The Commission shall monitor the application of the Public Service Commission Regulations, 2019. This will be done through quarterly reports from ministries, departments and State Corporations. In addition, the Commission will also carry out regular monitoring and evaluation of implementation of the 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 Ministry of Public Service, youth and Gender Affairs.

5. **Public Service Commission Contact Person.**

The contact person is Mr. Stephen Kirogo, Chairman, Public Service Commission.

Dated.....*13th June*.....2019



STEPHEN KIROGO
CHAIRMAN, PUBLIC SERVICE COMMISSION

**MINUTES OF THE 48TH SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON FRIDAY, 4TH OCTOBER, 2019 AT 11.00 A.M. IN DODORI
BOARD ROOM, PRIDE INN BEACH HOTEL, MOMBASA**

PRESENT

1. The Hon. Timothy Wanyonyi, MP (Chairing)
2. The Hon. Daniel Maanzo, MP
3. The Hon. Waihenya Ndirangu, MP
4. The Hon. George Murugara, MP
5. The Hon. Robert Mbui, MP
6. The Hon. (Dr.) Wilberforce Oundo, MP
7. The Hon. Jennifer Shamalla, MP
8. The Hon. Ronald Tonui, MP
9. The Hon. Martha Wangari, MP
10. The Hon. Kassait Kamket, MP
11. The Hon. Sammy Seroney, MP
12. The Hon. Tindi Mwale, MP

ABSENT WITH APOLOGY

1. **The Hon. Gladys Boss Shollei CBS MP** - **Chairperson**
2. **The Hon. Fatuma Gedi, MP** - **Vice Chairperson**
3. The Hon. Patrick Mariru, MP
4. The Hon. Alice Wahome, MP
5. The Hon. Gideon Mulyungi, MP
6. The Hon. Munene Wambugu, MP
7. The Hon. Muturi Kigano, MP
8. The Hon. Kamoti Mwamkale, MP
9. The Hon. Muriuki Njagagua, MP

ABSENT

1. The Hon. Alfred Sambu, MP
2. The Hon. Abdi Koropu Tepo, MP

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Jimale Mohamed - Second Clerk Assistant
3. Ms. Brigitta Mati - Legal Counsel II
4. Ms. Alice Kitur - Executive Secretary
5. Mr. Charles Ayari - Superintendent of Electronics (Audio)
6. Ms. Mary Otieno - Office Superintendent
7. Mr. Anthony Wamae - Serjeant at Arms
8. Mr. Brian Wechabe - Legal Intern

Ministry of Public Service, Youth and Gender

Ms. Mary Kimonge - Principal Administrative Secretary

Public Service Commissions

1. Ms. Charity Kisotu - Vice Chairperson
2. Mr. Reuben Chirchir - Commissioner
3. Ms. Jane W. Chege - Deputy Commissioner
4. Ms. Benrodgers M. Mitah - Director, Human Resource Management Policy
5. Mr. Musa Cherogony - Assistant Director/Legal Service
6. Ms. Kefa Mdende - Senior State Counsel/Legal Service

MIN.NO. NA/CDL/2019/284

PRAYER AND RELIMINARIES

Pursuant to Standing Order 188, the Members present unanimously elected Hon. Timothy Wanyonyi, MP to chair the meeting. He thereafter called the meeting to order at 10.20 a.m. and requested Hon. Sammy Seroney, MP to pray.

The Committee unanimously approved the Programme for the retreat as presented, with amendments to session chairs.

The Session Chairperson welcomed the team from the Ministry of Public Service, Youth and Gender and the Public Service Commission led by the Principal Administrative Secretary, Ms. Mary Kimonge to the meeting. He then requested all participants to introduce themselves.

MIN.NO. /NA/CDL/2019/285

OPENING REMARKS

Remarks by Ag. Chairperson Committee on Delegated Legislation

The Session Chairperson urged the Ministry and the Commission to engage with the Committee prior to publishing of the Regulations for pre-publication scrutiny pursuant to section 16 of the SI Act. The Act also provides for conferring post-publication which was the purpose of the meeting on that day.

He further highlighted the core mandate of the Committee as provided in the SI Act and the Standing Orders.

He thereafter invited the Principal Administrative Secretary, to make her remarks.

Remarks by Principal Administrative Secretary

Ms. Mary Kimonge, thanked the Committee for accepting the invitation to confer on the consideration of the Public Service Commission, Regulation, 2019. She admitted that indeed the pre-publication scrutiny engagement ought to have been done before publication.

She however emphasized the necessity of partnership between the Committee on Delegated Legislation and assured commitment in enhancing efficiency in service delivery to the public. She further highlighted that the Regulation provides for appointments, promotions, Resignations, Transfers, Secondments and Deployment as well as development of Human Resource in the Public Service. She also pointed out that the Regulations provide for the promotion of national values and principal of governance as stipulated in Article 10 of the Constitution of Kenya. It also covers the Human Resource Management issue, carrier

progression. She noted that the implementation of the Regulations will enhance provision of service delivery effectively. The public-sector reforms have contributed to the creation of Huduma centres across the country. The Regulations also cover internship programmes, resignations and retirement in the public sector.

Remarks by the Vice Chairperson of the Public Service Commission

Ms. Charity Kisotu on her part also thanked the Committee and assured the Commission's commitment to engage with the Committee on Delegated Legislation. She informed the Committee about the functions of the Public Services Commission and its mandate. She further emphasized that the Commission is closely working with the Ministry regarding the implementation and operationalization of the Regulations.

MIN.NO. /NA/CDL/2019/286

CONSIDERATION OF PUBLIC SERVICE COMMISSION, REGULATIONS 2019

The Committee was informed THAT –

The Purpose of the Public Service Commission Regulations, 2019

- (i) to provide for the appointment, discipline and removal of staff in the public service;
- (ii) Provide the form and method of keeping records under the Act;
- (iii) Provide criteria on the qualifications of persons entering the public service
- (iv) Guide the administration of the career progression and professional development programs for public officers;
- (v) Provide for the exercise of disciplinary control in the service;
- (vi) Guide the promotion and reporting on values and principles of public service;
- (vii) Provide operations and procedures of a committee established under the Act;
- (viii) Provide guideline on retirement.

The Policy Background

The Regulations seek to operationalise the Public Service Act, 2017 by giving effect to the mandate to the mandate of the Commission pursuant to Section 92. The Regulations provide a framework to assist in better running of the public service.

Public Consultation

The Regulations were subjected to three days of stakeholder consultations where views, comments and recommendations were incorporated into the final draft. The stakeholders include Ministries, department, Public Universities and State Corporations. The Commission will carry out regular monitoring in the implementation of the Regulations.

The Committee was then presented with a highlight of the Regulations.

Plenary discussions

The Committee observed THAT –

- 1) the Public Service Commission made the Public Service Commission Regulations, 2019 *vide* Legal Notice No. 71 of 2019 on the 24th of May, 2019. The Regulations were received by the Clerk of National Assembly on 5th August, 2019 and tabled in the House on 11th August, 2019, being twenty-eight (28) sitting days out of the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act. This was in breach of section 11 and 13(j) of the SI Act (unjustifiable delays in transmission to Parliament).
- 2) on Regulation 6, concerns were raised regarding the decision to be made by the Commission that are to be made by circulation of papers. "*the person to take the decision*" ought be clarified;
- 3) stakeholder consultations were not adequately undertaken and professional bodies were not part of the development of the Regulations;
- 4) Regulations, 22, 47, 49, 52 and 53 delegates further Guidelines. This contravenes section 13(m) of SIA in appropriating delegated legislatives powers;
- 5) under Reg. 70 on the mandatory Retirement age in the public service, the Committee observed that the Commission has the authority to determine the retirement age for Persons with Disability at the age of 70;
- 6) the Regulations are defective in drafting contrary to Section 13(h) of Statutory Instruments Act as evidenced;
- 7) the recruitment of advisers and consultant by the Cabinet Secretary is provided for in the Regulations where each CS is allowed to have a maximum of two consultants;
- 8) Personal Assistants for the Cabinet Secretaries are recruited on temporary basis; and
- 9) PSC is proposing a program for human resources development that considers staff training and promotions.

Committee Resolution

The Principal Administrative Secretary sought the Committee's indulgence for the unjustifiable delay in the transmission of the Regulations to Parliament. The Committee resolved to accord the Ministry the opportunity to revoke the Regulations with immediate effect to allow for re-publishing in conformity with the SI Act.

The regulation making authority was further advised to confer with the Committee before gazettment of the Regulations taking into account all the issues raised by the Committee.

MIN.NO. /NA/CDL/2019/287 ADJOURNMENT

The meeting was adjourned at 12.45 p.m. to reconvene same day at 2.30 p.m., same venue.

