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Salaries & Remuneration
Commission

Rewarding productivity

Ref NO: SRC/ TS/8 Vol.1 (118)

20th May, 2024

Mr. Samuel Njoroge
Clerk of the National Assembly
P.O Box 41842 -00100
Parliament Building
NAIROBI

1) DIAAGPC
Please bring to
the attention of the
Committee on Delegated
Legislation for consideration.
30/5/24

Dear **Mr. Njoroge**

DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

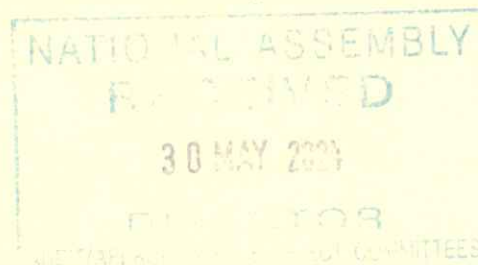
Reference is made to the above subject matter and to the National Assembly Committee on Delegated Legislation's Report on the consideration of the Draft SRC (Remuneration and Benefits for State and Other Public Officers) Regulations, 2022 dated 8th March, 2023.

The Salaries and Remuneration Commission (SRC) is established under Article 230 of the Constitution of Kenya and mandated to set and regularly review the remuneration and benefits for State officers, and to advise the national and county governments on the remuneration and benefits for other public officers.

Background

1. Pursuant to the provisions of Section 26 of the SRC Act, SRC developed the Draft SRC (Remuneration and Benefits for State and Other Public Officers) Regulations, 2022, herein after referred to as "the Draft Regulations".
2. In line with the provisions of Article 10 and 47 of the Constitution, among other legal provisions, SRC requested for memoranda and views from stakeholders and the public on the Draft Regulations. This was done by way newspaper advertisements placed in the Daily Nation and Standard newspapers which ran on 22nd February, 2022. The Draft Regulations were also accessible via SRC website.

Further, from 28th February to 4th March, 2022 and on 10th March, 2022 SRC carried out stakeholder sensitisation sessions with a view to facilitating a common understanding on the provisions of the Draft Regulations.



3. Following stakeholder engagement and public participation, the Commission took into account all the views received from stakeholders and the public and revised the Draft Regulations accordingly.
4. On 10th May, 2022, SRC forwarded the Draft Regulations to the National Assembly for pre-publication scrutiny and approval as required under Section 26 (2) of the SRC Act.
5. Thereafter, on 3rd June, 2023, the Commission attended a prepublication meeting convened by the Parliamentary Committee on Delegated Legislation (CDL) whereat SRC presented the Draft Regulations to the Committee.

The Committee duly considered the Draft Regulations and the annexed stakeholder/public participation report, and gave guidance on finalization of the Draft Regulations as follows:

- i. that SRC should revise the Draft Regulations and clearly set out its mandate with respect to State and other Public officers;
 - ii. that SRC should revise the Draft Regulations and clarify the purpose of conducting Job Evaluation and resultant Job Evaluation grading structures; and
 - iii. that SRC should incorporate equitable share of revenue to counties as a factor for consideration in advising county governments on remuneration and benefits for other public officers.
6. The Commission duly took into account the recommendations made by the CDL and on 6th June, 2022 forwarded the revised Draft Regulations to the National Assembly for consideration and approval.

On the same date the Teachers Service Commission (TSC), Public Service Commission (PSC) and Judicial Service Commission (JSC) wrote to the CDL asking the Committee not to table the Draft Regulations on account of the Draft Regulations infringing on their respective mandates. This prompted the CDL to invite SRC, TSC, PSC and JSC to a meeting on 7th June, 2022 to discuss the issues raised.

7. On 7th June, 2022, parties appeared before the CDL and submitted their views on the draft regulations. The four main broad areas that parties had an issue with in the regulations were: pension; job evaluation, and rewarding productivity and performance.
8. On account of the issues raised, the CDL declined to table the Regulations before the National Assembly for approval and instead advised SRC to undertake a stakeholders' validation exercise of the regulations. The Departmental Committee further advised the SRC to table the regulations before the 13th Parliament.
9. Vide letter dated 9th November, 2022, the CDL invited SRC to a pre-publication scrutiny meeting on 22nd November, 2022. The Commission duly attended the meeting and made a presentation of the Draft Regulations to the CDL.

The CDL guided the Commission to revise the definition of the terms "benefit" and "Job Description Manual" as set out under Regulation 2 and the provisions of Regulation 21 on rewarding productivity and performance.

10. The Commission duly revised the Draft Regulations as guided by the CDL and resubmitted them on 5th December, 2022 for approval and publication.

Report of the Committee

11. On 7th March, 2023, the Committee on Delegated Legislation prepared a Report and its recommendations on the Draft SRC Regulations. In the said report, the Committee recommended to the House not to approve the publication of the Draft SRC Regulations for:

- i. failing to conduct public participation as required by the Constitution and Statutory Instruments Act; and
- ii. contravening the provisions of the Constitution and the SRC Act.

12. From the report, the CDL invited the Parliamentary Service Commission, PSC, TSC and JSC for a stakeholders' engagement on Friday 24th February, 2023 to deliberate on the Draft Regulations.

The summary of the issues raised by PSC, JSC, TSC & PARLSCOM is as follows:

INSTITUTION	OBJECTION
PSC	<p>The definition of the term "benefits" in the regulation are ultra vires for encompassing non-financial compensation which exceeds the mandate of SRC under Article 230 (4) of the Constitution.</p> <p>The definition of the term "public body" gives SRC the power to deal directly with Ministries, Departments, Agencies, State Corporation and Universities all of which fall with the mandate of PSC.</p> <p>Regulation 3(b) (iii) is unconstitutional to the extent that it confers SRC the sweeping mandate to keep under review all matters relating to salaries and remuneration for other public officers contrary to Article 230 (4) of the Constitution.</p> <p>Regulation 4 exceeds the powers and function of SRC as proved for in Article 230 (4) of the Constitution and Section 11 of the SRC Act.</p> <p>Regulation 4(4) is unconstitutional to the extent that it empowers SRC to undertake the review taking into account the applicable national budgeting and planning cycles.</p> <p>Regulation 5 is unconstitutional and ultra vires to the extent that it gives SRC power to deal directly with public bodies to the exclusion of service commissions responsible for reviewing terms and conditions, and are therefore capable of dealing with the requests and recommendations of SRC.</p> <p>Regulation 6 is inconsistent with the Constitution, Pensions Act, the Retirement Benefits Act, the Public Service Superannuation Scheme Act, and Section 11(g) of the SRC Act or vesting pension and retirement benefits to the SRC, including setting the formula for pensions payable to public officers.</p>

	<p>Regulation 7(1) (g) and (j) are unconstitutional and ultra vires to the extent that they vest job and performance evaluation on SRC and not the employer.</p> <p>Regulation 8(b), empowering SRC to advise and determine the time frame for implementing of the advice is tantamount to making the advice binding contrary to the finding of the Supreme Court in Kenya Vision 2030 Delivery Board and the Commission on Administrative Justice & 2 Others.</p> <p>Regulation 9(16) is unconstitutional and ultra vires to the extent that they empower the SRC to undertake job evaluation instead of the relevant service commission.</p> <p>Regulation 19(2) is unconstitutional to the extent that it provides that salary structures for other public officers may only be reviewed on the advice of the SRC.</p> <p>Regulation 21(2) goes beyond the powers of the Commission to the extent that it mandates public service institutions to seek prior advice of the SRC before awarding its public officers any reward for productivity and performance.</p> <p>Regulation 23 (3) is ultra vires to the extent that it prescribes the period of collective bargaining agreement.</p> <p>Regulation 24(1) derogates from the powers of the public service employers to the extent that it requires public service institutions to seek prior advice of SRC before commencement of collective bargaining negotiations.</p> <p>Regulation 26(2), (3) and (4) are ultra vires for going beyond the powers of the SRC to advise.</p> <p>Regulation 28(1), (2) and 93) are contrary to the established procedure of litigation before the judiciary.</p> <p>The Draft Regulations do not provide a guide on when a service commission responsible for public officers may seek advice from SRC, the attendant procedure and documents.</p> <p>PSC further notes that clause 4 of the said Regulations does not provide for annual increments for State officers.</p>
TSC	<p>The definition of the term "benefits" in the regulation are ultra vires for encompassing non-financial compensation which exceeds the mandate of SRC under Article 230 (4) of the Constitution.</p> <p>Regulation 3(b) (iii) is unconstitutional to the extent that it confers SRC the sweeping mandate to keep under review all matters relating to salaries and remuneration for other public officers contrary to Article 230 (4) of the Constitution.</p>

	<p>Regulation 6 is inconsistent with the Constitution, Pensions Act, the Retirement Benefits Act, the Public Service Superannuation Scheme Act, and Section 11(g) of the SRC Act or vesting pension and retirement benefits to the SRC, including setting the formula for pensions payable to public officers.</p> <p>Regulation 21(2) is contrary to Article 249 of the Constitution and should be deleted to the extent that it seeks to unlawfully usurp the mandate of public service employers by irregularly granting SRC the mandate to advise on internal managerial prerogatives of public employers.</p> <p>SRC did not invite TSC for public participation on the said regulations.</p>
JSC	<p>The Regulations contravene Articles 172(1) (b) of the Constitution that gives JSC exclusive powers to review and make recommendations on the conditions of service for Judges and judicial officers other than their remuneration, and to review and make recommendations on the remuneration and conditions of service for the staff of the judiciary.</p> <p>The Draft Regulations contravene Article 249(2) of the Constitution which provides that the Commissions and Independent Offices are subject only to the Constitution, the law and are independent and not subject to direction or control by any person or authority.</p>
PARLSCOM	<p>SRC has in the past overstepped its mandate of setting remuneration and benefits of State officers, for instance, in the Gazette Notice dated 27th July, 2022 in which SRC purported to review and set remuneration for the Members of the 13th Parliament before it was even constituted.</p> <p>Unlike other State officers in the same scale as the Members of Parliament, SRC does not provide for graduated salaries for Members of Parliament, with annual increments factored in to compensate for inflation and the rising cost of living.</p> <p>SRC has arrogated upon itself the powers to regulate facilitation allowance like claim for mileage reimbursable and per diems contrary to Article 230(4) of the Constitution which limits the powers of SRC to setting and regularly reviewing remuneration and benefits. The Regulation of facilitation allowances by the SRC interferes with the responsibility of the PARLSCOM to provide facilitation to MPS to undertake their constitutional mandate.</p> <p>Whereas SRC is vested with the powers to set remuneration and benefits for State officers, its role is merely advisory when it comes to other public officers. It is therefore a regulatory overstep for SRC to set salaries and other benefits for parliamentary staff who are employees of PARLSCOM.</p> <p>Employers of public officers are not required to obtain approval of SRC when setting the salaries and benefits of public officers and therefore, the Draft Regulations are ultra vires to the extent that they seek to make it mandatory</p>

	for the public bodies to comply with the advice it provides with regard to the remuneration and benefits of public bodies.
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SRC's response to the Report

13. SRC has reviewed National Assembly's Committee on Delegated Legislation's Report on the consideration of the Draft SRC (remuneration and benefits for state and other public officers) regulations, 2022 dated 8th March, 2023 and responds as hereunder:

- i. **In making its recommendation to the House, the CDL observed that SRC failed to conduct public participation as required by the Constitution and Statutory Instruments Act.**

14. SRC undertook extensive stakeholder engagement and public participation as required by the Constitution and the Statutory Instruments Act as evidenced by the attached report marked as Annex **SRC-1**. PSC, TSC and the Parliamentary Service Commission duly tendered their views on the draft regulations as per the attached letters collectively marked as Annex **SRC-2**.

In particular, SRC confirms that it engaged PSC, TSC, JSC and the Parliamentary Service Commission prior to tabling the Draft Regulations and took into account the views submitted by them. Annexed herewith and marked as **Annex SRC-3** is a matrix of the views raised by these stakeholders and how SRC addressed them.

- ii. **The Draft Regulations offend the Constitution and the SRC Act.**

15. We humbly observe, that save for stating that the Draft Regulations contravene the Constitution and SRC Act, the Report does not set out how the Draft Regulations offend the Constitution and the SRC Act. It is SRC's considered view that all the provisions of the Draft Regulations are within the provisions of the SRC Act pursuant to which they are made, for purposes of facilitating the better carrying into effect the provision of the SRC Act.

Conclusion

In light of the extensive public participation undertaken, the careful consideration given to stakeholder views, and the alignment of the Draft Regulations with the provisions of the Constitution and the SRC Act, the Salaries and Remuneration Commission, respectfully, requests the National Assembly to reconsider its position.

SRC firmly believes that the Draft SRC (Remuneration and Benefits for State and Other Public Officers) Regulations, 2022, as revised and resubmitted herewith, comprehensively address the concerns raised by the Committee on Delegated Legislation and other stakeholders.

These Regulations are crucial for providing a clear and transparent framework for discharging SRC's powers and functions. They promote fairness, accountability, and fiscal responsibility in the management of the public wage bill. Furthermore, the Regulations shall harmonize and streamline

the processes for job evaluation, salary structuring, and performance-based rewards, ensuring consistency and equity among public institutions.

SRC, therefore, humbly requests the National Assembly to review the revised Draft Regulations and approve them for publication. This shall facilitate the effective discharge of SRC's constitutional and statutory mandate as envisaged by Article 230 of the Constitution.

Yours



Mrs. Anne R. Gitau, EBS
COMMISSION SECRETARY/CEO

**DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION
AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS,
2022**

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LEGAL NOTICE NO.

**THE SALARIES AND REMUNERATION COMMISSION
(REMUNERATION AND BENEFITS OF STATE AND OTHER
PUBLIC OFFICERS) REGULATIONS, 2022**

ARRANGEMENT OF REGULATIONS

Regulation

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- 2— Interpretation.
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THE SALARIES AND REMUNERATION COMMISSION ACT, 2011
(No. 10 of 2011)

IN EXERCISE of the powers conferred by section 26 of the Salaries and Remuneration Commission Act, 2011, the Salaries and Remuneration Commission makes the following Regulations—

**THE SALARIES AND REMUNERATION COMMISSION
(REMUNERATION AND BENEFITS OF STATE AND
OTHER PUBLIC OFFICERS) REGULATIONS, 2022**

PART I—PRELIMINARY PROVISIONS

Short title. 1. These Regulations may be cited as the Salaries and Remuneration Commission (Remuneration and Benefits of State and other Public Officers) Regulations, 2022.

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

“benefit” means any financial or non-financial compensation or allowance that is provided to a State or other public officer which is over and above the basic or consolidated salary and arising out of the employment of the State or other public officer;

“Commission” means the Salaries and Remuneration Commission established by Article 230 of the Constitution;

“job description” means a standardized documentation of the duties, responsibilities, reporting relationships, critical performance areas and working conditions, and the minimum qualifications, experience, skills and competences required to perform a job;

“job description manual” means a document containing approved job descriptions;

“job evaluation” means a systematic and objective process of determining the worth of a job in relation to other jobs;

“performance” means a measure of the extent of attainment of set objectives of a public body’s goals in an effective and efficient manner;

“productivity” means a measure of efficiency with which inputs are translated into outputs;

Cap. 2 “public body” has the same meaning assigned to it under section 3 of the Interpretation and General Provisions Act;

“public officer” has the meaning assigned to it under Article 260 of the Constitution;

“public service” has the meaning assigned to it under Article 260 of the Constitution;

“review cycle ” means the period after which salaries and remuneration for State and other public officers are reviewed for budgeting and planning purposes;

“reward” means an incentive awarded in recognition of an achievement of performance and productivity;

“State officer” has the meaning assigned to it under Article 260 of the Constitution;

No. 14 of 2007 “trade union” has the meaning assigned to it under section 2 of the Labour Relations Act, 2007; and

Object of the Regulations.

3.(1) The objective of these Regulations is to—

- (a) To facilitate the discharge of the mandate of the Commission;
- (b) provide for the procedure to—

- (i) set and review remuneration and benefits for State officers;
- (ii) advise on remuneration and benefits for other public officers; and
- (iii) keep under review all matters relating to salaries and remuneration of other public officers.

**PART II—SETTING, REVIEWING AND ADVISING ON
REMUNERATION AND BENEFITS OF STATE AND
OTHER PUBLIC OFFICERS**

Review cycle.

4.(1) The Commission shall review and set remuneration and benefits for State officers every four years.

(2) The Commission shall review and advise on remuneration and benefits for other public officers every four years.

(3) The Commission shall when undertaking a review under paragraphs (1) and (2), evaluate remuneration and benefits of State and other public officers with a view to institute change, if necessary.

(4) The Commission shall undertake the review taking into account the applicable national budgeting and planning cycles.

(5) Despite paragraphs (1) and (2), the Commission may undertake a special review of the remuneration and benefits of State and other public officers to address emerging circumstances and conditions.

Requirements and procedure for submission of relevant information.

5.(1) Whenever a review is due, the Commission shall request for relevant information, from public bodies, on remuneration and benefits for their respective State and other public officers.

- (a) the principles set out under Article 230(5) of the Constitution, section 12 of the Act and other applicable laws;
- (b) the economic performance of the country;
- (c) the capacity of a public body to afford the cost of proposed remuneration and benefits;
- (d) the ability of a public body to sustain payment of remuneration and benefits;
- (e) the outcome of comparative surveys on the labour

7.(1) The Commission shall, in setting, reviewing and advising on remuneration and benefits, where applicable, consider any or a combination of the following principles and factors—

- (a) advise on the pension or gratuity due to other public officers taking into account the applicable laws; and
 - (b) undertake periodic reviews and make recommendations on pensions payable to eligible persons.
- (2) The Commission shall, in consultation with relevant stakeholders—

6.(1) Pursuant to Article 230(4)(a) of the Constitution, the Commission shall set the pension or gratuity due to a State officer.

(a) in writing; and

(b) in such format and within such timelines as may be specified by the Commission.

(2) The public bodies shall submit the relevant information requested for under paragraph (1)—

Considerations during setting, review and advise on remuneration and benefits.

Pension.

markets and trends in remuneration;

- (f) comparative analysis between remuneration and benefits for similar jobs within institutions in the same sector to ensure equity and competitiveness;
- (g) job evaluation results as undertaken by the Commission;
- (h) cost of living;
- (i) existing collective bargaining agreements;
- (j) achievement of performance and productivity targets;
- (k) government policies and guidelines;
- (l) the equitable share of revenue to county governments; and
- (m) any other relevant factor in determination of remuneration or benefits.

(2) In this regulation “cost of living ” means the cost of purchasing goods and services as measured by the changes in the Consumer Price Index as provided by the Kenya National Bureau of Statistics from time to time.

Communication
and effective
date of advice.

8. The Commission shall communicate the—

- (a) set and reviewed remuneration and benefits for State officers indicating the effective date of implementation; and
- (b) advice on remuneration and benefits for other public officers indicating the effective date of implementation.

Job evaluation.

9. The Commission shall undertake job evaluation covering

jobs in public bodies in order to—

- (a) determine comparable and relative worth of jobs in public bodies;
- (b) determine equal pay for work of equal value; and
- (c) ensure fairness and transparency in pay.

Conduct of job evaluation.

10.(1) The Commission shall undertake job evaluation where —

- (a) jobs in a public body have not been evaluated by the Commission;
- (b) a public body is established;
- (c) a public office is established;
- (d) a new job is established arising from —
 - (i) a change in the mandate of a public body; or
 - (ii) a change in the institutional structure of a public body; and
- (e) a change arises in the job content of a role in a public body.

(2) A public body that meets the requirements for job evaluation as set out under paragraph 1 may submit the required information when requested by the Commission during a scheduled job evaluation or when the public body seeks for advice of the Commission on remuneration and benefits.

Procedure for undertaking job

11.(1) The Commission shall—

evaluation.

- (a) before undertaking a job evaluation sensitise public bodies on the job evaluation;
- (b) use an analytical, point-factor based job evaluation system that evaluates jobs using compensable factors determined by the Commission;
- (c) engage the respective public bodies on job evaluation results; and
- (d) communicate the job evaluation results to the respective public bodies, in writing.

(2) A public body shall—

- (a) ensure all the jobs in the public body are evaluated by the Commission;
- (b) establish a committee responsible for job analysis and development of job descriptions;
- (c) ensure members of the Committee responsible for job analysis and development of job descriptions in the public body are trained on matters relating to job evaluation;
- (d) assess, identify and determine the jobs to be evaluated by the Commission;
- (e) develop complete, accurate, approved and authenticated job description manuals;
- (f) provide feedback on the job evaluation results when communicated by the Commission; and

(g) submit a request for review of the job evaluation results if dissatisfied with the job evaluation results as prescribed by the Commission.

(3) A public body shall align the job description referred to in paragraph (2)(c) to the provisions of the relevant law, where applicable, and the approved human resource instruments.

(4) The Commission shall, where a job description for a State officer or other public officer is not submitted and where applicable, use the information provided in the relevant law to evaluate the job.

(5) Where a job description for a public officer is not submitted, the results of the previous job evaluation shall apply.

(6) Where a public body does not provide feedback on job evaluation results, the Commission shall proceed to conclude the job evaluation.

(7) In this regulation “compensable factor” means a job attribute used to provide a basis for determining the worth of a job in relation to other jobs.

Information to be submitted by a public body for job evaluation.

12.(1) A public body that meets the requirements for job evaluation as set out under regulation 10 shall submit to the Commission information relating to jobs within the public body for the purposes of job evaluation.

(2) The information to be provided in paragraph (1) shall include—

- (a) the approved institutional structure;
- (b) the approved staff establishment;

- (c) the approved career progression guidelines or schemes of service;
- (d) a list of jobs in the public body indicating current grades or levels;
- (e) the complete, accurate, approved and signed-off job description manual presented in a format as prescribed by the Commission; and
- (f) any other information that may be relevant for the job evaluation.

Review of job evaluation results.

13.(1) A public body, State officer or other public officer dissatisfied with job evaluation results may, within forty days from the date of communication of the job evaluation results, request for the review of the results in accordance with this regulation.

(2) A public body that is dissatisfied with the job evaluation results shall submit to the Commission a request for the review of the job evaluation results, in writing, set out the grounds for review and attach supporting documents.

(3) A State or other public officer is dissatisfied with the job evaluation results, may upon communication of the job evaluation results—

- (a) submit their grounds for review to the public body; and
- (b) the public body shall, if satisfied that the grounds have merit, submit to the Commission a request for review, the grounds for review and supporting documents.

(4) Where the Commission requests, in writing, for additional information relating to a request for a review of job evaluation

results, a public body shall provide the information within twenty days from the date of receipt of the request.

(5) Where the Commission does not receive additional information relating to a request for the review of job evaluation results within the stipulated time, the Commission may—

- (a) extend the time for submission of the required information; or
- (b) make any other determination as the Commission may considers fit.

(6) The Commission may review job evaluation results where new material information or significant changes in the job content are submitted to the Commission.

(7) The Commission shall review job evaluation results within fifty-five working days from the date of receipt of all the required documents in support of a request for review.

(8) Nothing in this regulation shall preclude any public body, State officer or other public officer from engaging the Commission further on job evaluation results.

Validity of job evaluation results.

14. Job evaluation results shall remain valid until the job is re-evaluated by the Commission.

Request for clarification.

15. A public body may request for clarification from the Commission on job evaluation results and the implementation of job evaluation results.

Application of Job Evaluation results.

16. The Commission shall use job evaluation results, among other factors set out in regulation 7, to—

- (a) set and review remuneration and benefits for a State officer; and
- (b) advise on the remuneration and benefits for other public officers.

Procedure for developing salary structures.

17.(1) The Commission shall—

- (a) develop and set salary structures for State officers; and
- (b) advise on the salary structures for other public officers.

(2) The Commission, shall, before developing and setting salary structures for State officers or advising on salary structures under paragraph—

- (a) conduct comparative surveys on labour markets and trends in remuneration to determine the relativity of remuneration of public service in relation to the market trends; and
- (b) subject the outcome of the comparative surveys on labour markets and trends in remuneration to the principles and factors set out in regulation 7.

Information for setting and review, and advise on salary structures.

18.(1) A public body shall upon request by the Commission provide such information on remuneration and benefits as may be required by the Commission to enable the Commission set and review salary structures for State officers; and advise on salary structures for other public officers.

(2) The Commission may, notwithstanding failure by a public body to submit the required information in accordance with paragraph (1),—

- (a) set salary structures for State officers; and

(b) advise on the salary structures for other public officers.

Validity of, and advice on, salary structures.

19.(1) The salary structures set for State officers shall remain in place until reviewed by the Commission.

(2) The salary structures for other public officers may only be reviewed on the advice of the Commission.

Guidance on implementation of salary structures.

20. A public body may request for guidance from the Commission on implementation of—

(a) the set and reviewed salary structures for State officers;
or

(b) the advice on its salary structures for other public officers.

Recognising productivity and performance and award of incentives.

21.(1) A public body may establish a financial reward and cash award scheme based on productivity and performance management frameworks or incentive schemes established by the public body in accordance with existing laws, regulations, government policies and guidelines.

(2) A public body shall seek the advice of the Commission on proposed financial rewards or cash awards before establishing a financial reward or cash award scheme.

Factors to be considered in recognising productivity and performance.

22. The Commission shall, in recognising productivity and performance, be guided by the following factors—

(a) achievement of productivity and performance targets as set by the public body;

(b) the capacity of a public body to afford the cost of

proposed reward;

(c) the ability of a public body to sustain payment of the reward; and

(d) government policies and guidelines.

Collective bargaining negotiation.

23.(1) The Commission shall, pursuant to section 11 of the Act, advise public bodies on the remunerative and benefit items payable out of public funds in collective bargaining negotiation.

(2) Collective bargaining negotiation between a public body and a trade union shall cover a four-year cycle.

Procedure for collective bargaining negotiation.

24.(1) A public body with a recognition agreement with a trade union shall seek the advice of the Commission on remuneration and benefits items payable out of public funds before the commencement of collective bargaining negotiation.

(2) A public body shall provide the following information required for provision of advice on collective bargaining negotiation—

(a) any trade union proposals and management recommendations;

(b) the public body's financial performance;

(c) the budget allocation;

(d) the approved salary structure and staff establishment; and

(e) any other information that may be required by the Commission.

(3) The Commission shall, upon receipt of a request for

advice, provide the public body with advice on the remunerative and benefits items payable out of public funds for purposes of collective bargaining negotiation, taking into account the principles and factors set out in regulation 7.

(4) A public body shall undertake negotiation based on the advice of the Commission.

(5) Upon conclusion of collective bargaining negotiation, the public body shall request the Commission for clearance of the draft collective bargaining agreement to facilitate its registration at the Employment and Labour Relations Court.

PART III—MISCELLANEOUS PROVISIONS

Submission of request for setting, review and advice.

25. The Commission may, at any time, upon the request of a public body, in writing,—

- (a) set and review the remuneration and benefits of the State officers serving in the public body; or
- (b) advise on the remuneration and benefits of the other public officers serving in the public body.

Review of advice on remuneration and benefits.

26.(1) The advice of the Commission, in relation to the remuneration and benefits of all other public officers shall only be reviewed by the Commission.

(2) A public body shall seek for the review of the advice of the Commission in writing.

(3) The Commission may review its advice upon receipt of new material information or justification not previously placed before it provided that such review shall take into account the principles and factors set out in regulation 7.

(4) The advice of the Commission once reviewed supersedes

Request for information. any prior advice.
27.(1) Pursuant to section 13(1)(a) of the Act, the Commission may, request a public body to provide such information as may be relevant.

(2) A public body shall, upon receipt of the request in paragraph (1), provide the information to the Commission in the manner specified by the Commission in the request.

Disputes relating to remuneration and benefits. 28.(1) The Commission shall encourage the use of alternative dispute resolution mechanisms in any disputes relating to remuneration or benefits for State and other public officers.

(2) A public body shall notify the Commission of any dispute relating to remuneration or benefits for its State or other public officers.

(3) A public body shall, where the Commission is not a party to a dispute, notify the Commission of any court proceedings relating to the remuneration and benefits of its State or other public officers within fourteen days of commencement of the suit or service of pleadings.

Monitoring and evaluation. 29.(1) The Commission may monitor and evaluate the implementation of its set remuneration and benefits for State officers or advice on remuneration and benefits for other public officers to—

(a) assess effectiveness in the implementation of the set or reviewed remuneration and benefits of State officers and advice on remuneration and benefits for other public officers.

(b) identify challenges in the implementation of paragraph (a) above; and

(c) in liaison with public bodies, identify remedies, where appropriate, for continuous improvement.

(2) The Commission shall sensitize public bodies on implementation of the—

(a) set and reviewed remuneration and benefits for State officers; and

(b) advice on remuneration and benefits for other public officers.

Stakeholder
consultation.

30. The Commission shall in the course of discharging its mandate undertake consultations with its stakeholders.

Made on the, 2022

LYN CHEROP MENGICH,
Chairperson,
Salaries and Remuneration Commission.

SCHEDULE

EXPLANATORY MEMORANDUM TO THE SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

PART I

Name of the Statutory Instrument:

The Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022

Name of the Parent Act:

Salaries and Remuneration Commission Act, 2011

Enacted Pursuant:

Section 26 of the Salaries and Remuneration Commission Act, 2011

Name of the State Organ:

Salaries and Remuneration Commission

PART II

1. Purpose of the Statutory Instrument

The Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022 are made by the Salaries and Remuneration Commission pursuant to section 26 of the Salaries and Remuneration Commission Act. The general purpose of the Regulations is to facilitate the discharge of the mandate of the Commission. Specifically, the Regulations are intended to—

(a) provide for the procedure to—

(i) set and review remuneration and benefits for State officers;

- (ii) advise on remuneration and benefits for other public officers;
- (iii) keep under review all matters relating to salaries and remuneration of other public officers;
- (iv) undertake job evaluation;
- (v) set and advise on salary structures for State and other public officers;
- (vi) reward productivity and performance;
- (vii) advise public bodies on collective bargaining negotiation; and
- (viii) monitor and evaluate the implementation of set remuneration and benefits of State officers or advice on remuneration and benefits for other public officers.

2.Legislative Context

The Constitution of Kenya, 2010, under Article 230(4), mandates the Salaries and Remuneration Commission (SRC) to set and regularly review the remuneration and benefits of all State Officers and advice the National and County Governments on the remuneration and benefits of all other public officers. In discharging its functions, the SRC is guided by the principles set out in Article 230(5) of the Constitution and Section 12(1) of the Salaries and Remuneration Commission (SRC) Act. The principles include:

- (a) the need to ensure that the total public compensation bill is fiscally sustainable;
- (b) the need to ensure that the public services are able to attract and retain the skills required to execute their functions;
- (c) the need to recognise productivity and performance;
- (d) transparency and fairness; and
- (e) Equal remuneration to persons for work of equal value.

