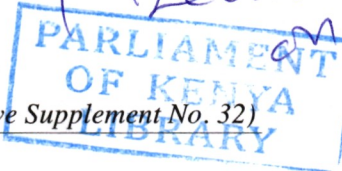


SPECIAL ISSUE

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*paper laid by
Leader of Majority
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22nd May, 2015

LEGAL NOTICE NO. 88

THE NATIONAL POLICE SERVICE COMMISSION ACT

(No. 30 of 2011)

IN EXERCISE of the powers conferred by section 28 of the National Police Service Commission Act, the National Police Service Commission makes the following Regulations:—

**THE NATIONAL POLICE SERVICE COMMISSION
(PROMOTIONS) REGULATIONS, 2015**

PART I—PRELIMINARY

1. These Regulations may be cited as the National Police Service Commission (Promotions) Regulations, 2015.

2. In these Regulations, unless the context otherwise requires—

“acting capacity” means temporary conferment upon a member of the Service, the power to perform duties of an office other than the office the member is substantively appointed to hold, while the member continues to hold the substantive appointment;

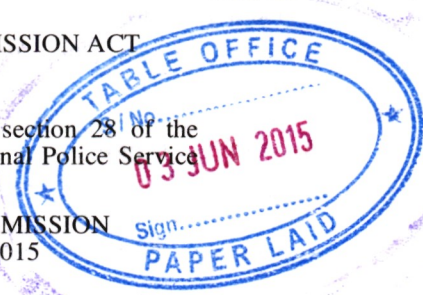
“affirmative action” has the same meaning assigned to it under Article 260 of the Constitution and includes any measure designed to overcome or ameliorate an inequity or the systemic denial or infringement of a right or fundamental freedom;

“merit” with reference to a person who is a candidate for a position within the National Police Service means that the person—

- (a) has abilities, aptitude, skills, knowledge, experience and personal qualities relevant to the carrying out of the duties in question;
- (b) in the case of promotions, that the officer, has performed satisfactorily in the previous post;
- (c) has the required educational qualifications;
- (d) has potential for further development;
- (e) has integrity in accordance with Chapter Six of the Constitution; and
- (f) meets the criteria as may be set out in the announcement or advertisement regarding the position in question;

“officer” has the same meaning as assigned to it under section 2 of the National Police Service Act, 2011;

“review” means an assessment of any matter relating to promotion, for purposes of establishing whether a promotion has been conducted in accordance with these Regulations.



Citation.

Interpretation.

3. (1) The Commission shall determine all promotions within the National Police Service in the manner provided for under these Regulations.

Guiding principles.

(2) All promotions in the National Police Service shall be based on merit.

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

(4) Subject to established policies on affirmative action, all officers of the National Police Service shall be accorded equal opportunities for promotion.

4. (1) Promotion of an officer of the rank of or above the rank of a Superintendent shall be carried out directly by the Commission and shall not be delegated to the Inspector-General.

Delegation to the Inspector-General.

(2) Promotion of an officer below the rank of a Superintendent, may be delegated to the Inspector-General in accordance with section 10 (2) of the National Police Service Commission Act.

No.30 of 2011

(3) A delegation to the Inspector-General under paragraph (2) shall—

- (a) be in writing;
- (b) be subject to the conditions as may, from time to time, be imposed by the Commission; and
- (c) not divest the Commission of the responsibility concerning the exercise of its powers or the performance of the duty delegated.

(4) Where promotions are delegated to the Inspector-General, the—

- (a) promotions may be commenced after a written notification of the commencement of the process to the Commission;
- (b) Inspector-General shall be held accountable for the process to the Commission and shall be bound by the policies, Guidelines, Regulations or Directives formulated or prescribed by the Commission;
- (c) Inspector-General shall within thirty days of the promotion, report to the Commission in writing concerning any promotion undertaken pursuant to the delegated authority; and
- (d) Commission may review or revoke the promotions, where the Commission finds any failure in the adherence to the Guidelines or Regulations on promotions.

5. The basis of all promotions shall be in accordance with the standards relating to the job descriptions and specifications for all civilian and uniformed police positions as approved by the Commission.

Adherence to standards on promotions.

6. It shall be a disciplinary offence for an officer to solicit, offer money or other reward in order to get or give a promotion in the National Police Service.

Offence on soliciting for promotions.

7. (1) Promotions shall be determined—

Determination of promotions

- (a) by the existence of an appropriate vacancy;
- (b) on an officer satisfying the criteria for promotion; or
- (c) on an officer successfully undergoing a promotional course or training.

(2) In determining promotions, an officer's disciplinary record shall be taken into consideration.

(3) An officer who is found guilty of a disciplinary offence may not be considered for promotion until after the lapse of six months from the date of the disciplinary offence.

8. (1) The Commission or, as the case may be, the Inspector-General, shall in so far as succession management is concerned, promote an officer in anticipation of the concerned position falling vacant and not after the vacancy has already occurred.

Succession Management.

(2) Where a police officer is promoted, the officer shall within thirty days from the date of the promotion, be released from the officer's previous rank and station where applicable to take up the promotion.

(3) The Commission may determine, through the Scheme of Service for members of the National Police Service, the term which an officer may hold a certain rank.

9. (1) In order to assess whether an officer qualifies for a promotion there shall be regular, mandatory performance appraisals in order to establish a reliable track record of an individual member of the National Police Service.

Performance Management

(2) Performance management consists of such steps as the Commission may determine and publish so that this is brought to the attention of all officers.

10. (1) The Inspector-General shall through the Service Standing Orders establish boards to be known as Service Promotion Boards to advise the Commission on issues relating to promotions.

Promotion Boards.

(2) The Service Promotion Boards specified under paragraph (1) shall comprise a member of the human resources department.

(3) The Commission shall issue guidelines on the procedure of the promotional boards.

11. (1) The Commission or the Inspector-General may advertise certain vacancies as determined by the Commission that may result to promotion of officers within the Service in line with these regulations.

Applying for a position that entails a promotion.

(2) A member of the Service may apply for a position in the Service that entails a promotion from his or her current position.

(3) The Commission shall keep a record of every proceeding regarding the promotion of an officer.

12. (1) The Commission may establish other human resources development mechanisms and processes to be known as horizontal career development.

Alternative avenues for career development.

(2) Horizontal career development may include a non-promotion reward scheme, where a member of the service is offered higher financial incentives and other career development opportunities and rewards irrespective of whether the member is promoted or not.

13. (1) Promotion shall commence on a written confirmation by the Commission, however the officer may take an office or position in an acting capacity until he or she is confirmed into the rank.