Signed:



Date: 15/10/2019

HON. GLADYS BOSS SHOLLEI CBS MP

(CHAIRPERSON)

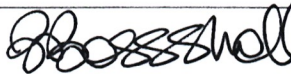


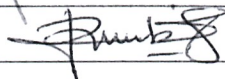
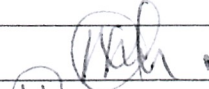
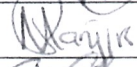

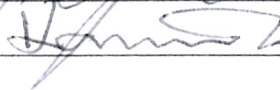
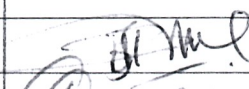
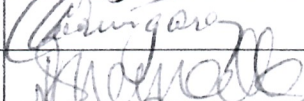
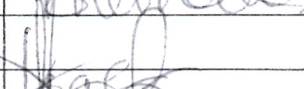
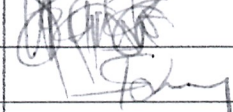
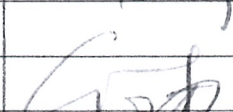
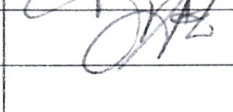
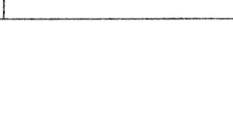

COMMITTEE ON DELEGATED LEGISLATION

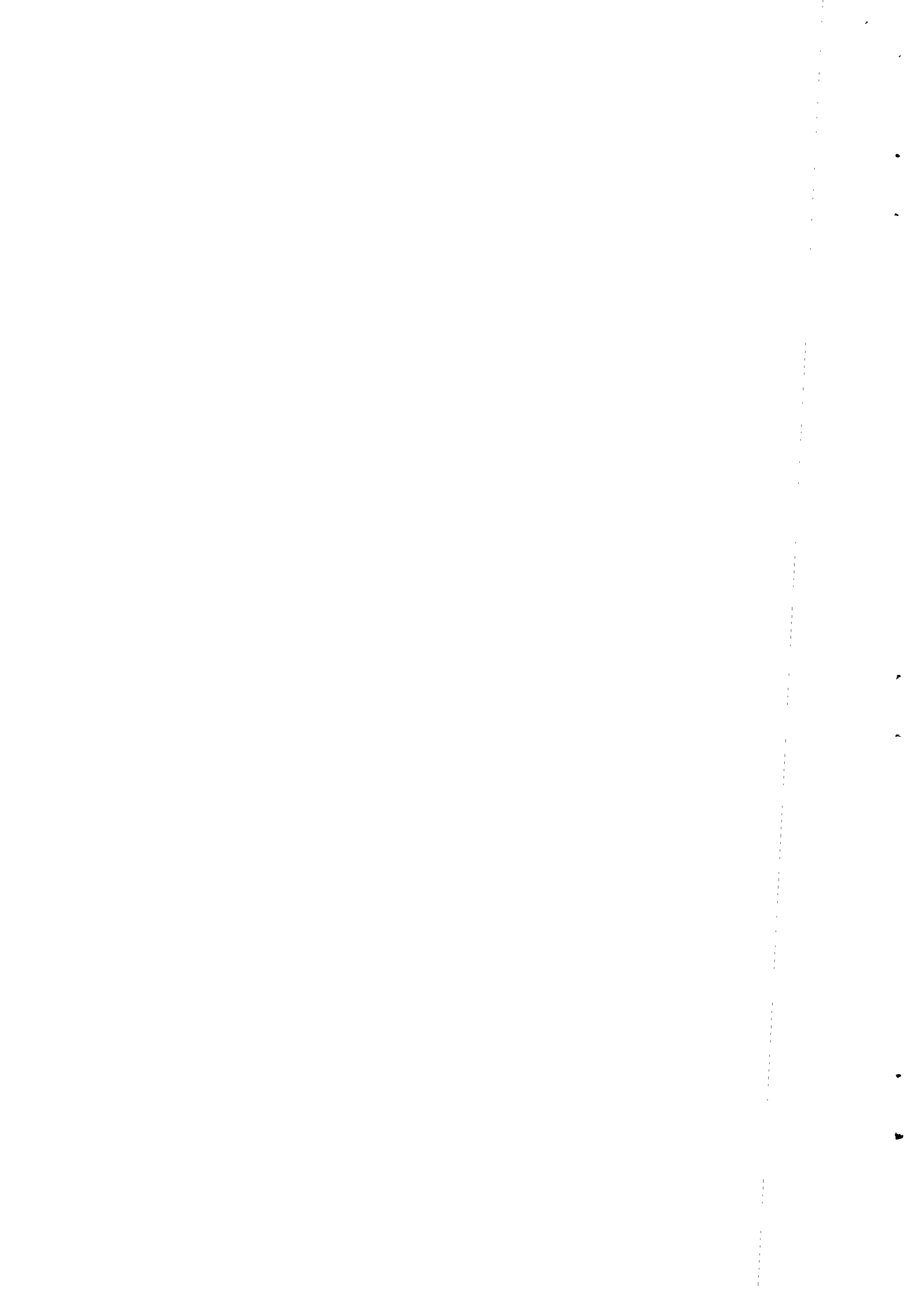
ADOPTION LIST

Report on the Public Service Commission Regulations, 2019

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 2nd November, 2019

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss-Shollei CBS MP (Chairperson)	
2.	Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	
3.	Hon. Isaac Waihenya Ndirangu, MP	
4.	Hon. Robert Mbui, MP	
5.	Hon. Alice Wahome, MP	
6.	Hon. Daniel Maanzo, MP	
7.	Hon. Muriuki Njagagua, MP	
8.	Hon. Martha Wangari, MP	
9.	Hon. Timothy Wanyonyi, MP	
10.	Hon. William Kamoti Mwamkale, MP	
11.	Hon. Patrick Kariuki Mariru, MP	
12.	Hon. Ronald Kiprotich Tonui, MP	
13.	Hon. William Kassait Kamket, MP	
14.	Hon. Munene Wambugu, MP	
15.	Hon. George Gitonga Murugara, MP	
16.	Hon. Jennifer Shamalla, MP	
17.	Hon. Muturi Kigano, MP	
18.	Hon. (Dr.) Wilberforce Oundo, MP	
19.	Hon. Sammy Seroney, MP	
20.	Hon. Tindi Mwale, MP	
21.	Hon. Gideon Mulyungi, MP	
22.	Hon. Abdi Tepo, MP	
23.	Hon. Alfred Sambu, MP	



(Legislative Supplement No. 20)

LEGAL NOTICE NO. 65

THE PUBLIC SERVICE COMMISSION ACT

(No. 10 of 2017)

THE PUBLIC SERVICE COMMISSION REGULATIONS, 2019

ARRANGEMENT OF REGULATIONS

Regulation

PART I—PRELIMINARY

- 1—Citation
- 2—Interpretation
- 3—Application of Regulations
- 4—Values and principles of the public service

PART II—GENERAL

- 5—Delegation
- 6—Decisions may be made by circulation of papers
- 7—Dissent by members
- 8—Record of meetings
- 9—Implementation of Commission decisions
- 10—Contravention of these regulations
- 11—Attendance and production of documents
- 12—Committees

PART III—APPOINTMENTS, PROMOTIONS, RE-
DESIGNATIONS, TRANSFERS, SECONDMENTS AND
DEPOLYMENTS

- 13—Authorised officer's request to be in writing
- 14—Delegation of authority to appoint
- 15—Record to be kept in paper form or electronic format
- 16—Criteria for appointment and promotion
- 17—Vetting of candidates
- 18—Effective date of appointment promotion and re-designation
- 19—Probation before confirmation in appointment

- 20— Promotions
 - 21— Recognition of exceptional performance
 - 22— Management of rare, scarce and specialized human resource
 - 23— Acting appointments
 - 24— Appointment of expatriates
 - 25— Authorised officers to notify Commission of contracts eligible for renewal
 - 26— Appointment of Principal Secretaries
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 - 28— Appointment of the personal staff of the President, Deputy President or retired President
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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 REGULATIONS, 2019

PART I—PRELIMINARY

1. These Regulations may be cited as the Public Service Commission Regulations, 2019. Citation.

2. (1) In these Regulations, unless the context otherwise requires— Interpretation.

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

“appointing authority” means an officer or public body having power to make appointments to a position in the public service;

“appointment” means engagement of a person to a position or a job and includes acting appointment, re-appointment, promotion and re-designation in the public service;

“authorised officer” means a member of the commission, any officer, body or authority in the public service, appointed by the Commission in writing to perform its delegated functions;

“code of conduct” means any written standard that is issued by any lawful authority—

- (a) that guides the behaviour of any category of public officers or public bodies; and
- (b) is aimed at ensuring ethical, efficient and effective performance of the public service;

“conditions of service” means any right or obligation relating to a public officer.

“confirm in appointment” means the placement of a public officer on permanent and pensionable terms or on contract, as the case may be, upon completion of the probation period;

“deployment” means the distribution of public officers within a public body and without change of grade;

“disciplinary control” means the due process in handling of discipline matters in accordance with the Constitution, legislation and these Regulations;

“interim body” means a public body that has been legally established under the Constitution or an Act of Parliament to perform a function that is of a temporary nature;

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

“merit” means consideration for an appointment, a reward or a benefit based on abilities, aptitudes, skills, qualifications, knowledge, experience and personal qualities relevant to the carrying out of duties;

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

“pension benefits” means any pension, compensation, gratuity or other similar allowance payable to a person in respect of such person’s service as a public officer, or to the widows, children, dependants or personal representatives of such person, in respect of that service;

“promotion” means the conferment upon a person in the public service of an office to which is attached added responsibility, higher salary or higher salary scale than that attached to the office to which the person was last substantively appointed;

“public body” includes—

- (a) any corporation, council, board, committee or other body which has power to act under and for purposes of any written law relating to the undertakings of a public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any such law;
- (b) a corporation, the whole or a controlling majority of shares which are owned by a person or entity that is a public body by virtue of any of paragraph (a) of this definition;
- (c) statutory public bodies; or
- (d) any public body brought under the jurisdiction of the Commission by an Act of Parliament for a specified function to the extent of that function;

“publicise”, in relation to a document, means to make known to the public, through electronic, print and other media;

“publish”, in relation to a document, includes—

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

“re-designation” means the movement of a public officer from one career path or cadre to another at a grade equal to or substantially equal to the one held before the movement, to facilitate the public officer’s horizontal mobility;

“representative” in reference to a public officer means any person who represents the public officer on any matter related to the employment of the public officer;

“reprimand” means a severe written rebuke or reproof to an officer after disciplinary process that determines an officer’s improper conduct;

“resignation” means the action of a public officer’s exit from the public service in accordance with Section 78 of the Act;

“retirement” means the exit of an officer from the public service with full separation benefits, including pension benefits as may be provided for in the applicable law, contract of service or a special retirement scheme agreed upon between the public officer and the relevant lawful authority;

“scholarship” means a grant or payment made by the Government, a local or foreign training institution or a development partner to support the education or training of a public officer;

“secondment” means the temporary release of a pensionable employee from an organisation within the public service to another organisation, to provide critical skills or acquire new skills while preserving the pension rights of the employee;

“stipend” means a fixed payment to an intern occurring at regular intervals;

“transfer” means the movement of an officer from one ministry to another or from one duty station to another with change of pay point;

“transfer of service” means the movement of a pensionable public officer from one public body to another, which has been declared a “Public Service” for purposes of preserving the employee’s previous pensionable services; and

“vetting” means the background check on a person, by the Commission or other competent authority, before being offered an employment, promotions or conferring an award and includes verification of academic certificates and identification document.