Further, Section 11 of the SRC Act provides for additional powers and functions for SRC. These are, inter alia:

- (a) inquire into and advise on the salaries and remuneration to be paid out of public funds;
- (b) keep under review all matters relating to the salaries and remuneration of public officers; and
- (c) determine the cycle of salaries and remuneration review upon which Parliament may allocate adequate funds for implementation.

Prior to establishment of SRC, wage awards were granted to sub-sectors of the public service without regard to their implications on the other sectors of the public service, macro-economic stability and external competitiveness, effectiveness and service delivery and affordability of such award. To address these challenges and ensure fair and transparent harmonization of public service salaries and value for money, the constitution established the SRC, with the intention of upholding the principles of public finance and fiscal responsibility, the budgetary process and the complexity of salaries and benefits determination for public officers.

The Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022 seek to facilitate the achievement of fiscally sustainable, transparent and fair, and harmonized pay in the public service by:

1. aligning the cycle of determination and review of salaries and remuneration for State and other public officers to the national budgeting and planning cycles;
2. setting out the principles and factors to be considered during setting, review and advise on remuneration and benefits for State and other public officers;
3. setting out procedures for conduct of job evaluation for purposes of determining the comparable and relative worth of jobs;
4. setting out the factors to be considered in rewarding productivity and performance in the public service; and
5. setting out the procedure for obtaining the advice of SRC on the remunerative and benefit items payable out of public funds in collective bargaining negotiation.

3. Policy Background

The policy objective of the Salaries and Remuneration Commission Act, 2011 is to make further provision as to the functions and powers of the Salaries and Remuneration Commission, the qualifications and procedures for the appointment of the chairperson and members of the Commission and for connected purposes.

The Constitution of Kenya 2010 and the Salaries and Remuneration Commission Act, 2011 provide, *inter alia*, for the powers and functions of the Salaries and Remuneration Commission. The Regulations provide *inter alia* the procedure for:

- (a) setting and reviewing remuneration and benefits for State officers;
- (b) advising on remuneration and benefits for other public officers;
- (c) keeping under review all matters relating to salaries and remuneration of other public officers;
- (d) undertaking job evaluation and
- (e) obtaining the advice of the Commission on remuneration and benefits for public officers.

4. Consultation Outcome

The Salaries and Remuneration Commission engaged a wide range of stakeholders between 28th February and 4th March, 2022 and on 10th March, 2022. This was done through sensitisation sessions and involved Ministries, Departments, and agencies, State Corporations Advisory Committee constitutional commissions and independent offices, county governments, Council of Governors, IGRTC, Law Society of Kenya, Association of Professional Societies in East Africa, Office of the Attorney General and Department of Justice, Kenya Law Reform Commission, the Federation of Kenya Employers, Central Organization of Trade Unions, among others.

Further, the Commission invited written submissions from stakeholders and the general public, vide newspaper advertisements in *Daily Nation* and *Standard* newspapers, which ran on 22nd February, 2022.

All the stakeholders consulted supported the draft regulations and made comments and proposals, some of which were incorporated into the draft.

The proposed improvements included proposals to clearly set out Salaries and Remuneration Commission's mandate with respect to state and other public officers and provide that the Commission shall in accordance with article 230 (4) of the Constitution set the remuneration and benefits for State officers and advise the national and county governments on the remuneration and benefits of other public officers.

Proposals to clarify the purpose of conducting job evaluation and resultant job evaluation grading structures, were also received and incorporated into the draft.

Further, the Commission received and adopted a proposal to incorporate equitable share of revenue to counties as a factor for consideration in advising county governments on remuneration and benefits for other public officers.

In addition, a number of stakeholders submitted views on the provisions relating to pensions. The Commission considered the views and amended the draft regulations appropriately, in particular to take into account the statutory and institutional framework on pensions in Kenya.

5. Guidance

The Salaries and Remuneration Commission will carry out sensitization forums and create awareness of the instrument to the users and implementing institutions. The instrument will also be uploaded in the Commission's website.

6. Impact

This statutory instrument does not impose costs on any community or part of a community and therefore does not require a regulatory impact statement.

7. Monitoring and Review

The Salaries and Remuneration shall monitor the implementation of these regulations on a continuous basis so as to identify the need for any future changes.

8. Contact

The Commission Secretary,
Salaries and Remuneration Commission,
P.O. Box 43621- 00100, Nairobi
Tel No.(020) 2710065/ 81, 0794587903
Email: hr@src.go.ke



OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

*Hild
Please
revisit
to review*

Hild

6th May, 2022

9.5.22

AG/LDD/635/2/2 TF

The Commission Secretary/CEO,
Salaries and Remuneration Commission,
6th Floor, Williamson House,
4th Ngong' Avenue,
P. O. Box 43126-00100
NAIROBI.



RE: REQUEST FOR TECHNICAL ASSISTANCE IN DRAFTING OF SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND PUBLIC OFFICERS) REGULATIONS

Reference is made to your letter Ref. no. SRC/ADM/18(51) dated the 26th April, 2022, forwarding drafting instructions in the form of the draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations, 2022, for our review and finalization.

Enclosed herewith please find a revised copy of the Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations, 2022, that we have revised in consultation with a team from the Commission led by Mr. Sitienei. We request the Commission to scrutinize the draft and let us have its comments, if any, and further instructions to facilitate finalization of the Regulations.

Catherine Ochanda

**CATHERINE OCHANDA,
Deputy Chief Parliamentary Counsel.**

For: Attorney-General.

NIB

*Attachment with
HLS (wairimu)*

Copy to: Hon. P. Kinara Karituki, EGH
Attorney General

Mr. Kennedy Ogeto, CBS
Solicitor General

M.N. Nzioka (Mrs)
Chief Parliamentary Counsel

REPORT ON STAKEHOLDERS FEEDBACK ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022.

1.0. PREAMBLE

This report provides an analysis on feedback from stakeholders and the public on the draft Salaries and Remuneration Commission (Remuneration and Benefits of State and other Public Officers) Regulations, 2022. The report comprises of an overview on stakeholders who provided written submission, analysis of the stakeholder submission, observation and recommendations.

2.0. INTRODUCTION

The Salaries and Remuneration Commission (SRC) is established under Article 230 of the Constitution of Kenya, 2010. Article 230(4) of the constitution gives the Commission powers and functions;

- a) to set and regularly review the remuneration and benefits of all State officers; and
- b) to advise the national and county governments on the remuneration and benefits of all other public officers.

Further, the Salaries and Remuneration Commission Act, 2011, which operationalises Article 230 of the constitution, vests the Commission with additional functions and powers. Section 26 of the Act mandates the Commission to make regulations for the better carrying into effect the provisions of the Act. Pursuant to this, the Commission developed the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022.

In line with Article 10 and 47 of the Constitution, among other legal provisions, the Commission requested for memoranda and views from stakeholders and the public on the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022. The Commission placed advertisements in the Daily Nation and Standard Newspapers which ran on 22nd February, 2022. Further, from 28th February to 4th March, 2022 and on 10th March, 2022 the Commission carried out stakeholder sensitisation sessions with a view to having a common understanding on the provisions of the Draft Regulations.

The Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and other Public Officers) Regulations, 2022, were also accessible via SRC website using the following link: <https://bit.ly/3579vIM>

The written views and memoranda were addressed to the Commission Secretary/CEO, and sent through the following email addresses: regulations@src.go.ke and/or info@src.go.ke, and/or addressed to the Commission Secretary/CEO, and sent through P.O. Box 43126 –

00100, Nairobi, Kenya, and/or through online options and platforms, as follows: SRC social media platforms (@srckenya on Twitter and Instagram; @SRCKE on Facebook; and Salaries and Remuneration Commission on LinkedIn. A Submission Form was available on SRC website link: <https://src.go.ke/1669-2/>. All submissions ought to have reached the Commission on or **before 11th March 2022**.

Further, SRC sent letters to mapped stakeholders requesting them to provide written submissions, before 11th March, 2022, on the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and other Public Officers) Regulations, 2022. The stakeholders are as follows:

1. The Head of Public Service;
2. All Ministries;
3. The Hon. Attorney General;
4. All Constitutional Commissions and Independent Offices;
5. Council of Governors;
6. State Corporations Advisory Committee;
7. Independent Police Oversight Authority;
8. Kenya Institute for Public Policy Research and Analysis;
9. Interpublic Universities Councils' Consultative Forum;
10. Intergovernmental Budget and Economic Council;
11. Intergovernmental Relations Technical Committee;
12. All County Public Service Boards;
13. All County Assembly Service Boards;
14. County Assemblies Forum;
15. Association of Professional Societies in East Africa;
16. Law Society of Kenya;
17. National Tax Payers Association;
18. Institute of Certified Public Accountants of Kenya;
19. Institute of Human Resource Management;
20. Central Organisation of Trade Unions;
21. Trade Unions Congress Kenya; and
22. Federation of Kenya Employers;

As at 9th May 2022, SRC had received 23 memoranda and views from the following stakeholders:

1. Ministry of Energy;
2. Ministry of Labour;
3. Commission on Administrative Justice (CAJ);
4. Commission on Revenue Allocation (CRA);
5. Ethics and Anti-corruption Commission (EACC);
6. National Gender and Equality Commission (NGEC);
7. National Police Service Commission (NPSC);
8. Parliamentary Service Commission (PARLSCOM);
9. Public Service Commission (PSC);
10. Office of the Controller of Budget (OCOB);
11. State Corporations Advisory Committee (SCAC);
12. Kenya Institute for Public Policy Research and Analysis (KIPPRA);
13. Intergovernmental Relations Technical Committee (IGRTC);
14. County Assembly of Makueni;
15. County Assembly of Embu;
16. County Assemblies Forum (CAF);
17. Association of Professional Associations in East Africa (APSEA);

- 18. Coalition of Trade Unions (COTU);
- 19. Intergovernmental Budget and Economic Council (IBEC);
- 20. Teachers Service Commission (TSC);
- 21. Council of Governors (COG);
- 22. Kenya Defence Forces; and
- 23. Ministry of East African Community and Regional Development.

Table 1 shows the distribution of the written submissions received from stakeholders and the public per communication medium.

Table 1: Distribution of Stakeholder written submissions per medium of communication

Communication Medium	Number
Email/postal address	23
Social Media	28
Total	52

Table 2: General feedback from stakeholders and the public on Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022.

Table 2: General Comments and Inputs from Stakeholders

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
1.	<p>a) State Corporations Advisory Committee (SCAC)</p> <p>SRC is seeking to expand its mandate outside of the constitutional remits. SRC function as regards public officers is to “advise” on remuneration and benefits, and not to set said remuneration and benefits. The power to set is only in relation to State officers. The logic to distinguish between “setting” and “advising” for State and public officers respectively, was to address the mischief of State officers varying their terms indiscriminately, with this pursuit not targeted at public officers, whose pay was already regulated. If the Constitution intended to require SRC’s advice to be binding, it would have specifically indicated so.</p>	<p>There is need to have the draft Regulations clearly outline the Commission’s mandate with respect to State and other public officers.</p> <p>Prior to establishment of SRC, wage awards were granted to sub-sectors of the public service without regard to their implications on the other sectors of the public service, macro-economic stability and external competitiveness, effectiveness and service delivery and affordability of such award. To address these challenges and ensure fair and transparent harmonization of public service</p>	<p>The draft regulations have been revised to clearly distinguish the mandate of SRC in relation to;</p> <p>(a) setting and regularly reviewing the remuneration and benefits for State officers;</p> <p>(b) advising the national and county governments on the remuneration and benefits of other public officers; and</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>salaries and value for money, the constitution established the SRC, with the intention of upholding the principles of public finance and fiscal responsibility, the budgetary process and the complexity of salaries and benefits determination for public officers.</p>	<p>(c) Keeping under review and advising on the remuneration and benefits for other public officers.</p>	
	<p>The regulations seek to appropriate the powers of the relevant Service Commissions and the Boards of Directors of State Corporations who are the respective employers of public officers within their domain. These regulations also seek to expand SRC's mandate into human resource management, by appropriating the responsibility of Service Commissions and Boards of Directors of state corporations to establish and review their internal organizational and staffing structures, appropriately.</p> <p>SRC does not have the constitutional or legal mandate to enter into the realm of defining the organizational structuring of government entities, including state corporations. By seeking to do so, SRC is transforming itself into the role of employer, but without the attendant responsibility of owning performance or assuring accountability – in addition to acting ultra vires the constitution and the law.</p>	<p>Regulation 11 (c) provides that the purpose of conducting job is to rationalize and harmonize job grading structures in the public service in order to set and/or advise on the appropriate salary.</p> <p>The mandate of SRC to conduct job evaluation in the public service is provided under section 11 (d) of the SRC act as affirmed by the of Court of Appeal in the case of TSC v KNUT & 3 Others [2015] eKLR which held that SRC has a role to play in job evaluation of public officers.</p>	<p>The draft regulations have been amended to clarify the purpose of conducting job evaluation—</p> <ol style="list-style-type: none"> i. Setting salary structures for state officers; ii. Advising on the salary structures for other public officers;
	<p>This proposal is further exacerbated by SRC's desire to set the pensions and gratuity for public officers, when the same is already prescribed by law. The SRC may give recommendations for law review, but not otherwise.</p>	<p>Pension is an employment benefit and is therefore subject to the mandate of SRC as set out under Article 230 (4) of the Constitution.</p> <p>There are numerous statutes that regulate pension in the public service. In addition, the statutes establish various bodies that regulate and/or manage the administration of pension in the public service.</p>	<p>The Commission has revised the regulation taking into account the existing legal and institutional framework on pensions in the public service.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>SCAC opposes the SRC's proposal to intervene in the process of rewards for productivity and performance as will be applicable to state corporations. The National Treasury, as ultimate government owner of the state corporation asset, is currently the prescribed agency to determine rewards and sanctions for state corporations with the advice of SCAC. This role is perfectly aligned, as the National Treasury sits on the Boards of all state corporations, and has direct line of site on the performance thereof. Secondly, it is the public body with the broad spectrum on fiscal management. Legal Notice No. 94 of 2004 defines the mechanisms for which productivity and equally, sanction is to be effected. An externalized process where SRC is to make such determinations is irrational, and solely focused on one ambit of performance. This is an employer role. Regulations on its implementation exist.</p>	<p>Article 230 (5) of the Constitution as read with section 11 of the SRC Act requires SRC to recognize productivity and performance in discharging her mandate.</p> <p>The purpose of the draft regulation is therefore to provide a framework and procedure for rewarding performance and productivity in the entire public service.</p> <p>Further, The Public Service Commission (Performance Management) Regulations, 2021, with regard to rewards provides as follows;</p> <p>42(3)(a) Where a public body establishes a financial reward scheme, the public body shall, first seek the advice of SRC for the proposed financial rewards.</p> <p>46(2) the PSC shall seek the advice of SRC where PSC intends to award cash prizes under the award scheme.</p>	<p>The draft regulation on rewarding productivity and performance has been revised appropriately.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>SRC ought to be guided by the Attorney General's legal opinion of no. AG/CONF/2/C/107 VOL.1 dated 17th December 2012 titled "Further Legal Opinion on Salaries and Remuneration Commission Mandate over State Corporations" and an advisory opinion of the Attorney General dated 21st August 2014 on the "Powers and Functions of the Public Service Commission over State Corporations and Other State Organs".</p> <p>The mandate of SRC over State Corporations is now settled vide judgments of the High Court in Chemelil Sugar Company Ltd & Others –vs- Kenya Union of Sugar Plantation and Allied workers & 2 others and NHIF – vs- KUCFAW. In both cases, the Courts held that SRC is only mandated to set the salaries and remuneration of State officers but when it comes to other public officers, SRC's role is advisory and SRC would therefore be acting in excess of jurisdiction if it were to purport to fix or set salaries for public officers.</p> <p>The Supreme Court in <i>Kenya Vision 2030 Delivery Board v Commission on Administrative Justice (CAJ) & 2 others (2021)</i> gave guidelines on how constitutional commissions giving advice or recommendations to public bodies are to be guided, to avoid unnecessary conflicts.</p>	<p>We have considered the authorities cited by SCAC and note that the issue of whether SRC can exercise her mandate over state corporations has attracted different interpretation by the Courts. For instance in the cases of Kenya Union of Domestic Hotels Education and Allied Workers (Kudheiha Workers) vs Salaries and Remuneration Commission (2014) eKLR and National Union of Water and Sewerage Employees vs Mathira Water and Sanitation Company Ltd and Others, 1st Interested Party – The Hon. Attorney General, 2nd Interested Party – Salaries and Remuneration Commission the Courts held that the drafters of the Constitution intended that the values and principles of public service should govern not just employees of state organs but also those of state corporations and as such state corporations are subject to the mandate of SRC.</p> <p>SRC notes that one of the cases cited: NHIF –vs- KUCFAW is pending before the Court of Appeal.</p>	<p>The draft regulation has been amended in line with the provisions of the Constitution and the SRC Act.</p> <p>The provision on the effect of SRC's advice has been revised.</p>
	<p>SRC can undertake any reviews or job evaluation exercises to establish the obtaining status on the remuneration and benefits in the public service for the purpose of setting/advice as appropriate. However, the resultant advisory from such reviews should be issued once for predictability purposes, encompassing a class of standardized jobs, and channeled to the respective National and County Governments focal points for consideration. Specifically, in the case of National Government, such advisory could only be ideally directed to:</p>	<p>The issue of communication has been addressed administratively.</p>	<p>SRC has retained the provisions of the draft regulation.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>1. Head of Public Service- For State officers/Executive/State Corporations</p> <p>2. Public Service Commission – For the Executive Parliamentary Service Commission- For Parliament</p> <p>3. Judicial Service Commission – For the Judiciary</p> <p>for execution. We opine that SRC should not operate outside of the protocols established by Government. SRC should channel any set prescriptions, or advisory through a single framework for purposes of good order, and more importantly, for purposes of predictability, and aligning policy directives as issued by Government from time to time.</p>		
	<p>We further opine that the SRC has in these Regulations, granulated the functions of job evaluation and remuneration and benefits advisory. The proposed processes as captured in the draft guidelines can be undertaken in a more efficient and cost-effective manner. Specific evaluations per each agency for job classes that are standardized is not meritorious. Incidences of differentiated treatment by SRC in comparable entities has often led to a haemorrhage of staff from one public institution to another. It also creates an untenable situation where the Government does not have a single framework (compendium) of applicable terms across the entire government, since individualized cases are determined by SRC on a case by case basis.</p>	<p>1. Job evaluation is conducted based on the content of the job as contained in the job descriptions provided by a public body. Job evaluation ensures that the relative worth of the job is assigned to a role and ensures that jobs with similar responsibilities are graded the same.</p> <p>Evaluation of jobs using job classes or nomenclature does not take account of responsibilities of individual jobs.</p> <p>The classes of jobs are designed by different public bodies and therefore different principles are applied in their design. Using such classes as the basis of evaluation may result to assigning same relative worth of jobs performing different responsibilities or assigning different worth of jobs for jobs performing same responsibilities.</p> <p>2. Job evaluation establishes a single framework (compendium) of applicable terms across the entire government. This is because, jobs are subjected to the same compensable factors, methodology</p>	<p>The draft regulations making provision on job evaluation have been revised to address some of the issues raised.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>Remuneration and benefit determination, whether for the purpose of setting the same for state officers, or advising on the same for public officers is not a full-time activity. Once prescribed, the public sector entity is expected upon determination of the specific bands, to implement these without regular resort to SRC. Oversight over their implementation is by the Ministry of Public Service/PSC for MDAS, SCAC for state corporations, and relevant service commissions.</p> <p>Suggestions in the regulations that seek to have public entities revert to SRC when there is a modification of assignment for officers, or minor reorganization of the office reporting structures is irrational, as the general principles once approved should offer necessary guidance to the authorized officers, oversight entities, and service commissions accordingly.</p>	<p>and point factor based job evaluation system.</p> <p>Internal and external relativities/ comparison of the job evaluation grading within peer jobs and institutions is also conducted while undertaking job evaluation.</p> <p>3. Job Evaluation creates a common framework to ensure jobs performing similar responsibilities are graded the same and progressively adhere to the principle of equal pay for work of equal value. The regulations provide a uniform approach to conducting job evaluation using an analytical point factor based system. This is expected to progressively address any disparities in job grading and salary structures.</p> <p>The rational of the regulation is to give powers to institutions to determine the jobs that require evaluation for purposes of setting, reviewing and advising on remuneration and benefits for State and other public officers respectively within a scheduled review or special review.</p> <p>The regulation should be amended to clarify that a public body that meets the criteria for job evaluation may submit the required information when called for by the Commission during a review cycle or when the public body has requested for setting, review, or advice on remuneration and benefits and a job evaluation is required.</p>	<p>The regulation has been revised to clarify that a public body that meets the criteria for job evaluation may submit the required information when called for by the Commission during a review cycle or when the public body has requested for setting, review, or advice on remuneration and benefits and a job evaluation is required.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>Having pointed out the above facts, we recommend that the SRC withdraws the proposed regulations, pending formal consultation to be chaired by the Office of the Head of the Public Service with the relevant authorities. This would be for the purpose of defining a suitable way forward. The engagement would provide an opportunity for the objectives that SRC sought to achieve to be contextualized as against the prevailing legal position on its mandate, and define an appropriate whole of government mechanism that would be in the best interests of the public sector.</p>	<p>Change in jobs within a public body organization structure that do not necessitate changes in remuneration and benefits, need not to be submitted to the Commission for evaluation and advice.</p> <p>SRC has noted the concerns raised by SCAC and where appropriate incorporated the views alongside those of other stakeholders that are largely agreeable to the regulations in order to have an all inclusive draft regulation.</p> <p>In addition, the Head of Public Service as well as other public bodies, were invited to submit their considered views on the draft regulations. Notably, a majority of them submitted their views which have been considered.</p>	<p>SRC considered all feedback from all stakeholders and the public and where appropriate amended the final draft regulations to take into consideration such views.</p>
2.	<p>Teachers Service Commission (TSC)</p> <p>Pension Regime in Kenya</p> <p>Pension regime in Kenya is regulated by Constitution, the Pensions Act, the Retirement Benefits Act, and the Public Service Superannuation Scheme Act. These legislations provide statutory guidelines on the entire pension regime in public service.</p> <p>Further, the statutes and attendant Regulations vests the legal mandate for the management of retirement benefits in different institutions in the public service including the National Treasury, the Retirement Benefits Authority and various employers.</p> <p>Regulation 8 of the proposed Regulations seeks to upset the above substantive statutory framework through the "back door" i.e. subsidiary legislation. As a cardinal principle of law, Regulations cannot amend a substantive statutory provision. The net effect of the Regulation as currently</p>	<p>Pension is an employment benefit and therefore part of SRC's mandate under Article 230 (4) of the Constitution.</p> <p>There are numerous statutes that regulate pension in the public service. It is necessary to revise the draft regulations taking into account the obtaining legal and institutional framework on pensions.</p>	<p>SRC revised the provision on pension in the draft regulations.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>drafted are inconsistent with the provisions of the Pensions Act, the Retirement Benefits Act, and the Public Service Superannuation Scheme Act.</p> <p>For instance: The Regulations proposes that SRC shall set and advice pension or gratuity payable to state officer and public officers. This contradicts the provision of the first schedule of the Pensions Act that provides a statutory formula for calculating pension emoluments in public service.</p> <p>We further take note that, the Public Service Superannuation Scheme is a defined contribution scheme for employees in the public service. The same is founded on the provisions of the Public Service Superannuation Scheme Act. The scheme is further regulated by the Retirement Benefits Authority. To this end, therefore, the proposed provision by the Regulations to mandate SRC to regulate defined contribution schemes will not only be usurping the mandate of the RBA but also a contravention of the existing law.</p> <p>Under Section 11(g) of the Salary and Remuneration Act the Commission has the mandate to make recommendations on the review of pensions payable to holders of public offices. The proposed Regulations tends to extend this mandate beyond the provisions of the parent Act to include "setting, regulating, reviewing, advising on pension review." This creates inconsistency which will not stand the test of time and/or the legal threshold for law making.</p> <p>To the extent that the proposed Regulations tend to encroach on matters already sufficiently provided for by other existing legislations the same is not only in contravention to jurisprudence but may fail the ultra vires test.</p> <p>We reiterate that there are statutory legislations in place that creates, defines and regulates the right to pension. As such, except through an amendment of the parent Acts to place SRC in the implementation structure of pensions, an attempt to create, define, regulate or confine powers to any other entities than those contemplated under the relevant legislation will be illegal.</p> <p>The proposed Regulations will render impotent and circumvent the powers and roles granted to bodies under the Pension Act, Retirement Benefits Act, and Public Service Superannuation Scheme Act. In this regard, it is our view that the proposed Regulations should be limited to the Constitutional Mandate of SRC.</p>		

#	General Stakeholder Feedback Managerial Prerogative of an Employer	Observations by SRC	Response/Action by SRC
	<p>Generally, employers have the mandate to recruit, supervise, appraise, and reward employees based on achievements and productivity instruments developed by the employer.</p> <p>More specifically, teacher management functions is exclusive mandate of TSC under Article 237(2) including inter alia to recruit, employ and promote teachers. TSC constitutional power to undertake teacher management functions vests it with exclusive mandate to supervise, measure and evaluate performance of its employees. The same is further buttressed by Section 11(f) of the TSC Act that empowers the Commission to monitor the conduct and performance of teachers in the teaching service.</p> <p>Accordingly, the TSC just like other employers in public service has in place the Performance, Recognition, Rewards and Sanctions Policy for its employees. This policy framework compliments the Performance Contract and Performance Appraisal tools to measure productivity and consequently issue rewards or sanctions where appropriate.</p> <p>In the same spirit, the Public Service Commission has in place the Performance Rewards and Sanctions Policy Framework for the Public Service. This framework establishes performance management system and a basis for rewarding exemplary performance, and where necessary, administering sanctions for poor performance, with a view to enhance productivity in the Public Service.</p> <p>Regulation 23 and 24 seeks to irregularly grant SRC the mandate to approve internal policies or guidelines related to rewards and productivity. More dangerously, Regulation 23 (1) seeks to further grant SRC power to develop Guidelines on rewarding productivity and performance and that such Guidelines will be binding on employers in the public service.</p> <p>Accordingly, it is our considered view that Regulations 23 and 24 be deleted entirely as it seeks to unlawfully usurp the mandate of Public Service employers contrary to Article 249 of the Constitution.</p> <p>Issues of reward and productivity are managerial emanating from the administrative prerogative that vest exclusively on an employer. While we appreciate the mandate of SRC under the law, TSC being a Constitutional</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC revised the provision on rewarding productivity and performance and incentive schemes.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>Commission with operational independence cannot be directed by any other person or authority save as provided in law.</p> <p>It is also key to note that there is a proposed National Productivity and Competitiveness Council Bill, 2019 that seeks to establish framework to foster productivity and competitiveness improvement in the public sector.</p> <p>It is our view, therefore, that rewards and sanction framework are within the exclusive province of employers. It is also key to note that not all rewards contemplated under various policies in the public sector have financial implications.</p>		
3.	<p>Ministry of Labour</p> <p>Reference is made to your letter Ref. No. SRC/18 (2) dated 23rd February, 2022 on the above subject.</p> <p>The Ministry is satisfied with the "Draft Policy on Remuneration and Benefits of State and other public officers Regulations, 2022 as presented.</p>	<p>The Ministry of Labour is satisfied with the provisions of the Draft regulations.</p>	
4.	<p>Ministry of Energy</p> <p>Regulations are consistent with the 2010 Constitution, obtaining Statutes, Regulations and the practices in the Public Service.</p>	<p>The Ministry of Energy is satisfied with the provisions of the Draft regulations.</p>	
5.	<p>ICPAK</p> <p>The public sector wage bill is an ever-increasing burden on taxpayers. The COVID-19 crisis is a unique situation and requires tough policy choices for managing the public sector wage bill to best achieve the difficult balance between fiscal consolidation, protection of lives and livelihoods and service delivery.</p> <p>The ballooning wage bill has raised attention and the government has admitted that this increase is unsustainable, and more effort is needed to tame it. Most county governments are spending a large proportion of their allocations from the National government in payment of salaries to staff members. This in turn means that there is not enough revenue left for allocation towards development initiatives. In the financial year 2021/22, The Office of the Controller of Budget (OCOB) indicates that the wage bill accounted for 72.2% of total expenditure in the county governments during the first quarter of the financial year thus constraining funding to other programmes as the development budget accounted for 6.7% of total expenditure. Such data necessitates the need for a comprehensive regulatory</p>	<p>ICPAK is satisfied with the provisions of the Draft regulations.</p>	

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>framework that enables an affordable and sustainable wage bill.</p> <p>The Institute would like to commend the Salaries and Remuneration Commission (SRC) for developing these Regulations and in turn, taking steps to control the public wage bill by aligning the wage system with best practices.</p>		
6.	<p>KIPPRA</p> <p>PART II is comprehensively detailed. However, the concern is how the Commission will ensure that the outcomes of the Section are adhered to by Public Service Institutions. The Commission may consider a periodic audit if not in place and outline it in the Regulations.</p>	<p>KIPPRA is satisfied with the provisions of the Draft regulations.</p>	
7.	<p>PARLSCOM</p> <p>Powers of the Salaries and Remuneration Commission</p> <p>It is important for the Salaries and Remuneration Commission to properly recognize the distinction between its constitutional power to set remuneration and benefits for State Officers and its power to advise on the remuneration and benefits for other public officers. During the Constitution making process, the Committee of Experts on Constitutional Review in their final report dated 11th October, 2010 stated as follows with regard to the Salaries and Remuneration Commission at paragraph 7.5.5.4</p> <p>".....7.5.5.4 <i>The Salaries and Remuneration Commission</i></p> <p><i>The functions of the Salaries and Remuneration Commission were revised in the RHDC. Its power to set the remuneration of MPs, members of the executive, including the president, members of commissions and other independent offices and other senior office holders was retained but its power to set the remuneration of other public officers was removed. This is because setting salaries in the public service is a matter closely linked to government policy and subject to collective bargaining. It is therefore not appropriately taken out of the hands of the executive (and unions) and given to an independent body. Instead, under the RHDC the Commission was to make recommendations on all other salaries etc. in the public service. The Commission was covered by the provisions of Chapter 16 of that draft and so is independent. A rigorous process must be followed to remove members of the Commission.</i></p>	<p>There is need to have the draft Regulations clearly outline the Commission's mandate with respect to State and other public officers.</p> <p>The draft regulations have been revised to clearly distinguish the mandate of SRC in relation to;</p> <p>(a) setting and regularly reviewing the remuneration and benefits for State officers;</p> <p>(b) advising the national and county governments on the remuneration and benefits of other public officers; and</p> <p>keeping under review and advising on the remuneration and benefits for other public officers.</p>	

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p><i>The composition of the Commission was also revised to ensure that each sector affected by its decisions can nominate members' to serve on' it. In addition, three additional members of the Commission were to supply professional advice and do not vote (these are persons designated by the Attorney-General's office, by the Cabinet Secretary responsible for finance and by the Cabinet Secretary responsible for human resources)</i></p> <p>The Salaries and Remuneration Commission protects constitutional democracy in two important ways. First, following practice in many modern democracies, it ensures that people do not set their own salaries – thus although MPs must pass the budget, they do not set their own salaries. Secondly, it protects the remuneration of members of the institutions that are intended to guard the Constitution and oversee the executive and Parliament. So, for instance, Parliament or the executive cannot intimidate judges by threatening to lower their salaries – the salaries are set and protected by the Commission.</p>		
8.	<p>Commission on Revenue Allocation (CRA)</p> <p>SRC's mandate covers a complex area of state operations. It deals with a wide range of state institutions with diverse mandates and corresponding operational modalities and different state official responsibilities.</p> <p>This enjoins the Commission to approach its regulatory functions from a thoroughly differentiated and carefully nuanced point of view. It cannot afford to tailor a suit that fits all, at least in a few distinctly unique areas. Such an approach would consider treating the following areas with the necessary differentiation and nuance:</p> <ol style="list-style-type: none"> 1. Structure of the state institutions 2. Salary structure 3. Determination of staff production 4. Allowance and benefit etc. <p>Over-standardization and harmonization of structures and procedures of public service institutions, without due regard to the unique functions of particular agencies, e.g. the independent bodies, may end up compromising their mandates. The ceiling of</p>	<p>The purpose of the draft regulation is for better carrying into effect the provisions of the SRC Act and specifically to provide the procedure for:</p> <ol style="list-style-type: none"> a) setting and reviewing remuneration and benefits for State officers; b) advising on remuneration and benefits for other public officers; and c) keeping under review remuneration and benefits of other public officers. <p>The draft regulations address issues relating to salary structure, allowances and benefits. However, the regulations do not address issues of organizational structure of public</p>	<p>Having considered the views from CRA and revised the draft regulations appropriately.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>use of fuel by public service officers needs a carefully nuanced standardization. At the moment the variance is too large and unilateral and with hardly any justification.</p>	<p>bodies and determination of staff production since they are beyond the mandate of the Commission under Article 230 (4) of the Constitution and SRC Act.</p> <p>The views on over-standardization negate the principle of equal remuneration for work of equal value as set out under Section 12 of the SRC Act. SRC upholds the principle of equal remuneration for work of equal value by:</p> <ol style="list-style-type: none"> 1. undertaking job evaluation to ascertain the relative worth of a job; 2. setting and advising on salary structures applicable across the public service. The salary structures are progressively harmonized subject to the principles of affordability and fiscal sustainability through harmonization. 	