Actual promotion.

(2) The fact of undergoing a promotional training does not, in itself, automatically entitle a person to a promotion but such training shall be considered alongside other requirements for the position in which promotion is desired.

14. (1) A member of the Service may appeal to the Commission against a promotion, delay or failure to promote, or demotion of an officer, to the Commission.

Appeals

(2) An appeal shall be in writing and shall be made within thirty days, of the decision appealed against.

(3) The Commission may accept an appeal out of time when there is good reason to do so or where compelling warrant it.

(4) The Commission may deal with an appeal by way of written submission by the member or through oral hearing of the parties.

(5) The Commission shall establish a panel to hear a case, the composition of which shall depend on the issue being raised on appeal and the rank of the person involved.

(6) The appeal panel shall consist of—

- (a) a Commissioner to chair the panel;
- (b) an officer from the same Service as the officer appealing, designated by the Inspector-General in consultation with the respective Deputy Inspector-General or Director of the Directorate of Criminal Investigations;
- (c) a human resource officer from the Service of the concerned officer; and
- (d) any other officer who possesses the knowledge and skills that are found necessary for the functions of the panel.

(7) The panel shall consider the appeal within twenty one days and make recommendations to the Commission for the Commission's consideration and final decision.

(8) The decision and reasons for the decision shall be submitted to the officer by the Commission, through the Inspector-General within fourteen days of the receipt of the panel's recommendations.

Made on the 7th May, 2015.

JOHNSTON KAVULUDI,
Chairperson,
National Police Service Commission.

LEGAL NOTICE NO. 89

THE NATIONAL POLICE SERVICE COMMISSION ACT

(No. 30 of 2011)

IN EXERCISE of the powers conferred by section 28 of the National Police Service Commission Act, the National Police Service Commission makes the following Regulations:—

THE NATIONAL POLICE SERVICE COMMISSION (TRANSFER AND DEPLOYMENT) REGULATIONS, 2015

PART I—PRELIMINARY

1. These Regulations may be cited as the National Police Service Commission (Transfers and Deployments) Regulations, 2015.

Citation

2. In these Regulations, unless the context otherwise requires—

Interpretation

“Act” means the National Police Service Act, 2011;

“assignment” means the allocation of specific duties to an officer;

“Commission” means the National Police Service Commission established under Article 246 of the Constitution;

“deployment” means the temporary movement of an officer from one station to another station, to undertake a specific assignment, for a period not exceeding three months and in which the pay point remains at the original station in which the officer was initially posted prior to the deployment;

“distribution of police officers” means the number of police officers required in a particular station, unit, formation, post or outpost;

“posting” means the placing of an officer in his or her duty station;

“secondment” means the temporary deployment of an officer outside the National Police Service with or without additional responsibilities;

“Service” means the National Police Service established under Article 243 of the Constitution;

“Service Board” means the Service Board established under section 21 of the National Police Service Act, 2011;

No 11A of 2011

“transfer” means the relocation of an officer from the current duty station to a new duty station and matters relating to the officer including the pay point of the officer is moved to the new duty station.

PART II—TRANSFERS

3. (1) Upon being appointed in the Service, an officer may from time to time be transferred from one station to another station as the Commission may determine.

Transfers generally

(2) A transfer shall not be used as a disciplinary sanction or reward measure.

(3) Where it is found that a transfer has been used as a disciplinary sanction or as a reward measure, the Commission shall revoke the transfer and direct appropriate disciplinary action to be taken against any officer established to have participated in the transfer.

4. (1) Subject to Article 246 (3) of the Constitution, the mandate to determine transfers shall lie with the Commission.

Authority to transfer

(2) The Commission shall determine inter-county transfers of any officer.

(3) The Inspector-General shall—

(a) be responsible for determining the distribution of officers in the Service; and

(b) recommend to the Commission, in writing, the authorization of transfers as may be necessary for purposes of attaining the required distribution of officers in the Service.

(4) The Commission shall, in considering a recommendation for transfer of an officer by the Inspector-General, *inter alia* consider—

(a) the justification for the transfer;

(b) whether the proposed transfer would disrupt police work;

(c) whether funds are available to pay the officer's transfer allowance; or

(d) ethnic diversity and gender representation.

(5) The Inspector-General shall ensure that an officer being transferred has been adequately facilitated.

5. (1) An officer appointed in the Service shall be deemed to have agreed to work in any place in the Kenya and transfers shall be in accordance with the terms and conditions of employment in the Service.

Conditions for transfers.

(2) A transfer shall be based on necessity and shall be carried out in a manner that shall not disrupt the operations of the concerned Service.

(3) Subject to paragraph (4), in order to be considered for transfer, an officer shall be required to have served in a duty station for a continuous period of at least one year and a maximum period of three years.

(4) Despite subsection (3), the Commission may, in exceptional circumstances, determine an officer's transfer without due regard to the period prescribed in paragraph (3).

(5) Where transfers are made, the Commission shall ensure that the requisite support is accorded to the officer for purposes of facilitating the resettlement of the officer and his or her family.

(6) The Commission and the Inspector-General shall ensure that transfers are fair and just and does not allow corruption including

soliciting or offering money or other services to acquire or avoid a transfer.

(7) Lobbying or canvassing for or against a transfer shall constitute a disciplinary offence.

6. An officer may, make an application in writing and in accordance with the requirements set out in the standing orders, requesting for a transfer or raising an objection to an intended transfer on medical or compassionate grounds, for consideration by the Commission.

Transfer on medical and compassionate grounds

7. (1) The Commission shall, in writing through the Inspector-General, notify an officer of a transfer.

Notification of transfer.

(2) An officer's notification of transfer under paragraph (1) shall state the officer's new station, the date of assumption of duties and the details of how the officer shall be facilitated during the transfer.

PART II—DEPLOYMENT

8. (1) Subject to section 10(1)(g) of the National Police Service Act, the mandate to deploy an officer lies with the Inspector-General.

Authority to deploy officers

(2) The Inspector-General shall, from time to time or on a need basis, determine the deployment of officers in the Service.

No of 2011

(3) A deployment shall not be used as a disciplinary sanction or a reward measure.

9. (1) A deployment shall not exceed three months and may be extended from time to time due to the operational requirements but shall not be for a period of one year.

Period of deployment

(2) Where deployment exceeds a period of one year, the Commission shall consider transferring the officer.

(3) Any further extension of the deployment period by the Inspector-General shall be with the approval of the Commission.