3. (1) Subject to Articles 155 (3) (a), 158 and 234 of the Constitution, these Regulations shall apply to public bodies and all persons holding or acting in an office in a public body.

Application of Regulations.

(2) For the purposes of these Regulations, “public body” includes—

- (a) a state department, state corporation, statutory commission, public university or any public institution of tertiary or higher learning, statutory board or body, Office of the Attorney-General, Office of the Director of Public Prosecutions, Controller of Budget, Auditor-General, National Intelligence Service, National Youth Service, Kenya Prisons Service and other correctional services, and

any agency, department, public entity or commission established under the Constitution or legislation and is not exempted under Articles 234 (3) and 252 (1) (c) 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.

4. (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.

Values and principles of the public service.

(2) Every public officer shall uphold and promote the values and principles in Articles 10 and 232 of the Constitution and shall be guided by codes of conduct and guidelines issued by the Commission.

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

(4) The Commission shall promote the values and principles in sub-paragraph (1) with respect to the public service as provided for in the Constitution, any legislation and these Regulations.

(5) A public body may forward acts of professional misconduct by an officer to the relevant professional body for disciplinary action as per the professional body's regulations in addition to undertaking any disciplinary action.

(6) Where a professional body has conducted a disciplinary process against a public officer and found the public officer guilty, the professional body shall immediately inform the employer of the public officer.

(7) Any person has a right to complain individually or collectively, and to make representation to the Commission regarding the violation of the values and principles in Articles 10 and 232 of the Constitution.

PART II—GENERAL MATTERS

5. (1) Subject to section 31 of the Act, a delegation of a power or an assignment of a function by the Commission to an authorised officer shall be in writing.

Delegation.

(2) Where the Commission has delegated any of its powers or duties, it shall retain the power to take corrective measures regarding the exercise of that power or performance of that function on its own motion or upon complaint or request on appeal or review.

(3) Where the Commission has delegated any of its powers or duties, the person exercising the delegated power or function shall be entitled to be heard by the Commission personally or through a representative on any issue in respect of the delegation.

(4) Where the Commission has delegated any of its powers or duties, it shall establish mechanisms to ensure that the person to whom

the power or function has been delegated complies with the conditions of the delegation imposed by the Commission.

(5) The Commission may monitor and evaluate the exercise of delegated powers through inquiry, investigation, audits or visits.

(6) Where the Commission has delegated the power to terminate the probationary appointment of an officer, this shall not prevent the Commission from exercising its power to terminate the probationary employment in accordance with these Regulations or the terms set out in the officer's contract or letter of appointment.

6. (1) Where majority of members of the Commission are unable to attend a meeting and an urgent matter arises, a decision in respect of the matter may be made by the Commission without a meeting of the members

Decisions may be made by circulation of papers.

(2) A decision under subregulation (1) shall only be made after—

- (a) the relevant documents in respect of the matter have been provided to the members of the Commission; and
- (b) at least five of the members of the Commission support, in writing, the decision intended to be taken.

(3) A decision of the Commission under subregulation (1) shall be recorded in the minutes of the next meeting of the Commission.

(4) Where the majority of the members of the Commission are unable to attend a meeting of the Commission in person and an urgent matter arises, the Commission may hold a virtual meeting and any decision made at the virtual meeting shall be recorded in the minutes of the next meeting of the Commission.

(5) For the purposes of this regulation, "virtual meeting" means a meeting that is held through teleconference, video conference or any other electronic means without the physical presence of one or more participants at the same location.

7. A member of the Commission who dissents from a decision of the Commission shall have the dissent and the reason thereof set out in the minutes of the meeting at which the decision was made.

Dissent by members.

8. The Secretary shall keep a record of the members present and the business transacted at every meeting of the Commission.

Record of meetings.

9. (1) The decisions of the Commission shall be implemented within thirty days from the date they are communicated to the relevant persons.

Implementation of Commission decisions.

(2) For the purposes of this regulation, decisions of the Commission include decisions made by persons to whom a power or function of the Commission has been delegated.

(3) A person who refuses or fails to implement the decisions of the Commission commits an act of misconduct and shall be subject to the penalties specified in section 68 of the Act or disciplinary proceedings in accordance with his or her terms of service.

(4) Where the refusal or failure to implement a decision is by an authorised officer who does not fall within the jurisdiction of the Commission, the Commission may recommend to that person's appointing authority to take disciplinary action in accordance with his or her terms of service.

(5) Where an authorised officer to whom the Commission has delegated a power or a function refuses or fails to implement a decision of the Commission, the Commission may revoke the delegation of the power or function.

10. (1) A public officer who contravenes any provision of these regulations shall be subject to disciplinary proceedings in accordance with his or her terms of service and liable to 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 and 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 to subject the officer to disciplinary action in accordance with his or her terms of service.

11. (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.

Attendance and production of documents.

(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 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—

(a) fails to appear before the Commission when notified to do so; or

(b) fails to comply with any request lawfully and properly made by the Commission, commits a breach of discipline and the Commission may on its own motion institute disciplinary proceedings.

(4) For the purposes of this regulation, "official document" means any document or paper prepared by any public officer in the course of employment or any document or paper which comes into the custody of any public officer in the course of employment

12. (1) A committee of the Commission established under section 12 (1) of the Act shall consist of at least three members and the quorum of the committee shall be two members.

Committees.

(2) The Secretary shall assign to a committee such staff of the Secretariat as may be necessary for the effective working of the committee.

PART III—APPOINTMENTS, PROMOTIONS, RE-DESIGNATIONS, TRANSFERS, SECONDMENTS AND DEPLOYMENTS

13. (1) A request by an authorised officer under section 33 (2) of the Act for the exercise of the Commission's power to appoint shall be in writing.

Authorised officer's request to be in writing.

(2) A request under subregulation (1) shall be accompanied by a human resource plan for the institution, an indent for the position and a confirmation of the availability of funds.

(3) The Commission may, in the best interests of the service, efficiency, effectiveness or parity of treatment, and on a case by case basis, recommend to an authorised officer the need to appoint persons to hold offices established by the Commission.

(4) A recommendation under subregulation (3) shall be in writing and shall be accompanied by a human resource plan for the institution, indents for the positions to which the recommendation relates and a confirmation of the availability of funds.

(5) For the purposes of this regulation, "indent" means an instrument for declaration of a vacancy to be filled and includes job descriptions and specifications.

14. (1) The Commission may delegate its power to appoint to an authorised officer in terms of section 31 as follows—

Delegation of
authority to
appoint.

- (a) in respect of public offices at levels to be determined by the Commission—
 - (i) the power of appointment, including acting appointment, re-designation, promotion, transfer and initial appointment;
 - (ii) the power to extend the probationary period of appointment; and
 - (iii) the power to end the probationary period of appointment and confirm a person in appointment;
- (b) in respect of all public officers irrespective of rank or seniority, the power to confirm in appointment of public officers appointed on probation;
- (c) in respect of all public officers irrespective of rank or seniority, the power to deploy; and
- (d) in respect of public officers serving on contract, the power to terminate other than by dismissal in accordance with the terms of the contract:

Provided that nothing in these Regulations shall affect the power of the Commission to terminate the appointment of public officers in accordance with the terms of service.

(2) An authorised officer exercising the powers conferred under subregulation (1) shall act in accordance with these Regulations and any other relevant written law.

(3) A public officer affected by a decision of an authorised officer exercising delegated powers in terms of this regulation may appeal in writing to the Commission within thirty days of being notified of the decision of the authorised officer.

(4) An appeal under subregulation (3) shall be made through the authorised officer.

(5) Notwithstanding subregulation (4), a public officer who intends to appeal to the Commission in terms of subregulation (3) shall submit an advance copy of the appeal to the Commission.

(6) The Commission may, at any time, audit, investigate, inquire into or visit an institution to determine how an authorised officer exercises any power delegated to him or her by the Commission.

15. The record required to be maintained under section 39 of the Act shall be maintained in paper form, electronic format or both.

Record to be kept in paper form or electronic format.

16. (1) In selecting candidates for appointment or promotion, the provisions of section 36 of the Act and section 10 of the Public Service (Values and Principles) Act, 2012 shall apply and the Commission or authorized officer, as the case may be, shall have regard to—

Criteria for appointment and promotion.

No. 1A of 2015.