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>There is need to align these draft regulations with the Constitution of Kenya 2010. In addition, clarity is needed as to who has the final say when it comes to providing benefits and salaries for public office, Independent Commissions and County governments. Article 230 (4) states as follows: The powers and functions of the Salaries and Remuneration Commission shall be to-</p> <ul style="list-style-type: none"> a) set and regularly review the remuneration and benefits of all State officers; and b) advise the national and county governments on the remuneration and benefits of all other public officers. <p>From the above, it is evident that the commission will set and regularly review the remuneration and benefits of all State officers and advise the remuneration and benefits for public officers. In some parts of the regulations, the Commission adheres to its constitutional mandate e.g. section 18 on salary structures, but then it contradicts itself in other following regulations.</p>	<p>There is need to have the draft Regulations clearly outline the Commission's mandate with respect to State and other public officers.</p>	<p>The draft regulations have been revised to clearly distinguish the mandate of SRC in relation to;</p> <ul style="list-style-type: none"> (a) setting and regularly reviewing the remuneration and benefits for State officers; (b) advising the national and county governments on the remuneration and benefits of other public officers; and <p>keeping under review and advising on the remuneration and benefits for other public officers.</p>
	<p>CRA has included an additional regulation 7A to incorporate cognizant CRA equitable share to counties when it comes to the county ceilings.</p>	<p>CRA proposes an additional regulation 7A to incorporate cognizant CRA equitable share to counties when it comes to the county ceilings. The proposed provision shall be part of the factors to be considered by SRC in setting, reviewing and advising on remuneration and benefits for State and other public officers.</p>	<p>The proposal has been adopted and incorporated into the draft regulations.</p>
9.	<p>National Police Service Commission. NPSC has perused the draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers), Regulations, 2022 and largely agrees with the proposed amendments, noting that the same will enhance productivity and performance within the Public Service.</p>	<p>NPSC is satisfied with the provisions of the Draft regulations.</p>	

General Stakeholder Feedback		
#	County Assembly of Embu	Response/Action by SRC
10.	<p>Considering the above observations, the County Assembly of Embu acknowledges that the draft Salaries and Remuneration Commission (Remuneration and Benefits of State and other public officers) Regulations has presented important reform questions on issues of Remuneration of State and public officers. However, the selected and highlighted parts of the proposed regulations need to be reconsidered and revised accordingly in order to address the concerns raised and to be in compliance with the Constitution, Salaries and Remuneration Commission, Act 2011 and other existing laws.</p>	<p>County Assembly of Embu has proposed specific amendments to the Draft regulations.</p>
11.	<p>County Assemblies Forum (CAF) Remuneration and benefits of public officers Overall, the Regulations do not take into account the views of the officers affected by its decisions and the uniqueness of such officers' working circumstances especially with the advent of devolution. Such unilateral decision making of the SRC has been challenged successfully in Court. Proposal: Overhaul the draft Regulation.</p>	<p>CAF has proposed specific amendments to the Draft regulations.</p>
12.	<p>Council of Governors CoG noted that the regulations provide for issues that are not provided under the SRC Act and thus states that the regulations cannot provide for issues that have not been provided for substantively under the enabling legislation and advises that such provisions need to be brought out in enabling framework first in order to operationalize the regulations.</p> <p>Noted that the position of County Governments that the constitutional mandate is not intended to prevent the Counties from setting up or determining how county governments choose to set up or adopt their pension scheme.</p> <p>It also noted the function of the National Government and ipso facto the national treasury is assigned to RBA under section 5(d) of the RBA act which states as follows; "the object and function of the Authority shall be to – advise the minister on the national policy to be followed with regard to retirement benefits schemes and to implement all</p>	<p>SRC considered the views and proposals from the County Assembly of Embu and revised the draft regulations appropriately.</p> <p>SRC considered the views and proposals from the County Assemblies Forum and revised the draft regulations appropriately.</p> <p>SRC considered the views and proposals from the Council of governors and revised the draft regulations appropriately.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p align="center">Government policies relating thereto"</p> <p>It further stated that the role of County Governments on pension matters is anchored under Article 235 of the Constitution and section 56 of the County Government Act both which recognizes County Governments as employers within their respective counties thus they have the authority to determine pension arrangements for their employees as exclusive county governments functions</p>		
13.	<p>Association of Professional Societies in East Africa (APSEA)</p> <p>The Association considers the need to establish:</p> <ol style="list-style-type: none"> Whether the regulations comply with the Statutory Instruments, Act, 2013. Whether the Commission conducted a Regulatory Impact Assessment under the Statutory Instruments Act. Whether the draft regulations were submitted to Parliament for approval first as stated in Section 26 (2) of the SRC Act. 	<p>The draft regulations are still in drafting stage and the commission intends to comply with procedures as set under the Statutory Instrument Act, 2013.</p> <p>Section 6 of the Statutory Instruments Act provides that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.</p> <p>In this case the proposed SRC regulations does not impose any financial costs on the community or part of the community and there as such SRC shall not undertake any Regulatory Impact Assessment as per the provision of Section 6 of the SIA.</p>	<p>SRC considered the views and proposals from the Association of Professional Societies in East Africa and shall comply with the provisions of the Statutory Instruments Act.</p>
11.	<p>Stephen Wambua</p> <p>The area we are working in is very hostile and hard stricken. Its unfair to have our counterparts from the TSC being given hardship allowances while we others in the Public service are not considered. Where is the problem? Kindly consider our fate.</p>	<p>The comment by Stephen Wambua is one of the items SRC considers in review of allowances and benefits.</p> <p>An inter-agency team comprising of MPGCS&SP and SRC is currently undertaking a study on hardship areas which</p>	<p>A study to inform review of hardship allowance is ongoing.</p> <p>SRC has retained the provisions of the draft regulation.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
		will inform review of hardship allowance.	
12.	<p>Bernard Otieno</p> <p>There is a massive salary days especially in Homa bay county. Workers promotion from one Job group to another isn't followed in Homabay County. Case scenario - A worker given promotion letter in 2019 but hasn't been effected on the payslip in 2022. A disaster to the worker professional development.</p> <p>What to do:</p> <p>Do a follow up on the county Government of Homabay to find out why:</p> <p>a) There is a salary delay to works;</p> <p>i. The county Government of Homabay finds it difficult to effect promotions on the workers' pay slips; and</p> <p>Make necessary recommendations to the counties to streamline these.</p>	The comment by Bernard Otieno is beyond the scope and objectives of these regulations.	
13.	<p>Gabriel Mecheo</p> <p>Plz review our salary house allowance commute even basic as compared to other ours is to low we cannot afford to pay even rent...and food travel to work ...Job group " E" plz and above plz consider us</p>	<p>The comment by Gabriel Mecheo is one of the items SRC shall consider in review of allowances and benefits as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p> <p>SRC is currently undertaking a study on house rent across the country which will inform review of house allowance.</p>	<p>A study to inform review of house allowance is ongoing.</p> <p>SRC has retained the provisions of the draft regulation.</p>
14.	<p>Mutwiri</p> <p>Why do some employees get hardship allowance while as others don't get and both serving in the same area but different ministry. TSC teachers get but interior don't in Igembe North Sub-county?</p>	<p>The comment by Mutwiri is one of the items SRC considers in review of allowances and benefits.</p> <p>An inter-agency team comprising of MPSGCS&SP and SRC is currently undertaking a study on hardship areas which will inform review of hardship allowance.</p>	A study to inform review of hardship allowance is ongoing.
15.	<p>Hassan Mohamed Ahmed</p> <p>Salary review is long due, government should increase the salaries of civil servants. Thank you!</p>	The comment is one of the items SRC shall consider as part of the 3 rd remuneration review cycle 2021/22 – 2024/25.	The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
16.	Oliver keya In consideration of high cost of living, I would prefer you increase salaries as it was first proposed	The comment is one of the items SRC shall consider as part of the 3 rd remuneration review cycle 2021/22 – 2024/25.	The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.
17.	Dalton Ochieng Owuor I would like our basic salary to be revised upwards. Life is unbearable and we need to give our children the best. Consider all the monthly bills and you will realize as much as we are smiling we are suffering somehow. Secondly, let our allowances march that of officers in the same cadre in judiciary.	The comment is one of the items SRC shall consider as part of the 3 rd remuneration review cycle 2021/22 – 2024/25.	The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.
18.	Aggrey Omolo I kindly request for the review of the civil servant salary. This is because the cost of living has skyrocketed . Most of the civil servant at lower cadar can not afford three meals a day thus can be compromised	The comment is one of the items SRC shall consider as part of the 3 rd remuneration review cycle 2021/22 – 2024/25.	The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.
19.	Brawan Kiprotich I kindly request that SRC reviews the clerical officers basic salary and allowances with a view of increasing them in a bid to confirm with high cost of living and the nature of the work.SRC should also consider promoting clerical officers who have served for more than two years and above as this will motivate them further and thus enhance efficiency at work. I will greatly appreciate your kind consideration.	The comment is one of the items SRC shall consider as part of the 3 rd remuneration review cycle 2021/22 – 2024/25.	The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.
20.	Lilian mawilu Mumo Salaries should be reviewed for public servants especially officers in job groups J and below. Life has become so expensive now, they are barely surviving. House and commuter allowances too should be reviewed too	The comment is one of the items SRC shall consider as part of the 3 rd remuneration review cycle 2021/22 – 2024/25.	The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.
21.	Benson Mulwa We argue the commission to allow those are in lower job group (A-F to be allowed to move to another cadre that is senior support staff to move up as clerical officers instead of retiring as support staff and they are capable of doing clerical jobs	Management of scheme of service is in the purview of employing institutions.	
22.	Emmanuel Kipruto We appreciate the work of this commission. Since the enactment of new	The comment is one of the items SRC shall consider as part of the 3 rd remuneration	The Commission shall advise on salary structures under the third

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>constitution in 2010 civil servants in lower cadre the salaries have been increased. The CBA of 2017 ended on 2021. The new CBA was to begin being implemented on 2021- 2025 which the commission frozen the increment that to COVID 19 and economy had recovered. Later the commission rewarded the MCAs with a package the same year. It is my request to SRC to also remember the CBA of 2020 of civil servants to implement so as to care for low cadre of civil servants.</p>	<p>review cycle 2021/22 – 2024/25.</p>	<p>remuneration review cycle upon the lapse of the freeze period.</p>
23.	<p>Monicah Wambua Please review house allowance and commuter allowance for clerical officers. Regards</p>	<p>The comment is one of the items SRC shall consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
24.	<p>Geoffrey Marube We need basic and allowances to tally with other parastatals</p>	<p>The comment is one of the items SRC shall consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
25.	<p>Wilfred Muriuki</p> <ul style="list-style-type: none"> - I would like to salary and allowances be harmonise to all cadre, for example a clerical officer stationed at huduma Centre earns 15,000 more than a clerical officer stationed at DCC's or Cc's office in the same locality; - House allowance also to be increased for example at EMBU, house rent is 5,500 whereas we are allocated 3,850 which is far below you; - Clerical officer is the cadre with the least job group and the only cadre requires one to sit for an exam to be promoted yet you can pass the exam and stagnate for years; <p>You can imagine how someone feels when you're employed and do almost all the work in an office where your boss pockets 5 times more than you. For example example DCC's Office, they are given fuel, cars, AIE, government house, and still needs clerk to help them can't we even be given an allowance or AIE to cater for our needs, remember we're also Kenyans with children to feed and pay school fees like them.</p>	<p>The comment is one of the items SRC shall consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
26.	<p>Irene mwikali munyao Great Job</p>		

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
27.	<p>Said Lugo Mwachiti I would wish to comment that the salary gap of the subordinate staffs in the ministries and the other government agencies are very big. Therefore, SRC kindly look to raise some of the allowances and salaries to the staffs working in the ministries. For example; a clerk in the ministry of Interior earns Gross of Kshs.25000 while in the Judiciary earns Kshs.80000 with all facing the same price of Unga. Too demoralizing.</p>	<p>The comment is one of the items SRC shall consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
28.	<p>Dominic Cheburet We request the review of salaries as far as academic/performance credentials are concerned.</p>	<p>Academic qualification is one of the compensable factors considered in job evaluation for assigning relative worth of the job and subsequently development of the salary structure. This is one of the items SRC will consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
29.	<p>Stephen Kuya Lokiru Civil servant are the lowest paid officers, there salaries must be reviewed</p>	<p>The comment by is one of the issues SRC will consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
30.	<p>Stephen Okumu Why is there perennial salary delays in Homabay? Currently the county staff are being paid January salaries using February AIE most probably meaning someone must have misappropriated some salaries in the past. Are you the right agency to handle this?</p>	<p>The views go beyond the scope and objective of the draft regulations.</p>	
31.	<p>Anne Atieno Ogutu There should be equity and harmonized civil servants' allowances. House allowance should be reviewed. Suba should be considered as hardship area.</p>	<p>The comment by is one of the issues SRC will consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25. SRC is currently undertaking a study on house rent and transport rates across the country which will inform review of house allowance, commuter allowance and hardship allowance.</p>	<p>A study to inform review of house allowance, commuter allowance and hardship allowance is ongoing.</p>
32.	<p>Tobias Otieno Am not impressed with the monthly salary delay with no notice it hurts us when it comes to humiliation we encounter with tenants, delevance to pay</p>	<p>The views go beyond the scope and objective of the draft regulations.</p>	

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	rent, treatment when NHIF reads red, children sent home for school fees unpaid, unable to support church projects when in the list of eg. harambee. Payment should be based on performances, years of service and level of education.		
33.	Kiprop Kevin The drivers are underpaid and work throughout the week and weekends too without overtime or weekend allowances. Please consider to add something on their basic pay. Thanks	The comment by is one of the issues SRC will consider as part of the 3 rd remuneration review cycle 2021/22 – 2024/25	The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.
34.	Odoro O. Jacob As much as the salary and management of human resource is concerned, it's still much far better the way we were at the National. Counties are unable to handle human resource and salary. Delay in payment, No promotions, and no motivation to the workers 10 yrs.' down the line we are stagnated in same job group. statutory deductions aren't remitted.	The views go beyond the scope and objective of the draft regulations.	
35.	Hillary Oracha Would love to know your take with regards to health risk allowances to nutritionists. The cadre has been disenfranchised in this regard and the irony is that the risk as defined under the health act of 2017, Occupational Health and Safety act clearly earmarks the environment and the hazards that informed the award of the allowance. The cadre works within this same environment but when it comes to being protected nothing has been forthcoming. Need to have a broad conversation over the same	SRC has advised on salaries and allowances for health workers.	
36.	Juma Jaffar Looking forward for favorable and pleasing entities into the pay slip for civil servants	Not clear.	
37.	Enock Osire Employees of county governments are never paid on time. There is a perennial problem of salary delay, as a result, the people of Kenya are not served effectively. The solution to this problem lies with SRC convening the following stakeholders for a collaborative discussion; COG, National treasury and Workers Unions preferably UKCS. I strongly believe that the above stakeholders are able to find a long lasting solution to this problem. They should be able to;	The views on delayed salaries go beyond the scope and objective of the draft regulations. With regard to hardship allowance, SRC is currently undertaking a study on house rent and transport rates across the country which will inform review of house allowance, commuter allowance and hardship allowance.	A study to inform review of house allowance, commuter allowance and hardship allowance is ongoing.

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>(a) Unravel weaknesses in the law and suggest amendments;</p> <p>(b) Amend county budget process and approval bureaucracy</p> <p>(c) s to exclude wages vote; and</p> <p>(d) Removal of incompetent county employees attached to finance and payroll department.</p> <p>The other issues I want SRC to take up seriously are;</p> <ol style="list-style-type: none"> 1. Hardship allowance to Suba region of Homabay county and other listed regions; and 2. Harmonisation of house allowance to civil servants. 		
38.	<p>Patrick Otiende Abondo</p> <p>In the last review of salaries Enrolled nurses were only added one job group for progression (up to L) while KRN's were awarded up top 4 job groups, please do something we are demotivated, you could have given us even up to March.</p>	SRC has advised on salaries and allowances for health workers.	
39.	<p>Jared Odhiambo Onyango</p> <p>As Clinical Officers, we need enhanced risk allowance. As the gatekeepers and first in contact with any patient before they are diagnosed and admitted, we meet them and find the diagnosis. The rest only deals with something that is already known and are able to adjust their PPEs accordingly. Thanks</p>	SRC has advised on salaries and allowances for health workers.	

Table 3 presents specific comments and feedback from stakeholders.

Table 3: Input from Stakeholders, observation and recommendations to the Commission on specific clauses of the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>Enabling clause IN EXERCISE of the powers conferred by section 26 of the Salaries and Remuneration Commission Act, 2011, the Chairperson of the Salaries and Remuneration Commission makes the following Regulations—</p>	<p>Parlscm 1. "The draft Regulations are made pursuant to section 26 of the Salaries and Remuneration Commission Act, (No. 10 of 2011) which provides that- <i>"(1) The Commission may make regulations generally for the better carrying into effect of any provisions of this Act.;</i> <i>(2) The power to make Regulations shall be exercised only after a draft of the proposed Regulations has been approved by the National Assembly."</i> Proposal The enactment clause should be re-done to conform to section 26 of the Salaries and Remuneration Commission Act, and sections 13(a) and (h) of the Statutory Instruments Act. The power to make Regulations is granted to the Salaries and Remuneration Commission AND NOT the "Chairperson" whose role is to sign the Regulations. This is a drafting and policy error that ought to be corrected. 2. Pursuant to section 26(2) of the Salaries and Remuneration Commission Act, the draft Regulations can only be published after a draft of the proposed Regulations has been approved by the National Assembly. The Regulations refer to the word "Commission" severally in the text/body. Proposal The enactment clause should therefore indicate that the Regulations are made by the Salaries and Remuneration Commission after approval by the National Assembly.</p>	<p>The enabling clause should be aligned to the provisions of Section 26 (1) and (2) of the SRC Act as well as section 13 (a) and (h) of the Statutory Instruments Act.</p>	<p>Adopt the proposal by Parliament. Enabling clause should now read: IN EXERCISE of the powers conferred by section 26 of the Salaries and Remuneration Commission Act, 2011, the Commission makes the following regulations.</p>
	<p>CRA It is not the chairperson's task to make regulations rather it is the work of the commission as a whole.</p>	<p>The enabling clause should be aligned to the provisions of Section 26 (1) and (2) of the</p>	<p>Adopt the proposal by CRA.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>Replace the word Chairperson with the commission to say "IN EXERCISE of the powers conferred by section 26 of the Salaries and Remuneration Commission Act, 2011, the Commission makes the following regulations</p>		<p>SRC Act as well as section 13 (a) and (h) of the Statutory Instruments Act.</p>	
<p>1. Short title These Regulations may be cited as the Salaries and Remuneration Commission (Remuneration and Benefits of State and other Public Officers) Regulations, 2022.</p>			
<p>2. Interpretation In these Regulations, unless the context otherwise requires—</p>			
<p>"allowance" means payment made to State or other public officers in addition to the basic or consolidated salary, as the case may be, for purposes of compensation, or any facilitative payment made to State or other public officers;</p>	<p>Parliscom Facilitative payments are neither remuneration nor benefits and therefore fall outside the mandate of the Salaries and Remuneration Commission. Facilitative payments are simply monies paid to State and public officers to enable them undertake their functions. The monies must be accounted for and do not benefit or remunerate the State or public officer. Examples of facilitative payments include imprest and per diem. Proposal The phrase "...or any facilitative payment made to State or other public officers..." should therefore be deleted</p>	<p>The proposed amendment raises issues on the mandate of SRC vis a vis Parliscom.</p>	<p>SRC to consider dropping the word "facilitative" in the definition of allowance. In the alternate, SRC to adopt an ordinary definition of allowances as follows: "Allowance" means any additional emoluments payable over and above the basic or consolidated salary, directly or indirectly, to a State or other public officer and arising out of the employment of that State or other public officer.</p>
<p>"benefit" means financial or non-financial compensation that is provided to a State or other public officer in addition to the basic or consolidated salary;</p>	<p>EACC It is proposed that the definition of benefits includes allowance and the rationale is that the term benefit includes both financial and non-financial compensation in addition to basic salary whereas allowance means financial payment made in addition to basic or consolidated salary. The term benefit therefore includes allowance.</p>	<p>The proposals defines benefit to include allowance.</p>	<p>Adopt the provision of the draft regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
Commission	<p>County Assembly of Makueni Proposes that the clause clarifies which benefits are nonfinancial.</p> <p>Parlscom The Regulations refer to the word "Commission" severally in the text/body. Proposal There should be a definition of the term "Commission" as the Salaries and Remuneration Commission.</p> <p>County Assembly of Makueni Proposes the interpretation clause to define the word Commission as used in the regulation so as to provide a distinction from other Commissions.</p> <p>NPSC The term 'Commission' is not defined though it used severally in the document. Define the term "Commission" as 'the Salaries and Remuneration Commission established under Article 230 of the Constitution'</p>	<p>The proposal requires SRC to list all allowances in the definition section. This may not be practical.</p> <p>The proposal is in order.</p> <p>The proposal is in order.</p> <p>The proposal is in order.</p>	<p>Proposal to have an addendum that will list all the allowances.</p> <p>Define the term "Commission" as follows: "Commission" means the Salaries and Remuneration Commission established by Article 230 of the Constitution;</p>
"compensable factor" means job attribute(s) used to provide a basis for determining the worth of a job in relation to other jobs.	<p>CRA This limits the definition to the standards set by KNBS only. How about other labor laws like ILO? Proposal Cost of living means the cost of goods and services as indicated in legislation and labor guidelines.</p> <p>IBEC To define under R2, the term "defined contribution" cited under R8(5) in terms of the relevant statute.</p>	<p>Only KNBS is mandated to set the rate of consumer price index.</p>	<p>Adopt the provision of the draft regulations.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised</p>
"cost of living" means the cost of purchasing goods and services as measured by the changes in the Consumer Price Index as provided by the Kenya National Bureau of Statistics from time to time; "defined contribution"			