(4) At the end of the deployment period, an officer shall be required to undergo counseling sessions as may be determined by the Service for psychological purposes of transition into regular policing.

PART III — SECONDMENTS AND ATTACHMENTS

10. (1) An institution may request the Inspector-General to second or attach a member of the Service to the institution for a specified period of time.

Secondment and attachment

(2) The requests under paragraph (1) shall be made in writing to the Inspector-General.

(3) On receipt of the request under paragraph (2), the Inspector-General shall within fourteen days consult the Service Board concerning the request made by the institution.

11. (1) Secondment of an officer shall be done after confirmation that the institution to which the officer is seconded shall pay the costs of the service of the officer being seconded.

Terms and conditions of secondments and attachments

(2) All secondments or attachments shall be for a period not exceeding three years.

(3) Any further extension of the secondment or attachment period by the Inspector-General shall be with the approval of the Commission.

12. The Commission may review these Regulations from time to time.

Made on the 7th May, 2015.

JOHNSTON KAVULUDI,
Chairperson,
National Police Service Commission.

Review of
Regulations

LEGAL NOTICE NO. 90

THE NATIONAL POLICE SERVICE COMMISSION ACT

(No. 30 of 2011)

IN EXERCISE of the powers conferred by section 28 of the National Police Service Commission Act, 2011, the National Police Service Commission makes the following Regulations:—

THE NATIONAL POLICE SERVICE COMMISSION (DISCIPLINE)
REGULATIONS, 2015

PART I—PRELIMINARY

1. These Regulations may be cited as the National Police Service Commission (Discipline) Regulations, 2015.

2. In these Regulations, unless the context otherwise requires—

“Act” means the National Police Service Commission Act, 2011;

“appeal” means an appeal lodged with the National Police Service Commission;

“authorized officer” means the Inspector-General or an officer who is authorized by the Inspector-General initiate disciplinary action against an officer;

“civilian staff” means a person serving in the Service but does not carry out policing functions and duties, and is not authorized to use police powers as provided for in the National Police Service Act, 2011;

“corrective action” means an immediate and temporary measure taken by an immediate supervisor against an officer in order to avert further commission of the offence or misconduct pending commencement of disciplinary processes;

“disciplinary action” has the same meaning as assigned to it under the Act;

“disciplinary proceedings” means proceedings under Part X of the National Police Service Act, 2011;

“dismissal” means an order against a member of the Service to leave the employment of the Service on disciplinary grounds and may result in other consequences as prescribed in any other relevant law ;

Citation.

Interpretation

No 30 of 2011

No 11A of 2011

No 11A of 2011

“immediate commanding officer of the respective Service” means the officer prescribed by Regulations or Service Standing Orders as having powers of command over the accused officer;

“interdiction” means a disciplinary measure where an officer is discontinued from the Service for a specified period of time but continues to be paid one half of his monthly salary;

“officer” has the same meaning as assigned to it under section 2 of the National Police Service Act;

No 11A of 2011

“reinstatement” means a person is taken back in the Service on his or her former position, after having been interdicted or suspended;

“resignation” means that the member of the Service voluntarily leaves from the Service in accordance with section 76 of the National Police Service Act, 2011;

“respective Service” means the Kenya Police Service or the Administration Police Service;

“Service” means the National Police Service established under Article 243 of the Constitution.

3. (1) The Commission shall exercise disciplinary control over the Service.

Disciplinary control
by the Commission

(2) In these Regulations, “disciplinary control” includes—

- (a) the development and prescription of fair and clear disciplinary procedures and mechanisms in accordance with Article 47 of the Constitution;
- (b) ensuring compliance with the prescribed disciplinary procedures and guidelines formulated by the Inspector-General;
- (c) ensuring compliance with the due process in disciplining members of the Service;
- (d) receiving of regular reports from the Inspector-General on disciplinary matters handled by the Service;
- (e) reviewing or ratifying of disciplinary actions taken by the Inspector-General;
- (f) hearing and determining appeals from the members of the Service; and
- (g) observing due process, removing persons holding or acting in offices within the Service.

(3) The Commission shall develop procedures for the undertaking disciplinary proceedings by the Inspector-General and officers authorized by the Inspector-General and shall ensure compliance with the procedures.

(4) Every disciplinary process shall observe due process as provided under Article 47 and Article 246(3)(b) of the Constitution.

4. (1) The disciplinary process may commence upon occurrence of any of the following—

Complaints against
police officers.

- (a) a complaint from a member of the public;
 - (b) a complaint from a member of the Service;
 - (c) a complaint from a state organ; or
 - (d) an anonymous witness statement or other statement made for another investigation not necessarily commenced for purposes of police Service matters.
- (2) Where an incident under subsection (1) occurs, such complaint shall be investigated by the most senior officer available or by an authorized officer in the manner prescribed in the Service Standing Orders.
- (3) In exceptional circumstances, where the offence against discipline is clearly manifest as to render investigations unnecessary, the officer-in-charge may immediately issue a notification to the appropriate disciplinary committee to conduct the disciplinary proceedings.
- (4) During the investigation, statements may be collected from the complainant, any witnesses available and from the officer being accused.
- (5) Where the complaints or reports and investigation disclose offences against discipline, the investigations report along with a notification shall be forwarded to the appropriate disciplinary committee to commence disciplinary proceedings.
- (6) The appropriate disciplinary committee shall upon conclusion of the disciplinary proceedings make a recommendation to the Inspector-General or authorized officer on the disciplinary action to be taken.
- (7) Upon conclusion of the disciplinary proceedings and on receipt of the recommendations of the appropriate disciplinary committee, action may be taken by the Inspector-General or the authorized officer in accordance with procedure set out in these Regulations and the Service Standing Orders.
- (8) Investigations into complaints against police shall be notified to the Internal Affairs Unit, upon commencement of the investigations.
- (9) Where investigations under this section disclose offences against discipline, the officer in charge shall be required to inform the Internal Affairs Unit of the notification issued to the appropriate disciplinary committee to conduct proceedings to enable a record of the same to be maintained.
- (10) Where an officer accused in a complaint admits to an offence against discipline, appropriate disciplinary proceedings shall be taken by the appropriate disciplinary committee.
- (11) An authorized officer or an officer-in-charge, as prescribed in the Service Standing Orders, may, subject to these Regulations and any other applicable procedure, take corrective action immediately against an officer who is manifestly culpable of a disciplinary offence

pending the disciplinary proceedings before the appropriate disciplinary committee in accordance with these Regulations and the Service Standing Orders.