- (a) merit, equity, aptitude and suitability;
- (b) the prescribed qualifications for holding or acting in the office including abilities, skills, knowledge, experience and personal qualities relevant to carrying out of the duties;
- (c) the efficiency of the public service;
- (d) the provable experience and demonstrable milestones attained by the candidate and potential for development;
- (e) integrity of the candidate; and
- (f) the standards, values and principles set out in Articles 10, 27, 54 (2), 55 (c), 56 (c), 232 and Chapter 6 of the Constitution:

Provided that the Commission or authorized officer shall ensure that officers at entry level and at other levels to be determined by the Commission shall be vetted by competent state agencies before taking up positions in the public service.

17. (1) The Commission or authorised officer, as the case may be, may determine the suitability of a person for the purposes of section 36 of the Act by—

Vetting of candidates.

- (a) conducting aptitude or other competency tests; or
- (b) vetting by relevant State agencies before taking up positions in the public service.

(2) The Commission may conduct suitability interviews in the following instances—

- (a) where posts have been upgraded;
- (b) on re-designation;
- (c) where an officer is being considered for promotion on merit; or
- (d) on redeployment upon reorganisation of Government or of a public entity.

(3) In determining whether an appointment has been undertaken in a fair and transparent manner, the Commission shall consider the following factors—

- (a) competitiveness;
- (b) meritocracy
- (c) absence of nepotism, cronyism and political influence; and
- (d) non-discrimination.

(4) For the purposes of this regulation, "suitability interview" means the non-competitive assessment of the degree to which an employee possesses the knowledge, ability, skills and other characteristics identified as important for successfully performing the position being filled.

18. The effective date of appointment, acting appointment, promotion or re-designation shall be the date of the decision to appoint, promote or re-designate or such other date as the Commission or authorised officer may determine:

Effective date of appointment promotion and re-designation.

Provided that a fresh appointment shall take effect on the date the officer reports to his or her work station.

19. All persons recruited to the public service on first appointment shall, before confirmation in appointment on permanent and pensionable terms or on contract, serve on probationary terms as provided in section 41 of the Act.

Probation before confirmation in appointment.

20. (1) The Commission or other lawful authority vested with the function of making the decision to promote a public officer shall enhance succession management by making the decision in anticipation of the concerned public office falling vacant at least six months before the vacancy occurs.

Promotions.

(2) Subregulation (1) shall not apply where a decision to promote an officer is made to fill in a vacancy in a public office that in the circumstances could not be anticipated including a vacancy created by the death of the office holder.

(3) Where a public officer has been promoted to a public office in a public body other than that in which the officer is serving, the officer shall be released to take up the new appointment within sixty days from the date of the decision to promote.

(4) Where a public officer has been promoted to a public office in a public body other than that which the officer is serving, the authorised officer shall provide the receiving institution with the relevant documents relating to the release within sixty days from the date of the decision to promote.

(5) Notwithstanding subregulation (4) or (5), if the public officer who has been promoted to a public office in a public body other than that which the officer is serving is not released, the officer shall be considered to have been released on the expiry of sixty days from the date of the decision to promote.

(6) Except where a public officer is on secondment, if the public officer fails to take up the promotion, the decision to promote the officer shall lapse on the expiry of sixty days from the date of the decision and the officer shall continue to serve in the office held prior to the decision.

21. (1) Where an officer demonstrates exceptional competencies, qualities, abilities, innovation, creativity and leadership, the officer may be considered for promotion on merit, an award and commendation, or both.

Recognition of exceptional performance.

(2) All promotions on merit shall be made by the Commission.

(3) An officer may be considered for promotion on merit on recommendation by the relevant human resource committee of a public body and a request to the Commission by the authorized officer.

(4) An officer may be considered for promotion on merit where a vacancy exists:

Provided that where no vacancy exists, the Commission may consider any other appropriate reward.

(5) An officer may be considered for an award and commendation for that officer's experience, competence, personal qualities, exceptional abilities, innovation, tangible creativity, leadership, demonstrable milestones and integrity.

(6) In this regulation, "promotion on merit" means promotion through evaluation based on experience, competencies, personal qualities, exceptional abilities, innovation, tangible creativity, leadership, demonstrable milestones and integrity.

22. (1) The Commission shall develop guidelines for management of rare, scarce and specialized human resource.

Management of rare, scarce and specialized human resource.

(2) In these regulations "rare, scarce and specialized human resource" means knowledge and skills not readily available in the job market.

23. (1) Where a person has been appointed in an acting capacity, the appointing authority shall make the appointment in accordance with the provisions of section 34 of the Act and regulation 16.

Acting appointments.

24. (1) Where an expatriate is appointed under the Act, the appointment shall be in accordance with the provisions of section 36 (6) and (7) of the Act.

Appointment of expatriates.

(3) Where an authorised officer intends to appoint an expatriate, the authorised officer shall apply in writing to the Commission for approval accompanied by written confirmation that there is no Kenyan with the required qualification who is available for the appointment.

(4) In granting the approval to appoint non-citizen expatriates, the Commission shall first satisfy itself that there are no citizens with the requisite qualifications to meet the staffing needs of the public body.

(5) The appointment of an expatriate shall be on contractual terms for a period that shall not exceed three years which may be renewed only once for a period that shall not exceed three years with the approval of the Commission.

(6) Expatriates shall be appointed on such terms and conditions of service as shall be determined by the Commission and be subject to the code of conduct, policies and regulations applicable to public officers.

25. Authorised officers shall notify the Commission at least six months before expiry of any contracts of employment that are eligible for or require renewal.

Authorised officers to notify Commission of contracts eligible for renewal.

26. (1) The Commission shall, in recommending persons to be appointed as Principal Secretaries under section 47 of the Act, use a competitive recruitment process.

Appointment of Principal Secretaries.

(2) Within twenty-one days of a presidential election, the Commission shall commence a competitive recruitment process for the purpose of identifying persons to be recommended for nomination by the President for appointment as Principal Secretaries:

Provided that the Commission may, on request and if circumstances warrant it, carry out a recruitment and selection process at any other time.

(3) Within twenty-one days after the President has been elected or upon the request of the President for the purpose of filling a vacancy in an office of a Principal Secretary, the Commission shall publish a notice in the *Gazette*, the Commission's website and in at least one newspaper of nationwide coverage, inviting eligible persons to apply for the position of Principal Secretary.

(4) A person is eligible to be appointed as a Principal Secretary if that person satisfies the conditions set out in section 47 (2) of the Act.

27. (1) The Commission shall be responsible for the appointment of advisors to the President, Deputy President and Cabinet Secretaries.

Appointment of advisors.

(2) The Commission shall determine the number of advisors who shall be appointed for the President and Deputy President as may be needed for carrying out the functions of office.

(3) Where the Commission appoints advisors for a Cabinet Secretary, it shall not appoint more than two advisors at a time.

(4) A person may be appointed as an advisor only if that person—

(a) has the relevant qualification, experience, competencies and skills necessary for the performance of his or her duties as advisor; and

(b) meets the requirement of Chapter Six of the Constitution.

(5) The Commission shall appoint an advisor only upon request in writing by the relevant State officer.

(6) The written request under subregulation (5) shall state—

- (a) that the technical competencies, skills and experience possessed by the proposed advisor do not exist in the public service;
- (b) that the competencies and experience of the proposed advisor match the job requirements;
- (c) the functions, duties and responsibilities of the proposed advisor.

(6) An advisor shall be responsible to, and support, the requesting State officer and shall not be assigned any role that is performed by other officers in the public body.

(7) Advisors shall be bound by the Public Service Code of Conduct and sign the oath of secrecy under the Official Secrets Act.

Cap. 187.

(8) Each advisor shall be appointed on contract for a period not exceeding three years and may be renewable only once for a period not exceeding three years:

Provided that the appointment of an advisor for a State officer shall not extend beyond the tenure of the State officer.

(9) The Commission shall determine the grading and terms of service of each advisor.

(10) A person appointed as an advisor shall undergo security and other vetting by the relevant State agencies before taking up the appointment.

(11) Advisors shall undergo induction training by the Commission before taking up appointment.

(12) Advisors shall not have or hold any supervisory role over any public officers.

28. (1) Subject to the provisions of Article 234 (4) of the Constitution, the Presidential Retirements Benefits Act, 2003 and the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015, the Commission shall appoint the personal staff of the President, Deputy President and retired Presidents in accordance with the establishment approved by the Commission.

Appointment of the personal staff of the President, Deputy President or retired President.

No. 11 of 2003.

No. 8 of 2015.

(2) Personal staff shall serve at the pleasure of the President, Deputy President or retired President as the case may be and for such period as shall be determined by the Commission.

(3) Notwithstanding subregulation (2), a person shall not serve on the personal staff of the President or Deputy President for longer than the term of office of the President or Deputy President.

(4) A person shall cease to serve on the personal staff of a retired President upon the death of the retired President unless otherwise dismissed from service in accordance with the Act, these regulations or any other written law.

(5) For the purposes of this regulation, "personal staff" includes—

- (a) personal assistants;
- (b) health fitness instructors;
- (c) support staff;
- (d) cooks;
- (e) housekeepers; and
- (f) gardeners.

29. (1) A Cabinet Secretary may request the Commission in writing to appoint a personal assistant for the Cabinet Secretary.

Appointment or assignment of personal assistants for Cabinet Secretaries, Permanent Secretaries and chief executive officers.

(2) A Principal Secretary may request the Commission to assign a personal assistant for the Principal Secretary:

Provided that a personal assistant assigned to a Principal Secretary shall only be assigned from among public officers serving in the public service.

(3) A chief executive officer may request the Commission in writing to assign a personal assistant to the chief executive officer:

Provided that a personal assistant assigned to a chief executive officer shall only be assigned from among the staff of the public body in which the chief executive officer is serving.

(4) The Commission shall determine the terms of service for personal assistants appointed or assigned under this regulation.