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		<p>regularly review with regard to State officers; and b) advise the national and county governments with regard to other public officers.</p> <p>There exist 13 legal framework that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities.</p> <p>Public Service Superannuation Scheme Act, 2012 defines "contribution" to mean the amount payable by a member and by the Government into the Scheme;</p>	by the RBA.
<p>"job description" means a standardized documentation of the duties, responsibilities, reporting relationships, critical performance areas and working conditions , and the minimum qualifications, experience, skills and competences required to perform a job;</p>	-	-	-
<p>"job description manual" means a document containing approved job descriptions;</p>	-	-	-
<p>"job evaluation" means a systematic and objective process of determining the worth of a job in relation to other jobs for purposes of establishing a rational grading structure;</p>	<p>Public Service Commission The interpretation of "job evaluation" violates the mandate of PSC under Article 234(2)(a) (i) of the Constitution as read together with Section 27 of the Public Service Commission Act, 2017.</p> <p>Proposal "Job Evaluation" should be interpreted to mean a systematic and objective process of determining the</p>	<p>Article 234 (2) (a) (i) empowers the Public Service Commission to establish and abolish offices in the public service</p> <p>Article 252 (1) (c) empowers</p>	<p>The draft regulation be amended to clarify the purpose of job evaluation and resultant JE grading structure, without contradicting the provisions of</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>worth of a job in relation to other jobs;</p>	<p>Constitutional Commissions and Independent Officers to recruit their own staff.</p> <p>The above provisions, empowers employing institutions to establish offices and consequently organization structures. The organization structure defines a specific hierarchy within an organization and therefore the grading.</p> <p>The Draft SRC Regulation's definition of JE indicates its purpose as to establishment of a rational grading structure. Regulation 11 (c) highlights that one of the reason for conducting JE is to rationalize and harmonize job grading structures in the public service.</p> <p>Whereas the regulations provide for grading of jobs pursuant to job evaluation results for purpose of setting/advising on the appropriate salary structures, amendment to highlight to purpose of job evaluation and resultant JE grading structure should be incorporated.</p> <p>Establishment of grading</p>	<p>the Constitution.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		<p>structures is vested on the employing institutions as provided by the Constitution.</p> <p>JE should be defined within the context of Article 230 (4) of the constitution, that is; for purpose of setting/advising on the remuneration and benefits for state and other public officers.</p>	
Pension	<p>NPSC Consider the definition of pension as part of remuneration to be paid at exit from service giving effect to the function of the SRC to set and/or review pension to State Officers and Public Officers respectively.</p>	<p>Pension is a benefit. Pension is a generic term and its common parlance definition suffices.</p> <p>There exist 13 legal framework that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities.</p>	SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.
"performance" means a measure of the extent of attainment of set objectives of a public service institution's goals in an effective and efficient manner;	<p>County Assembly of Makueni Proposes the inclusion of "work environment" in defining productivity and states that work environment is a key factor in performance.</p>	Performance is a measure of the extent of attainment of set objectives of a public service institution's goals in an effective and efficient manner and work environment is not part of the measure.	Adopt the provision of the draft regulations.
"productivity" means a measure of efficiency with which inputs are translated into outputs;	<p>County Assembly of Makueni Proposes the insertion of the word "set process" immediately after the word "outputs"</p>	Productivity is a measure of efficiency with which inputs are translated into outputs. Set process is not part of the measure.	Adopt the provision of the draft regulations.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		The proposed insertion would reduce clarity on the definition.	
"public office" has the meaning assigned to it under Article 260 of the Constitution;	-	-	-
"public officer" has the meaning assigned to it under Article 260 of the Constitution;	<p>KIPPRA</p> <p>The term "other public officer" has been extensively used in the Regulations. However, there is no clear definition to the term. The Constitution under Article 260 only defines a "public officer". It would be important to clearly define the term based on the context of use or adhere to the term "public officer" as it is clearly defined.</p>	The qualification "other" is used at article 230 (4) (b) of the Constitution for purposes of setting out the mandate of SRC with respect to the remuneration and benefits of State and public officers. Note that State officers are also public officers by dint of Article 260 of the Constitution.	Adopt the provision in the regulation but cite the explanation when referring to the stakeholders.
"public service" has the meaning assigned to it under Article 260 of the Constitution;	-	-	-
"public service institution" means a State organ, a public office, a state corporation, national or county government entity and includes any institution in the public service established by law;	<p>SCAC</p> <p>The current case law position is that state corporations do not fall within the meaning of "public service" as relates to the functions of the Salaries and Remuneration Commission.</p>	Constitutional Petition 331 of 2016 referred to by SCAC has been stayed by the Court of Appeal.	<p>Substitute the term "Public Service Institution" with "employing Public Service Institution".</p> <p>The use of the term State organ implies that the body is established under the Constitution.</p>
	<p>Public Service Commission</p> <p>The interpretation of the term "public service institution" is unconstitutional as it purports to usurp the constitutional mandate of the Public service Commission specifically Art. 234(2)(g) by giving SRC the power to directly engage public service institutions that fall under the mandate of the Public Service Commission i.e. Ministries and State Corporations.</p>	The list of PSC is not exhaustive with respect to employing public institutions.	<p>SRC to consider changing public service institution to public service body.</p> <p>In defining Public service body state that it means public body as defined by Interpretation and General</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>Proposal The definition should be as follows:-</p> <p>"public service institution" means</p> <ul style="list-style-type: none"> a) Public Service Commission; b) Parliamentary Service Commission; c) Judicial Service Commission; d) National Police Service Commission; e) Teachers Service Commission; f) County Public Service Board; g) County Assembly Service Board; and h) Constitutional Commission and independent Office. 		Provisions Act (IGPA) of 1968.
<p>"review of remuneration and benefits" means evaluation of the remuneration and benefits with a view to institute change, if necessary;</p>	<p>Public Service Commission It should be amended to only provide for the definition of review.</p>	<p>The regulations include "review of remuneration and benefits" and "review cycle".</p> <p>The proposal by PSC would alter the meaning of the terminology as used in the regulations.</p>	Adopt the provision of the draft regulations.
	<p>County Assembly of Makueni Proposes that the clause to specify the type of change and the time frame for the review.</p>	The proposed definition section does not expound	Adopt the provision of the draft regulations.
<p>"review cycle" means the period after which, remuneration, allowances and benefits for State and other public officers are reviewed for budgeting and planning purposes;</p>	<p>NPSC The term "review cycle" has not been defined to include a definitive period after which SRC shall conduct a review on the remuneration and benefits of State and Public Officers unlike in the previous Regulations of 2013 - though this has been provided for under proposed Regulation 4.</p> <p>While nothing in law mandates the SRC to specify a period after which to review the same, it is important to define the period to: Provide a timeline within which the SRC will be required to conduct the review; (a) Enable institutions attract and retain employees</p>	<p>The review cycle has been defined as 4 years. The specific timelines as proposed are administrative processes.</p> <p>The issues raised by NPSC have been addressed at regulation 4.</p>	Adopt the provision of the draft regulations.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>with the requisite skills</p> <p>(b) Ensure a fair balance within the public and private sectors and</p> <p>(c) Address the economic situation of the country within a given period including cost of living.</p> <p>Consider reverting to four year period after which the review cycle is to be done or defining the period.</p>		
"reward" means an incentive awarded in recognition of an achievement of performance and productivity;	-	-	-
"State officer" has the meaning assigned to it under Article 260 of the Constitution;	-	-	-
"State officer" has the meaning assigned to it under Article 260 of the Constitution;	-	-	-
"State organ" has the meaning assigned to it under Article 260 of the Constitution;	-	-	-
"trade union" has the meaning assigned to it under section 2 of the Labour Relations Act; and	-	-	-
"unionisable employee" has the meaning assigned to it under section 2 of the Labour Relations Act.	-	-	-
3. Object of the regulations			
(1) The object of these Regulations is for the better carrying into effect the provisions of the Act.	Proposes citing of the specific section of the act that the regulation seeks to give effect to.	The issue has been addressed under the enabling clause.	Adopt as in the draft regulations.
(2) Without prejudice to the generality of sub-regulation (1), these Regulations provide the procedure for—	County Assembly of Makeni Proposes the inclusion of the word "other public officers" immediately after state officer; County Assembly of Makeni (a) Proposes the inclusion of the word "state officers" before the word "other public officers"; (b) Proposes the inclusion of the word "state officer" before the word "other public officers"; (c) Proposes the inclusion of the word "state officer" immediately after the word "benefit"; (d) Proposes introduction of a new regulation 3(3) to provide for harmonization of salaries and remuneration for state and public officers.	The proposals is contrary to the provisions of Article 230 (4) of the Constitution which defines the mandate of SRC. The proposal for introduction of a new regulation 3(3) to provide for harmonization of salaries and remuneration for state and public officers as one of the objectives of the regulations is not practical as harmonization is a progressive process which is subsumed	Adopt the provision of the draft regulations.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
(a) setting and reviewing remuneration and benefits for State officers;		under other processes provided under the draft regulations.	
(b) advising on remuneration and benefits for other public officers; and	<p>-</p> <p>CAJ The word 'other' should be deleted. The sentences should read public officers as opposed to 'other public officer' in the same way it reads in the Constitution and Salaries and Remuneration Commission Act, 2011.</p>	<p>The qualification "other" is used at article 230 (4) (b) of the Constitution for purposes of setting out the mandate of SRC with respect to the remuneration and benefits of State and public officers.</p> <p>Note that State officers are also public officers by dint of Article 260 of the Constitution.</p>	Adopt the provision of the draft regulations.
(c) reviewing remuneration and benefits of other public officers.	<p>EACC It is proposed that "other public officers" be defined in the Regulations so as to exclude State Officers and the rationale is that the use of "other public officers". Article 260 of the Constitution defines a public officer to include State Officers. This would therefore mean that the SRC cannot set the remuneration of State Officers as provided for in Article 230(2)(4) of the Constitution.</p> <p>To clear this, it is important that the term "other public officer" be defined in Regulation 2 on Interpretation as to include other public officers except State Officers.</p> <p>SCAC (With regard to Regulation 3 (2) (c)) The Constitution and law does not grant SRC the power to review remuneration of public officers, but only to advise on the remuneration and benefits. Consequently, all references in the regulations related to review of public officer remuneration and benefits is ultra vires SRC mandate.</p>	<p>The qualification "other" is used at article 230 (4) (b) of the Constitution for purposes of setting out the mandate of SRC with respect to the remuneration and benefits of State and public officers.</p> <p>Note that State officers are also public officers by dint of Article 260 of the Constitution.</p>	Adopt the provision of the draft regulations.
(c) reviewing remuneration and benefits of other public officers.		<p>Owing to the ambiguity of the word "reviewing" it would be necessary to qualify it to address the concerns raised by the stakeholders.</p>	Amended Regulation 3 (2) (c) to read: Keeping under review all matters relating to salaries and remuneration of other public officers.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>4. Review cycle (1) The Commission shall undertake a review of —</p>	<p>Public Service Commission 3(2)(c) The provision contravenes Art. 234(2) (g) of the Constitution and it also contravenes the provisions of Section 11(b) of the Salaries and Remuneration Act which only gives SRC the power to keep under review all matters relating to the salaries and remuneration of public officers. It should be noted that under Article 230(4) of the Constitution SRC is only mandated to set and regularly review the remuneration and benefits of all State Officers and to advise the National and County Governments on remuneration and benefits of all other public officers. Therefore, SRC cannot give itself powers, through Regulations, that exceed their Constitutional powers and functions.</p> <p>Public Service Commission The entire clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act. 4. (1) The Commission shall – (a) undertake a review of State Officers' remuneration and benefits every four years; (b) Keep under review other public officers' remuneration every four years; and (c) Keep under review allowances and benefits of other public officers." (3) The Commission may, notwithstanding the provisions of sub-regulation (1), undertake a special review of the remuneration and benefits of State officers to address emerging circumstances and conditions.</p>	<p>Owing to the ambiguity of the word "reviewing" it would be necessary to qualify it to address the concerns raised by the stakeholders.</p>	<p>Amended Regulation 3 (2) (c) to read: Keeping under review all matters relating to salaries and remuneration of other public officers.</p>
<p>(1) The Commission shall undertake a review of —</p>	<p>The draft Regulations outline the Commission's mandate with respect to State and other public officers. The mandate of the Commission with respect to setting the remuneration and benefits for State officers is distinct from that of advising national and county governments on the remuneration and benefits of other public officers.</p>	<p>Amend the provisions of Regulation 4 to now read: 4 (1) The Commission shall review and set remuneration and benefits for State officers every four years. 4 (2) The Commission shall review and advise on remuneration and benefits for public officers every four years.</p>	<p>Amend the provisions of Regulation 4 to now read: 4 (1) The Commission shall review and set remuneration and benefits for State officers every four years. 4 (2) The Commission shall review and advise on remuneration and benefits for public officers every four years.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>COTU</p> <p>According to International Labour Standards and various international Labour Organization (ILO) recommendations, a CBA should be within the period of two years. Kenya being a member of the ILO and a signatory to various ILO Conventions, MUST always take this Recommendation serious. A CBA must be reviewed within two years to take into consideration inflation, purchasing power parity and other changes in the economy. Anything above two years ceases being a CBA and becomes an MoU.</p> <p>COTU (K) strongly believes that a four (4) year review period is too long thus efforts to reduce it to two (2) years should be carried out to harmonize with all sectors. This is equally in line with the Wage Guidelines issued by Ministry of Finance in November 2005 guideline number 4 which states that wages /salaries should be reviewed once every 24 months and in addition we know that the Kenyan Government Budget is reviewed every year.</p> <p>Secondly, timelines should be clearly spelt out so that all activities towards salaries and remuneration are carried out within a specific period to enable the parties concerned to effectively engage prior to review of remuneration and benefits.</p>	<p>The proposal by COTU was considered unfortunately the International Labour Organization Conventions does not make provision or recommendation that CBAs should be within the period of two years.</p>	<p>Propose that the said the provisions of Regulation 4 be amended as follows;</p> <p>4 (1) The Commission shall review and set remuneration and benefits for State officers every four years.</p> <p>4 (2) The Commission shall review and advice on remuneration and benefits for public officers every four years.</p>
	<p>County Assembly of Makueni</p> <p>Proposes insertion of the word "state officers" immediately after the words "benefits of"</p>	<p>The proposal would duplicate the provisions of regulation 4(1)(a).</p>	<p>"</p>
<p>(a) State Officers' remuneration and benefits every four years;</p>	<p>CRA:</p> <p>4(1)(a) does not refer to review of State Officers' allowances. It should include review of state officers' allowances.</p>	<p>Remuneration for state officers is consolidated.</p>	<p>"</p>
<p>(b) other public officers' remuneration</p>	<p>County Assemblies Forum</p>	<p>Section 11 (b) of the SRC Act</p>	

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
every four years; and	The Constitution does not give SRC the mandate to 'review other public officers' remuneration. Rather, SRC's mandate is limited to 'advise' the public institution involved which has autonomy over its affairs. Amend to retain the mandate of SRC on remuneration and benefits of other public officers as advisory.	mandates SRC to keep under review all matters relating to the salaries and remuneration of public officers.	"
	CRA: 4(1)(a/b) This seems to interfere with independent offices, policy organs and other government levels. SRC can evaluate but as advisory only. The other institutions can independently carry out this evaluation and set SRC advice as a threshold. SRC to only advice every 4 years.	Section 11 (b) of the SRC Act mandates SRC to keep under review all matters relating to the salaries and remuneration of public officers. The Court of Appeal in TSC -vs- KNUT case affirmed the advice of SRC to be binding.	Adopt the provision of the draft regulations.
(c) allowances and benefits of other public officers.	KIPPRA The timeline for the review of the allowance and benefits of other public officers is not provided. As provided, in section (a) and (b), the Commission could consider stating the stipulated timelines.	The purpose for not setting a timeline for review of allowances and benefits for other public officers is to give the Commission a leeway to review when appropriate and also to manage expectations.	The Commission may consider review of allowances and benefits for other public officers every four year as part of the remuneration review cycles.
	KDF It is proposed that under sub regulation 4 (1) (c) allowances and benefits of all other public officers be reviewed every four years as stated under sub regulation 4 (1)	"	"
	EACC It is proposed that for regulation 4(1)(c), there be a provision for the time frame for the review of allowances and benefits for public officers as has been provided in 4(1) (a) and (b). The rationale is that for fairness to public officers there needs to be a timeline within which allowances and benefits will be reviewed. A timeline has been provided for the review of benefits for state officers.	"	"

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>CRA: 4(1)(c) It does not refer to the duration for review of Other public officers' allowances and remuneration. It should stipulate the duration for review.</p> <p>NPSC The SRC should be clear after how long it will review allowances and benefits of Public Officers other than that of State Officers (refer to proposed sub-Regulation 4 (1) (c)) noting that where need arises to review allowances and/or benefits, the SRC is allowed to conduct a special review under proposed sub- 1 Regulation 4 (3) In addition, the SRC needs to take into consideration inflation coupled with economic in recession in African states. Consider specifying the period after which allowances and benefits of Public Officers other than that of State Officers to every three or four years.</p>	"	"
(2) The Commission shall undertake the review taking into account the applicable national budgeting and planning cycles.	<p>PARLSCOM This is contrary to section 11(e) of the Principal Act which provides for the Commission to simply undertake the review. It is thereafter the responsibility of Parliament to determine whether to allocate funds for implementation of the review. It is Parliament's role to make the budget as well as plan for the country's medium term expenditure framework. The Commission should therefore work closely with Parliament and the National Treasury with undertaking reviews of remuneration and benefits.</p>	The proposed regulation is not contrary to Section 11(e) of the Principal Act which outlines "determine the cycle of salaries and remuneration Review upon which Parliament may allocate adequate funds for implementation". Rather, it gives effect and clarifies Section 11(e) of the SRC Act.	Adopt as proposed in the regulations.
(3) The Commission may, notwithstanding the provisions of sub-regulation (1), undertake a special review of the remuneration and benefits of State and other public officers to address emerging circumstances and conditions.	<p>IGRTC The Regulations should indicate clear circumstances that may necessitate a special review. The term 'emerging circumstances and conditions' may lead to ambiguity in interpretation by the various stakeholders</p> <p>CRA The regulation refers to the review of remuneration and benefits in several other sections and omits allowances</p>	It is not practical to list all emerging circumstances and conditions that would warrant a special review. Allowances are a subset of benefit.	Adopt the contents of the Regulation. Adopt the provision as contained in the regulations.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>altogether. The review should include allowances.</p> <p>County Assembly of Makueni Proposes the regulation to specify the emerging circumstances and conditions for ease implementation as when the need arises e.g political instability, inflation, pandemic, endemic.</p> <p>County Assemblies Forum The Constitution does not give SRC the mandate to 'review other public officers' remuneration. Rather, SRC's mandate is limited to 'advise' the public institution involved which has autonomy over its affairs. Amend to retain the mandate of SRC on remuneration and benefits of other public officers as advisory.</p>	<p>It is not practical to list all emerging circumstances and conditions that would warrant a special review.</p> <p>Section 11 (b) of the SRC Act mandates SRC to keep under review all matters relating to the salaries and remuneration of public officers.</p>	<p>Adopt the contents of the Regulation.</p> <p>Adopt the contents of the Regulation subject the proposed amendments in 4(1).</p>
<p>5. Requirements and procedure for submission of relevant information (1) Whenever a review is due, the Commission shall call for relevant information from public service institutions, on remuneration and benefits for their respective State and other public officers.</p>	<p>SCAC The regulation should follow the constitutional mandate of SRC to advise Government. Advise to national government (the Executive branch in particular) has already been guided to be channeled as above. This principle applies in all references in the regulations on communication to and from public service institutions under the national executive e.g (7)(1); 13(1)(f); 13(2)(e) and (f); 14(1); 15 (1) to (8); 17; 19 (2); 20(1) and (2); 22; 27; 28; 30(4); 31.</p>	<p>Pursuant to Article 230(4) of the constitution, SRC is mandated to set remuneration and benefits for state officers and advise the national and county governments on the remuneration and benefits of all other public officers.</p> <p>There are several public service employing institutions in the nation and county governments.</p>	<p>SRC to consider amending public service institution to public body.</p>
	<p>Public Service Commission: The clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act. 5(1) Whenever a review is due, the Commission shall call for relevant information from public service institutions, on remuneration and benefits for their respective State officers.</p>	<p>Section 11 (b) of the SRC Act mandates SRC to keep under review all matters relating to the salaries and remuneration of public officers. The Commission may therefore call for relevant information from public service institutions on remuneration and benefits for other public officers.</p>	<p>Adopt the provision as contained in the regulations subject to the amendment above.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
(2) Submission of relevant information under sub-regulation (1) shall be made— (a) in writing; and			
(b) in a format and within such timelines as may be prescribed by the Commission.	<p>NPSC Proposed sub-regulation 5(2)(b) provides that there will be a format within which all Public Service Institutions are to provide for a review to be conducted. A format needs to be provided to give legal effect, noting that SRC has made it mandatory. Consider providing for timelines within which Public Service Institutions will be required to give information to SRC at proposed regulations (5), noting the need for efficiency and accountability</p>	That submission of relevant information to SRC is administrative in nature and the format may vary from time to time due to the variance of information required.	Adopt the provision as proposed in the regulations.
<p>6. Parameters for review of remuneration and benefits The Commission shall, in undertaking a review in accordance with these Regulations, consider</p>	<p>EACC: Regulations 6 and 9 seem to be discussing the same things. It is therefore proposed that regulation 6 be deleted and regulation 9 be left. The rationale is to avoid duplication/repetition.</p> <p>OCOB Merge Clause 6 and 9 of Regulations. This will avoid duplication of the provisions and improve the flow of the Regulations.</p> <p>NPSC The SRC ought to consider changes in the work environment especially within the security sector as a parameter to be considered during the review of remuneration</p> <p>Public Service Commission The clause contravenes the mandate of the Public Service Commission under Article 234(2) (a) (i) as read together with Section 27 of the Public Service Commission Act. The clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.</p> <p>Proposal It should read as follows:</p>	The provisions of Regulation 6 and 9 are similar.	Proposed to merge the provisions of regulation 6 and 9.
		Changes in the work environment are some of the factors taken into account during job evaluation.	Proposal not adopted as the same is addressed under regulation 9 (g) on job evaluation.
		The mandate of SRC to conduct job evaluation in the public service is provided for in Section 11 (d) of the SRC act. In addition, the Court of Appeal in the TSC v KNUT & 3 Others [2015] eKLR case also found and held that SRC has a role to play in job	Adopt clause 6(d) as contained in the regulations.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>The Commission shall, in undertaking a review or keeping under review all matters relating to the salaries and remuneration of public officers in accordance with these regulations, consider -</p> <p>(a) the principles set out under Article 230 (5) of the Constitution, Section 12 of the Act and other legal provisions;</p> <p>(b) the economic performance of the country;</p> <p>(c) the outcome of comparative surveys on the labour markets and trends in remuneration; and</p> <p>(d) the job evaluation results as undertaken by public service institutions.</p>	<p>evaluation of public officers.</p> <p>Allowing institutions to undertake job evaluation may lead to disparities and thus hinder SRC from objectively discharging its mandate.</p>	
(a) the principles set out under Article 230 (5) of the Constitution, Section 12 of the Act and other legal provisions;	<p>Parlscm Reference to the words "other legal provisions" in the proposed Regulation 6(a) are vague and should clearly specify the written laws that the principles are anchored on.</p> <p>Proposal These include the Employment Act, the Income Tax Act, the Public Service Commission Act, the Parliamentary Service Commission Act, the Judicial Service Commission Act, the Retirement \Benefits Act, the Pensions Act, the Parliamentary Pensions Act, and the Retirement Benefits (Deputy President and Designated State Officers) Act.</p>	<p>It may not be practical to set out in these regulations all the other legal provisions the Commission shall take into account when reviewing remuneration and benefits.</p>	<p>SRC has retained the provisions of the draft regulation.</p> <p>Delete the words "other legal provisions" and substitute with "other applicable laws".</p>
(b) the economic performance of the country;	-	-	-
(c) the outcome of comparative surveys on the labour markets and trends in remuneration; and	-	-	-
(d) the job evaluation results.	-	-	-
	<p>CAJ The Commission should also consider other factors in undertaking a review.</p> <p>Proposal Factors such as the 'nature and risks' involved in a job should be taken into consideration by the Salaries and Remuneration Commission.</p>	<p>Changes in the work environment are some of the factors taken into account during job evaluation as one of the compensable factors.</p>	<p>Proposal not adopted as the same is addressed under regulation 9 (g) on job evaluation.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>COTU Proposed an additional clause (e) to include Wage guidelines, 2005.</p> <p>County Assembly of Makeni Proposes insertion of new regulation 6 (e) on Collective Bargaining Agreement and states that when undertaking a review the Commission should consider other factors like the Collective Bargaining Agreement.</p>	<p>The concerns have been addressed under Regulation 9 (k)</p> <p>The concerns have been addressed under Regulation 9 (i)</p>	<p>The concerns have been addressed under Regulation 9 (k)</p> <p>The concerns have been addressed under Regulation 9 (i)</p>
<p>7. Review of allowances and other benefits (1) The Commission shall undertake periodic review of allowances and other benefits and advise public service institutions taking into account provisions of regulations 4 and 6.</p>	<p>EACC: It is proposed that a time frame for the review of allowances and benefits for public officers be provided as has been provided for state officers in Regulation 4(1)(a). The rationale is that for fairness to public officers there needs to be a timeline within which allowances and benefits will be reviewed. A timeline has been provided for the review of benefits for state officers.</p> <p>Public Service Commission The clause contravenes on the mandate of the Public Service Commission under Article 234(2) (a)(i) as read together with Section 27 of the Public Service Commission Act. The clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.</p> <p>Proposal The Commission shall undertake periodic review or keep under review, as the case may be, allowances and other benefits and advise public service institutions taking into account provisions of regulation 4.</p>	<p>Proposal is in order.</p> <p>Proposal is in order.</p>	<p>The proposal has been reflected in the revised regulation 4 (2).</p> <p>The proposal has been reflected in the revised regulation 4 (2).</p>
<p>(2) The Commission shall from time to time issue guidance to give effect to the provisions of sub regulation 1.</p>	<p>Parliscom Regulation 7(2) contravenes section 13(m) of the Statutory Instruments Act. Regulation 7(2), in effect, delegates the power to make further statutory instruments to the Commission without reference to the legislative role of Parliament. Article 94(5) of the Constitution of Kenya, 2010 states as follows:</p>	<p>Proposal is in order.</p>	<p>Consider reviewing the provisions of Regulation 7(2).</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p><i>"No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation."</i></p> <p>This is further contrary to section 13(m) of the Statutory Instruments Act as it amounts to an inappropriate delegation of legislative powers.</p> <p>The guidelines contemplated should be set out in the Regulations for approval together with the other provisions of the Regulations.</p> <p>Regulation 24(e) contravenes section 13(m) of the Statutory Instruments Act as it amounts to an inappropriate delegation of legislative powers.</p> <p>Regulation 29(2) is in contravention of section 13(m) of the Statutory Instruments Act in so far as it purports to delegate the timelines for submission of the information sought.</p> <p>Regulation 32 is in contravention of section 13(m) of the Statutory Instruments Act in so far as it purports to give powers to the Commission to issue guidance on implementation of the Regulations and amounts to an inappropriate delegation of legislative power.</p>		
	<p>KDF</p> <p>It is proposed that any reviews and benefits be undertaken for both State and other public officers at the same time (concurrently) in place of the current practice where review for State officers are different from that of other public officers.</p>	Proposal is in order.	The proposal has been reflected in the revised regulation 4 (2).
	<p>County Assembly Of Makueni</p> <p>Proposes the replacement of the word "guidance" with "guidelines"</p>	Proposal is in order.	Consider reviewing the provisions of Regulation 7(2).
SETTING BENEFITS AND SALARIES FOR BOTH LEVELS OF GOVERNMENT	<p>CRA</p> <p>To include a section to seek recommendations from CRA before setting benefits and salaries for both levels of government to avoid any confusion based on the equitable allocation.</p> <p>There have been several conflicts between the equitable allocations and the advice on benefits and salaries for</p>	CRA has proposed an additional regulation 7A to incorporate cognizant CRA equitable share to counties when it comes to the county ceilings. The proposal by CRA will ensure affordability and	SRC to consider adopting the proposal by CRA on regulation 7A to incorporate cognizant CRA equitable share to counties when it comes to the county ceilings.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>government officials specifically county governments and CRA ceilings.</p> <p>Proposal Insert a regulation to say "When advising on remuneration and benefits for the County governments, SRC will seek advise from the CRA on the thresholds available for setting the ceilings.</p> <p>Public Service Commission: The entire clause contravenes the provisions of, among others, the Presidential Retirement Benefits Act, Retirement Benefits (Deputy President and Designated State Officers) Act, Retirement Benefits Act, Pensions Act and the Public Service Superannuation scheme Act.</p> <p>Proposal Clause 8 should be deleted in its entirety.</p>	<p>fiscally sustainability of remuneration and benefits payable in the county governments.</p> <p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>
<p>8. Pension (1) The Commission shall set the pension or gratuity due to a State officer.</p>	<p>MINISTRY OF EAST AFRICAN COMMUNITY AND REGIONAL DEVELOPMENT SRC may consider and in conjunction with Treasury on how pension may be fully privatized.</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		<p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	<p>Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>
<p>KDF Regulation 8 violates section 244(1) of the KDF Act providing pension as it is usurping the powers of the Defence Council (DC) and the Treasury to provide for and review pension regulation for KDF personnel. In addition, the draft regulation comprise subsidiary legislation which improperly purport to amend statute.</p>		<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>
<p>TSC The First Schedule of Pensions Act provides for a formula for calculation of pensions due to a public officer. Further, Public Service Superannuation Scheme Act</p>		"	"

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>provides for contributions and payment of retirement benefits for defined contribution. It is our considered view therefore that the proposed regulation tend to bestow functions provided by other statutes on SRC without any basis in law.</p> <p>Proposal The entirety of Regulation 8 be deleted.</p>		
	<p>OCOB Pensions should be addressed by the Pension Act. Further, from practice, seconded staff can earn both pension and gratuity since institutions are required to remit pensions to Director Pensions. The Pension is based on the officer's basic salary from the parent ministry. At the end of the contract, the officer is paid gratuity based on the basic salary at the institution where the officer is on secondment.</p> <p>Proposal Regulation 8 should be deleted.</p>	"	"
	<p>NPSC It would be prudent to provide that the SRC shall, in consultation with the National Treasury set the pensions of State Officers and advice and review the pensions of other Public Officers, noting that the National Treasury is mandated with the formulation and management of national pensions.</p>	"	"
	<p>Parlscom The Regulations should provide that the pension or gratuity shall be based on a scientific formula and further be in tandem with the relevant pension laws (Retirement Benefits Act, the Pensions Act, the Parliamentary Pensions Act, and the Retirement Benefits (Deputy President and Designated State Officers) Act. This shall bring the Regulations into conformity with section 13(k) of the Statutory Instruments Act which provides that statutory instruments should not make</p>	The determination of pensions may require one or more formulas scientific or otherwise, and therefore the process cannot be fixed in the regulations based on one formula.	"

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>rights, liberties or obligations of any person unduly dependent on insufficiently defined administrative powers.</p> <p>COTU</p> <p>States that pension benefit are meant to cushion retirees and trustees are appointed to ensure members get maximum benefit.</p> <p>It states that the Commission ought not to dictate the type of scheme;</p> <p>It also states that Pension is guided and regulated through the RBA and the proposed change by SRC shall interfere and conflict with the mandate of RBA under the Act that governs it.</p> <p>Further states that the Authority outlines how contribution by employer and employee can be set out and SRC cannot determine what level of contribution can be made and how trustee to pension scheme can be appointed.</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to:</p> <p>a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>
<p>County Assembly Of Makueni</p> <p>Proposes the insertion of the word " set" immediately after "shall"</p>	<p>immediately</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to:</p> <p>a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		<p>public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	
<p>(2) The Commission shall advise on the pension or gratuity due to other public officers.</p>	<p>SCAC This proposal is ultra vires the mandate of SRC. Pension in public service is guided by the Public Service Superannuation Scheme and pensions Act as advised by the National Treasury in consultation with other relevant Government entities.</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>
	<p>NPSC It would be prudent to provide that the SRC shall, in consultation with the National Treasury set the pensions of State Officers and advice and review the pensions of other Public Officers, noting that the National Treasury is mandated with the formulation and management of national pensions.</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		<p>government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	<p>with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>
	<p>County Assembly of Makueni Proposes the insertion of the word " set" immediately after "shall"</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to:</p> <p>a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>

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	<p>ICPAK</p> <p>The provision leaves room for public service institutions to set pension or gratuity to other public officers. With the growing burden of pensions due to public officers, there is need for harmonization so as to ensure pensions due are sustainable.</p> <p>Proposal</p> <p>Amend regulation 8(2) to read:</p> <p>The Commission shall set the pension or gratuity due to other public officers.</p> <p>Justification</p> <p>To facilitate proper planning.</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>
<p>(3) A State or other public officer shall not be paid both pension and gratuity for the same period of service.</p>	<p>TSC</p> <p>The proposed Regulation contradicts Section 4 of the Pensions Act that provides that every person has absolute right to pensions and gratuity.</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exist 13 legal framework that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for</p>	<p>Reevaluate the provision of regulation 8 in its entirety.</p> <p>SRC to review the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8.in its entirety.	
(4) Allowances payable to State and other public officers shall not form the basis of computation of pension or gratuity.	<p>IBEC</p> <p>Notwithstanding R8(4) to consider specifying that takes effects after the next collective bargaining agreement (CBA). Housing and commuter allowance currently form part of the pensionable sum under the County Government Pension Scheme. It is a contractual matter within the CBA which may be vacated during the next negotiation.</p>	"	"
	<p>KDF</p> <p>The KDF (Pensions and Gratuities) (Officers and Service Members) Regulations, 2021 states as shown:</p> <p>Regulation 3 (1) "Pensionable emoluments" means the rate of pay including additional pay in issue to an officer or service member at the time of his retirement or discharge;</p> <p>Pensions Act CHAPTER 189 reised 2012 (1986) Regulation 2 (1) (a) "pensionable emoluments" means— (a) in respect of servie under the Government after the 31st December, 1953, includes salary, inducement and overseas addition to salary and personal allowance, but does not include duty allowance, house allowance, entertainment allowance or any other emoluments whatsoever;</p> <p>"Pensionable emoluments" includes salary and responsibility allowance but does not include any cost of living allowance, entertainment allowance or any other emoluments whatsoever, hence pensionable pay should be based on the contributions the employer makes to the pensions scheme (defined benefit) on behalf of the employee.</p>	"	"

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>From the foregoing, it is evident that some allowances counts towards pension (remunerative allowance) while others are not. The proposed regulation needs to be consistent with Pensions Acts and other regulations in use.</p>		
<p>(5) Where a public service institution establishes a pension scheme for State or other public officers, such pension scheme design shall be a defined contribution.</p>	<p>County Assembly of Embu With regard to pensions and gratuities there is need to have a clear provision on transition as officers are already in existing pension schemes that may not necessarily meet the thresholds proposed in these regulations and it is vital to allow for reasonable time for transition or at least offer guidance/timelines on how the regulation shall be implemented.</p>	"	"
	<p>Council of Governors The COG proposed Regulation 8(5) and (6) to be deleted stating that setting up of pension schemes for county government is a function of the County Government under Article 185 of the Constitution. They also stated that SRC should be able to provide guidance for County Governments by providing advice on the quantum and benefits payable to State and public officers in the counties.</p>	"	"
	<p>TSC The Public Service Superannuation Scheme Act creates a defined contribution for public service and gives guidance to contribution and payment of retirement benefits under the scheme.</p>	"	"
<p>(6) The Commission shall provide guidance to give effect to the provisions of sub-regulation 5.</p>	<p>EACC: It should be provided as to what format the guidance for the provisions of sub-regulation 5 will be. Perhaps it could be in the form of guidelines issued by the SRC. The rationale is that it will provide a way forward for the SRC to come up with this guidance.</p>	"	"
	<p>CRA: The Retirement and Benefits Act provides these guidelines. This is not a function of SRC. On the</p>	"	"

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>financial aspect, the MOF can always provide directions in the annual finance bill, therefore delete 8(6)</p> <p>Council of Governors The COG proposed Regulation 8(5) and (6) to be deleted stating that setting up of pension schemes for county government is a function of the County Government under Article 185 of the Constitution. They also stated that SRC should be able to provide guidance for County Governments by providing advice on the quantum and benefits payable to State and public officers in the counties.</p>	"	"
(7) The Commission shall undertake periodic reviews and make recommendations on pensions payable to persons eligible for such pension. (in consultation with)	<p>TSC The Public Service Superannuation Scheme Act creates a defined contribution for public service and gives guidance to contribution and payment of retirement benefits under the scheme.</p> <p>CAJ (with regard to 8 (7) and (8)) This paragraph should be amended to include a rider that any reduction in the recommended rates should not affect employees who are already benefiting from a higher rate.</p> <p>The Commission further proposes that SRC sets a fixed rate of pension contribution for the employer and employees as opposed to giving a range as is the case currently. Any reviewed rate by the Salaries and Remuneration Commission that is lower than the set rate should only affect officers who join Pension Scheme after the new rates</p> <p>This provision would ensure that there is harmony and fairness in pension contributions across the public service, and employers would not be at liberty to choose from a range.</p> <p>TSC</p>	"	"