5. (1) The officer-in-charge shall be required to cooperate with the Internal Affairs Unit, the Independent Policing Oversight Authority and other investigative agencies during the course of any disciplinary process.

Cooperation with other agencies

(2) Authorized officers conducting investigations into complaints against police shall be required to conduct the investigations expeditiously and to issue monthly reports on the findings of investigations to the Internal Affairs Unit for their record and other purposes in line with their mandates.

(3) The Internal Affairs Unit shall be required to submit quarterly reports to the Commission through the Inspector-General of all complaints and outcomes of investigations conducted by the Unit and reported from various field reports.

6. (1) Disciplinary proceedings before the Disciplinary committees against an officer may be initiated on—

Commencement of disciplinary proceedings

- (a) notification from the officer's immediate supervisor;
- (b) recommendation from the Internal Affairs Unit of the National Police Service;
- (c) recommendation from Independent Policing Oversight Authority;
- (d) adverse mention in a report of a parliamentary committee, committee of inquiry, the Auditor General, the Directorate of Criminal Investigations, the Directorate of Public Prosecutions, the Ethics and Anti-Corruption Commission, the Commission on Administrative Justice, or any other official inquiry or investigation; or
- (e) where an officer is caught in the act committing an offense against discipline.

7. (1) In exercise of the powers conferred under section 13 of the Act, the Commission shall establish the National Police Service Disciplinary Committee for purposes of hearing and determining disciplinary proceedings for an officer of the rank of assistant superintendent and above.

Establishment and composition of the National Police Service Disciplinary committee

(2) The Disciplinary Committee shall consist of—

- (a) the concerned Deputy Inspector-General of the Service to which the accused officer belongs or in his or her absence a Commissioner from the National Police Service Commission;

Provided that the Commissioner shall not be a Deputy Inspector-General of the Service; and

- (b) four other members appointed by Commission as follows—

- (i) two members representing the Kenya Police Service; and
- (ii) two members representing the Administration Police Service.

(3) Where the accused officer is an officer from the Directorate of Criminal Investigations, one of the two members representing the Kenya Police Service under paragraph (2) (a) shall be from the Directorate of Criminal Investigations.

(4) Where the accused officer is an officer of the rank of Senior Assistant Inspector-General, the Disciplinary Committee shall consist of at least three members of the Commission.

(5) The officer accused of an offence against discipline may while appearing before the Committee, be represented by a police officer, who shall not be of a rank higher than the accused officer's rank to assist the officer in his defence.

(6) Notwithstanding paragraph (5), the Committee may require the accused officer to make submissions in person during the hearings.

(7) The Disciplinary Committee may decline the officer selected by the accused officer under paragraph (5) and shall give reasons for the refusal, however the accused officer shall be granted an opportunity to select a different officer to assist him or her in the defence.

8. (1) The members of the Disciplinary Committee shall be constituted on a case by case basis.

Term of the National
Disciplinary
Committee

(2) The Disciplinary Committee shall sit at a venue to be determined by the Commission.

9. (1) The Disciplinary Committee shall inquire into matters related to offences against discipline for all officers taking into account the rank of the officer for purposes of the constituting the Disciplinary Committee.

Responsibility of the
Disciplinary
Committee

(2) In conducting an inquiry under subsection (1), the Disciplinary Committee may engage the services of any person or institution with expert knowledge in the matter to which the inquiry relates.

(3) The Committee may in determining any complaint against an officer, make recommendations to the Commission, including recommendations for dismissal from the Service.

(4) An officer aggrieved by the decision of the Commission following the recommendations of the Disciplinary Committee, may apply to the Commission for a review, in accordance with these Regulations.

8. (1) Where a hearing is for purposes of undertaking discipline of an officer of the rank of Chief Inspector and below, the Commission shall constitute a Subordinate Disciplinary Committee to inquire into and hear the disciplinary matter.

Subordinate
Disciplinary
Committee.

(2) The Subordinate Disciplinary Committee shall consist of—

- (a) a presiding officer, being an officer who is appointed as a presiding officer by the immediate commanding officer of the respective Service, and shall be of a rank not below the rank of Inspector and not of or below the rank of the accused officer;
- (b) an assistant presiding officer appointed by the immediate commanding officer of the respective Service, as provided in the Service Standing Orders; and
- (c) an officer appointed by the immediate commanding officer of the respective Service to observe the proceedings, who shall not be of a rank lower than the accused officer.

(4) There shall be, during the hearings of the Subordinate Disciplinary Committee, an officer prosecuting the offence being an officer authorized to inquire into offences against discipline and shall be of a rank higher than the accused officer but not of a rank higher than the presiding officer.

(5) A police officer facing disciplinary action may be accompanied by another officer of his or her choice for assistance and support:

Provided that such an officer shall not be of a senior rank to the presiding officer.

(6) The Subordinate Disciplinary Committee may decline the officer selected by the accused officer under paragraph (5) and shall give reasons for the refusal, however the accused officer shall be granted an opportunity to select a different officer to assist him or her in the defence.

(7) A police officer aggrieved by the Subordinate Disciplinary Committee's decision may apply for appeal in the following sequence—

- (a) at the County or Formation or Unit, at the first instance;
- (b) to the respective Deputy Inspector-General or to the Directorate of Criminal Investigations, at the second instance;
- (c) to the Inspector-General in accordance with these Regulations and the Service Standing Orders, at the third instance.

(8) An appeal from the decision of the Inspector-General shall lie with the Commission in accordance with these Regulations and the Service Standing Orders.

9. (1) Disciplinary proceedings shall be conducted in accordance with these Regulations, the Service Standing Orders and any guidelines issued by the Commission from time to time.

(2) Where an offence against discipline is committed by an officer, the officer's supervisor may take a corrective action, where applicable, pending the commencement of disciplinary process.

(3) The accused officer shall be notified of the offence accused of having committed and shall be accorded an opportunity of at least three calendar days within which to show cause why disciplinary action should not be taken against him or her.

(4) Where a disciplinary hearing is scheduled, an officer accused of a disciplinary offence shall be given at least seven calendar days' notice before the date of the hearing.

(5) The notice under paragraph (4) may, in exceptional circumstances, be waived and the hearing held in accordance with the Service Standing Orders.

(6) Where paragraph (5) is invoked, the presiding officer shall record the reasons for such waiver in writing.

(7) Where applicable or relevant, the officer who is the subject of the hearing may call witnesses or other evidence on his or her behalf, at the officer's own cost.

(8) The disciplinary hearings before the Disciplinary Committees shall be conducted expeditiously and without undue delay or technicalities and any delay in the disposal of the proceedings beyond twenty-eight days shall be reported to the Commission together with the reasons for such delay.