30. (1) The Commission shall, subject to provisions of the Constitution or any other written law, determine the qualifications and disqualifications in respect of which it is required to nominate or recommend a person for appointment under section 46 of the Act.

Nomination and recommendation for appointment.

(2) The Commission shall publish on its website and in at least one newspaper of nationwide coverage, the qualifications in respect of which it is required to nominate or recommend a person for appointment under section 46 of the Act.

(3) A nomination or recommendation under section 47 of the Act shall comply with the provisions of section 37.

31. (1) This regulation shall—

- (a) apply to the appointment of any person in an interim body established under the Constitution or any relevant written legislation; and

Appointments to interim bodies.

(b) not apply to the appointment of any person to an interim body conferred with the power to establish offices or appoint persons to serve in those offices.

(2) The authority to appoint persons to hold office in an interim body shall vest in the Commission.

(3) No person shall be appointed in the interim body unless the Commission is satisfied that in the circumstances, there is no available public officer for secondment, deployment or appointment to that interim body.

(4) No person shall be appointed to an office in an interim body unless the Commission has established a public office in the establishment of that body for that purpose.

32. A public institution shall—

Affirmative
Action.

- (a) develop and implement employment equity plans;
- (b) review their recruitment policies to ensure that the mode of advertisement of job vacancies, the pre-selection and conducting of interviews do not in any way disadvantage any particular group; and
- (c) take deliberate measures including targeted advertisements to bring on board marginalized groups.

33. (1) 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 resources, the public body shall seek the approval of the Commission before executing the partnership or joint venture agreement as the case may be.

Staff of
partnerships and
joint ventures

(2) For the purposes of these regulations, the Commission may consider any undertaking, 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—

- (a) at least thirty percent of the staff of the undertaking, joint venture or partnership are public officers;
- (b) the undertaking, joint venture or partnership substantially provides a service or performs a function on behalf of the Government where the government is the sole traditional provider of that service or performer of that function;
- (c) at least thirty percent of the funding for the undertaking, joint venture or partnership is drawn out of public funds;
- (d) at least thirty percent of the assets of the undertaking, joint venture or partnership are public assets; or
- (e) at least thirty percent of the liabilities incurred by the undertaking, joint venture or partnership are public liabilities.

(3) The authority to appoint and exercise disciplinary control over public officers serving in undertakings, joint ventures or partnerships on behalf of the Government shall vest in the Commission.

34. (1) Where vacancies are to be filled according to the results of examinations held under the authority of the Commission in accordance with section 51 of the Act, the Commission shall—

Promotional
examinations.

- (a) develop and, by notice in the *Gazette*, publish a curriculum for the examinations;
- (b) prescribe rules to govern the administration of the examinations;
- (c) prescribe any administrative fees in respect of the examinations;
- (d) by notice in the *Gazette*, publish the results of the examinations;
- (e) issue certificates to successful candidates; and
- (f) institute any other measures for the efficiency, effectiveness and integrity of the administration of the examinations.

(2) 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 and officers who pass the exams shall be promoted with effect from the date of publication of the results in the *Gazette*.

(3) Nothing in these regulations shall prevent the Commission from administering any other competitive and objective method for the recruitment or selection of officers.

35. (1) The Commission may delegate to an authorised officer the power to re-designate officers up to such rank as may be determined by the Commission.

Re-designation.

(2) An officer may be re-designated if the officer possesses the requisite qualifications, experience, skills and competencies and the re-designation shall take effect from the date the decision is made.

(3) An officer who is due for promotion and who is eligible for re-designation shall first be considered for promotion before the officer's re-designation is processed.

(4) Re-designation with continuous service shall be allowed only for technical cadres whose job specifications are similar for both graduate and non-graduate officers.

36. (1) Deployment within a public body shall be undertaken by the authorised officer.

Deployment.

(2) In making a deployment decision, the authorised officer shall take into account the—

- (a) efficiency and effectiveness of public service delivery;

- (b) promotion of national integration and cohesion; and
- (c) representation of Kenya's diverse communities, gender, ethnic communities and persons with disabilities.

37. (1) Subject to section 42 of the Act, where a public officer is appointed on contract to a public body or an international public body to which Kenya is a State party or has an existing bilateral agreement, the officer may make a request to the Commission, through the authorised officer, to be seconded to that public body or international public body.

Secondment.

(2) Secondment shall be restricted to officers on permanent and pensionable terms of service.

(3) The Commission shall determine the job levels in the public service eligible for secondment in accordance with these regulations.

(4) Secondment shall be for a period not exceeding three years and may be renewed once for a further period not exceeding three years after which the provisions of section 42 (6) of the Act shall apply:

Provided that upon expiry of the secondment period the officer on secondment may opt to transfer service, resign or retire in accordance with the Act and these Regulations.

(5) Organisations to which officers are seconded shall remit pension contributions of the seconded officer to the relevant pension scheme at the prevailing rates during the period of secondment, to avoid loss of pension;

(6) Where the organisation to which an officer has been seconded pays the pension contribution for the seconded officer, such amount shall be recovered from the officer's service gratuity.

(7) Public officers on secondment shall be eligible for promotion in their parent public body during the period of secondment.

(8) Where the parent public body from which an officer has been seconded intends to terminate the secondment, the public body shall notify the officer and the organisation to which he or she has been seconded at least one month before the termination.

(9) Where an officer on secondment commits a breach of discipline, the case shall be handled by the organization to which the officer is seconded and the recommendations and decision thereof shall be forwarded to the parent public body for additional action in accordance with these regulations.

(10) Upon completion of the secondment period, a public officer shall—

- (a) revert to the terms and conditions of service appropriate to their substantive position in the public body; and
- (b) not be eligible for another secondment within a period of three years from the last secondment

(11) An officer on secondment shall not be seconded to another organization during the period of the secondment.

(12) Subject to relevant transitional statutory provisions, where a new public body is established from an existing public body, public officers who shall be retained in the new public body shall be deemed to be on secondment pending the establishment of a retirement benefits scheme for the officers of that new body.

(13) A public officer shall not proceed on secondment before being notified in writing by the Commission.

38. (1) The Commission may grant leave of absence to a public officer on recommendation of the authorised officer through the relevant Human Resource Management Advisory Committee for a period not exceeding three years which may be extended only once for a period not exceeding three years.

Leave of absence.

(2) Where an officer is appointed on contractual terms to a public body for a period exceeding three years, the Commission may grant leave of absence for the duration of the contract.

(3) Leave of absence may be granted to a public officer for purposes of taking up contractual appointments within a public body, private corporation or international organisation to which the officer cannot be seconded or to which service cannot be transferred:

Provided that an officer may only be granted leave of absence to a private corporation where the Commission determines that the experience and expertise that the officer shall gain from the private organisation shall be of benefit to the public body which the officer is from.

(4) Leave of absence may be granted to a spouse of a foreign service officer who has been posted outside Kenya during the tour of service of the foreign service officer.

(5) Leave of absence shall not be increment-earning.

(6) During a leave of absence, the public body will not make a contribution of its portion towards an officer's pension under contributory pension scheme.

(7) Despite subregulation (6), an officer undertaking a leave of absence may continue to contribute towards the officer's pension under a contributory pension scheme during the leave of absence.

(8) The period of leave of absence shall not be pension-earning within the provisions of the Pensions Act.

Cap. 189.

(9) Upon completion of the period of leave of absence, a public officer shall revert to the terms and conditions of service appropriate to their substantive position in the public body and shall not be eligible for another leave of absence within a period of three years from the period of the last leave of absence.

39. (1) An authorised officer may, on recommendation of the respective Human Resource Management Advisory Committee, grant a

Unpaid leave.

public officer unpaid leave for a period not exceeding six months which may be extended only once for a period not exceeding six months for the purpose of attending to urgent private affairs of exceptional nature.

(2) Unpaid leave shall not be increment-earning.

(3) During the period of unpaid leave, the public body shall not make a contribution of its portion towards the officer's pension under a contributory pension scheme.

(4) Despite subregulation (3), an officer on unpaid leave may continue to contribute towards the officer's pension under a contributory pension scheme during the unpaid leave.

(5) The period of unpaid leave shall not be pension-earning under the Pensions Act.

Cap. 189.

40. (1) Transfers of public officers shall be in accordance with section 43 of the Act.

Transfer.

(2) For purposes of section 43 (4) (b) of the Act, where—

- (a) there is reorganisation of Government;
- (b) there is a change in Government policy; or
- (c) a transfer affects officers at levels to be determined by the Commission, an authorised officer shall seek approval from the Commission for the transfer of public officers in the public body.

(3) A transfer shall not be a promotion unless expressly authorised by the Commission.

(4) Subject to these Regulations, in making a decision to transfer a public officer, the Commission or the authorised officer referred to in section 43 (4) (b) of the Act, shall take into account the—

- (a) efficiency and effectiveness of public service delivery;
- (b) existing skills and competencies in the receiving public body or department so as not to disadvantage public officers already serving in the receiving public body or department;
- (c) promotion of national integration and cohesion; and
- (d) promotion of representation of Kenya's diverse communities, men and women, the members of all ethnic groups and persons with disabilities.

41. (1) Where a public officer has been appointed in another public body with a separate retirement benefits scheme, the public officer may apply in writing to the Commission, through the authorised officer from which the officer is coming, for a transfer of service.

Transfer of service.

(2) Applications for transfer of service shall be considered by the Commission for approval subject to any relevant written law in force relating to retirement benefits.

42. (1) For the purposes of section 50 of the Act, benefits include— Protection of benefits.

- (a) accrued pension in accordance with relevant written law in force relating to pension;
- (b) retirement benefits;
- (c) accrued leave; or
- (d) any other benefit as may be determined by the Commission.