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>The proposed Regulation extend to the mandate of SRC beyond what is provided under Section 11(g) of the SRC Act. The Regulation is thus ultra vires.</p> <p>KDF</p> <p>a. Consider a 4 (four) year review cycle instead of a periodic review which is a broad statement.</p> <p>b. Pension be protected against inflation by automatically increasing/adjusting in accordance with the inflation or</p> <p>CRA:</p> <p>The Retirement and Benefits Act provides these guidelines. This is not a function of SRC. On the financial aspect, the MOF can always provide directions in the annual finance bill, therefore delete 8(7).</p>	"	"
(8) Setting, reviewing, advising and recommendations on pension review —	-	-	-
(a) shall be subject to the prevailing economic conditions, affordability and fiscal sustainability; and	-	-	-
(b) may, among others, be informed by the outcome of an actuarial valuation.	-	-	-
(c)	<p>County Assembly of Makueni</p> <p>Proposes the insertion of a new regulation 8(8)(c) on the Collective Bargain Agreement.</p> <p>Proposes that pension review exercise should consider among other issues the Collective Bargain Agreement.</p> <p>EACC</p> <p>Regulations 6 and 9 seem to be discussing the same things. It is therefore proposed that regulation 6 be deleted and regulation 9 be left.</p> <p>The rationale is to avoid duplication/repetition.</p> <p>MINISTRY OF EAST AFRICAN COMMUNITY AND REGIONAL DEVELOPMENT</p> <p>The SRC may also consider an upward review of remuneration and benefits of the lower cadre, dut to</p>	"	"
<p>9. Considerations during setting, review and advise on remuneration and benefits.</p> <p>(1) The Commission shall, in setting, reviewing and advising on remuneration and benefits, where applicable, consider—</p>	<p>The provisions of Regulation 6 and 9 are similar.</p> <p>The comment by is one of the issues SRC will consider as part of the 3rd remuneration review cycle 2021/22 –</p>	<p>Proposed to merge the provisions of regulation 6 and 9.</p> <p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the</p>	

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>economic challenges that these employees face.</p> <p>COTU Recommends that before a review is carried out, it is important to carry out comparative survey on labour markets and trends.</p> <p>County Assembly of Makueni Regulation 9(1)(c) it proposes the word "institution" to be deleted. States that financial capacity should be of general public service and not particular public institution since all public service institution are paid from the public coffers. Proposes the insertion of the words "and benefits" immediately after the word remuneration in (1) (e) (1)(f) proposes the insertion of the word "related immediately" after the word "similar" and also proposes the words "same sector" be deleted and replaced with "public service"</p> <p>Public Service Commission Clause 6 and 9 are dealing with the same or related issue. Clauses 6 and 9 should be merged. Proposal In the merger, clause 9(1) should read: The Commission shall, in setting, reviewing or advising on remuneration and benefits, where applicable, consider ...</p>	<p>2024/25.</p> <p>The outcome of comparative surveys on the labour markets and trends in remuneration is one of the considerations provided for during setting, review and advise on remuneration and benefits under Regulation 9.</p>	<p>freeze period.</p> <p>Retain as provided in the draft regulation</p>
	<p>NPSC Alongside using comparative surveys on labour markets and trends, the SRC ought to consider risks involved in undertaking various tasks especially within the security sector.</p>	<p>Some of the factors taken into account during job evaluation as a compensable factor are risks involved in undertaking a tasks .</p>	<p>The proposal has been addressed under regulation 9 (g) on job evaluation.</p>
	<p>County Assembly of Embu For public officers, the level of education and period of active service seem not to form part of the consideration to be made during, review and advise on remuneration</p>	<p>The level of education and period of active service are some of the factors taken into account during job evaluation</p>	<p>The proposal has been addressed under regulation 9 (g) on job evaluation</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	and benefits. The regulation should be revised to include the above as consideration as they are an important factor in ensuring that there is no stagnation of officers and that relevant job experience and advanced education are rewarded in order to promote job satisfaction amongst public officers as well as retention of valuable public officers.	as one of the compensable factors.	
a. the principles set out under Article 230 (5) of the Constitution, Section 12 of the Act and other legal provisions;	<p>Pariscom Reference to the words "other legal provisions" in the proposed Regulation 9(1)(a) are vague and should clearly specify the written laws that the principles are anchored on.</p> <p>Proposal These include the Employment Act, the Income Tax Act, the Public Service Commission Act, the Parliamentary Service Commission Act, the Judicial Service Commission Act, the Retirement (Benefits Act, the Pensions Act, the Parliamentary Pensions Act, and the Retirement Benefits (Deputy President and Designated State Officers) Act.</p>	It may not be practical to set out in these regulations all the other legal provisions the Commission take into account when reviewing remuneration and benefits.	SRC has retained the provisions of the draft regulation.
b. the economic performance of the country;			
c. the capacity of a public service institution to afford the cost of proposed remuneration and benefits;	<p>CAJ This paragraph should be deleted. P.E allocations are approved by the National Assembly. The SRC should not be the determinant on whether an institution has capacity to afford.</p> <p>CRA 9(1) (c) The capacity of the public service institution is not an independent variable. It is dependent on factors that the commission should be in a position to hold constant and not allow to be relegated to the unknown. The Commission should hold constant and not allow to be relegated to the unknown.</p> <p>CRA 9(1) (d) should be added to deal with the "unique features" of public service institutions.</p>	Principle on affordability	Principle on affordability
d. the ability of a public service institution to sustain payment of remuneration and benefits;			SRC has retained the provisions of the draft regulation.
e. the outcome of comparative surveys on the labour markets and trends in			SRC has retained the provisions of the draft regulation.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
remuneration;			
f. comparative analysis between remuneration and benefits for similar jobs within institutions in the same sector to ensure equity and competitiveness;	KDF It is proposed the considerations to include additional sub Para: External comparator where there is no local comparator for best practices.	The outcome of comparative surveys on the labour markets and trends in remuneration as set out under regulation 9(1)(e) addresses both local and international comparators.	The proposal has been addressed under regulation 9(1) (e) on job evaluation comparative surveys on the labour markets and trends in remuneration.
g. job evaluation results as undertaken by SRC;	Public Service Commission 9(1)(g) should read; The job evaluation results as undertaken by public service institutions;	Use of job evaluation results from job evaluation conducted by different public service institutions will violate the uniformity principle of the evaluation. Public Service Institutions will apply different compensable factors, JE systems among others which will make comparability across the public service difficult. (add practice of job analysis at the institutional level pursuant to which final job descriptions are submitted to SRC for J.E)	Retain as provided in the draft regulation
h. cost of living;	-	-	-
i. existing collective bargaining agreements;	-	-	-
j. achievement of performance and productivity targets;	IGRTC On the issue of competitiveness and productivity, there is need to consider the provisions of the National Productivity and Competitiveness Council Bill, 2019 which seeks to establish a Council to provide a forum for an on-going dialogue on all matters related to productivity, quality and competitiveness.	The provisions of the National Productivity and Competitiveness Council Bill, 2019 have already considered during the formulation of these regulations. The Commission shall work in collaboration with the institution mandated to provide standards on productivity.	SRC has retained the provisions of the draft regulation.
k. government policies and guidelines; and	-	-	-

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>i. any other relevant factor in determination of remuneration or benefits.</p>			
(2)	<p>In the discharge of its mandate, the Commission may invite views from stakeholders which include—</p>	<p>Public participation of the people is one of the core national values and principles of governance as set out under Article 10 of the Constitution. The objective of public participation in decision making is to ensure that the Government is aware of the concerns of the public thus eliminating the risk of arbitrariness and irrationality in the formulation of policy or legislation. Public participation is therefore an essential pillar of decision making as it ensures that the Government is open, accessible, accountable and responsive to its citizens.</p>	<p>Proposal in order. Replace the word "may" with the word "shall".</p>
	<p>Parlscom Under Article 10 of the Constitution, participation of the people is a national value and therefore mandatory. Regulation 9(2) should therefore provide that the Commission "shall" invite the views of the stakeholders while discharging its mandate.</p>	<p>The use of the word "may" in the Regulation 9(2) is interpreted to mean that the Commission is not obliged to undertake public participation during setting, review and advise on remuneration and benefits.</p>	
	<p>Public Service Commission 9(2) should read; In the discharge of its mandate, the Commission shall invite views from stakeholders which include-</p>		
	<p>OCOB To be aligned to the review and advice by the</p>		

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>Commission on the remuneration of State and Public officers as well as to the general public. Our view is that the views of the stakeholders should always be considered. Use of the term "may" makes it discretionary and not mandatory.</p> <p>Proposal Delete the word "may" and replace with the word "shall".</p> <p>COTU Recommended the use of "shall" as opposed to may as it's a constitutional mandate.</p> <p>KDF Article 201(1) of the constitution mandates public participation in public finance management regulation 9(2) ought to be amended to read in mandatory terms.</p>		
(a) public service institutions;	-	-	-
(b) employees of the public service institution;	-	-	-
(c) relevant employer associations;	-	-	-
(d) relevant trade unions;	-	-	-
(e) professional bodies; and	-	-	-
(f) members of the public.	-	-	-
<p>10. Communication and effective date of advice The Commission shall communicate the—</p>	<p>KDF It is proposed that the Commission sets a common effective date of implementation of set, reviewed remuneration and benefits for both State officers and other public officers.</p>	<p>It may not be practical to have a common effective date of implementation of set, reviewed remuneration and benefits for both State and other public officers as public bodies may request SRC to either set, review or advice on remuneration and benefits for State and other public officers respectively at different times.</p>	<p>Retain the provision as contained in the regulations.</p>
(a) set and reviewed remuneration and benefits for State officers indicating the effective date of implementation; and	<p>County Assembly Of Makueni 10 (a) Proposes the insertion of the word "advise" immediately after the word "set" and insertion of the word "other public officers" immediately after "state officer"</p>	<p>The proposals is contrary to the provisions of Article 230 (4) of the Constitution with respect to the mandate of SRC.</p>	<p>Retain the provision as contained in the regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>Also states that SRC should set, advise and review on remuneration and benefit of both state and other public officers.</p> <p>Further proposes the merging of 10 (a) and (b).</p>	<p>10 (a) focuses on state officers while 10 (b) focusses on other public officers</p>	
<p>(b) advice on remuneration and benefits for other public officers indicating the effective date of implementation.</p>	<p>Parlscom The role of the Salaries and Remuneration with other public officers is to advise and not to set the remuneration. The role of setting the remuneration and benefits of other public officers falls within the remit of their respective employers who also appoint and supervise the office holders.</p> <p>The Salaries and Remuneration Commission has no powers to redefine contractual relations between an employer and employee.</p>	<p>The mandate of the Commission with respect to Setting the remuneration and benefits for State officers is distinct from that of advising national and county governments on the remuneration and benefits of other public officers.</p> <p>By dint of Article 259 (11) of the Constitution and the judgment of the Court of Appeal in Teachers Service Commission (TSC) v Kenya Union of Teachers (KNUT) & 3 Others [2015] eKLR to SRC's advice under Article 230 (4) (b) is mandatory and binding.</p> <p>The issue raised by Parlscom has been addressed</p>	<p>Retain</p>
	<p>SCAC Communication and effective date of any advisories for public officers shall be subject to the consideration and issuance by the respective focal point organs as listed above.</p>	<p>By dint of Article 259 (11) of the Constitution and the judgment of the Court of Appeal in Teachers Service Commission (TSC) v Kenya Union of Teachers (KNUT) & 3 Others [2015] eKLR to SRC's advice under Article 230</p>	<p>Retain the provision as contained in the regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		<p>(4) (b) is mandatory and binding.</p> <p>SRC guides on the effective date of implementation which is across all employing institutions. Leaving the effective date to be determined by the focal point organization may result to disparity in implementing SRC'S advice. For example if the advice has cost implication, the commission will have discussed with the national treasury on the cost implication and therefore the effective date will be uniform across all institutions.</p>	
<p>CRA</p> <p>This is not mandatory as it is advice. The Commission should communicate the advice on remuneration and benefits for other public officers and will advise on the effective date of implementation.</p>		<p>By dint of Article 259 (11) of the Constitution and the judgment of the Court of Appeal in Teachers Service Commission (TSC) v Kenya Union of Teachers (KNUT) & 3 Others [2015] eKLR to SRC's advice under Article 230 (4) (b) is mandatory and binding.</p> <p>LOOK AT WHT WAS DISCUSSED</p>	<p>Retain the provision as contained in the regulations.</p>
<p>Public Service Commission</p> <p>The clause exceeds the powers of SRC as provided for in Article 230(4) (b) of the Constitution which has since been interpreted by the Supreme Court in Pet. No. 42 of 2019.</p>		<p>The mandate of SRC to issue advice to the national and county governments under Article 230 (4) (b) of the Constitution can be</p>	<p>Retain the clause.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>Proposal The Clause should read Advice on remuneration and benefits for other public officer. indicating the effective date of implementation (delete)</p>	<p>distinguished from the mandate of CAJ to make recommendations under the CAJ Act. This is because, by dint of Article 259 (11) of the Constitution, the national and county government cannot proceed without the advice of SRC.</p> <p>The judgment of the Supreme Court in in Pet. No. 42 of 2019 is also distinguishable with respect the mandate of SRC under Article 230 (4) (b) of the Constitution as the Supreme Court did not address the advice or recommendations contemplated under Article 259 (11) of the Constitution.</p> <p>SRC guides on the effective date of implementation which is across all employing institutions. Leaving the effective date to be determined by the focal point organization may result into disparity in implementing SRC'S advice. For example if the advice has cost implication, the commission will have discussed with the national treasury on the cost implication and therefore the effective date will be uniform across all institutions.</p>	

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>COTU Proposes the need to introduce timelines the way budget timelines are set to enable public institution know their role , obligation and duration.</p>	<p>Regulation 4 highlights the review cycle which is tied to the national budgeting and sub regulation 3 provides for a special review under special circumstances.</p> <p>A month by month breakdown of the timelines in line with the budget making process is administrative when it comes to remuneration and benefit review cycle.</p>	
<p>11. Job evaluation The Commission shall undertake job evaluation covering jobs in public service institutions in order to—</p>	<p>Public Service Commission (with regard to Regulations 11- 18)</p> <p>The clauses contravene on the mandate of the Public Service Commission under Article 234 (2) (a) (i) as read together with Section 27 of the Public Service Commission Act.</p> <p>The clauses exceed the powers and functions of SRC as provided in Article 230 (4) of the Constitution and Section 11 of the SRC Act.</p> <p>With regard to State officers their jobs are defined in the Constitution and enabling legislation.</p> <p>Proposal</p> <p>Clauses 11 to 18 should be deleted.</p>	<p>The mandate of SRC to conduct job evaluation in the public service is provided for in Section 11 (d) of the SRC Act. In addition, the Court of Appeal in the TSC v KNUT & 3 Others [2015] eKLR case also confirmed that SRC has a role to play in job evaluation of public officers.</p> <p>Section 12 of the SRC Act requires SRC to take into account the principle of equal pay for work of equal value. Job evaluation is a mechanism through which SRC upholds the principle of equal pay for work of equal value.</p> <p>Further, whereas the roles of state officers are determined by the Constitution, SRC still</p>	<p>The provisions on job evaluation as set out in the draft regulations have been revised to clarify the conduct and purpose of job evaluation by SRC.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		undertakes job evaluation to determine their relative worth.	
	<p>County Assembly of Embu (with regard to Regulations 11 -17)</p> <p>These proposed Regulations make provisions on job evaluation by the Commission. The Constitution (Article 230) and Salaries and Remuneration Commission Act, 2011, have neither expressly nor impliedly given this mandate to the Commission. Job evaluation exercise in National Public Service is the sole responsibility of the Public Service Commission under Article 234 of the Constitution. This is the same with Judicial Service Commission (for Judiciary), Parliamentary Service Commission (for Parliament) County Public Service Boards (for county public service), County Assembly Service Boards (Section 11 of the County Assembly Services Act, 2017- for county assembly service) among others. The responsibility of the Commission is limited to setting, reviewing or advising on the salaries and benefits of those that hold positions in the respective institutions. The object, intent and purpose of Article 230 (4), Section 26 of the Salaries and Remuneration Commission Act as read together with Article 94 (6) of the Constitution, have therefore been negated by these proposed regulations, and should be struck out and expunged forthwith.</p>	<p>The mandate of SRC to conduct job evaluation in the public service is provided for in Section 11 (d) of the SRC Act. In addition, the Court of Appeal in the TSC v KNUT & 3 Others [2015] eKLR case also confirmed that SRC has a role to play in job evaluation of public officers.</p> <p>Section 12 of the SRC Act requires SRC to take into account the principle of equal pay for work of equal value. Job evaluation is a mechanism through which SRC upholds the principle of equal pay for work of equal value.</p>	<p>The draft regulations on job evaluation have been revised to clearly distinguish the mandate of SRC in relation to;</p> <ul style="list-style-type: none"> (a) setting and regularly reviewing the remuneration and benefits for State officers; (b) advising the national and county governments on the remuneration and benefits of other public officers; and (c) keeping under review and advising on the remuneration and benefits for other public officers.
	<p>CRA</p> <p>This provision does not comply with the constitution. The role of advice is not to set. Reword using the word "will" and leave room for the other government institution that are not state offices to use the SRC advice as to the minimum threshold and set their applicable standards.</p> <p>Proposal</p> <p>The proposed wording should be: The Commission will</p>	<p>The mandate of SRC to conduct job evaluation in the public service is provided for in Section 11 (d) of the SRC Act. In addition, the Court of Appeal in the TSC v KNUT & 3 Others [2015] eKLR case</p>	<p>The draft regulations on job evaluation have been revised to clarify the conduct and purpose of job evaluation by SRC.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>a. determine comparable and relative worth of jobs in the public service institutions; determine equal pay for work of equal value; ensure fairness and transparency in pay.</p>	<p>undertake job evaluation covering jobs in public service institutions to-</p> <p>(a) advice on the comparable and relative worth of jobs in the public service institutions;</p> <p>(b) advice on job classification in the public service; and</p> <p>(c) advice on rationalizing and harmonizing job grading structures in the public service.</p>	<p>also confirmed that SRC has a role to play in job evaluation of public officers.</p> <p>Section 12 of the SRC Act requires SRC to take into account the principle of equal pay for work of equal value. Job evaluation is a mechanism through which SRC upholds the principle of equal pay for work of equal value.</p>	
<p>a. classify the jobs in the public service; and</p>	<p>SCAC</p> <p>Proposal is ultra vires. Rationalization of job grading structures and classification of jobs within public service (in particular State Corporations) is a policy function of the Ministry of Public Service in consultation with the Public Service Commission and in the case of State Corporations, SCAC.</p> <p>SRC can undertake job evaluation covering jobs in the public service institutions but the penultimate aim should be to advise the national government strictly in terms of Article 230 (4) (b). If SRC delves into harmonizing job grading structures (euphemism for developing grading structures) and classifying jobs for individual state corporation and the ministries, then they would be operating ultra vires the constitution.</p>	<p>It is important to recast the purpose of job evaluation by SRC in line with its constitutional and statutory mandate.</p>	<p>The draft Regulations have been revised to now provide that –</p> <p>The Commission shall undertake job evaluation covering jobs in public bodies in order to—</p> <p>a. determine comparable and relative worth of jobs in public bodies;</p> <p>b. determine equal pay for work of equal value; and</p> <p>c. ensure fairness and</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
			transparency in pay.
<p>c. rationalise and harmonise job grading structures in the public service.</p>	<p>SCAC Proposal is ultra vires. Rationalization of job grading structures and classification of jobs within public service (in particular State Corporations) is a policy function of the Ministry of Public Service in consultation with the Public Service Commission and in the case of State Corporations, SCAC. SRC can undertake job evaluation covering jobs in the public service institutions but the penultimate aim should be to advise the national government strictly in terms of Article 230 (4) (b). If SRC delves into harmonizing job grading structures (euphemism for developing grading structures) and classifying jobs for individual state corporation and the ministries, then they would be operating ultra vires the constitution.</p>	<p>It is important to recast the purpose of job evaluation by SRC in line with its constitutional and statutory mandate.</p>	<p>The draft Regulations have been revised to now provide that –</p> <p>The Commission shall undertake job evaluation covering jobs in public bodies in order to—</p> <ol style="list-style-type: none"> a. determine comparable and relative worth of jobs in public bodies; b. determine equal pay for work of equal value; and c. ensure fairness and transparency in pay.
	<p>Parlscom Regulation 11(c) is not in tandem with section 11(c) of the Salaries and Remuneration Commission Act in that the objective of the rationalization and harmonization of job grading structures in the public service has not been set out in the Regulations.</p> <p>Section 11(c) of the Salaries and Remuneration Commission Act provides that the purpose of harmonization, equity and fairness of remuneration is for</p>	<p>It is important to recast the purpose of job evaluation by SRC in line with its constitutional and statutory mandate.</p>	<p>The draft Regulations have been revised to now provide that –</p> <p>The Commission shall undertake job evaluation covering jobs in public bodies in order to—</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>the attraction and retention of requisite skills in the public service. The said section 11(c) provides that in addition to the powers and functions of the Commission under Article 230(4) of the Constitution, the Commission shall "advise the national and county governments on the harmonization, equity and fairness of remuneration for the attraction and retention of requisite skills in the public sector."</p>		<ul style="list-style-type: none"> a. determine comparable and relative worth of jobs in public bodies; b. determine equal pay for work of equal value; and c. ensure fairness and transparency in pay.
	<p>County Assembly of Makueni 11(c) proposes the word "remuneration and benefits" to be inserted immediately "grading structure"</p>	<p>It is important to recast the purpose of job evaluation by SRC in line with its constitutional and statutory mandate.</p>	<p>The draft Regulations have been revised to now provide that –</p> <p>The Commission shall undertake job evaluation covering jobs in public bodies in order to—</p> <ul style="list-style-type: none"> a. determine comparable and relative worth of jobs in public bodies; b. determine equal pay for work of equal value; and c. ensure fairness and transparency in pay.
<p>12. Criteria for job evaluation (1) The Commission shall undertake job evaluation</p>	<p>SCAC The proposal is moot as this is a function of the PSC or in</p>	<p>The mandate of SRC to conduct job evaluation in the</p>	<p>The regulation has been revised to clarify that a public</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>where—</p>	<p>the case of a newly established State Corporation, SCAC in consultation with the line Ministry. SRC in this regard prescribes the applicable bands in global terms. Day to day execution is to be administered by service commissions/SCAC.</p> <p>Once a principle is established, it does not require day to day consultation.</p> <p>This was and has been the practice of the Ministry of Public Service, whose guidelines once issued (e.g allowances, leave etc) were the benchmark for application throughout the public service without recourse to day to day consultation/requests for advice.</p> <p>The proposal is also extremely intrusive of state corporation/MDA operations, and the responsibilities for which authorized officers/Boards are expected to play. Simple reorganization actions, ought not to result in SRC advisory, as this would risk the inference of frittered time.</p>	<p>public service is provided for in Section 11 (d) of the SRC Act. In addition, the Court of Appeal in the TSC v KNUT & 3 Others [2015] eKLR case also confirmed that SRC has a role to play in job evaluation of public officers.</p> <p>The rationale of the regulation is to give powers to institutions to determine the jobs that require evaluation for purposes of setting, reviewing and advising on remuneration and benefits for State and other public officers respectively within a scheduled review or special review.</p> <p>The regulation should be amended to clarify that a public body that meets the criteria for job evaluation may submit the required information when called for by the Commission during a review cycle or when the public body has requested for setting, review, or advice on remuneration and benefits and a job evaluation is required.</p> <p>Change in jobs within a public body organization structure that do not necessitate changes in remuneration and</p>	<p>body that meets the criteria for job evaluation may submit the required information when called for by the Commission during a review cycle or when the public body has requested for setting, review, or advice on remuneration and benefits and a job evaluation is required.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	12 (1) proposes insertion of a new regulation 12 (1) a to provide for the Commission to undertake job evaluation after the expiry of the existing job evaluation report.	benefits, need not to be submitted to the Commission for evaluation and advice. Job evaluation results are valid until the job is re-evaluated by the Commission. The proposal is already accommodated by the validity clause at regulation 16.	The draft regulations make provision for validity of job evaluation; results.
(a) jobs in public service institutions have not been evaluated by the Commission;	CRA Direct consultation with public service institutions should be a "must" and not a "may", "May" should be substituted with "shall". 12 (1)(a) There is no clarity that brings the difference or convergence between evaluation by the Commission and the relevant committee within the remit of the public service institution in question. More clarity is needed on this aspect.	1. Regulation 12 (1) employs use of the word "shall" and not "may" as pointed out by CRA. 2. Job Evaluation is a participatory exercise and the Committee in charge of job evaluation in a public body is responsible for identifying jobs to be submitted to the Commission for evaluation, in addition development of complete and comprehensive job descriptions which are critical input to the job evaluation by the Commission.	SRC has considered the views and retains the provision as contained in the draft regulations.
(b) a public service institution is established;	-	-	-
(c) a public office is established;	-	-	-
(d) a new job is established arising from— i. change in the institutional mandate of a public service institution; or	-	-	-

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
ii. change in the institutional structure of a public service institution; (e) a change arises in the job content of a role in a public service institution.	County Assembly of Makueni 12(1)(e) proposes the insertion of the word "job enrichment" immediately before the word job content. "job enrichment may arise in cases where there is a merger of department warranting the need to carry out job evaluation."	Change in job content covers the job enrichment.	SRC has considered the proposal and retains the provision as contained in the draft regulations.
(2) A public service institution that meets the criteria set out in sub-regulation (1) shall submit the required information as per regulation 14.	-	-	-
13. Procedure for undertaking job evaluation (1) The Commission shall—	ICPACK The regulation fails to provide mechanisms to address the mismatch between the function/responsibility against the requisite professional qualifications.	Job evaluation takes into account professional qualifications as a compensable factor as derived from the job description provided by a public body.	SRC has considered the proposal and notes that professional qualifications as a compensable factor are adequately provided for in regulation 11 (1) (b).
a. issue guidance on undertaking job evaluation in the public service;	Proposal Insert a new sub-regulation 13(1)(g) to read: Liaise with the Public Service Commission, public sector agencies and professional associations to ensure professionals are rightly placed in accordance with their qualifications for effective service delivery.	-	-
b. sensitise public service institutions on the job evaluation;	Justification Professional custodianship essential enhanced regulation, professional development and ethical behavior.	-	-
c. partner with relevant training institutions to facilitate training of public service	County Assembly of Makueni proposes the word "guidance" to be substituted with "guideline"	The draft provisions on issuance of guidance may need to be reconsidered on account of the provisions of the Statutory Instruments Act.	The draft provisions on issuance of guidance have been deleted from the draft regulations.
-	-	-	-
Parlscom Regulation 13(1)(c) makes it mandatory for the	Regulation 13(1)(c) makes it mandatory for the	Regulation 13(1)(c) makes it mandatory for SRC to partner	SRC has considered the proposal and amended the

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>institutions in matters relating to job evaluation;</p>	<p>Commission to partner with training institutions to facilitate training of public service institutions in matters relating to job evaluation. The partnering with training institutions should be optional and determined by the Commission's internal capacity</p>	<p>with relevant training institutions to facilitate training of public service institutions. Partnering with training institutions should be optional and may be determined administratively.</p>	<p>provision appropriately.</p>
<p>d. use an analytical, point-factor based job evaluation system that evaluates jobs using compensable factors as prescribed by the Commission;</p>	<p>Parlscom Regulation 13(1)(d) provides that the Commission shall prescribe the compensable factors for job evaluation. The compensable factors must be determined after taking into account the functions of a job as set out in the Constitution, an Act of Parliament, job description or schemes of service as is applicable to the job. The compensable factors must further be defined and publicized in order to be in conformity with section 13(k) of the Statutory Instruments Act which provides that statutory instruments should not make rights, liberties or obligations of any person unduly dependent on insufficiently defined administrative powers. The compensable factors further need to be set out in the regulations to avoid the same being in contravention of section 13(m) of the Statutory Instruments Act which prohibits an inappropriate delegation of legislative powers.</p> <p>KDF The regulation in pointing out analytical system, it will have left out non analytical system. It is proposed that job evaluation system to be used is informed by sustainability and peculiarity of the Sector.</p>	<p>It may not be feasible to set out in these regulations the compensable factors.</p>	<p>SRC has considered the proposal and retains the clause as provided in the regulations.</p>
		<p>An analytical point factor based system is the most systematic and objective method of determining the relative worth of a job. It provides a framework for uniformly applying the job evaluation principles to all jobs in the public service. An non-analytical system on the other hand is subjective and makes it difficult to have a</p>	<p>Retain the provision as contained in the regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		framework for uniformly applying the job evaluation principles to all jobs in the public service.	
e. engage public service institutions on job evaluation results; and	-	-	-
f. communicate the job evaluation results.	County Assembly of Makueni proposes insertion of the word "feedback" immediately after "communicate"	insertion of the word "feedback" as proposed shall distort the intended purpose of the provision.	SRC has considered the proposal and retains the clause as provided in the draft regulations.
(2) A public service institution shall—	SCAC SRC can undertake a general job evaluation of jobs within a single classification structure, and give appropriate guidance on remuneration and benefits to the designated focal point organ as above, without recourse to a review of every officer job in the entire public service to obviate the risk of duplication and differentiated outcomes. Incidences of differentiated treatment by SRC in comparable entities has often led to a hemorrhage of staff from one public institution to another. It also creates an untenable situation where the Government does not have a single framework (compendium) of applicable terms across the entire government, since individualized cases are determined by SRC without reference to the sector. The suggestion to review changes arising in the job content of a role in the public service institution is irrational, and will limit the ability of an employer to create multi-tasking capabilities for officers, or build capacity for high flying officers to be assigned additional responsibility. We refer once again to the practice of the Ministry of Public Service pre-SRC for guidance.	1. Job evaluation is conducted based on the content of the job as contained in the job descriptions provided by a public body. Job evaluation ensures that the relative worth of the job is assigned to a role and ensures that jobs with similar responsibilities are graded the same. Evaluation of jobs using job classes or nomenclature does not take account of responsibilities of individual jobs. The classes of jobs are designed by different public bodies and therefore different principles are applied in	SRC has considered the proposal and retains the clause as provided in the draft regulations.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		<p>their design. Using such classes as the basis of evaluation may result to assigning same relative worth of jobs performing different responsibilities or assigning different worth of jobs for jobs performing same responsibilities.</p> <p>2. Job evaluation establishes a single framework (compendium) of applicable terms across the entire government. This is because, jobs are subjected to the same compensable factors, methodology and point factor based job evaluation system.</p> <p>Internal and external relativities/ comparison of the job evaluation grading within peer jobs and institutions is also conducted while undertaking job evaluation.</p> <p>Job Evaluation creates a common framework to ensure jobs performing similar responsibilities are graded the same and progressively adhere to the principle of equal pay for work of equal value. The</p>	