(9) The recommendations of the Disciplinary Committee shall be forwarded to the Commission for confirmation and approval and the Commission shall subsequently communicate the disciplinary action to be taken on the officer through the Inspector-General.

(10) The recommendations of the Subordinate Disciplinary Committee shall be forwarded to the Inspector-General or authorized officer as prescribed in the Service Standing Orders, for confirmation and approval and the Inspector-General or authorized officer shall subsequently communicate or implement, where applicable, the disciplinary action to be taken on the officer, taking into consideration the provisions of regulation 10.

12. (1) Where an officer fails to attend a disciplinary hearing despite evidence of notification of the date, venue and time of the hearing the disciplinary hearing may proceed in the absence of the accused officer and the presiding officer shall record the reasons for the accused officer's absence.

Disciplinary
hearings where the
accused is absent

(2) The appropriate disciplinary committee may upon conclusion of the hearing issue a determination of the disciplinary action to be taken in writing and the disciplinary action taken shall be recorded immediately in accordance with these Regulations.

13. (1) The Inspector-General may either directly or through an authorised officer or the appropriate disciplinary committees, initiate disciplinary proceedings against any member of the Service in the manner provided under these Regulations and any Guidelines issued by the Commission or the Service Standing Orders.

Disciplinary
proceedings by the
Service

(2) Where a complaint or report against an officer discloses an offence against discipline, appropriate disciplinary action shall be taken

by the Inspector-General, the authorised officer or the concerned disciplinary committee in accordance with these Regulations.

(3) Where disciplinary proceedings are initiated by the Inspector-General or an authorised officer, the Inspector-General or authorised officer shall notify the Commission for information purposes.

(4) A police officer who commits an offence against discipline is liable to—

- (a) reprimand;
- (b) suspension;
- (c) confinement to barracks or police residential quarters;
- (d) reduction of salary by not more than one third of basic salary for a period not exceeding three months;
- (e) a fine not exceeding a third of basic salary;
- (f) an order of restitution;
- (g) stoppage of salary increments for a specified period but not exceeding one year;
- (h) reduction in rank;
- (i) dismissal from the service; or
- (j) any combination of the punishments provided under this paragraph.

No. 11A of 2011

(5) The sanctions provided under paragraph 4 (f) (g) (h) (i) and (j) shall only take effect on approval and confirmation by the Commission.

No. 11A of 2011

(6) In the determining what disciplinary action to take against an officer under paragraph (4), the Inspector-General or the authorised officer shall take into consideration—

- (a) the circumstances in which the offence was committed and the gravity of the offence;
- (b) the seniority and length of service of the officer;
- (c) the previous record and conduct of the officer, and
- (d) the statement made by the officer for the purposes of mitigation.

(7) The officer presiding on the subordinate disciplinary committee shall enter the details of the punishment, including the date of the punishment and the offence for which it was imposed, on the record sheet of the police officer punished, and a copy of the record shall be forwarded to the Commission.

(8) Where the recommended disciplinary action relates are as provided under regulation 10 (4) the recommended disciplinary action shall require confirmation by the Commission.

(9) Where a disciplinary offence amounts to a criminal offence, or where an officer is charged of a criminal offence, the Service shall, in accordance with these regulations and the service standing orders, take appropriate disciplinary action regardless of whether the criminal proceedings result in a conviction or an acquittal.

(10) Where the Service fails to take the requisite disciplinary action the Commission may initiate disciplinary proceedings against the accused officer as provided in section 88 (4) of the National Police Service Act.

(11) Where an officer commits a criminal offence, the Inspector-General or authorised officer shall interdict the officer in accordance with the provisions of these Regulations and the Service Standing Orders and shall immediately inform the Commission of the interdiction.

14. (1) An officer under investigation, may be interdicted by the Inspector-General or an authorized officer to facilitate investigations.

Interdiction

(2) An interdiction of an officer shall not mean removal from office.

(3) An interdicted officer shall continue to be subject to all laws, Regulations, Service Standing Orders and Guidelines relating to the Service.

(4) An officer under investigation may, depending on the nature of the case, be interdicted pending the investigation.

(5) Where the officer is interdicted, the officer shall surrender his or her Certificate of Appointment to the supervisor.

(6) Despite any provision in this regulation, the officer's appointment shall not cease only because of such interdiction or suspension.

(7) While an officer is interdicted or suspended, the officer's powers, privileges and benefits shall be suspended, but the officer shall continue to be subject to the discipline and penalties provided under the National Police Service Act, 2011, as if the officer had not been interdicted or suspended.

(8) An officer who has been interdicted from duty will be entitled to half salary as well as to remain in the accommodation as provided to the officer.

(9) Notwithstanding paragraph (8), during an officer's interdiction or suspension as the case may be, the officer may be required to proceed to his permanent residence and to report to the local police station or post as prescribed in the Service Standing Orders.

15. (1) If the Inspector-General after having considered the report made with regard to an officer, and is of the opinion that the matter cannot suitably be dealt with under any provision in these Regulations or the Service Standing Orders, the Inspector-General shall the officer

Retirement on grounds of public interest

in writing specifying the complaints by reason of which the officer's retirement is in the public interest.

(2) The notice issued under paragraph (1) shall be issued to the officer together with the any report or part of a report containing any matter against the officer.

(3) If after giving the officer an opportunity to show cause why the officer should not be retired in the public interest and the Inspector-General is satisfied that the officer should retire in the interest of the public, the Inspector-General shall forward to the Commission the report on the case including comments from—

(a) the officer ;

(b) the Deputy Inspector-General or Director of the Directorate of Criminal Investigation;

(c) the Inspector-General,

and the Commission shall make a final determination whether the officer should be retired in the interest of the public .

16. (1) A disciplinary action taken by the Inspector-General or authorised officer shall be subject to review by the Commission in accordance with these Regulations.

Review and confirmation and by the Commission

(2) If on reviewing a disciplinary action taken by the Inspector-General or an authorised officer, the Commission finds that disciplinary measure taken is not proportionate to the disciplinary offence, the Commission shall make recommendations to the Inspector-General on the required corrective action to be taken.

(3) The disciplinary proceedings shall be performed in accordance with these regulations and the Service Standing Orders, and any officer who fails to adhere to these procedures shall attract disciplinary proceedings against the authorised officer.

(4) In reviewing a disciplinary measure taken against an officer, the Commission may review the process and outcome of an investigation and the recommended punishment, in order to confirm that the disciplinary action meted on an officer was commensurate to the offence committed.