43. (1) The authorised officer of a public body may, with the approval of the Commission, appoint a qualified person to serve on voluntary basis. Volunteer service

(2) No person shall be engaged on voluntary basis in a public body as—

- (a) a revenue collector;
- (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 by the Constitution or an Act of Parliament; or
- (g) such other position as may be determined by the Commission.

(3) A volunteer in the public service shall be issued with a letter of engagement as a volunteer for a non-renewable period not exceeding twelve months.

(4) A volunteer shall be bound by these regulations, and the code of conduct, rules and regulations applicable to other public officers.

(5) A person engaged as a volunteer shall be deployed to perform duties relevant to the volunteer's area of qualification, experience or expertise.

(6) Volunteer service shall not be a guarantee of employment in the public service.

44. (1) Where a service is required for more than twenty-four hours but not exceeding twenty-one days, the relevant authorised officer may engage a qualified person on a contract not exceeding twenty-one days.

Short-term contracts of service.

(2) Where there is need for temporary services not contemplated under this paragraph, the relevant authorised officer may procure the services of independent service providers in accordance with the procurement laws and regulations.

(3) Where a service is required for not more than twenty-four hours, the relevant authorised officer may engage a qualified person on a casual service basis.

(4) In these Regulations, "casual service" refers to employment of a person on terms where payment for services rendered shall be at the end of each workday and the person is engaged for a period not exceeding twenty-four hours.

45. (1) Under this paragraph "intern" means a supervised trainee working to gain experience or satisfy requirements for an academic, professional, technical, occupational or trade certification, registration or licensing.

Internship.

(2) The relevant authorised officer of a public body, with the approval of the Commission, may engage any qualified person as an intern.

(3) A public body shall notify the Commission of the available opportunities for internship before engaging any person as an intern.

(4) Subject to any other written law, all opportunities for internship shall be advertised in accordance with the provisions of section 37 of the Act.

(5) The engagement of interns in the public service shall be through a competitive process, shall transparent and accountable and accord equal opportunity for all qualified applicants.

(6) Interns shall be deemed to be public officers for the purposes and duration of the internship and shall be subject to these regulations and prevailing code of conduct for public officers in the public body to which the intern is attached.

(7) Interns may be paid such stipends as the Commission may approve or prescribe.

(8) An internship shall be for a non-renewable period not exceeding one year and shall not be a guarantee for employment in the public service.

(9) The Commission shall monitor and evaluate internship programmes for the public service.

(10) No public body shall engage interns for another public body without the written approval of the Commission.

PART IV — CONDITIONS OF SERVICE, CODE OF CONDUCT AND QUALIFICATIONS

46. (1) In exercising the power to review the conditions of service in the public service, the Commission shall be guided by the Constitution and the provisions of section 53 of the Act.

Conditions of service.

(2) In this regulation, "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 and exit from service;

- (d) salaries and allowances;
- (e) working hours;
- (f) leave;
- (g) grievances;
- (h) disciplinary control;
- (i) medical care;
- (j) transport;
- (k) water;
- (l) food;
- (m) welfare;
- (n) working environment;
- (o) training and development;
- (p) membership of trade unions;
- (q) housing;
- (r) pensions and retirement benefits; and
- (s) staff performance management.

(3) 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, the category of public officers the officer belongs to or all public officers in the public body the officer belongs to.

(4) Where the Commission has undertaken a review and made recommendations under this regulation, the concerned public body or authorised officer shall implement the recommendations—

- (a) immediately or when next a decision relating to the conditions of service falls due; or
- (b) if it relates to remuneration and other payments, it shall be effected in accordance with the Commission's recommendations and advice from the Salaries and Remuneration Commission.

47. (1) The Commission shall review codes of conduct in the public service in accordance with the provisions of section 54 of the Act.

Code of conduct.

(2) Subject to any other written laws, an authorised 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.

48. (1) The Commission shall determine the qualifications for all positions in the public service except where the Constitution has vested in another authority the function of determining qualifications attached to a public office.

Qualifications for positions in the public service.

(2) Qualifications for positions in public office shall be contained in the applicable career progression guidelines.

(3) The Commission shall review qualifications for position in the public service in accordance with the provisions of section 55 of the Act.

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

(5) Nothing in this regulation shall prevent the Commission from determining, reviewing or recommending qualifications on a case by case basis with respect to a public office or category of public offices.

(6) Every public body or authorised officer shall, unless a waiver has been obtained from the Commission, comply with the qualifications prescribed in accordance with this regulation.

(7) In these regulations, "qualifications" means any prescribed requirement of eligibility or ineligibility attached to holding or acting in a public office.

49. (1) The Commission shall review and issue a grading structure for the public service.

Grading structure and career progression.

(2) The Commission shall provide career progression guidelines for all cadres in the public service which shall—

- (a) provide norms and standards for the specific cadres for the determination of qualifications and progression;
- (b) prescribe relevant competencies for all cadres; and
- (c) advise on relevant technical and professional training for all cadres.

(3) The Commission shall—

- (a) initiate the review of career progression guidelines in accordance with the provisions of section 55 (7) of the Act;
- (b) in the case of professional cadres in the public service, partner with professional bodies to ensure compliance with the standards of each profession;
- (c) require facilitation, by a public body, for the registration and annual subscription of public officers as members of professional bodies;
- (d) cluster cadres in the service into relevant job families; and
- (e) ensure the institutionalisation of human resource planning, career and succession management.

(4) Except as provided by any other written law, career progression guidelines shall be administered by the respective authorised officer in the public body.

(5) In these regulations—

- (a) “career progression guidelines” means a tool that facilitates the recruitment, retention, training and development of officers in the public service;
- (b) “job families” means the clustering of cadres with related functions; and
- (c) “professional body” means a statutory body representative of members of a given profession.

PART V—DEVELOPMENT OF HUMAN RESOURCE IN THE PUBLIC SERVICE

50. (1) The Commission shall be guided by the provisions of section 56 of the Act when developing human resource in the public service.

Human resource development.

(2) The Commission shall determine and recommend to the national government the percentage of the recurrent budget for the public service that shall be set apart for the purpose of the development of human resource in the public service.

(3) The Commission shall issue an Annual Training Policy Statement to address training needs in the public service for each financial year.

(4) Authorised officers shall abide by policies and guidelines issued by the Commission for the development of human resource in public bodies.

51. (1) The Commission shall publish the procedures and instruments governing the development of human resource, the measures for prudent utilization of training funds in public bodies and for ensuring merit in the selection and award of training opportunities for public officers at least once in each year.

Scholarships.

(2) Except for public universities and research institutions, all awards of scholarships available to public officers shall be presented to the Commission for approval by authorised officers.

(3) In seeking approval under subregulation (2), the authorised officer shall present to the Commission a report containing the following information—

- (a) the nature and scope of the scholarship;
- (b) the date of receipt of information on the scholarship;
- (c) the date and particulars of advertisement of the scholarship;
- (d) list of all applicants;
- (e) the shortlisted applicants;
- (f) the criteria for shortlisting; and
- (g) criteria for award.

(4) Scholarships opportunities for public officers shall be advertised for a period of at least twenty-one days in at least two daily newspapers of nationwide circulation, the public body's website and in such other form as the human resource committee of the public body shall determine.

(5) Public officers shall not be permitted to proceed to study on scholarship without the approval of the Commission.

52. (1) Authorised officers shall present to the Commission the training projections for public officers in the public body for approval and monitoring.

Training.

(2) Training opportunities for public officers shall be considered and awarded by the relevant human resource committee of the public body.

(3) An officer may be eligible to at least one short term training opportunity in a financial year, which shall be sponsored by the public body and shall not exceed a period of three months.

(4) Officers shall be eligible to training opportunities which exceeds a period of six months:

Provided that an officer shall not be eligible for training that exceeds a period of six months until after the lapse of a period of two years from the date of the last training opportunity undertaken by the officer that exceeded a period of six months.

(5) Public officers who undertake any training sponsored by the public body shall be bonded in accordance with guidelines issued by the Commission for this purpose.

(6) The Commission shall identify and recommend to public bodies the institutions with the capacity to undertake human resource development for the public service in consultation with the relevant accrediting bodies.

(7) The Commission shall monitor and evaluate the effectiveness of learning and training programmes that lead to qualifications required to hold a public office and recommend to the concerned institutions any matter necessary to improve the programmes.

(8) Authorised officers shall submit a report to the Commission on any training undertaken by public officers within a financial year.

(9) The report referred to in paragraph 8 shall be submitted on or before the 31st July of each year and shall contain the following information in relation to officers who have been trained—

- (a) personal number;
- (b) name;
- (c) gender;
- (d) ethnicity;
- (e) disability;

- (f) age;
- (g) designation;
- (h) duty station;
- (i) training undertaken;
- (j) cost of training;
- (k) duration and location of training;
- (l) status of the training or certification issued; and
- (m) training impact assessment report.

53. (1) The Commission shall develop guidelines for the effective orientation and induction of public officers into the public service.

Induction and orientation.

(2) Newly appointed public officers shall undergo an induction prior to assignment of any duties.

(3) For the purposes of this regulation—

- (a) “orientation” means familiarization and socialization of a public officer in a new work environment; and
- (b) “induction” means training provided to a new appointee by the employer in order to assist in adjustment to the new work environment and responsibilities.

PART VI—ORGANISATION, ADMINISTRATION AND PERSONNEL PRACTICES OF THE PUBLIC SERVICE

54. (1) The Commission shall investigate, monitor and evaluate the organization, administration and personnel practices of the public service set out in the policies, guidelines and manuals issued by the Commission in accordance with the provisions of section 57 (3) of the Act.