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		regulations provide a uniform approach to conducting job evaluation using an analytical point factor based system. This is expected to progressively address any disparities in job grading and salary structures.	
a) ensure all the jobs in the institution are evaluated by the Commission;	-	-	-
b) ensure the members of the Committee in charge of the job evaluation in the institution are trained on matters relating to job evaluation;	-	-	-
c) assess, identify and determine the jobs to be evaluated using the criteria prescribed by the Commission;	Parlscm Regulation 13(2)(c) which provides for the Commission to prescribe the criteria for assessing, identifying and determining the jobs to be evaluated is ultra vires to section 13(m) of the Statutory Instruments Act which prohibits an inappropriate delegation of legislative powers. The criteria for this should be set out in the regulations and is indeed set out at Regulation 12(1).	The criteria is provided for under the provisions of regulation 12 of the draft regulations.	SRC has considered the proposal and deleted the terms "using the criteria prescribed by the Commission" appearing immediately after the words "and determine jobs to be evaluated".
d) develop complete, accurate, approved and signed-off job description manuals.	County Assembly of Makueni proposes insertion of the word " for each specific job" immediately after "manual"	A job description manual is defined as a document containing approved job descriptions. Consequently, there is no need to insert the word "for each specific job" immediately after "manual"	Retain as contained in the draft regulation
e) provide feedback on the job evaluation results when communicated by the Commission; and	-	-	-
f) Submit request for review of the job evaluation results if dissatisfied with the job evaluation results as prescribed by the	-	-	-

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
Commission.			
(3) A job description referred to in sub-regulation (2)(d) shall be aligned to the provisions of the law, where applicable, and the approved human resource instruments.	County Assembly of Makueni proposes deleting of the word "the provision of law" immediately after the word "aligned " and substitute with "applicable law" proposes the word "where applicable" to be deleted.	Not all the jobs are provided by the provisions of the law and therefore the need to have the term "where applicable" applicable"	SRC has considered the proposal and retains the clause as provided in the draft regulations.
(4) Where a job description for a State officer is not submitted, the Commission shall use the information provided in the relevant law to evaluate the job, where applicable.			
(5) Where a job description for a public officer is not submitted, the position shall not be evaluated.	KIPRA (with regard to 13 (5) & (6)) On the procedure for undertaking job evaluation, point no. (5) and (6) on instances where a job description is not submitted are conflicting. There is need for clarification for instances where shall be evaluated and when it shall not be evaluated.	The rationale for regulation 13 (5) is to address instances where job descriptions for other public officers are not submitted to the Commission for job evaluation.	SRC has considered the proposal and amended the provision.
ICPAK The provision does not provide for recourse in the event that a public service institution does not provide a description for a specific public officer. This might leave room for abuse by way of a public service institution purposefully not providing a job evaluation description thus it would not be subject to the Regulations.		The proposal has been addressed.	SRC has considered the proposal and amended the provision.
Proposal Amend Regulation 13(5) to read: Where a job description for a public officer is not submitted, the Commission shall consult the Public Service Commission to evaluate the job.			
Justification			

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
(6) Where a public service institution fails to provide feedback on job evaluation results, the Commission shall proceed to conclude the job evaluation.	To enhance comprehensiveness of the Regulations. -	Regulation 13 (6) relates failure to provide feedback on preliminary JE results by a public service institution. To bring more clarity, the regulation to be amended to mean failure to provide feedback after the JE results are communicated (After the JE clinic or after communication of final JE results- Request for review)	Amend the regulation to read "Where a public service institution does not provide feedback on job evaluation results, the Commission shall proceed to conclude the job evaluation."
<p>14. Information to be submitted by a public service institution</p> <p>(1) A public service institution shall provide the Commission with information relating to jobs within the institution for purposes of job evaluation.</p>	<p>SCAC Refer to the comment above and the communication protocol.</p> <p>County Assembly Of Makueni Proposes the insertion of the following word immediately after the word "evaluation", "in accordance with the constitutional principles set out under Articles 232- 236 of the Constitution of Kenya." It is important that job evaluation exercises take into account key constitutional principles on public service</p> <p>CRA This section is a mandatory directive for public officers and governments to comply with which is unconstitutional. Proposal A public service institution can/ will provide information relating to jobs within the institution for purposes of job evaluation.</p>	<p>The issue of communication has been addressed administratively.</p> <p>The objects of the regulations is for the better carrying into effect the provisions of the SRC Act. It is therefore not necessary to invoke the provisions of Articles 232- 236 of the Constitution as proposed.</p> <p>The information required in this regulation is mandatory, without which job evaluation to determine the relative worth of jobs cannot be undertaken.</p> <p>Further, Section 13(1)(a) of the SRC Act provides for supply of information to the Commission.</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p> <p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p> <p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>
(2) The information to be provided in sub-	CRA Regulation 14 (2) should be amended to read:	The proposal is provided for in sub-regulation (2).	SRC has considered the proposal and retains the

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>regulation (1) shall include—</p> <p>(a) the approved institutional structure;</p> <p>(b) the approved staff establishment;</p> <p>(c) the approved career progression guidelines or schemes of service;</p> <p>(d) a list of jobs in the institution indicating current grades or levels;</p> <p>(e) the complete, accurate, approved and signed-off job description manual presented in a format as prescribed by the Commission; and</p> <p>(f) any other information that may be relevant for the job evaluation.</p>	<p>(2) The information to be provided in sub-regulation (1) shall include- as indicated in the sub-regulation (2)</p> <p>KDF</p> <p>In the case of KDF, this requirement is security classified in the interest of national security.</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p>	<p>The issues raised by KDF are noted and shall be addressed administratively.</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p>	<p>clause as provided in the draft regulations.</p> <p>Retain the provisions in the regulations.</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p>
<p>15. Review of job evaluation results</p> <p>(1) A public service institution, State officer or other public officer dissatisfied with job evaluation results may seek review of the results as provided for under this regulation.</p>	<p>SCAC</p> <p>(on regulation 15 (1-8))</p> <p>Refer to comment above and the communication protocol. Further it is the opinion of SCAC that JE results are guidelines, non-binding and operate as a benchmark for determining remuneration and benefits that are then set by the employer. A review on grounds of dissatisfaction is based on the premise of their binding nature, which is not the case; and further usurps the role of the employer in determining the merit or otherwise of the advisory and exercise of discretion, based on the broad parameters of the advisory issued.</p>	<p>The provision on review of job evaluation results is an important administrative mechanism for further engagement between the public body and SRC in the event of dissatisfaction with the job evaluation results.</p> <p>Job evaluation results, among other factors, inform the advice of SRC on salary structures for other public officers.</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>
<p>CRA</p> <p>This section should only apply to state officers and not to public officers and other levels of government. They should have their final say on these matters but use SRC as a minimum threshold just like the employment Act. SRC to review section and delete parts addressing public</p>	<p>This section should only apply to state officers and not to public officers and other levels of government. They should have their final say on these matters but use SRC as a minimum threshold just like the employment Act. SRC to review section and delete parts addressing public</p>	<p>The provision on review of job evaluation results is an important administrative mechanism for further engagement between the</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	officers and other levels of government.	public body and SRC in the event of dissatisfaction with the job evaluation results. Job evaluation results, among other factors, inform the advice of SRC on salary structures for other public officers.	
	NPSC Definite timelines need to be stipulated within which an institution is expected to submit grievances after receipt of the evaluation results e.g. 14 days after receipt of the job evaluation results.	For good order, it is important to provide timelines within which certain actions should be taken.	SRC has considered the proposal and revised the draft regulations to provide for timelines.
(2) Where a public service institution is dissatisfied with the job evaluation results, the public service institution shall submit to the Commission a request for review, the grounds for review and supporting documents;	-	-	-
(3) Where a State or other public officer is dissatisfied with the job evaluation results, the officer may upon release of the results—	Parlscm Regulation 15(3) needs to be re-drafted to more accurately communicate the procedure of applying for review of job evaluation results.	The draft regulations provide a clear procedure for submission of request for review of job evaluation results.	SRC has considered the proposal and retains the clause as provided in the draft regulations.
(a) raise their grounds for review with the public service institution; and	-	-	-
(b) the public service institution shall, if satisfied that the grounds have merit, submit to the Commission a request for review, the grounds for review and supporting documents.	-	-	-
(4) An application for review of job evaluation results shall be submitted to the Commission within such timelines as may be prescribed by the Commission.	Parlscm Regulation 15(4) provides that the Commission shall prescribe the timelines for an application for review of a job evaluation. This is a derogation from section 13(m) of the Statutory Instruments Act which prohibits an inappropriate delegation of legislative powers. The timelines should be	For good order, it is important to provide timelines within which certain actions should be taken.	SRC has considered the proposal and revised the draft regulations to provide for timelines.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>detailed in the Regulations or in a schedule to the Regulations.</p> <p>51. Again, the timelines set out in Regulations 15(5)&(6) should be detailed in the Regulations or in a schedule to the Regulations and not prescribed by the Commission.</p>		
<p>OCOB</p> <p>Provide the specific timelines for addressing the review of the evaluation results. The timelines need to be known and clear. The Commission should not give itself other prescriptive powers in the Regulations.</p>	<p>OCOB</p> <p>Provide the specific timelines for addressing the review of the evaluation results. The timelines need to be known and clear. The Commission should not give itself other prescriptive powers in the Regulations.</p>	<p>For good order, it is important to provide timelines within which certain actions should be taken.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for timelines.</p>
<p>(5) A public service institution shall, where the Commission requires and formally requests for more information relating to an application for a review of job evaluation results, provide the information sought within such timelines as may be prescribed by the Commission.</p>			
<p>(6) Where the Commission does not receive additional information relating to an application for review of job evaluation results within the stipulated time, the Commission may—</p>			
<p>a. prescribe additional time for submission of the required information; or</p>			
<p>b. make any other determination as the Commission may deem fit.</p>			
<p>(7) Job evaluation results may be reviewed by the Commission where new material information or significant changes in the job content have been submitted to the Commission.</p>			
<p>(8) Nothing in this regulation precludes any public service institution, State officer or other public officer from engaging the Commission further</p>			

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
on job evaluation results.			
	<p>IGRTC New Sub regulation 9. Communicating back the reviewed job evaluation results to a public institution. The observation of IGRTC is that the Commission should introduce a new sub-regulation Regulation 15, indicating the timeline within which the Commission should submit back reviewed results. Previously, the Commission had not been submitting results of reviewed job evaluation results after an appeal by public institution.</p>	<p>For good order, it is important to provide timelines within which certain actions should be taken.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for timelines.</p>
<p>16. Validity of job evaluation results Job evaluation results shall remain valid until the job is re- evaluated by the Commission.</p>	<p>SCAC Refer to comment above and the communication protocol. Further it is the opinion of SCAC that JE results are guidelines, non-binding and operate as a benchmark for determining remuneration and benefits that are then set by the employer. A review on grounds of dissatisfaction is based on the premise of their binding nature, which is not the case; and further usurps the role of the employer in determining the merit or otherwise of the advisory and exercise of discretion, based on the broad parameters of the advisory issued.</p> <p>Parlscom Regulation 16 infringes on the powers and responsibilities of employers of public officers to undertake their own job evaluations for employees. In particular, the Parliamentary Service Commission, the Judicial Service Commission and the Public Service Commission have the power to undertake job evaluation for public officers who are employees of these Commissions.</p>	<p>The provision on review of job evaluation results is an important administrative mechanism for further engagement between the public body and SRC in the event of dissatisfaction with the job evaluation results.</p> <p>Job evaluation results, among other factors, inform the advice of SRC on salary structures for other public officers.</p> <p>Employers of other public officers can undertake their own job evaluation for their employees for different purposes. However, with respect to remuneration and benefits for other public officers, the Commission shall its job evaluation results to advise in accordance with section 11 (d) of the SRC Act.</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p> <p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>
	<p>CRA There will be a problem where a re- evaluation is done</p>	<p>The effective date for implementation of the advice</p>	<p>SRC has considered the proposal and retains the</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	but due to budgetary constraints is not implemented as it happened in 2019. Section 16 should therefore be revised to care for such situation.	on salary structures takes into account availability of funds.	clause as provided in the draft regulations.
	NPSC There's need to allow flexibility in the event that emerging issues call for review, consider adding an exception.	The emerging issues that might affect the worth of the job to warrant re-evaluation are set out in the criteria for job evaluation in Regulation 12 (1)	SRC has considered the proposal and retains the clause as provided in the draft regulations.
	COTU Recommends the need to provide timelines for validity of job evaluation results.	The worth of the job remains the same as long as the content of the job remains the same. Evaluating a job whose content has not changed will yield the same job evaluation results, therefore validity of the job evaluation results in not time bound, rather its determined by the factors set out under criteria for job reevaluation (Regulation 12)	SRC has considered the proposal and retains the clause as provided in the draft regulations.
17. Guidance on job evaluation A public service institution may request for guidance or clarification from the Commission on job evaluation process and implementation of job evaluation results.	-	-	-
18. Salary structures (1) The Commission shall use job evaluation results, among other factors set out in regulation 9 (1), when—	-	-	-
(a) setting and reviewing remuneration and benefits for a State officer; and	IGRTC Regulation 18(1) (a) indicates that the Commission shall use the job evaluation results when setting remuneration and benefits for a state officer. Previously, IGRTC has received salary structure from SRC for the Secretariat that was not in tandem with the job	The rationale for Regulation 18(1) (a) is that job evaluation results, among other factors set out in regulation 9 (1), form the basis for setting	SRC has considered the proposal and retains the clause as provided in the draft regulations.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>evaluation results. The salary structure was introducing a grade that was not in the job grading results, this disadvantaging some cadres.</p> <p>Further, the members have been graded as Commissioner while Secretariat received a different job evaluation. The law says you cannot have different salaries for same job. (See Employment Act)</p>	<p>salary structures for state officers.</p> <p>The views by IGRTC shall be addressed by the Commission administratively</p>	
	<p>County Assembly of Makueni Insert the word "advising" immediately after the word "reviewing" The role of the Commission is to advise on remuneration and benefits to public officers in addition to setting and reviewing the same.</p>	<p>Regulation 18 (1)(a) addresses the state officers and therefore setting and reviewing of remuneration and benefits is only applicable to them.</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>
<p>(b) advising on the remuneration and benefits for other public officers.</p>	<p>County Assembly of Makueni 18(1) (b) Insert the word "advising" immediately after the word "reviewing". The role of the commission is to advise on remuneration and benefits to public officers in addition to setting and reviewing the same.</p>	<p>Regulation 18 (1)(b) addresses the other public officers and therefore advising on remuneration and benefits is only applicable to them.</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>
<p>19. Procedure for developing salary structures (1) The Commission, shall, prior to developing salary structures—</p>	<p>Public Service Commission Regulation 19 exceeds the constitutional and statutory powers and functions of SRC, specifically Article 230(4)(b) of the Constitution which has been interpreted by the Supreme Court in Petition No. 42 of 2019.</p> <p>Proposal 19(1) The Commission, shall, prior to developing salary structures for State Officers-</p> <p>(a) conduct comparative surveys on labour markets and trends in remuneration to determine the relativity of remuneration of public service in relation to the market trends; and</p> <p>(b) subject the outcome of the comparative surveys on labour markets and trends in remuneration to the provisions of regulation 9 (1).</p>	<p>There is need to have the draft Regulations clearly address the Commission's mandate with respect to salary structures for State and other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
(a) conduct comparative surveys on labour markets and trends in remuneration to determine the relativity of remuneration of public service in relation to the market trends; and	(2) The Commission shall develop and communicate to public service institutions the set and reviewed salary structures for State officers.	-	-
(b) subject the outcome of the comparative surveys on labour markets and trends in remuneration to the provisions of regulation 9 (1).	-	-	-
(c)	<p>County Assembly of Makueni Insert a new regulation 19 (c) on collective bargaining agreements.</p> <p>It is important that requirements of collective bargaining agreements are considered in developing salary structures.</p>	The outcome of the comparative surveys on labour markets and trends in remuneration in Regulation 19 (1) (a) is subjected to the provisions of Regulation 9 (1) which includes existing collective bargaining agreements -Regulation 19 (1) (i)	SRC has considered the proposal and retains the clause as provided in the draft regulations as it would be repetitive to include the additional proposed provision.
(2) The Commission shall develop and communicate to public service institutions the set and reviewed salary structures for State officers and other public officers.	<p>County Assembly of Makueni Insert the word "advise" immediately after the word "communicate" Delete the words "advise on the salary structures" appearing immediately before the words "other public officers"</p>	There is need to have the draft Regulations clearly address the Commission's mandate with respect to salary structures for State and other public officers.	SRC has considered the proposal and revised the draft regulations appropriately.
(3) A public service institution shall—	<p>Pariscom Regulation 19(3) is ultra vires the powers of the Salaries and Remuneration Commission as set out in the Constitution and the Salaries and Remuneration Commission Act which is to advise on the remuneration and benefits of other public officers. The Commission</p>	The provision on implementation and review of salary structures for other public officers should be recast in line with the Commission's	SRC has considered the proposal and revised the draft regulations appropriately.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>cannot compel a public service institution to ensure that the salary structure of its public officers is as advised by the Commission.</p> <p>The role of setting the remuneration and benefits of other public officers falls within the remit of their respective employers who also appoint and supervise the office holders and the Commission has no powers to redefine contractual relations between an employer and employee.</p> <p>In particular, section 11(1)(b) of the Parliamentary Service Act, 2019 provides that the Parliamentary Service Commission</p> <p>"(1) In addition to the functions set out in Article Functions of the 127(6) of the Constitution, the Commission shall:</p> <p>a) direct and supervise the administration of the services and facilities provided by, and exercise budgetary control over, the Service;</p> <p>b) determine and review the terms and conditions of service of persons holding or acting in the offices of the Service;</p> <p>c) initiate, co-ordinate and harmonize policies and strategies relating to the development of the Service;</p> <p>SCAC</p> <p>Salaries as advised by SRC for public officers cannot be binding. The application of the advice is subject to the constraints of the Constitution and the Supreme Court advisory.</p>	<p>mandate.</p>	
(a) ensure its salary structure is as advised by the Commission; and	<p>County Assemblies Forum</p> <p>The decision on salary structure of a public service institution belongs to the institution itself. The role of SRC is advisory in nature. The public service institution only needs to show that it sought, obtained and considered the advice from SRC.</p> <p>Omit this provision.</p>	<p>The provision on implementation and review of salary structures for other public officers should be recast in line with the Commission's mandate.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
		<p>The provision on implementation and review of salary structures for other public officers should be recast in line with the Commission's mandate.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>CRA This is unconstitutional even for County governments and therefore should be deleted.</p>	<p>The provision on implementation and review of salary structures for other public officers should be recast in line with the Commission's mandate.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>	
<p>(b) submit the information requested by the Commission while undertaking comparative surveys on labour markets and trends in remuneration;</p>	-	-	Proposed for deletion.
<p>20. Information to be submitted to the Commission (1) A public service institution shall provide information on remuneration and benefits as may be required by the Commission. (2) The Commission shall develop and advise on salary structures, notwithstanding failure by a public service institution to submit the required information.</p>	<p>Public Service Commission Regulation 20 exceeds the constitutional and statutory powers and functions of SRC, specifically Article 230(4)(b) of the Constitution which has been interpreted by the Supreme Court in Petition No. 42 of 2019. Proposal Clause 20(2) should be deleted.</p>	<p>There is need to provide clarity in this provision on salary structures for state and other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
<p>21. Validity of salary structures Salary structures that are set, reviewed or advised shall remain valid until reviewed by the Commission.</p>	<p>SCAC Salaries as advised by SRC for public officers cannot be binding. The application of the advice is subject to the constraints of the Constitution and the Supreme Court advisory. Parliscom Regulation 19(3) is ultra vires the powers of the Salaries and Remuneration Commission as set out in the Constitution and the Salaries and Remuneration Commission Act which is to advise on the remuneration and benefits of other public officers. The Commission cannot compel a public service institution to ensure that the salary structure of its public officers is as advised by</p>	<p>There is need to provide clarity in this provision on salary structures for state and other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>the Commission. The role of setting the remuneration and benefits of other public officers falls within the remit of their respective employers who also appoint and supervise the office holders and the Commission has no powers to redefine contractual relations between an employer and employee. In particular, section 11(1)(b) of the Parliamentary Service Act, 2019 provides that the Parliamentary Service Commission "(1) In addition to the functions set out in Article Functions of the 127(6) of the Constitution, the Commission shall: a) direct and supervise the administration of the services and facilities provided by, and exercise budgetary control over, the Service; b) determine and review the terms and conditions of service of persons holding or acting in the offices of the Service; c) initiate, co-ordinate and harmonize policies and strategies relating to the development of the Service;</p>		
	<p>County Assemblies Forum SRC has no mandate to set or review the salary structures of public service institutions. Its mandate is limited to advising the said institutions. Delete Regulation.</p>	<p>There is need to provide clarity in this provision on salary structures for state and other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>CRA This is unconstitutional. even for County governments and therefore should be deleted.</p>	<p>There is need to provide clarity in this provision on salary structures for state and other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>Public Service Commission The clause exceeds the constitutional and statutory mandate of SRC. Proposal</p>	<p>There is need to provide clarity in this provision on salary structures for state and other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	Salary structures that are set, reviewed or advised (Delete) shall remain valid until reviewed by the Commission.		
<p>22. Guidance on salary structures. A public service institution may request for guidance or clarification from the Commission on its salary structure.</p>	<p>Parlscom This is ultra vires the powers of the Commission which is to advise public service institutions and not to offer "guidance".</p>	<p>There is need to provide clarity in this provision on the implementation of salary structures for state officers and advice on salary structures for other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
<p>23. Rewarding productivity and performance (1) The Commission shall issue guidance on recognizing and rewarding productivity and performance.</p>	<p>SCAC The proposal is ultra vires. Performance rewards in public service and state corporations is based on the Public Service Commission (Performance Management) Regulations 2021 and the State Corporation (Performance Contracting) Regulations 2004, respectively. Implementation is based on prior consultation with the National Treasury.</p> <p>The proposal seeks to transform SRC into the employer without a mechanism for determining the context and conditions on performance, externalizing a process that only an employer can prescribe. The same ought to be deleted in entirety.</p> <p>OCOB To provide the criteria for rewarding productivity instead of stating that the Commission shall issue guidance. These regulations should operationalize the Act by providing the "how", not by stating once again that the Commission shall do certain things but providing how those things will be done. This would also increase accountability and transparency in that there will be a set mechanism for measuring performance.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p> <p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>TSC Firstly, rewards and sanctions is an exclusive prerogative of the employer and TSC being an independent constitutional body its functions cannot be supervised by another body.</p> <p>Secondly, we note that the nature of Productivity and Rewards regime does not require guidelines, approvals and supervision by SRC.</p> <p>Thirdly, SRC has no such mandate in law. It is only the employer in consultation with the employee who can effectively measure the productivity of an employee.</p> <p>Fourth, the proposed National Productivity and Competitiveness Council Bill, 2019 seeks to establish a council that will be in charge of productivity and competitiveness in the public sector.</p> <p>Teachers are employees of TSC and therefore, their productivity and performance can only be measured by TSC through its internal Performance Evaluation instruments.</p> <p>Proposal The regulations be deleted in entirety.</p> <p>Parlscom This is ultra vires the powers of the Commission which is to advise public service institutions and not to offer "guidance".</p> <p>IGRTC On the issue of competitiveness and productivity, there is need to consider the provisions of the National Productivity and Competitiveness Council Bill, 2019 which seeks to establish a Council to provide a forum for an on-going dialogue on all matters related to productivity, quality and competitiveness.</p> <p>Public Service Commission</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p> <p>There is need to set out the criteria for rewarding productivity and performance.</p> <p>While the National Productivity and Competitiveness Council Bill, 2019 is yet to be enacted into law, SRC took into account its legislative proposals in drafting these regulations.</p> <p>The rationale for the</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p> <p>SRC has considered the proposal and revised the draft regulations appropriately.</p> <p>SRC has considered the proposal and revised the draft regulations appropriately.</p> <p>SRC has considered the</p>	

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>The clause encroaches on the Public Service Commission powers and functions in Article 234(2) (e) of the Constitution as read with Section 62 of the Public Service Commission Act.</p> <p>Clause 23 should be deleted in its entirety.</p>	<p>regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>proposal and revised the draft regulations appropriately.</p>
	<p>County Assemblies Forum</p> <p>Any legal obligation should be traceable either to the Constitution or the Principal Act. There doesn't seem to be a clear function given to SRC concerning performance management. The Regulation assumes that recognition and reward relates only to remuneration and benefits which is not the case. Public service institutions should be free to manage their own performance in accordance with their own human resource policies and those of relevant regulatory bodies such as Public Service Commission. In any event, there is no legal obligation to adhere to 'guidance'.</p> <p>Proposal Delete Regulation.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>County Assembly of Makueni</p> <p>Delete the words "guidance, recognizing and rewarding appearing immediately after the word "issue" and substitute therefor "guidelines on recognition and reward of productivity and performance".</p>	<p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
<p>(2) The guidance referred to in sub-regulation (1) may provide for—</p>	<p>-</p>	<p>-</p>	<p>-</p>
<p>(a) the mechanisms for linking rewards in the public service to measurable productivity and performance; and</p>	<p>-</p>	<p>-</p>	<p>-</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
(b) the eligibility criteria for recognising and rewarding productivity and performance in the public service.	CRA 23(2)(b) These are decisions made by independent commissions, county, and national government. They can set SRC guidelines as minimum thresholds and should therefore be deleted.	The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes. There is need to provide clarity in this provision on rewarding productivity and performance.	SRC has considered the proposal and revised the draft regulations appropriately.
	County Assembly of Makueni 23 (2) (b)Delete the words "recognizing and rewarding" and substitute thereof " recognition and reward"	There is need to provide clarity in this provision on rewarding productivity and performance.	SRC has considered the proposal and revised the draft regulations appropriately.
(3) A public service institution shall develop a framework for recognising and rewarding productivity and performance.	NPSC Institutions should be mandated to develop a reward and sanction policy to guide rewarding of performance, in consultation with SRC. Further the policy to be reviewed from time to time in consultation with the SRC will enable institutions maintain autonomy, avoid bureaucracies and endure timely implementation and ultimately improved productivity within their institution.	The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes. There is need to provide clarity in this provision on rewarding productivity and performance.	SRC has considered the proposal and revised the draft regulations appropriately.
(4) The framework referred to in sub-regulation (3) shall be—	-	-	-
(a) in accordance with the Commission's guidance referred to in sub-regulation (1); and	County Assembly of Makueni Delete the entire sentence and substitute with "In accordance with the guidelines as prescribed and approved by the Commission	There is need to provide clarity in this provision on rewarding productivity and performance.	SRC has considered the proposal and revised the draft regulations appropriately.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>(b) approved by the Commission.</p> <p>24. Procedure for rewarding productivity and performance.</p> <p>(1) A public service institution shall seek the prior advice of the Commission before awarding its public officers a reward for productivity and performance.</p>	<p>SCAC</p> <p>The proposal is ultra vires. Performance rewards in public service and state corporations is based on the Public Service Commission (Performance Management) Regulations 2021 and the State Corporation (Performance Contracting) Regulations 2004, respectively. Implementation is based on prior consultation with the National Treasury.</p> <p>The proposal seeks to transform SRC into the employer without a mechanism for determining the context and conditions on performance, externalizing a process that only an employer can prescribe. The same ought to be deleted in entirety.</p> <p>TSC</p> <p>Firstly, rewards and sanctions is an exclusive prerogative of the employer and TSC being and independent constitutional body its functions cannot be supervised by another body.</p> <p>Secondly, we note that the nature of Productivity and Rewards regime does not require guidelines, approvals and supervision by SRC.</p> <p>Thirdly, SRC has no such mandate in law. It is only the employer in consultation with the employee who can effectively measure the productivity of an employee.</p> <p>Fourth, the proposed National Productivity and Competitiveness Council Bill, 2019 seeks to establish a council that will be in charge of productivity and competitiveness in the public sector.</p> <p>Teachers are employees of TSC and therefore, their productivity and performance can only be measured by TSC through its internal Performance Evaluation instruments.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p> <p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p> <p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>Proposal The regulations be deleted in entirety.</p> <p>Parliscom Again, this derogates from the power of employer public service institutions and goes beyond the powers of the Commission to advice.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>	
<p>COTU It recommended for a functional productivity center to provide criteria for measurement for productivity.</p>	<p>SRC is agreeable to the proposal to have a functional National Productivity Center. This, however, goes beyond the scope and objectives of these regulations.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC shall take up the matter administratively.</p>	
<p>County Assembly of Makueni Delete the words "seek the prior advice of the commission" and substitute therefore "comply with the commission guidelines on recognition and reward of productivity."</p> <p>OCOB If an institution develops a framework for recognizing and rewarding productivity in accordance with Reg. 23(4). That is, the framework should be in accordance with the guidelines approved and issued by the Commission. The public institution should therefore not seek advice on implementing its framework.</p> <p>Proposal Regulation 24 (1) should be deleted.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>	