17. (1) Disciplinary proceeding shall be conducted in accordance with these Regulations and the Service Standing Orders and any guidelines issues by the Commission from time to time.

Hearing during Disciplinary proceedings

(2) Where an offence against discipline is committed by an officer, the officer's supervisor may take immediate corrective action, where necessary, pending the commencement of disciplinary process.

(3) In all disciplinary proceedings, the accused officer shall be notified of the offence he is charged of and shall be given at least three calendar days within which to show cause why disciplinary action should not be taken against him or her.

(4) Where a disciplinary hearing is scheduled, an officer accused of a disciplinary offence shall be given at least twenty-four hours' notice before the date of the hearing.

(5) In exceptional circumstances, the notice under paragraph (4) may be waived and the hearing held in accordance with the Service Standing Orders.

(6) Where paragraph (5) is invoked, the presiding officer shall be required to make a written statement stating the reasons for the waiver.

(7) The officer who is the subject of the hearing may, where applicable, call witnesses or other evidence on his or her behalf, at the officer's cost.

(8) The disciplinary hearing before the Disciplinary Committee shall be conducted expeditiously and without undue delay or technicalities and any delay in the disposal of the proceedings beyond twenty-eight days shall be reported to the Commission stating the reasons for the delay.

(9) The recommendations of the National Disciplinary Committee shall be forwarded to the Commission for confirmation and approval and the Commission shall within seven days upon receipt of the recommendations communicate to the Inspector-General the disciplinary action to be taken against the officer.

(10) The Inspector-General shall take the disciplinary action within three days of receipt of the communication from the Commission.

(11) The recommendations of the Subordinate Disciplinary Committee shall be forwarded to the Inspector-General or authorised officer as prescribed in the Service Standing Orders, for confirmation and approval.

(12) The Inspector-General or authorised officer shall thereafter communicate or implement, where application the disciplinary action to be taken on the officer, taking into consideration regulation 10 of these Regulations.

18. (1) The Commission shall establish whether the correct procedures as prescribed in these Regulations, the Service Standing Orders and the Guidelines have been followed and whether correct disciplinary measures have been taken.

Action by
Commission on
review

(2) Upon review of a decision or action by the Commission, the Commission may—

- (a) uphold the decision;
 - (b) set aside the decision;
 - (c) vary the directions as it considers to be just;
 - (d) make any decisions for refund, reinstatement of remuneration or release of withheld payment due to an officer as it considers to be just;
 - (e) direct that disciplinary action to be taken against any authorised officer or other persons within the Service who has failed to discharge a duty in which he or she was under obligation to discharge, in relation to the disciplinary case;
- or

- (f) make any other appropriate decision in view of the circumstances of the case.

19. (1) The Commission shall keep records, and include in its annual report, the number of members of the police service who have been subjected to the disciplinary process, the offences committed, the disciplinary action taken, appeals and number of successful appeals.

Record of disciplinary cases generally

(2) The record referred to in subsection (1), shall include—

- (a) the outcome of all reviews and appeals of cases by the Commission and the Service, including where the officer is not found guilty;
- (b) information relating to misconduct which the officer is accused of;
- (c) the disciplinary action taken; and
- (d) the outcome of the review by the Commission or the Service, where applicable, the outcome of the appeal.

20. (1) Where disciplinary hearing has been conducted before the Commission, the person aggrieved by the decision of the Commission may apply to the Commission to review that decision.

Power of review by the Commission of its decisions

(2) Where the Commission has confirmed or determined action to be taken against an officer following recommendations of the disciplinary board, an officer aggrieved by the decision of the Commission may apply to the Commission to review that decision.

(3) An application for review shall be in writing and be made within seven days, of the decision.

(4) An application for review to the Commission shall be on any of the following grounds—

- (a) an error on the face of the record; or
- (b) a new and important matter that was not considered by the Commission's disciplinary panel in the conduct of the officer's proceedings.

(5) The Commission may, where applicable, deal with a review by way of written submissions between the officer and the Commission or through oral hearing or both by way of written submissions and oral hearing.

(6) Where the application for review is to the Commission and the matter is to be handled through a hearing—

- (a) the Commission shall constitute a panel to hear the case;
- (b) the composition shall depend on the gravity of the case and the rank of the officer involved and shall be comprised of members including—
 - (i) a Commissioner who shall be the chairperson of the panel;

- (ii) an officer from the same Service as the officer applying for review, designated by the Inspector-General in consultation with the respective Deputy Inspector or Director of the Directorate of Criminal Investigations, as the case may be;
 - (iii) a human resource officer from the Service of the concerned officer; and
 - (iv) any other officer who possesses the knowledge and skills that are found necessary by the panel;
- (c) the panel shall consider the application for review within twenty one days of receipt of the application and shall make recommendations to the Commission for the Commission's consideration and final decision; and
- (d) the decision and reasons for the decision shall be submitted to the officer by the Commission, through the Inspector-General within fourteen days of the receipt of the panel's recommendations.

21. (1) Where a disciplinary hearing has been conducted by an authorized officer or disciplinary board, the officer aggrieved by the decision of the authorized officer may appeal to the designated appellate authority.

Appeals

(2) Any further appeal shall lie with the Commission.

22. (1) An appeal to the Commission or to the designated appellate authority within the Service, as the case may be, shall be in writing and shall be made within thirty days of the decision appealed against.

Procedure for appeal

(2) An officer who appeals to the Service designated appeal authorities shall submit a copy of the appeal to the Inspector-General and to the concerned Deputy Inspector-General of the Officer's Service and to the Commission for information purposes.

(3) The Commission or the designated appellate body may, in accordance with the Service Standing Orders, accept an appeal out of time where there is a compelling reason to do so or in the interest of justice, and the officer shall in writing state the reasons justifying the appeal out of time.

(4) The Commission or the designated appellate body as per the Service Standing Orders or the Commission, as the case may be, may deal with an appeal by way of written submissions by the parties or through oral hearing or both.

(5) Where an appeal is to the Commission and the matter is to be handled through a hearing—

- (a) the Commission shall establish a panel to hear the case;
- (b) the composition shall depend on the rank of the person involved and shall be comprised of—
 - (i) a Commissioner to chair the panel;

- (ii) an officer from the same Service as the officer appealing, designated by the Inspector-General in consultation with the respective Deputy Inspector-General or Director of the Directorate of Criminal Investigations, as the case may be;
 - (iii) a human resource officer from the Service of the concerned officer; and
 - (iv) any other officer who possesses the knowledge and skills deemed necessary by the panel;
- (c) the panel shall consider the matter within twenty one days and shall make recommendations to the Commission for the Commission's consideration and final decision; and
- (d) the decision and reasons for the decision shall be given to the officer by the Commission, through the Inspector-General within fourteen days' of the receipt of the recommendation of the panel.