Organization of public service.

(2) The Commission shall, upon investigation, monitoring and evaluation of the organisation of the public service with respect to any public body, issue specific recommendations to the public body for implementation where necessary.

(3) The Commission shall consider the following factors when investigating, monitoring or evaluating the organisation of the public service—

- (a) the functions of the National Government set out in the Fourth Schedule to the Constitution;
- (b) the functions of the respective public body;
- (c) national sustainable development; and
- (d) the policies of the National Government.

55. The Commission shall, in addition to the provisions of section 57 (2) of the Act and with respect to any public body, investigate, monitor, evaluate and report on a public body’s—

Commission’s duties in administration of public service.

- (a) prevailing systems, processes and instruments for the performance of the body's functions;
- (b) co-ordination of measures towards delivery of the body's core functions;
- (c) reporting systems including supervisory, accountability and appraisal functions; and
- (d) financial implications in the performance of the functions and powers of the Commission by the body's authorised officer.

56. Pursuant to sections 60 and 61 of the Act, the Commission shall, as far as practicable in the circumstances, communicate its findings on the investigation of a complaint to the complainant.

Reports to complainants.

PART VII — PUBLIC SERVICE EFFICIENCY AND EFFECTIVENESS

57. (1) The standards in service delivery of the public service shall include—

Promotion of public service efficiency and effectiveness.

- (a) establishment of service delivery baseline information;
- (b) setting of service delivery benchmarks;
- (c) publication of citizen service delivery charters;
- (d) determination of the citizen service delivery satisfaction levels;
- (e) annual evaluation of citizens' satisfaction levels; and
- (f) grievance management procedures.

(2) The Commission shall, when evaluating the organization and core functions of a public body, assess the efficiency and effectiveness of standards, norms and practices of the public body set out in section 59 of the Act.

(3) The Commission shall, when evaluating the organisation and core functions of a public body, assess the efficiency and effectiveness of internal processes including—

- (a) governance structures;
- (b) documentation and automation of processes;
- (c) knowledge management practices;
- (d) e-government presence;
- (e) decentralization of services;
- (f) economic use of resources;
- (g) transparency and accuracy; and
- (h) timeliness.

(4) The Commission shall, when evaluating the organisation and core functions of a public body, assess the efficiency and effectiveness of citizen satisfaction by—

- (a) setting citizen satisfaction indicators;
- (b) undertaking citizen satisfaction surveys; and
- (c) establishment a citizen satisfaction index.

(5) Performance management guidelines shall include—

- (a) commitments of the Government;
- (b) commitments of the public body;
- (c) commitments of the public officer;
- (d) commitments of the citizen;
- (e) period of contract;
- (f) expected outcomes;
- (g) cost of service delivery;
- (h) evaluation criteria;
- (i) mitigation measures;
- (j) monitoring, evaluation and reporting; and
- (k) rewards and sanctions.

(6) Performance appraisal guidelines for public bodies and individual public officers shall include—

- (a) development of strategic objectives;
- (b) preparation of work plans;
- (c) setting of performance targets;
- (d) determination of evaluation criteria;
- (e) determination of evaluation benchmarks;
- (f) use of assessment tools and instruments;
- (g) prescription of performance improvement plans;
- (h) use of productivity assessment tools;
- (i) prescription of applicable rewards and sanctions; and
- (j) mechanisms for monitoring, evaluation and reporting.

(9) The Commission shall evaluate the performance, efficiency and effectiveness of the public service not later than six months after the end of the financial year.

(10) In evaluating performance and performance agreements between the Government and public bodies or individual public officers, the Commission shall, in addition to other mechanisms—

- (a) set methodologies for evaluation;
- (b) set criteria for evaluation; and
- (c) prescribe rewards and sanctions.

(11) The recommendations of the Commission made pursuant to section 62 (1) (f) of the Act shall be binding.

(12) Where an authorised officer fails to ensure efficiency and effectiveness of a public body, the Commission shall, pursuant to the provisions of section 62 (2) of the Act, recommend to the President the imposition of one or more of the following sanctions—

- (a) reprimand;
- (b) surcharge;
- (c) removal from office; or
- (d) any other sanction as the Commission may recommend.

PART VIII—VALUES AND PRINCIPLES OF GOVERNANCE AND PUBLIC SERVICE

58. (1) The Commission shall, in promoting the national values and principles of governance under Article 10 of the Constitution and the values and principles of public service under Article 232—

Promotion of
values and
principles.

- (a) visit, investigate, monitor and evaluate any public office or body with a view to determining the status of compliance with the values and principles;
- (b) 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;
- (c) 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;
- (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—
 - (i) a continuing program of research;
 - (ii) publication including in braille and Kenya Sign Language;
 - (iii) conferences;
 - (iv) lectures and symposia;
 - (v) exhibitions;
 - (vi) print and electronic media;
 - (vii) radio and television; and
 - (viii) such other means as may be appropriate; and

- (e) 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;
- (2) The Commission shall consider the following factors in promoting values and principles—
 - (a) financial requirements for the successful promotion of the values and principles;
 - (b) training and capacity building requirements;
 - (c) the meaning and application of the values and principles with respect to the various public bodies;
 - (d) channels for the effective dissemination of values and principles;
 - (e) relevant partners for cooperation towards successful promotion of the values and principles;
 - (f) protection of human rights;
 - (g) any relevant written laws, regulations, procedures, instruments and standards;
 - (h) any relevant conventions or treaties to which Kenya is a party; and
 - (i) the prevailing value systems that may undermine the values and principles.

59. (1) The Commission shall submit to the President and Parliament, once in each year, the report of the evaluation on the extent to which the values and principles in Articles 10 and 232 of the Constitution have been complied with in the public service in respect of the preceding financial year.

Report on values and principles.

- (2) The report by the Commission under subregulation (1) shall—
 - (a) be delivered by the Commission, every December, to the President and the Speakers of the Houses of Parliament;
 - (b) specify all the steps taken and decisions made by the Commission under this Part;
 - (c) specify any recommendations on the promotion and reporting of the values and principles;
 - (d) specify the decisions and particulars of public bodies who have violated the values and principles including the nature of violation and action taken or recommended against them;
 - (e) specify the constraints encountered by the Commission in promoting and reporting on the values and principles; and
 - (f) specify any programmes the Commission is undertaking or has planned to undertake in the medium term towards the promotion of the values and principles.

(3) The Commission's report to the President and Parliament shall be published by the Commission in the *Gazette* by the 31st December of every year.

(4) The Commission shall publicise the report.

(5) 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 IX—DISCIPLINARY CONTROL

60. (1) The Commission shall exercise disciplinary control in the public service in accordance with Article 47 of the Constitution, the Fair Administrative Action Act, 2015, Part XII of the Act and any other written law.

Disciplinary
control.

No. 4 of 2015.

(2) The Commission may delegate in writing the power of dismissal or reduction in rank or seniority of officers to authorised officers subject to section 65 (2) (b) and the law relating to pensions or retirement benefits.

61. (1) The Commission and authorised officers may impose the penalties prescribed in section 68 of the Act.

Types of
penalties.

(2) Subject to the provisions of section 68 (1) (c) of the Act, where a salary increment has been deferred, the deferred increment shall not be paid retrospectively upon the lapse of the period of deferment.

(3) Pursuant to the provisions of section 68 (2) (3) of the Act, where an officer has been found to have committed an act of misconduct, the Commission or other lawful authority shall communicate to the officer the options available to the officer and he or she shall be required to select one of the options within a period of fourteen days from the date of communication or, where the officer fails to choose within the fourteen days, the Commission or that other lawful authority may impose any of the penalties specified in section 68 (1) of the Act.

62. (1) The authorised officer of a public body may, with the written approval of the Commission, send a public officer in a public body in which an investigation is being conducted on compulsory leave for a period not exceeding thirty working days, where it is feared that the officer may influence or interfere with the investigation.

Compulsory
leave.

(2) The authorised officer shall notify in writing the officer being sent on compulsory leave of the reasons for the decision and the duration of the compulsory leave.

(3) An officer on compulsory leave shall be entitled to full pay and benefits.

(4) Compulsory leave shall not be counted as part of an officer's annual leave.

63. An authorised officer shall provide to the Commission a quarterly report on the status of the cases of interdicted and suspended officers pursuant to section 72 of the Act containing the following information—

Provision of
information on
interdictions and
suspensions.

- (a) personal number, name, age and gender of the officer;
- (b) designation and job group of the officer;
- (c) date of interdiction or suspension;
- (d) nature of disciplinary proceedings;
- (e) status of the proceedings;
- (f) status of court matter if any; and
- (g) where the interdiction or suspension has exceeded six months, the reasons for the delay in concluding the proceedings.

64. (1) Pending criminal proceedings shall not bar a public body from undertaking an administrative disciplinary process against a public officer and imposing any of the penalties specified in section 68 of the Act.

Administrative disciplinary process.

(2) An acquittal or discharge by a court of competent jurisdiction on a criminal offence shall not supersede an administrative disciplinary process.

65. Pursuant to the provisions of section 69 (12) of the Act, where a case is filed against a public body or authorised officer relating to a disciplinary case involving a public officer, the authorised officer shall, within fourteen days of receipt of summons in the case, notify the Commission and provide copies of court documents filed for and against the public body.

Information on suits arising from disciplinary proceedings.

66. Pursuant to Article 236 of the Constitution, public officers shall not be disciplined for performing the functions of office in accordance with the Constitution or any other law.

Protection of public officer.

67. Where a disciplinary process has not been concluded administratively or before the Commission or in court, a public body shall not recruit an officer to substantively fill the position.