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>CAJ This paragraph should be amended to read as follows: "The Commission shall provide guidance on the parameters for the type of rewards that institutions may give to employees for productivity and performance" The Salaries and Remuneration Commission should give guidelines on the type of rewards that institutions may give to its officers for productivity, as opposed to requiring institutions to seek approval from SRC for implementation of its rewards schemes.</p>	<p>in this provision on rewarding productivity and performance.</p> <p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>County Assemblies Forum Refer to 4. Above. Besides, seeking advice for every reward for productivity will be cumbersome and unnecessary. The Regulation inhibits the autonomy of public institutions which are empowered by law to make independent decisions. Delete Regulation In the alternative, issue a one off circular to advice on the reward resulting in remuneration or benefits to public officers.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>EACC It is proposed that Regulation 24(1) be deleted. The rationale is that it shall be onerous for all public institutions to seek prior advice of SRC before awarding public officers a reward for productivity and performance.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		<p>schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	
	<p>CRA Public officers and the levels of government are not under any mandatory obligation to seek this advice because they have their structures in place including the HR department. This is unconstitutional and should therefore be deleted.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>Further, The Public Service Commission (Performance Management) Regulations, 2021, with regard to rewards provides as follows;</p> <p>42(3)(a) Where a public body establishes a financial reward scheme, the public body shall, first seek the advice of SRC for the proposed financial rewards.</p> <p>46(2) the PSC shall seek the advice of SRC where PSC intends to award cash prizes under the award scheme.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
<p>(2) The Commission shall in advising on productivity and performance be guided by the following—</p>	<p>County Assembly of Makueni 24 (2) Delete the entire sentence and substitute therefor " In awarding productivity and performance the commission shall be guided by the following</p>	<p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
(a) achievement of productivity and performance targets;	-	-	-
(b) the capacity of a public service institution to afford the cost of proposed reward;	County Assembly of Makueni 24 (2) (b)Specify whether the reward is monetary or non-monetary	There is need to provide clarity in this provision on rewarding productivity and performance.	SRC has considered the proposal and revised the draft regulations appropriately.
(c) the ability of a public service institution to sustain payment of the reward;	-	-	-
(d) government policies and guidelines; and	-	-	-
(e) any other relevant factor that may be prescribed by the Commission.	-	-	-
(f)	COTU Proposed additional of clause (f) to provide for productivity center which shall be under the Ministry of Labour and shall be operationalized to provide the criterion and how labour productivity indices can be developed;	The object of the draft regulations is for the better carrying into effect the provisions of the SRC Act. The proposal goes beyond the scope and object of the draft regulations.	SRC has considered the proposal and revised the draft regulations appropriately.
25. Collective bargaining negotiation. (1) The Commission shall, pursuant to section 11 of the Act, advise public service institutions on the remunerative and benefit items payable out of public funds in collective bargaining negotiation.	SCAC The function cannot be undertaken by SRC in isolation, but in tandem with the National Treasury, Service Commissions and SCAC.	The Commission, in advising on collective bargaining negotiation, consults stakeholders.	SRC has considered the proposal and revised the draft regulations appropriately.
(2) Collective bargaining negotiation between a public service institution and a trade union shall cover a four year cycle.	KDF (On Regulation 25 and 26) Provisions to be made for public institutions whose employees cannot belong to trade union or engage in collective bargaining agreement. It is proposed a sub para be introduced for engagement with such institutions for example through responsible department, branch or a select board. Parliscom The Commission may advise on the period of a collective bargaining agreement but may not prescribe the period of the agreements.	The proposal by KDF is beyond the scope of collective bargaining negotiation as contemplated in the draft regulations.	Retain the provisions as contained in the regulations.
		SRC is mandated to set the cycle for review of remuneration and benefits. This includes collective	SRC has considered the proposal and retains the provision as contained in the

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>CRA CBAs have their life cycles and SRC cannot dictate this. It is envisaged already in the agreement. This regulation is irrelevant. Delete</p>	<p>bargaining agreements. The four year cycle is informed by the need for planning and allocation of funds to implement the collective bargaining agreement. This is aligned to the government budgeting and planning cycle.</p>	<p>draft regulations.</p>
	<p>COTU Proposes the review cycle to be within 2years.</p>	<p>SRC is mandated to set the cycle for review of remuneration and benefits. This includes collective bargaining agreements. The four year cycle is informed by the need for planning and allocation of funds to implement the collective bargaining agreement. This is aligned to the government budgeting and planning cycle.</p>	<p>SRC has considered the proposal and retains the provision as contained in the draft regulations.</p>
<p>26. Procedure for collective bargaining negotiation (1) A public service institution with a recognition agreement with a trade union shall seek the prior advice of the Commission before the commencement of collective bargaining negotiation.</p>	<p>SCAC The function cannot be undertaken by SRC in isolation, but in tandem with the National Treasury, Service Commissions and SCAC</p> <p>County Assembly of Makueni Delete the words "a recognition agreement"</p> <p>County Assembly of Embu On collective bargaining, the role of the Commission</p>	<p>The Commission, in advising on collective bargaining negotiation, consults stakeholders. Recognition agreement is a legal requirement between parties in a CBA. There is need to provide clarity on the mandate of SRC to</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately. SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>when it comes to collective bargaining should be restricted to a strictly advisory role. Collective bargaining is a fundamental right that is rooted in the International Labour Organisation Constitution and reaffirmed as such in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. As such it is well regulated and additional conventions as well as procedures have already been set up to offer guidelines when it comes to the procedure to be used during the process. The Clause as structured seeks to insert the Commission into collective bargaining negotiations which may curtail the freedoms of trade unions as well as compliance/ slow down the process entirely. The said Regulation violates Article 41 of the Constitution which guarantees workers the right to fair labour practices particularly the right to engage in collective bargaining. Further violates the provisions of Articles 36 and 37 of the Constitution since the Regulation attempts to curtail and limit the scope of collective bargaining agreements.</p>	<p>advice public bodies on the remunerative and benefits items payable out of public funds.</p>	<p>regulations appropriately.</p>
	<p>Parlscom This derogates from the power of employer public service institutions and goes beyond the powers of the Commission to advice. Regulations 26(2)(3)&(4) are similarly ultra vires to the powers of the Commission and derogate from the power of employer public service institutions and goes beyond the powers of the Commission to advice.</p>	<p>There is need to provide clarity on the mandate of SRC to advice public bodies on the remunerative and benefits items payable out of public funds.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>County Assemblies Forum The procedure is restrictive and invasive on the public service institution. This defeats the essence of such negotiations. Proposal Redraft to give adequate latitude to the parties to a negotiation.</p>	<p>There is need to provide clarity on the mandate of SRC to advice public bodies on the remunerative and benefits items payable out of public funds.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>CRA This is an encroachment to the trade union rights as envisaged in the constitution Article 41 (4).Every trade union and every employers' organization has the right- (a) to determine its administration, programs, and</p>		

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>activities; (b) to organize; and (c) to form and join a federation. The clauses exceed the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.</p> <p>Proposal The clause should be deleted.</p>		
(2) A public service institution shall provide the following information required for provision of advice on collective bargaining negotiation—	<p>Parliscom Regulation 26(2) is similarly ultra vires to the powers of the Commission and derogate from the power of employer public service institutions and goes beyond the powers of the Commission to advise.</p>	<p>There is need to provide clarity on the mandate of SRC to advice public bodies on the remunerative and benefits items payable out of public funds.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>County Assembly of Makueni Insert the word "process" immediately after the word "bargaining".</p>	<p>It may not be necessary to add the word "process" before the word "bargaining" it may distort the purpose of the provision.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
(a) trade union proposals and management recommendations;	<p>County Assembly of Makueni The procedure should adhere to guidelines prescribed in the Labour Relations Act, 2007</p>	<p>There is no contradiction with the Act.</p>	<p>No action by the Commission</p>
(b) institution's financial performance;	<p>County Assembly of Makueni Which institution? Review and tie to relevant provisions of the Labour Relations Act, 2007</p>	<p>The term "institution's financial performance" refers to the financial performance of the public body seeking the advice of the Commission.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately</p>
(c) budget allocation;	<p>County Assembly of Makueni Which institution? Review and tie to relevant provisions of the Labour Relations Act, 2007</p>		
(d) approved salary structure and staff establishment; and			
(e) any other information that may be required by the Commission.			
(3) The Commission shall, upon receipt of a	<p>Parliscom</p>	<p>The mandate of SRC to issue</p>	<p>SRC has considered the</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
request for advice, provide the public service institution with parameters for collective bargaining negotiation taking into account the provisions of regulation 9 (1).	Regulation 26(3) is similarly ultra vires to the powers of the Commission and derogate from the power of employer public service institutions and goes beyond the powers of the Commission to advise.	advice to the national and county governments under Article 230 (4) (b) of the Constitution needs to be set out clearly in these regulations.	proposal and revised the draft regulations appropriately with regard to its advisory mandate.
(4) A public service institution shall undertake negotiation within the parameters issued by the Commission.	<p>Public Service Commission The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.</p> <p>Proposal Clause 26(3) should be deleted in entirety.</p>	The mandate of SRC to issue advice to the national and county governments under Article 230 (4) (b) of the Constitution needs to be set out clearly in these regulations.	SRC has considered the proposal and revised the draft regulations appropriately with regard to its advisory mandate.
(4) A public service institution shall undertake negotiation within the parameters issued by the Commission.	<p>Parliscom Regulation 26(4) is similarly ultra vires to the powers of the Commission and derogate from the power of employer public service institutions and goes beyond the powers of the Commission to advise.</p> <p>Public Service Commission The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.</p> <p>Proposal Clause 26(4) should be deleted in entirety.</p>	The draft proposal needs to be revised clearly set out the mandate of SRC under Article 230 (4) (b) of the Constitution and Section 11 of the SRC Act.	SRC has considered the proposal and revised the draft regulations appropriately with regard to its advisory mandate.
Upon conclusion of collective bargaining negotiation within the parameters provided by the Commission, the public service institution shall request the Commission for clearance of the draft collective bargaining agreement to facilitate its registration at the Employment and Labour Relations Court.	<p>County Assembly of Makueni Insert the words "trade unions "immediately after the word "commission</p> <p>COTU Proposes the subsection to be deleted.</p>	The Commission issues its advice to the public service organization who in-turn use the advice to negotiate with the trade unions. The clause is to ensure that public bodies adhere to the advice before the CBA's are registered. ELRC Act and rules recognize the role of SRC in CBN and CBA registration.	It is not necessary to insert the word trade unions. SRC has considered the proposal and retains the provision as contained in the draft regulations.
	County Assembly of Makueni	There is need to consider	SRC has considered the

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	Insert the words "applicable laws" immediately after the word "commission".	adopting the proposal.	proposal and revised the draft regulations appropriately with regard to its advisory mandate.
<p>27. Submission of request for advice</p> <p>A public service institution may, at any time, request the Commission, in writing, to set, review and, advise on the remuneration and benefits for its State or other public officers.</p>	<p>Public Service Commission</p> <p>The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.</p> <p>Proposal</p> <p>27 A public service institution may, at any time, request the Commission, in writing, to-</p> <p>(a) set and review the remuneration and benefits for its State Officers; and</p> <p>(b) advise on the remuneration of its public officers.</p>	<p>There is need to have the draft Regulations clearly outline the Commission's mandate with respect to other public officers.</p>	<p>The draft regulations have been revised to clearly distinguish the mandate of SRC in relation to;</p> <p>(c) setting and regularly reviewing the remuneration and benefits for State officers;</p> <p>(d) advising the national and county governments on the remuneration and benefits of other public officers; and</p> <p>(a) keeping under review and advising on the remuneration and benefits for other public officers.</p>
<p>28. Review of advice on remuneration and benefits.</p> <p>(1) The advice of the Commission, in relation to the remuneration and benefits of all other public officers, is binding and may only be reviewed by</p>	<p>SCAC</p> <p>The proposed binding nature of SRC advise is unconstitutional and ultra vires. The SRC should be guided by the Supreme Court advisory hereinabove. The entire section should be excluded for manifest breach reasons.</p>	<p>There is need to have the draft Regulations clearly outline the Commission's mandate with respect to State</p>	<p>The provision on the effect of SRC's advice has been revised.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
the Commission.	<p>Parlscorn Regulation 28(1) is ultra vires to the powers of the Commission in so far as it provides that the advice of the Commission is binding in relation to the remuneration and benefits of all other public officers and may only be reviewed by the Commission.</p> <p>County Assembly of Embu On review of advice on remuneration and benefits, Regulation 28 seeks to make advice issued by the Commission binding. The term 'advice' in its literal meaning can never be binding as to advise is to offer a guideline or suggestion. Secondly, the role of the Commission when it comes to public officers, other than State officers, is clearly outlined in the Constitution and is limited to an advisory role. By making advice binding then the Commission would in fact be setting requirements for public officers which would be contrary to the provisions of Article 230 (4) (b) of the Constitution. The regulation should therefore be revised accordingly.</p> <p>County Assemblies Forum This provision redefines the meaning of the word 'advice'. It also obliterates the differentiation created by the Constitution between 'setting and reviewing of remuneration' and advising on the same.</p> <p>Proposal Delete Regulation.</p> <p>Public Service Commission The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.</p> <p>Proposal Clause 28 should be deleted.</p> <p>County Assembly of Makueni Insert the words "in case of a dissatisfaction with the decision of the commission by a court of competent jurisdiction" immediately after the words "commission"</p>	and other public officers.	

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>(2) A public service institution seeking review of the advice of the Commission shall do so in writing.</p>	<p>OCOB It is important to provide the timeline for seeking the review and the time when the Commission should respond.</p>	<p>SRC has considered the proposal and finds it impractical to prescribe timelines for review of advice as review of advice may be contingent on emerging issues the timing of which is not foreseeable.</p>	<p>SRC has considered the proposal and retains the provision as contained in the draft regulations.</p>
<p>(3) The Commission may review its advice upon receipt of new material information or justification not previously placed before it.</p>	<p>NPSC Advice to be given by SRC upon request by a Public Service Institution needs to be done in accordance with proposed Regulation 4 and 6. Consider adding a provision at proposed sub-regulation 28(3)</p>	<p>Review of remuneration and benefits should be subject to the factors set out under Regulation 9(1).</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
<p>(4) The advice of the Commission once reviewed supersedes any prior advice.</p>	<p>OCOB It is important to provide the timeline for seeking the review and the time when the Commission should respond.</p>	<p>SRC has considered the proposal and finds it impractical to prescribe timelines for review of advice as review of advice may be contingent on emerging issues the timing of which is not foreseeable.</p>	<p>SRC has considered the proposal and retains the provision as contained in the draft regulations.</p>
<p>29. Request for information. (1) The Commission may pursuant to section 13(1)(a) of the Act, request a public service institution to provide information.</p>	<p>SCAC As reiterated, communication to and from the Commission should be channeled through the focal point organs in the Executive, Judiciary and Parliament. Any variant from the same would be distortional, cause confusion and operate contra good order.</p>	<p>Communication protocols will be managed administratively and need not be in the regulations.</p>	<p>SRC has considered the proposal and retains the provision as contained in the draft regulations.</p>
<p>(2) A public service institution shall, upon receipt of the request in sub-regulation (1) provide the required information to the Commission within the timelines set by the Commission.</p>	<p>30. Disputes relating to remuneration and benefits. (1) The Commission shall encourage the application of alternative dispute resolution</p>	<p>The proposal is meant to encourage the application of alternative dispute resolution in disputes relating to</p>	<p>SRC has considered the proposal and retains the provision as contained in the</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>mechanisms in any disputes relating to remuneration or benefits for State and other public officers.</p>	<p>appropriate. The section further seeks to shield SRC from court action by prescribing the action to be undertaken by the Commission upon suit, which is contra legal practice.</p>	<p>remuneration and benefits in line with Articles 159 (2) (c) and 252 (1) (b) of the Constitution and Section 11 (h) of the SRC Act.</p>	<p>draft regulations.</p>
<p>(2) A public service institution shall notify the Commission of any dispute relating to remuneration or benefits for its State or other public officers.</p>	<p>County Assembly of Makueni Insert the word "officer" immediately after the word "state".</p>	<p>SRC has considered the proposal and is of the view that it is not necessary to insert the word "officer" immediately after the word "State".</p>	<p>SRC has considered the proposal and retains the provision as contained in the draft regulations.</p>
<p>(3) The Commission shall in any court proceedings relating to remuneration or benefits for State or other public officers, file a report within thirty days of service of the pleadings or such other time as the Court may direct.</p>	<p>PARLSCOM Regulation 30(3) is ultra vires to the powers of the Commission with regard to employer public service institutions as well as the established procedure of litigation before the judiciary.</p>	<p>A similar provision exists in the Employment and Labour Relations Court Rules, 2016. It is therefore not necessary to have similar provisions in these regulations.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>County Assembly of Makueni Insert the word "officer" immediately after the word "state"</p>	<p>SRC has considered the proposal and is of the view that it is not necessary to insert the word "officer" immediately after the word "State".</p>	<p>SRC has considered the proposal and retains the provision as contained in the draft regulations.</p>
	<p>Public Service Commission The clause is superfluous as the procedures for dispute resolution in court is provided for in various rules of procedure for different courts. Proposal Clause 30(3) should be deleted.</p>	<p>A similar provision exists in the Employment and Labour Relations Court Rules, 2016. It is therefore not necessary to have similar provisions in these regulations.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
<p>(4) Where the Commission is not a party to proceedings referred to in sub-regulation (3), the public service institution shall within seven days of the commencement of the suit or service of pleadings, notify the Commission of such proceedings.</p>	<p>Parlscm Regulation 30(4) is ultra vires to the powers of the Commission with regard to advise to employer public service institutions as well as the established procedure of litigation.</p>	<p>The provision addresses situations where disputes relating to remuneration and benefits for State or other public officers are determined without the Courts having the benefit of considering SRC's position.</p>	<p>SRC has considered the proposal and retains the provision as contained in the draft regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>EACC It is proposed that the timeframe be increased or provided as within a reasonable time. The rationale is that the time-frame given of 7 days from commencement of suit, is short and may lapse before they are notified.</p>	<p>The proposal on timelines is appropriate and shall give public bodies ample time to notify SRC of any disputes.</p>	<p>SRC has considered the proposal and revised the time-frame to 14 days.</p>
<p>31. Compliance with Commission set and reviewed remuneration and benefits, and advice. (1) The Commission may take any measures it considers necessary to ensure that public service institutions adhere to the set and reviewed remuneration and benefits, and advice issued by the Commission.</p>	<p>SCAC The advisory on public officer remuneration and benefits is non-binding. SRC cannot by regulation provide a blanket cover of consequential action not premised on powers under the constitution or the law. SRC is to be guided by the Supreme Court advisory and channel any non-compliance action to parliament in accordance with Article 254 (1). County Assembly of Makueni Delete the following words "the set and reviewed remuneration and benefits and advice issued by the Commission" and substitute therefor " set guidelines on remuneration and benefits" Public Service Commission The clause exceed the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019. 31(1) The Commission may take any measures it considers necessary to ensure that public service institutions adhere to the set and reviewed remuneration and benefits for State Officers, and advice issued by the Commission Delete.</p>	<p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p>
	<p>CRA Based on the Advisory role, there is no need for compliance, therefore delete.</p>	<p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p>
	<p>OCOB To avoid ambiguity and uncertainty, the measures to be taken by the Commission should be clearly provided for.</p>	<p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>Parliscom Regulation 31(1) is ultra vires to the powers of the Commission as the Commission has no power to enforce the remuneration that it sets for State Officers. Further, the advice given on the remuneration for public officers is not binding. The power to investigate, determine compliance and enforce the same (including sanctions for non-compliance) is placed on other state agencies such as the Office of the Auditor General, the EACC, DCI and the judiciary. Regulation 31(2),(3),(4)&(5) are ultra vires in so far as the Commission has no powers to investigate and determine compliance.</p> <p>County Assemblies Forum The Constitution does not create an obligation for the public service institutions to adhere to the advice given by SRC.</p> <p>Proposal Redraft sub-regulation (1) to apply only to state officers.</p> <p>County Assemblies Forum Under Regulation 32 (2), it should be an obligation of SRC to sensitize the public service institutions.</p> <p>Proposal In sub-regulation (2) delete the word 'may' and substitute therewith the word 'shall'</p> <p>Parliscom Regulation 31(2) is ultra vires in so far as the Commission has no powers to investigate and determine compliance.</p> <p>County Assembly of Makueni Delete the entire sentence and substitute therefor "set guidelines on remuneration and benefits by the Commission. 31 (2) (b) Insert the words "state officers" immediately before the words "other public officers."</p>	<p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p>
(a) set and reviewed remuneration and			

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
benefits for State officers; and			
(b) advise on remuneration and benefits for other public officers.	-	-	-
(3) The Commission shall, pursuant to Section 13 of the Act, conduct regular compliance checks to ensure that public service institutions comply with these regulations, the set and reviewed remuneration and benefits, and the advice of the Commission.	Parlscom Regulation 31(3) is ultra vires in so far as the Commission has no powers to investigate and determine compliance.	It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.	SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.
	ICPAK The provision is not clear on how often the compliance checks should be carried out. Proposal Amend Regulation 31 (3) to read: The Commission shall, pursuant to Section 13 of the Act conduct compliance checks every two years to ensure that public service institutions comply with these regulations, the set and reviewed remuneration and benefits and the advice of the Commission. Justification For clarity.	It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.	SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.
	Public Service Commission The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019. Proposal The clause should be deleted.	It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.	SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.
	County Assembly of Makueni Delete the words " the set and reviewed remuneration and benefits and the advice of the commission "and substitute therefor "set guidelines on remuneration and benefits for state and other public officers"	It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.	SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.
(4) The Commission may require a public service	Parlscom Regulation 31(4) is ultra vires in so far as the	It is necessary to revise the provision on compliance with	SRC has considered the proposal and revised the draft

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
institution to take remedial action in compliance with the Commission's set remuneration and benefits, and advice within a set time frame and provide proof of such compliance.	Commission has no powers to investigate and determine compliance.	Commission set and reviewed remuneration and benefits, and advice in entirety.	regulations to provide for monitoring and evaluation.
	Public Service Commission The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019. Proposal The clause should be deleted.	It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.	SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.
	County Assembly of Makueni Delete the words " the commissions set remuneration and benefits and advice within the set time frame and provide proof of compliance" and substitute therefor " the set guidance on remuneration and benefits for state officers and and other public officers and advise	It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.	SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.
(5) Where a public service institution fails to comply with the Commission's requirement in sub-regulation (4), the Commission may initiate or recommend action as provided by law.	Parlscm Regulation 31(5) is ultra vires in so far as the Commission has no powers to investigate and determine compliance.	It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.	SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.
	Public Service Commission The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019. Proposal: The clause should be deleted.	It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.	SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.
32. Commission to provide guidance. The Commission may, from time to time, issue guidance on the implementation of these Regulations.	County Assembly of Makueni Amend the marginal note accordingly Amend the word "guidance "appearing immediately before the word "guidance" and substitute therefor "guidelines"	The draft provision needs to be revised in line with Section 13 of the Statutory Instruments Act.	SRC has considered the proposal and revised the draft regulations on provision of guidance.
	Parlscm Regulation 7(2) contravenes section 13(m) of the Statutory Instruments Act. Regulation 7(2), in effect, delegates the power to make further statutory instruments to the Commission without reference to the legislative role of Parliament. Article 94(5) of the Constitution of Kenya, 2010 states as follows: <i>"No person or body, other than Parliament, has</i>	The draft provision needs to be revised in line with Section 13 of the Statutory Instruments Act.	SRC has considered the proposal and revised the draft regulations on provision of guidance.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p><i>the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation."</i></p> <p>This is further contrary to section 13(m) of the Statutory Instruments Act as it amounts to an inappropriate delegation of legislative powers.</p> <p>The guidelines contemplated should be set out in the Regulations for approval together with the other provisions of the Regulations.</p> <p>Regulation 24(e) contravenes section 13(m) of the Statutory Instruments Act as it amounts to an inappropriate delegation of legislative powers.</p> <p>Regulation 29(2) is in contravention of section 13(m) of the Statutory Instruments Act in so far as it purports to delegate the timelines for submission of the information sought.</p> <p>Regulation 32 is in contravention of section 13(m) of the Statutory Instruments Act in so far as it purports to give powers to the Commission to issue guidance on implementation of the Regulations and amounts to an inappropriate delegation of legislative power.</p>		



REPUBLIC OF KENYA

SALARIES AND REMUNERATION COMMISSION



SALARIES AND REMUNERATION COMMISSION
P.O. BOX 10000
NAIROBI

DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

INVITATION TO SUBMISSION OF MEMORANDA

The Salaries and Remuneration Commission (SRC) is established under Article 230 of the Constitution of Kenya, 2010. Article 230(4) of the constitution gives the Commission powers and functions,

- a) to set and regularly review the remuneration and benefits of all State officers; and
- b) to advise the national and county governments on the remuneration and benefits of all other public officers.

Further, the Salaries and Remuneration Commission Act, 2011, which operationalises Article 230 of the constitution, vests the Commission with additional functions and powers. Section 26 of the Act mandates the Commission to make regulations for the better carrying into effect the provisions of the Act.

Pursuant to this, the Commission has developed the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022.

In line with Article 10 and 47 of the constitution, among other legal provisions, the Commission is requesting for memoranda and views from stakeholders and the public on the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022.

The Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and other Public Officers) Regulations, 2022, can be accessed on SRC website using the following link: <https://bit.ly/3579v1M>

The written views and memoranda should be addressed to the Commission Secretary/CEO, and sent through the following email addresses: regulations@src.go.ke and/or info@src.go.ke, and/or addressed to the Commission Secretary/CEO, and sent through P.O. Box 43126 – 00100, Nairobi, Kenya, and/or through online options and platforms, as follows: SRC social media platforms (@srckenya on Twitter and Instagram; @SRCKE on Facebook; and Salaries and Remuneration Commission on LinkedIn. A Submission Form is also available on SRC website link: <https://src.go.ke/1669-2/>

All submissions should reach the Commission on or before 11 March 2022.



<https://www.src.go.ke/>



Salaries and Remuneration Commission



SRC/KE

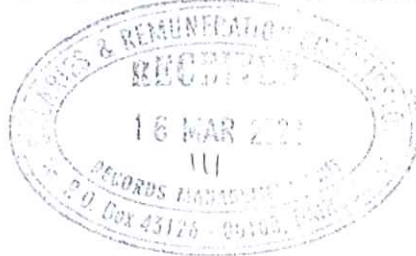


@srckenya

OFFICE OF THE CONTROLLER OF BUDGET



Tel: 020 2211068, 0738466721, 0709910000
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Gina House, 12th Floor
Hararbee Avenue
P.O. Box 35616-00100
Nairobi Kenya

Ref. COB/SRC/002/Vol.V (23)

15th March, 2022

Mrs. Lyn Mengich
Chairperson
Salaries and Remuneration Commission
P.O. Box 43126-00100
NAIROBI

HLS
Please find
[Signature]

Dear *Mrs Mengich,*

17-3-22

**RE: WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND
REMUNERATION COMMISSION (REMUNERATION AND
BENEFITS OF STATE AND OTHER PUBLIC OFFICERS)
REGULATIONS, 2022**

We refer to your letter Ref: SRC/ADM/18(2)) dated 23rd February, 2022 on the above subject matter.

Forwarded herewith, please find written submissions from this office for your further necessary action.

Yours *Sincerely,*
[Signature]

**Dr. Margaret Nyakang'o CBS
CONTROLLER OF BUDGET**

OFFICE OF THE CONTROLLER OF BUDGET COMMENTS ON THE SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

No	Clause	Proposed Amendment	Explanation
1.	6	Merge Clause 6 and 9 of the Regulations	This will avoid duplication of the provisions and improve the flow of the Regulations.
2.	8	Delete the clause	Pensions should be addressed by the Pension Act Further, from practice, seconded staff can earn both pension and gratuity since institutions are required to remit pensions to Director Pensions. The Pension is based on the officer's basic salary from the parent ministry. At the end of the contract, the officer is paid gratuity based on the basic salary at the institution where the officer is on secondment.
3.	9(2)	To replace "may" with "shall"	To be aligned to the review and advise by the Commission on the remuneration of State and Public officers as well as to the general public. Our view is that the views of the stakeholders should always be considered. Use of the term "may" makes it discretionary and not mandatory.
4.	15(4)	Provide the specific timelines for addressing the review of the evaluation results	The timelines need to be known and clear. The Commission should not give itself other prescriptive powers in the Regulations.
5.	23(1)	To provide the criteria for rewarding productivity instead of stating that "the Commission shall issue guidance..."	These regulations should operationalize the Act by providing the "how", not by stating once again that the Commission shall do certain things but providing how those things will be done. This would also increase accountability and transparency in that there will be a set mechanism for measuring performance.
6.	24(1)	To delete	If an institution develops a framework for recognizing and rewarding productivity in accordance with Reg. 23(4). That is, the framework should be in accordance with the guidelines approved and issued by the Commission. The public institution

			should therefore not seek advice on implementing its framework.
7.	28(2) & (3)	To provide timeline	It is important to provide the timeline for seeking the review and the time when the Commission should respond.
8.	31	The measures to be taken by the Commission should be clearly provided for.	To avoid ambiguity and uncertainty.



Dr. Margaret Nyakang'o CBS
CONTROLLER OF BUDGET



National Gender and Equality Commission
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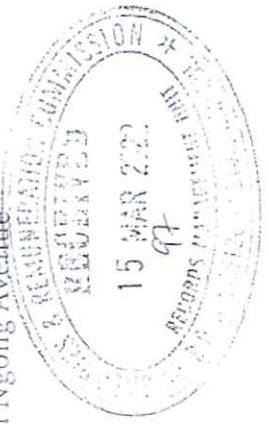
Ref: No.: NGECC/CS/COMMS/017/VOI.. I (101)

11th March 2022

Anne. R. Gitau, MBS
 Commission Secretary/CEO
 Salaries and Remuneration Commission
 Williamson House 6th Floor, 4th Ngong Avenue
 P.O Box 43126 - 00100
 NAIROBI

Carsten

15.3.22



Regulations@src.go.ke
info@src.go.ke

Dear

REQUEST FOR WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

We make reference to your letter Ref. No. SRC/ADM/18(2) of 22nd February, 2022.

Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011 mandates the Commission to, *'monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions'*;

In line with our mandate, we have read through the Regulations as drafted and having cross referenced the provisions therein with the Constitution, the Salaries and Remunerations Act, the Pensions Acts and all other relevant documents. We wish to submit that we formed the opinion and made a conclusion that the Draft Regulations are in order and aligned to other existing provisions of relevant laws and we accordingly approve the same for finalization.

Yours

Musee

Betty Sungura-Nyabuto, MBS
 COMMISSION SECRETARY/ CEO

NATIONAL GENDER AND EQUALITY COMMISSION

TEACHERS SERVICE COMMISSION

Telephone: Nairobi 2892000
Email: info@tsc.go.ke
Web: www.tsc.go.ke



TSC HOUSE
KILIMANJARO ROAD
UPPER HILL
PRIVATE BAG- 00100
NAIROBI, KENYA

When replying please quote
Ref. N^o:CS/TSC/46/VOL.VII

Date: 16th March, 2022

Anne R. Gitau, MBS (Mrs)
Secretary/Chief Executive
Salaries and Remuneration Commission
P.O. Box 30050 – 00100,

Dear Madam,


This is in reference to your letter SRC/ADM/18 (2) dated 23rd February, 2022, and our letter Ref:TSC/FIN/SDD/SRC/70/VOL.II/4 dated 11/3/2022 on the above matter.

We have subjected the proposed Regulations on the Remuneration and Benefits of State and Public Officers 2022 to a thorough review.

Attached hereto, find Memorandum elaborating the position of the Teachers Service Commission on the same.

We await the opportunity to reiterate and/or elaborate on the same.