Report of the panel.

23.(1) The appeals panel shall deliver its report to the Commission within seven days of the conclusion of the hearing and may, in respect of a decision appealed against recommend to—

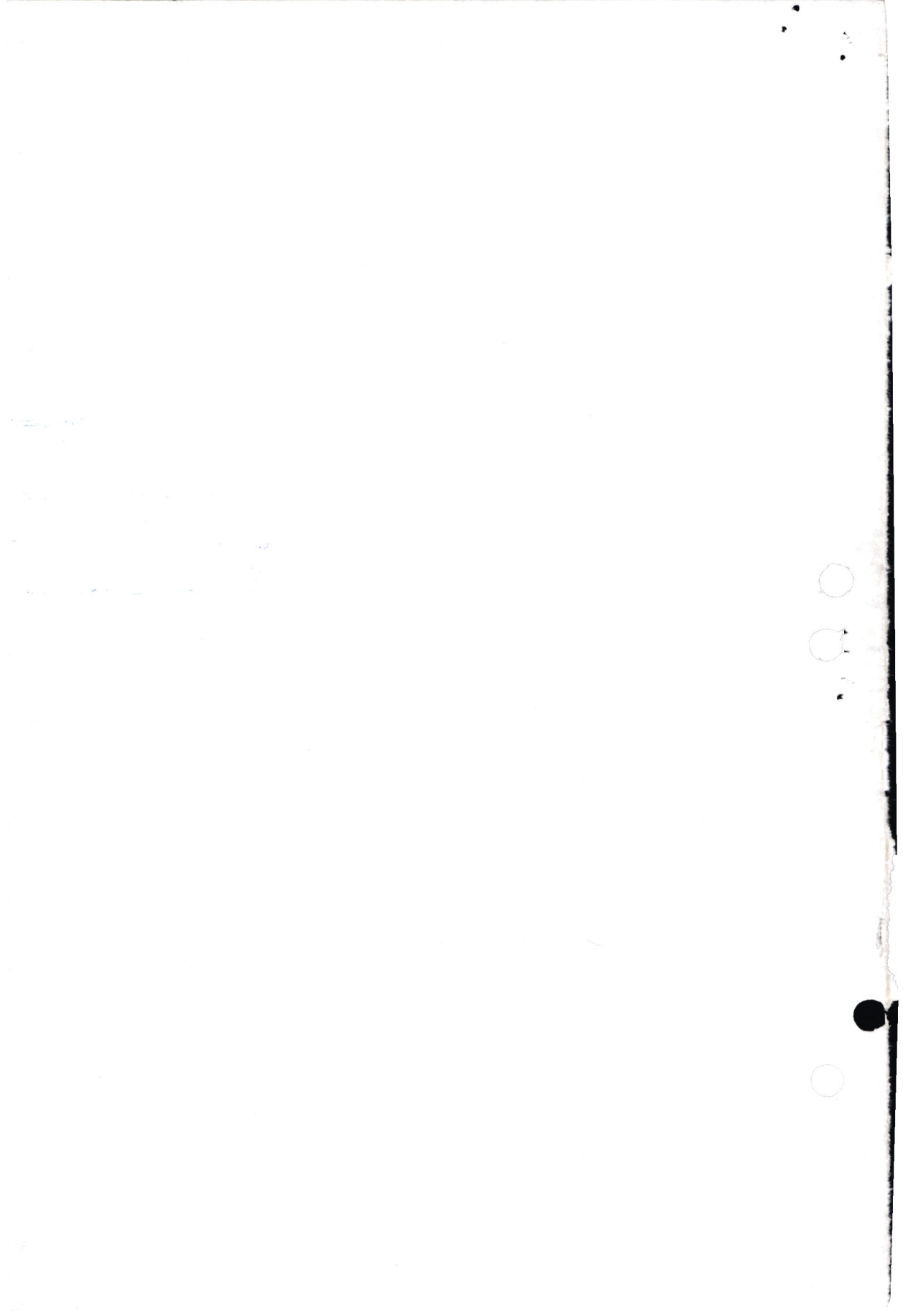
- (a) uphold the decision;
- (b) set aside the decision;
- (c) vary the decision as it considers to be just;
- (d) make such directions as it may considers appropriate, with respect to the decision;
- (e) make any decision for refund, reinstatement of remuneration or release of withheld payment due to an officer as it considers to be just;
- (f) direct that disciplinary action be taken against any authorizing officer or other person within the Service who has failed to discharge a duty that was under obligation to discharge in relation to the disciplinary case; or
- (g) make any other appropriate decision in view of the circumstances of the case.

(2) An appellant who is dissatisfied with the decision of the Commission may petition the Commission for review, if there is new information that warrants such review by the Commission.

(3) The Commission may issue guidelines for the better carrying out of disciplinary processes and proceedings.

Made on the 7th May, 2015.

JOHNSTON KAVULUDI,
Chairperson,
National Police Service Commission.



EXPLANATORY MEMORANDUM TO THE NATIONAL POLICE SERVICE COMMISSION (DISCIPLINE) REGULATIONS, 2015

PART I	
Name of the Statutory Instrument	National Police Service Commission (Discipline) Regulations. 2015
Name of the Parent Act	National Police Service Commission Act (NPSC Act)
Enacted Pursuant to	Section 28 of the NPSC Act
Name of the Ministry/Department	National Police Service Commission
Gazetted on	22 nd May 2015
Effective on	27 th May 2015
PART II	
1. Purpose of the Statutory Instrument	To provide for the principles and disciplinary procedures in the National Police Service
2. Legislative Context	<p>2.1 The Constitution of 2010 established the National Police Service Commission with the mandate to exercise disciplinary in the National Police Service.</p> <p>2.2 The Kenya Police Force Standing Orders provided for the disciplinary procedures in the Kenya Police.</p> <p>2.3 The establishment of the National Police Service brought the Kenya Police Service and the Administration Police Service under one Service, and this brought the need to have the procedures of the Service outlined for clarity and application to the entire Service.</p> <p>2.4 The National Police Service (Amendment) Act established the Disciplinary Board to inquire into matters involving officers of the rank of ASP and above.</p> <p>2.5 The NPSC Act provides that the NPSC may make regulations for better carrying out of the provisions of the Act and in particular to provide for at section 28 (b).</p> <p>2.6 The NPSC (Amendment) Act provides at section 10 (4) that Disciplinary Control means:</p> <p>i. the development and prescription of fair and clear disciplinary procedures and mechanisms in accordance with Article 47 of the Constitution;</p>