Pending disciplinary process.

68. (1) A public officer who is dissatisfied with a disciplinary process may appeal against the process or the decision in accordance with section 74 of the Act.

Appeals and reviews.

(2) A public officer who is dissatisfied with the outcome of an appeal may apply for review in accordance with section 75 of the Act.

PART X—RESIGNATION, RETIREMENT AND RELATED MATTERS

69. (1) Resignations in the public service shall be handled in accordance with section 78 of the Act.

Resignation.

(2) In this regulation—

- (a) “resignation” means exit from the public service at the instance of a public officer; and
- (b) “salary” referred to in section 78 (2) of the Act means gross salary.

(3) Subject to section 78 (2) of the Act, a resignation letter may be sent by electronic mail or registered post or delivered by hand to the authorised officer and, where sent by registered post, relevant evidence of postage shall be produced as proof of delivery where required.

(4) Resignation shall take effect thirty days from the date of the delivery or registration of the resignation letter at the post office.

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

- (a) fraud or conspiracy where the concerned public officer is innocent;
- (b) duress where the concerned public officer has proved that the resignation was occasioned by threats or coercion by a person in authority over the officer;
- (c) involuntary decision by the concerned public officer by reason of infirmity of mind arising from ill health or involuntary intoxication;
- (d) resignation is aimed at avoiding anticipated or on-going disciplinary case; or
- (e) outstanding liabilities owed by the officer to the public body.

(6) Upon the submission or delivery of a resignation letter, the officer shall be required to settle any outstanding liabilities to the Government and obtain a clearance certificate.

(7) Subject to the relevant written law, where a public officer resigns after completing a period of at least five years pensionable service, the officer shall be eligible to pension benefits.

(8) An officer who has resigned shall not, if subsequently re-employed after a break of service, count his previous service when determining his or her pensionable service.

(9) An officer who has resigned may only re-enter the public service on new appointment in accordance with section 78 (4) of the Act and shall be required to produce a clearance certificate obtained after resignation.

70. (1) Subject to the Constitution, section 80 of the Act, any other relevant written law or a specific government policy, the mandatory retirement age in the public service shall be—

- (a) sixty years;
- (b) sixty-five years for persons with disability; and
- (c) such age as may be determined by the Commission for lecturers and research scientists serving in public universities, research institutions or equivalent institutions as determined by Commission in consultation with such universities, research institutions or equivalent institutions.

(2) A public officer shall be considered for retirement as a person with disability if the officer—

Retirement on age grounds.

- (a) has a disability of a permanent nature that can be perceived by significant sectors of the community and the disability has a substantial impact on the ability of the officer to carry out ordinary day to day activities;
- (b) has been registered in the public body's human resource database as a person with disability for at least three years before the date of retirement:

Provided that the Commission may, where it considers appropriate, consider cases of disability that occur less than three years before the date of retirement; and

- (c) is registered by the National Council for Persons with Disabilities and has a tax exemption certificate from the Kenya Revenue Authority as a person with disability:

Provided that registration by the Council or possession of a tax exemption certificate shall not be considered as automatic evidence of disability.

(3) Where there is doubt as to the disability of a public officer, the Commission shall seek a second medical assessment from a panel consisting of a representative of the Commission and three eminent doctors appointed by the Director-General of Medical Services and the second medical assessment shall supersede any other assessment.

(4) A person shall not be retained in the public service on account of disability beyond the mandatory retirement age without the approval of the Commission.

(5) Subject to the Constitution, the Retirement Benefits Act, 1997, the rules of a retirement benefits scheme or a specific government policy, where an officer attains the mandatory retirement age while undergoing disciplinary proceedings, the officer shall retire with the applicable pension benefits.

No. 3 of 1997.

(6) Subject to section 80 (2) of the Act, in determining whether to engage an officer after attainment of retirement age, the Commission shall determine and document the rare knowledge, skills or competencies that the officer possesses.

(7) In this regulation—

- (a) "rare knowledge, skills and competencies" means knowledge, skills and competencies that are scarce, unique and not readily available in the job market.; and
- (b) "disability" means a permanent physical or other impairment or condition that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day to day activities.

71. (1) Subject to section 81 of the Act, a public officer who elects to retire on the attainment of fifty years of age shall apply in writing to the authorised officer.

Retirement on attainment of fifty years.

(2) An application for retirement may be sent by electronic mail or registered post or delivered by hand to the authorised officer and relevant evidence of registered postage shall be produced as evidence of delivery where required.

(3) Retirement shall take effect at the expiry of three months from the date of the delivery or registration of the application for retirement at the post office.

(4) The Commission or any other appointing authority shall not reject a request for retirement on attainment of fifty years except on account of—

- (a) fraud or conspiracy where the concerned public officer is innocent;
- (b) subject to the provisions of section 68 (2) and (3) of the Act and regulation 50 (3), duress where the public officer has proved that the application for retirement was occasioned by threats or coercion by a person in authority over the officer;
- (c) involuntary decision by the public officer by reason of infirmity of mind arising from ill health or involuntary intoxication; or
- (d) retirement aimed at avoiding anticipated or on-going disciplinary cases.

(4) The authority to approve an application for retirement upon attainment of fifty years of age by a public officer shall vest in the Commission.

72. (1) Subject to section 82 (2) of the Act, where by reason of infirmity of mind arising from ill health, a public officer is incapable of consciously following the procedural steps under section 82 of the Act, the authorised officer shall notify the Commission in writing, setting out the authorised officer's observations and the Commission shall determine whether or not to retire the afflicted officer on the ground of ill health or make any other relevant determination.

Retirement on grounds of ill health.

(2) The Commission shall conduct an investigation to confirm the illness and the impact of the illness on the officer's ability to perform his or her duties before exercising the powers contemplated in section 82 (5) of the Act.

(3) The Commission may require the next of kin of the officer to present the officer for a medical examination.

(4) A public officer who retires on the ground of ill health shall be eligible for applicable retirement benefits.

(5) The authority to retire a public officer on medical grounds shall vest in the Commission.

73. (1) Subject to the provisions of section 28 (3) of the Act, where the Commission intends to retire a public officer on the ground of abolition of office, the authorised officer shall inform the officer that the his or her retirement is being considered and invite the officer, within reasonable time, being not less than thirty days, to make representation thereon, if any.

Retirement on grounds of abolition of office.

(2) Upon receiving the representation under subregulation (1) or failing to receive any representation within the prescribed time, the

authorised officer shall in writing notify the Commission together with the officer's representation, if any, with recommendations justifying the retirement or retention of the officer.

(3) The Commission shall promptly determine whether the public officer should be retired on grounds of abolition of office:

Provided that where the Commission requires further information from the authorised officer or the officer intended to be retired, it shall direct the authorised officer or officer intended to be retired to provide the information before the Commission determines the matter.

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

74. (1) A public officer may, pursuant to section 79 (1) (f) of the Act, voluntarily retire from service upon serving for a period of five years in a public body and shall be entitled to a pension in accordance with the written law relating to pensions.

Voluntary
retirement.

(2) A public officer who opts to voluntarily retire from service shall give the authorised officer one month's notice in writing.

75. A retirement decision may be reviewed by the Commission in accordance with the provisions of section 84 of the Act.

Retirement
decisions
reviewable.

PART XII—COMMISSION'S REPORT TO THE PRESIDENT AND PARLIAMENT

76. (1) The annual report by the Commission to the President and Parliament required under Article 254 of the Constitution shall be submitted in accordance with section 90 of the Act.

Commission's
Report to the
President and
Parliament.

(2) The report by the Commission shall—

- (a) be delivered by the Commission to the President and the Speakers of both the National Assembly and the Senate by the thirtieth day of September each year; and
- (b) be published in the *Gazette* and publicised in at least one daily newspaper with nationwide circulation within fourteen days of submission to the President and Parliament.

PART XII—MISCELLANEOUS

77. (1) The Commission may, on its own initiative or on a complaint made by any person, investigate any issue relating to the Commission's constitutional or statutory functions and powers and make such determination as may be just in the circumstances.

Complaints and
grievances.

(2) The Commission shall, in conducting an investigation under subregulation (1), afford every affected party an opportunity to be heard before the Commission makes a determination in the matter.

78. (1) The Commission may, on its own initiative or on the request of any person, facilitate conciliation, mediation or negotiation in respect of any issue relating to the Commission's constitutional or

Conciliation,
mediation and
negotiation.

statutory functions, and shall encourage the parties to arrive at an amicable resolution.

(2) The Commission shall in facilitating conciliation, mediation or negotiation under subregulation (1) ensure that every party to the conciliation, mediation or negotiation has an opportunity to make representations in respect of the matter.

79. (1) Any decision of the Commission shall be communicated by the Secretary in writing.

Communication of Commission's decisions.

(2) Subject to section 93 of the Act, a public officer affected by a decision of the Commission or the officer's representative shall be entitled to receive information about the decision or the reasons for the decision from the Commission on request by the officer or the officer's representative.

(3) Despite subregulations (1) and (2), a decision of the Commission may be communicated in writing by the Chairperson if circumstances warrant it.

80. (1) Any matter not addressed by these regulations shall be dealt with in accordance with such special or general instructions issued by the Commission.

Cases not covered by regulations.

(2) Subject to the Constitution and any other written law, nothing in these regulations shall preclude the Commission from considering and determining any matter that is within the Commission's mandate but has not been addressed in these regulations.

81. Authorised officers shall be responsible for keeping and maintaining any records required under the Act or these regulations on behalf of the Commission.

Records.

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

Revocation of Regulations.

Dated the 18th April, 2019.

STEPHEN KIROGO,
Chairperson of the Public Service Commission.