*Paper laid by
Leader of Majority
on 3/6/2015*

	<ul style="list-style-type: none"> ii. ensuring compliance with the prescribed disciplinary procedures and guidelines by the Inspector-General; iii. ensure compliance with the due process in disciplining members of the Service; iv. receiving of regular reports from the Inspector-General on disciplinary matters handled by the National Police Service; v. review or ratification of disciplinary actions taken by the Inspector-General; and vi. hearing and determining appeals from the members of the Service. 				
3. Policy Background					
	<p>3.1. What is being done and why</p> <ul style="list-style-type: none"> ▶ The Commission has established procedures applicable in the conduct of disciplinary proceedings and shall ensure compliance with such procedures. ▶ Every police officer is subject to discipline, and is subject to the disciplinary proceedings set out in these Regulations. ▶ Disciplinary proceedings shall be carried out in a thorough fair manner and shall be concluded expeditiously. ▶ The Inspector General may initiate disciplinary proceedings against any member of the Police Service below the rank of AIG and shall do so in accordance with such guidelines and general directions as may be issued by the Commission. (These procedures are outlined in the Regulations and in the Service Standing Orders) 				
	<p>3.2 Consolidation In line with its mandate the NPSC has drafted the regulations taking the recommendations from various consultations into consideration.</p> <table border="1" data-bbox="576 1375 1528 1892"> <thead> <tr> <th data-bbox="576 1375 948 1413">Issue</th> <th data-bbox="948 1375 1528 1413">Regulations</th> </tr> </thead> <tbody> <tr> <td data-bbox="576 1413 948 1892">Commencement of disciplinary proceedings</td> <td data-bbox="948 1413 1528 1892"> Disciplinary proceedings against an officer may commence on occurrence of any of the following— <ul style="list-style-type: none"> ▪ a complaint from a member of the public; ▪ a complaint from a member of the Police Service; ▪ an officer caught in the act committing a disciplinary offence by the officer’s supervisor; ▪ intelligence report from a Government investigative body; ▪ anonymous witness statement or other statement made for another </td> </tr> </tbody> </table>	Issue	Regulations	Commencement of disciplinary proceedings	Disciplinary proceedings against an officer may commence on occurrence of any of the following— <ul style="list-style-type: none"> ▪ a complaint from a member of the public; ▪ a complaint from a member of the Police Service; ▪ an officer caught in the act committing a disciplinary offence by the officer’s supervisor; ▪ intelligence report from a Government investigative body; ▪ anonymous witness statement or other statement made for another
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		<p>investigation not necessarily commenced for purposes of Police Service matters;</p> <ul style="list-style-type: none"> ▪ adverse mention in a report of a parliamentary committee, committee of inquiry or any other official inquiry or investigation; or ▪ repeated warnings from a supervisor or other authorized officer; ▪ any other lawful ground as the Commission may determine.
	Need for Fair Administrative Action	<ul style="list-style-type: none"> ▶ An officer shall be notified of a disciplinary hearing against him, in writing ▶ Disciplinary Hearings shall be conducted in an expeditious and fair manner. ▶ All disciplinary actions conducted by the Inspector General under the delegated disciplinary functions shall be reported and recorded with the Commission. ▶ Officers aggrieved by the disciplinary action taken may appeal to the Commission.

4. Consultation Outcome	<p>4.1 The Commission developed these regulations through a Regulations Committee that comprised of staff of the NPSC and officers of the NPS chaired by a Commissioner of the NPSC.</p> <p>4.2 The Commission has held 4 consultations on these Regulations so far:</p>	
	Consultation Forum and Input	Outcome
	<p>i) With members of the National Police Service (October 2013, September 2014, December 2014 and January 2015)</p>	<p>The members of the Service recommended the need to provide distinct disciplinary procedures for Gazetted officers and non-gazetted officers. The members also deliberated on the composition, structure and proceedings of the Disciplinary Board. The members of the Service also emphasized the need to maintain discipline in the Service through the maintenance of the command and control within the Service.</p>
<p>ii) With civil society stakeholders</p>	<p>Stakeholders expressed the view that there should be an elaborate guideline on</p>	

		cases that the commission can handle and a referral structure as to where the public can be referred. The members also added their input on the conduct of proceedings of the Disciplinary Boards to ensure due process is upheld.
5. Guidance	<p>5.1 The NPSC is guided by requirements of Article 10, 47 and 246 of the Constitution</p> <p>5.2 The Commission is also guided by Chapter 6 of the Constitution on the need to entrench integrity and accountability in processes such as the disciplinary procedures, which will in turn enhance professionalism in the Service.</p>	
6. Impact		
	<p>6.1 Impact on Fundamental Rights and freedoms</p> <p>The Discipline regulations provide information to members of the public and officers in the Service on the procedures for discipline at the Commission's exercise of disciplinary control in the Service, fulfilling the Right to Information.(Article 35)</p> <p>The regulations impact on the right to equality and freedom from discrimination in that they provide equality in the treatment of officers who are accused to have committed offences against discipline. (Article 27)</p> <p>The regulations impact on the right to fair administrative action in that they provide for the fair procedures that ought to be followed in the disciplinary processes of the Service (Article 47)</p>	
	<p>6.2 Impact on the Private Sector</p> <p>The end result of the regulations is an improved Service, which will lead to improved security and a safe environment for investors.</p> <p>This will lead to more investment, more employment opportunities and hence a reduction in crime rates.</p>	
	<p>6.3 Impact on the Public Sector</p> <p>The regulations provide the principles and purpose of disciplinary procedures in the Service and will promote accountability in the Service and in turn enhance accountability of the Service to the Public.</p>	
	<p>6.4 This instrument provides administrative guidelines on the recruitment process.</p>	
7. Monitoring and Review	The Commission will be responsible for disciplinary control in the	

	<p>Service.</p> <p>The Commission shall keep records, and include in its annual report:</p> <ul style="list-style-type: none">• the number of members of the police service who were subjected to the disciplinary process• the type of offences,• the disciplinary action taken• appeals and success rate of appeals. <p>The Commission is responsible to oversee the implementation of discipline in the Service.</p>
8. Contact	<p>MR. OJANGO OMUMU Commission Secretary/Chief Executive Officer 020 218 5989 info@npsc.go.ke jomumu@npsc.go.ke</p>