Yours Sincerely,


DR. NANCY NJERI MACHARIA, CHS
SECRETARY/CHIEF EXECUTIVE

TEACHERS SERVICE COMMISSION



TSC MEMORANDUM ON THE DRAFT SRC (REMUNERATION
AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS)
REGULATIONS 2022

PRESENTED

TO

THE SALARIES AND REMUNERATION COMMISSION

BY

THE TEACHERS SERVICE COMMISSION

TSC MEMORANDUM ON THE DRAFT SRC (REMUNERATION
AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS)
REGULATIONS 2025

1. INTRODUCTION

- 1.1 The Teachers Service Commission (the Commission) is established under Article 237 (1) of the Constitution as a constitutional Commission with primary functions being to: - register trained teachers; recruit and employ registered teachers; assign teachers for service in any public school or institution; promote and transfer teachers; exercise disciplinary control over teachers; and terminate the employment of teachers engaged in public service.
- 1.2 The Commission is further mandated Under Article 237 (3) of the Constitution to:- review the standards of education and training of persons entering the teaching service; review the national demand for, and the supply of teachers; and advise the National Government on matters relating to the teaching profession.
- 1.3 On the other hand, section 11 of the Teachers Service Commission Act requires the Commission to: -
 - 1.3.1 Formulate policies to achieve its mandate;
 - 1.3.2 Provide strategic leadership and direction;
 - 1.3.3 Prescribe teaching standards and ensure compliance;
 - 1.3.4 Manage the Teachers payroll;
 - 1.3.5 Facilitate career progression & professional development;
 - 1.3.6 Monitor the Conduct and Performance of teachers; and
 - 1.3.7 Do all such other things as may be necessary for the effective discharge of its functions and the exercise of its powers.
- 1.4 TSC is therefore an independent body bestowed with a specific mandate to undertake all teacher management functions. Under Article 250 of the Constitution, the membership of the Commission is constituted to discharge and/or execute such mandate while Article 249(2) (b) of the Constitution acknowledges that the Commission is independent hence not subject to direction or control by any person or authority.

- 1.5 The Commission is the single largest employer in the public sector. Notably, the proposed Regulations will have huge implication in the teaching service in Kenya. It is against this background that the Commission has carefully studied the proposed Regulations and hereby presents its views on the same for consideration.

2. GENERAL VIEW ON THE PROPOSED REGULATIONS

Pension Regime in Kenya

- 2.1 Pension regime in Kenya is regulated by Constitution, the Pensions Act, the Retirement Benefits Act, and the Public Service Superannuation Scheme Act. These legislations provide statutory guidelines on the entire pension regime in public service.
- 2.2 Further, the statutes and attendant Regulations vests the legal mandate for the management of retirement benefits in different institutions in the public service including the National Treasury, the Retirement Benefits Authority and various employers.
- 2.3 Regulation 8 of the proposed Regulations seeks to upset the above substantive statutory framework through the "back door" i.e. subsidiary legislation. As a cardinal principle of law, Regulations cannot amend a substantive statutory provision. The net effect of the Regulation as currently drafted are inconsistent with the provisions of the Pensions Act, the Retirement Benefits Act, and the Public Service Superannuation Scheme Act.
- 2.4 For instance: The Regulations proposes that SRC shall set and advice pension or gratuity payable to state officer and public officers. This contradicts the provision of the first schedule of the Pensions Act that provides a statutory formula for calculating pension emoluments in public service.
- 2.5 We further take note that, the Public Service Superannuation Scheme is a defined contribution scheme for employees in the public service. The same is founded on the provisions of the Public Service Superannuation Scheme Act. The scheme is further regulated by the Retirement Benefits Authority. To this end, therefore, the proposed provision by the Regulations to mandate SRC to regulate defined contribution schemes will not only be usurping the mandate of the RBA but also a contravention of the existing law.

- 2.6 Under Section 11(g) of the Salary and Remuneration Act the Commission has the mandate to make recommendations on the review of pensions payable to holders of public offices. The proposed Regulations tends to extend this mandate beyond the provisions of the parent Act to include “setting, regulating, reviewing, advising on pension review.” This creates inconsistency which will not stand the test of time and/or the legal threshold for law making.
- 2.7 To the extent that the proposed Regulations tend to encroach on matters already sufficiently provided for by other existing legislations the same is not only in contravention to jurisprudence but may fail the *ultra vires* test.
- 2.8 We reiterate that there are statutory legislations in place that creates, defines and regulates the right to pension. As such, except through an amendment of the parent Acts to place SRC in the implementation structure of pensions, an attempt to create, define, regulate or confine powers to any other entities than those contemplated under the relevant legislation will be illegal.
- 2.9 The proposed Regulations will render impotent and circumvent the powers and roles granted to bodies under the Pension Act, Retirement Benefits Act, and Public Service Superannuation Scheme Act. In this regard, it is our view that the proposed Regulations should be limited to the Constitutional Mandate of SRC.

Managerial Prerogative of an Employer

- 2.10 Generally, employers have the mandate to recruit, supervise, appraise, and reward employees based on achievements and productivity instruments developed by the employer.
- 2.11 More specifically, teacher management functions is exclusive mandate of TSC under Article 237(2) including inter alia to recruit, employ and promote teachers. TSC constitutional power to undertake teacher management functions vests it with exclusive mandate to supervise, measure and evaluate performance of its employees. The same is further buttressed by Section 11(f) of the TSC Act that empowers the Commission to monitor the conduct and performance of teachers in the teaching service.

- 2.12 Accordingly, the TSC just like other employers in public service has in place the Performance, Recognition, Rewards and Sanctions Policy for its employees. This policy framework compliments the Performance Contract and Performance Appraisal tools to measure productivity and consequently issue rewards or sanctions where appropriate.
- 2.13 In the same spirit, the Public Service Commission has in place the Performance Rewards and Sanctions Policy Framework for the Public Service. This framework establishes performance management system and a basis for rewarding exemplary performance, and where necessary, administering sanctions for poor performance, with a view to enhance productivity in the Public Service.
- 2.14 Regulation 23 and 24 seeks to irregularly grant SRC the mandate to approve internal policies or guidelines related to rewards and productivity. More dangerously, Regulation 23 (1) seeks to further grant SRC power to develop Guidelines on rewarding productivity and performance and that such Guidelines will be binding on employers in the public service.
- 2.15 Accordingly, it is our considered view that Regulations 23 and 24 be deleted entirely as it seeks to unlawfully usurp the mandate of Public Service employers contrary to Article 249 of the Constitution.
- 2.16 Issues of reward and productivity are managerial emanating from the administrative prerogative that vest exclusively on an employer. While we appreciate the mandate of SRC under the law, TSC being a Constitutional Commission with operational independence cannot be directed by any other person or authority save as provided in law.
- 2.17 It is also key to note that there is a proposed National Productivity and Competitiveness Council Bill, 2019 that seeks to establish framework to foster productivity and competitiveness improvement in the public sector.

2.18 It is our view, therefore, that rewards and sanction framework are within the exclusive province of employers. It is also key to note that not all rewards contemplated under various policies in the public sector have financial implications.

3. MATRIX ON SPECIFIC RECOMMENDATIONS ON THE PROPOSED REGULATIONS

S/N	CLAUSE	VIEWS	RECOMMENDATIONS
1.	Regulation 8 (1) and (2): SRC shall set/advise on pension due to state officers and public officers.	<p>The First Schedule of Pensions Act provides for a formula for calculation of pensions due to a public officer.</p> <p>Further, the Public Service Superannuation Scheme Act provides for contributions and payment of retirement benefits for defined contribution.</p> <p>It is our view therefore that the proposed Regulation tend to bestow functions provided by other statutes on SRC without any basis in law.</p>	The entirety of Regulation 8 be deleted.
	Regulation 8(3): State or other public officer shall not be paid both pension and gratuity for the same period of time.	The proposed Regulation contradicts Section 4 of the Pensions Act that provides that every person has absolute right to pensions and gratuity.	

	<p>Regulation 8(5) and (6): SRC to give guidance to effect defined contribution</p>	<p>The Public Service Superannuation Scheme Act creates a defined contribution for public service and gives guidance to contribution and payment of retirement benefits under the scheme.</p> <p>Further, the Retirement Benefits Authority established by the Retirement Benefits Authority Act is mandated to regulate Pension Schemes.</p> <p>Thus, the proposed Regulation contravenes the powers/functions provided by statute and donated to other bodies.</p>	
	<p>Regulation 8(7): SRC to set, review advise and recommend on pension review</p>	<p>The proposed Regulation extend to the mandate of SRC beyond what is provided under section 11(g) of the SRC Act. The Regulation is thus <i>ultra vires</i></p>	

<p>2.</p>	<p>Regulation 23 & 24: Rewarding productivity and performance</p>	<p>Firstly, Rewards and Sanctions is an exclusive prerogative of the employer and TSC being an independent constitutional body its functions cannot be supervised by another body.</p> <p>Secondly, we note that the nature of Productivity and Rewards regime does not require guidelines, approvals and supervision by SRC.</p> <p>Thirdly, SRC has no such mandate in law. It is only the employer in consultation with the employee who can effectively measure the productivity of an employee.</p> <p>Fourth, the proposed National Productivity and Competitiveness Council Bill, 2019 seeks to establish a council that will be in charge of productivity and competitiveness in the public sector.</p> <p>Teachers are employees of TSC and therefore, their productivity and performance can only be measured by TSC through its internal Performance Evaluation instruments.</p>	<p>The regulations be deleted in entirety.</p>
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-----ENDS-----

REPUBLIC OF KENYA



PARLIAMENT

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Parliamentary Service Commission
Parliament Buildings
P. O. Box 41842 -00100
NAIROBI, Kenya

SPEAKER OF THE NATIONAL ASSEMBLY/CHAIR OF THE PARLIAMENTARY SERVICE COMMISSION

OUR REF: DLC/ADM/1/19(63)

9th March, 2022

Mrs. Lyn C. Mengich,
Chairperson,
Salaries & Remuneration Commission, info@src.go.ke
Williamson House, 6th floor, 4th Ngong Avenue, regulations@src.go.ke
P. O. Box 43126-00100,
NAIROBI.

Dear

Chairperson,

REQUEST FOR WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022.

We refer to your letter ref: SRC/ADM/18(2) dated 23rd February, 2022.

Please note that the Parliamentary Service Commission was unable to participate in the virtual stakeholders' engagement meeting scheduled to be held on Monday, 28th February 2022 due to the short notice given for the meeting. It is important for effective and meaningful public participation that stakeholders be given adequate notice of the meetings to enable them attend. In this particular instance, your letter was received on Friday, 25th February 2022 yet the meeting was scheduled for Monday, 28th February 2022.

Be that as it may, the Parliamentary Service Commission has now considered the draft Regulations in light of the provisions of the Constitution of Kenya, 2010, the Salaries and Remuneration Commission Act, (No. 10 of 2011), the Interpretation and General Provisions Act (Cap 2 Laws of Kenya) and the Statutory Instruments Act (No. 23 of 2013) now proceeds to give its views on the draft Regulations as follows:

PROCEDURAL MATTERS

(a) Regulations making powers

1. The enactment clause of the Regulations states that “IN EXERCISE of the powers conferred by section 26 of the Salaries and Remuneration Commission Act, 2011, **the Chairperson** of the Salaries and Remuneration Commission makes the following Regulations-...”
2. The draft Regulations are made pursuant to section 26 of the Salaries and Remuneration Commission Act, (*No. 10 of 2011*) which provides that-
 - “(1) The Commission may make regulations generally for the better carrying into effect of any provisions of this Act.*
 - (2) The power to make Regulations shall be exercised only after a draft of the proposed Regulations has been approved by the National Assembly.”*
3. The enactment clause should be re-done to conform to section 26 of the Salaries and Remuneration Commission Act, and sections 13(a) and (h) of the Statutory Instruments Act. The power to make Regulations is granted to the Salaries and Remuneration Commission AND NOT the “Chairperson” whose role is to sign the Regulations. This is a drafting and policy error that ought to be corrected.

(b) Regulations making procedure

4. Pursuant to section 26(2) of the Salaries and Remuneration Commission Act, the draft Regulations can only be published after a draft of the proposed Regulations has been approved by the National Assembly.
5. The enactment clause should therefore indicate that the Regulations are made by the Salaries and Remuneration Commission after approval by the National Assembly.

(c) Definition of “commission”.

6. The Regulations refer to the word “Commission” severally in the text/body. There should be a definition of the term “Commission” as the Salaries and Remuneration Commission.

(d) Vague provision

7. Reference to the words “other legal provisions” in the proposed Regulation 6(a) and 9(1)(a) are vague and should clearly specify the written laws that the principles are anchored on. These include the Employment Act, the Income Tax Act, the Public

Service Commission Act, the Parliamentary Service Commission Act, the Judicial Service Commission Act, the Retirement \Benefits Act, the Pensions Act, the Parliamentary Pensions Act, and the Retirement Benefits (Deputy President and Designated State Officers) Act.

SUBSTANTIVE MATTERS

Definition of “allowance”

8. Regulation 2 defines “allowance” as meaning “... payment made to State or other public officers in addition to the basic or consolidated salary, as the case may be, for purposes of compensation, or any **facilitative payment made to State or other public officers.**”
9. Facilitative payments are neither remuneration nor benefits and therefore fall outside the mandate of the Salaries and Remuneration Commission. Facilitative payments are simply monies paid to State and public officers to enable them undertake their functions. The monies must be accounted for and do not benefit or remunerate the State or public officer. Examples of facilitative payments include imprest and per diem.
10. The phrase “...or any facilitative payment made to State or other public officers...” should therefore be deleted.

ROLE OF THE SALARIES AND REMUNERATION COMMISSION WITH REGARD TO OTHER PUBLIC OFFICERS

Powers of the Salaries and Remuneration Commission

11. It is important for the Salaries and Remuneration Commission to properly recognize the distinction between its constitutional power to set remuneration and benefits for State Officers and its power to advise on the remuneration and benefits for other public officers. During the Constitution making process, the Committee of Experts on Constitutional Review in their final report dated 11th October, 2010 stated as follows with regard to the Salaries and Remuneration Commission at paragraph 7.5.5.4:

7.5.5.4 The Salaries and Remuneration Commission

The functions of the Salaries and Remuneration Commission were revised in the RHDC. Its power to set the remuneration of MPs, members of the executive, including the president, members of commissions and other independent offices and other senior office holders was retained but its power to set the remuneration of other public officers was removed. This is because setting salaries in the public service is a matter closely linked to government policy and subject to collective bargaining. It is therefore not appropriately taken out of the hands of the executive (and unions) and given to an independent body. Instead, under the RHDC the Commission was to make recommendations on all other salaries etc in the public service. The Commission was covered by the provisions of Chapter 16 of that draft and so is independent. A rigorous process must be followed to remove members of the Commission.

The composition of the Commission was also revised to ensure that each sector affected by its decisions can nominate members to serve on it. In addition, three additional members of the Commission were to supply professional advice and do not vote (these are persons designated by the Attorney-General's office, by the Cabinet Secretary responsible for finance and by the Cabinet Secretary responsible for human resources).

The Salaries and Remuneration Commission protects constitutional democracy in two important ways. First, following practice in many modern democracies, it ensures that people do not set their own salaries – thus although MPs must pass the budget, they do not set their own salaries. Secondly, it protects the remuneration of members of the institutions that are intended to guard the Constitution and oversee the executive and Parliament. So, for instance, Parliament or the executive cannot intimidate judges by threatening to lower their salaries – the salaries are set and protected by the Commission.

Object of the Regulations

12. Regulation 3(1)(c) states that one the objectives of the Regulations is to provide for the procedure for reviewing the remuneration and benefits of other public officers. This is contrary to Article 230(4)(b) of the Constitution and section 11(a), (b) and (c) of the Salaries and Remuneration Act, 2011 which envisages that the Salaries

and Remuneration Commission shall play an advisory role in terms of remuneration and benefits of all other public officers;

13. Article 230(4)(b) of the Constitution provides as follows:

The powers and functions of the Salaries and Remuneration Commission shall be to—

- (a) set and regularly review the remuneration and benefits of all State officers; and*
- (b) advise the national and county governments on the remuneration and benefits of all other public officers.*

14. Sections 11(a), (b) and (c) of the Salaries and Remuneration Act, 2011 provide as follows:

Functions of the Commission

In addition to the powers and functions of the Commission under Article 230 (4), the Commission shall -

- (a) inquire into and advise on the salaries and remuneration to be paid out of public funds;*
- (b) keep under review all matters relating to the salaries and remuneration of public officers;*
- (c) advise the national and county governments on the harmonization, equity and fairness of remuneration for the attraction and retention of requisite skills in the public sector;*
- (d) conduct comparative surveys on the labour markets and trends in remuneration to determine the monetary worth of the jobs of public offices;*
- (e) determine the cycle of salaries and remuneration review upon which Parliament may allocate adequate funds for implementation;*
- (f) make recommendations on matters relating to the salary and remuneration of a particular State or public officer;*
- (g) make recommendations on the review of pensions payable to holders of public offices; and*
- (h) perform such other functions as may be provided for by the Constitution or any other written law.*

15. Regulation 4(2) provides that the Salaries and Remuneration Commission shall undertake the review taking into account the applicable national budgeting and

planning cycles. This is contrary to section 11(e) of the Principal Act which provides for the Commission to simply undertake the review. It is thereafter the responsibility of Parliament to determine whether to allocate funds for implementation of the review. It is Parliament's role to make the budget as well as plan for the country's medium term expenditure framework. The Commission should therefore work closely with Parliament and the National Treasury with undertaking reviews of remuneration and benefits.

16. Regulation 10(b) provides that the Commission shall communicate its advice on the remuneration and benefits for other public officers indicating the effective date of implementation.
17. The role of the Salaries and Remuneration with other public officers is to advise and not to set the remuneration. The role of setting the remuneration and benefits of other public officers falls within the remit of their respective employers who also appoint and supervise the office holders.
18. The Salaries and Remuneration Commission has no powers to redefine contractual relations between an employer and employee.
19. Regulation 11(c) is not in tandem with section 11(c) of the Salaries and Remuneration Commission Act in that the objective of the rationalization and harmonization of job grading structures in the public service has not been set out in the Regulations. Section 11(c) of the Salaries and Remuneration Commission Act provides that the purpose of harmonization, equity and fairness of remuneration is for the attraction and retention of requisite skills in the public service. The said section 11(c) provides that in addition to the powers and functions of the Commission under Article 230(4) of the Constitution, the Commission shall-

"advise the national and county governments on the harmonization, equity and fairness of remuneration for the attraction and retention of requisite skills in the public sector."

Validity of job evaluation results

20. Regulation 16 infringes on the powers and responsibilities of employers of public officers to undertake their own job evaluations for employees. In particular, the Parliamentary Service Commission, the Judicial Service Commission and the Public Service Commission have the power to undertake job evaluation for public officers who are employees of these Commissions.

Procedure for developing salary structures

21. Regulations 19(3) and 21 are *ultra vires* the powers of the Salaries and Remuneration Commission as set out in the Constitution and the Salaries and Remuneration Commission Act which is to advise on the remuneration and benefits of other public officers. The Commission cannot compel a public service institution to ensure that the salary structure of its public officers is as advised by the Commission.
22. The role of setting the remuneration and benefits of other public officers falls within the remit of their respective employers who also appoint and supervise the office holders and the Commission has no powers to redefine contractual relations between an employer and employee.
23. In particular, section 11(1)(b) of the Parliamentary Service Act, 2019 provides that the Parliamentary Service Commission-

“(1) In addition to the functions set out in Article Functions of the 127(6) of the Constitution, the Commission shall —

- (a) direct and supervise the administration of the services and facilities provided by, and exercise budgetary control over, the Service;*
- (b) determine and review the terms and conditions of service of persons holding or acting in the offices of the Service;*
- (c) initiate, co-ordinate and harmonize policies and strategies relating to the development of the Service;*

...”

Guidance on salary structures, rewarding productivity and performance

24. Regulations 22 and 23 provide that the Commission shall issue guidance on recognizing productivity and performance as well as guidance on a public service institutions salary structure. Again, this is *ultra vires* the powers of the Commission which is to advise public service institutions and not to offer “guidance”.
25. Regulations 24 provides that a public service institution shall seek the prior advice of Commission before awarding its public officers a reward for productivity and performance. Again, this derogates from the power of employer public service institutions and goes beyond the powers of the Commission to advice.

Collective Bargaining negotiation

26. Regulation 25(2) is *ultra vires* the powers of the Commission by prescribing the period of collective bargaining agreements. The Commission may advise on the period of a collective bargaining agreement but may not prescribe the period of the agreements.
27. Regulation 26(1) provides that a public service institution with a recognition agreement with a trade union shall seek the prior advice on the Commission before commencement of collective bargaining negotiation. This derogates from the power of employer public service institutions and goes beyond the powers of the Commission to advice.
28. Regulations 26(2)(3)&(4) are similarly *ultra vires* to the powers of the Commission and derogate from the power of employer public service institutions and goes beyond the powers of the Commission to advice.
29. Regulation 28(1) is *ultra vires* to the powers of the Commission in so far as it provides that the advice of the Commission is binding in relation to the remuneration and benefits of all other public officers and may only be reviewed by the Commission.

Litigation

30. Regulations 30(3)&(4) are *ultra vires* to the powers of the Commission with regard to advise to employer public service institutions as well as the established procedure of litigation before the judiciary.

Compliance

31. Regulation 31(1) is *ultra vires* to the powers of the Commission as the Commission has no power to enforce the remuneration that it sets for State Officers. Further, the advice given on the remuneration for public officers is not binding.
32. The power to investigate, determine compliance and enforce the same (including sanctions for non-compliance) is placed on other state agencies such as the Office of the Auditor General, the EACC, DCI and the judiciary.
33. Regulation 31(2),(3),(4)&(5) are *ultra vires* in so far as the Commission has no powers to investigate and determine compliance.

Contravention of section 13(m) of the Statutory Instruments Act

34. Regulation 7(2) provides that the Commission shall from time to time issue guidelines to give effect to the provisions of regulation 1.

35. This, in effect, delegates the power to make further statutory instruments to the Commission without reference to the legislative role of Parliament. Article 94(5) of the Constitution of Kenya, 2010 states as follows:

"No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation."

36. This is further contrary to section 13(m) of the Statutory Instruments Act as it amounts to an inappropriate delegation of legislative powers.

37. The guidelines contemplated should be set out in the Regulations for approval together with the other provisions of the Regulations.

38. Regulation 24(e) contravenes section 13(m) of the Statutory Instruments Act as it amounts to an inappropriate delegation of legislative powers.

39. Regulation 29(2) is in contravention of section 13(m) of the Statutory Instruments Act in so far as it purports to delegate the timelines for submission of the information sought.

40. Regulation 32 is in contravention of section 13(m) of the Statutory Instruments Act in so far as it purports to give powers to the Commission to issue guidance on implementation of the Regulations and amounts to an inappropriate delegation of legislative powers.

Pension

41. Regulation 8 provides that the Commission shall set the pension or gratuity due to a State Officer and advise on the pension or gratuity due to other public officers. The Regulations should provide that the pension or gratuity shall be based on a scientific formula and further be in tandem with the relevant pension laws (Retirement Benefits Act, the Pensions Act, the Parliamentary Pensions Act, and the Retirement Benefits (Deputy President and Designated State Officers) Act)

42. This shall bring the Regulations into conformity with section 13(k) of the Statutory Instruments Act which provides that statutory instruments should not make rights, liberties or obligations of any person unduly dependent on insufficiently defined administrative powers.

Public participation

- Regulation 9(2) provides that the Commission “may” invite views from stakeholders while discharging its mandate. Under Article 10 of the Constitution, participation of the people is a national value and therefore mandatory.
43. Regulation 9(2) should therefore provide that the Commission “shall” invite the views of the stakeholders while discharging its mandate.

Partnering with training institutions

44. Regulation 13(1)(c) makes it mandatory for the Commission to partner with training institutions to facilitate training of public service institutions in matters relating to job evaluation. The partnering with training institutions should be optional and determined by the Commission’s internal capacity.

Compensable factors

45. Regulation 13(1)(d) provides that the Commission shall prescribe the compensable factors for job evaluation. The compensable factors must be determined after taking into account the functions of a job as set out in the Constitution, an Act of Parliament, job description or schemes of service as is applicable to the job.
46. The compensable factors must further be defined and publicized in order to be in conformity with section 13(k) of the Statutory Instruments Act which provides that statutory instruments should not make rights, liberties or obligations of any person unduly dependent on insufficiently defined administrative powers.
47. The compensable factors further need to be set out in the regulations to avoid the same being in contravention of section 13(m) of the Statutory Instruments Act which prohibits an inappropriate delegation of legislative powers.
48. Regulation 13(2)(c) which provides for the Commission to prescribe the criteria for assessing, identifying and determining the jobs to be evaluated is *ultra vires* to section 13(m) of the Statutory Instruments Act which prohibits an inappropriate

delegation of legislative powers. The criteria for this should be set out in the regulations and is indeed set out at Regulation 12(1).

Review of job evaluation

49. Regulation 15(3) needs to be re-drafted to more accurately communicate the procedure of applying for review of job evaluation results.

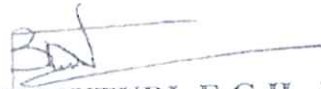
50. Regulation 15(4) provides that the Commission shall prescribe the timelines for an application for review of a job evaluation. This is a derogation from section 13(m) of the Statutory Instruments Act which prohibits an inappropriate delegation of legislative powers. The timelines should be detailed in the Regulations or in a schedule to the Regulations.

51. Again, the timelines set out in Regulations 15(5)&(6) should be detailed in the Regulations or in a schedule to the Regulations and not prescribed by the Commission.

CONCLUSION

The Parliamentary Service Commission thanks the Salaries and Remuneration Commission for the opportunity to give its views on the draft Regulations and assures it of its highest regard.

Yours)


**HON. JUSTIN MUTURI, E.G.H., M.P.,
SPEAKER OF THE NATIONAL ASSEMBLY/CHAIRMAN,
PARLIAMENTARY SERVICE COMMISSION.**

REPUBLIC OF KENYA



MINISTRY OF LABOUR



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Ref: MOL/6/31 VOL.II (72)

8th March, 2022

The Secretary/CEO
Salaries and Remuneration Commission
P O Box 43126 - 00100
NAIROBI

REQUEST FOR WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

Reference is made to your letter Ref. No. SRC/18 (2) dated 23rd February, 2022 on the above subject.

This is to confirm that the Ministry is satisfied with "Draft Policy on Remuneration and Benefits of State and Other Public Officers" Regulations, 2022" as presented.

Fahad Muthee
For: CABINET SECRETARY

Our Ref: KIPpra/4/2

10th March 2022

Anne R. Gitau, MBS
Commission Secretary/CEO,
Salaries and Remuneration Commission
Williamson House, 6th Floor
4th Ngong Avenue
P.O Box 43126 – 00100
Nairobi



HLS
Please find
input
11-2-22

Dear Mrs Gitau

WRITTEN SUBMISSION ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

Reference is made to your letter of Ref. No: SRC/ADM/18 (2) dated 23rd February 2022 requesting for written submission on the above subject matter.

The draft Regulations are well articulated and address the subject matter comprehensively. We appreciate the effort put in formulating the Regulations. Below are a few highlights to improve the draft.

1. **Subsection 4 part 1(c)** the timeline for the review of the allowances and benefits of other public officers is not provided. As provided in section (a) and (b) the Commission could consider stating the stipulated timelines.
2. **Under Subsection 13** on procedure for undertaking job evaluation, point number (5) and (6) on instances where a job description is not submitted are conflicting. There is need for clarification for instances where a position shall be evaluated and when it shall not be evaluated.
3. The term "**other public officer**" has been extensively used in the Regulations. However, there is no clear definition to the term. The Constitution under **Article 260** only defines a "public officer". It would be important to clearly define the term based on the context of use or adhere to the term "public officer" as it is clearly defined.
4. **Part II** is comprehensively detailed. However, the concern is how the Commission will ensure that the outcomes of the Section are adhered to by Public Service Institutions. The Commission may consider a periodic audit if not in place and outline it in the Regulations.

Thank you for considering Kenya Institute for Public Policy Research and Analysis as one of your stakeholders.

Yours sincerely



DR ROSE NGUGI
EXECUTIVE DIRECTOR



National Police Service Commission



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Our Ref: NPSC/1/1/8/VOLII (72)

Date: Wednesday, 9th March 2022

Mrs. Eunice Mwangi
The Chairperson
Salaries and Remuneration Commission
Williams House, 6th Flr
47 Long Avenue
P.O. Box 43128-00100
NAIROBI

Dear Chairperson,

RE: THE BEST FOR WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS), REGULATIONS 2022

We refer to the above matter and your letter to the Commission Ref. SAC/1/1/8 (2) dated 23rd February 2022.

The Commission has perused the draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers), Regulations, 2022 and largely agrees with the proposed amendments, noting that the same will enhance productivity and performance within the Public Service.

Subsequently, the Commission has made observations that are herein attached for your consideration and further reflection.

Thank you for your continued cooperation.

Yours

Sincerely



DR. ALICE A. OTWALA, CBS
VICE-CHAIRPERSON
NATIONAL POLICE SERVICE COMMISSION

Encls.

COMMENTS OF THE DEPT. SALARIES AND REMUNERATION COMMISSION ON REGULATIONS OF THE STATE AND LOCAL GOVERNMENT CONCERNING THE SALARIES AND BENEFITS OF STATE EMPLOYEES

S/NO	REGULATION	COMMENT(S)	PROPOSAL(S)
1.	<i>Regulation Interpretation</i>	2. The term 'Commission' is not defined though it is used severally within the document.	Define the term 'Commission' as "Commission" means the Salaries and Remuneration Commission established under Article 230 of the Constitution;
		The term "review cycle" has not been defined to include a definitive period after which the SRC shall conduct a review on the remuneration and benefits of State and Public Officers unlike in the previous Regulations of 2013 – though this has been provided for under proposed Regulation 4.	Consider reverting to four year period after which the review cycle is to be done or defining the period.
		While nothing in law mandates the SRC to specify a period after which to review the same, it is important to define the period for:	
		<ul style="list-style-type: none"> a. Provide a timeline within which the SRC will be required to conduct the review; b. Finalize established period and submit same to the relevant authority for approval. 	

2.	<p><i>Regulation 4: Review Cycle</i></p> <p>The SRC should be clear after how long it will review allowances and benefits of Public Officers other than that of State Officers to proposed sub-Regulation 4 (1) (c) noting that where need arises to review allowances and/or benefits, the SRC is allowed to conduct a special review under proposed sub-Regulation 4 (3).</p> <p>In addition, the SRC needs to take into consideration inflation coupled with economic recession in African states.</p>	<p>the cost of living.</p> <p>Consider specifying the period after which allowances and benefits of Public Officers other than that of State Officers to every three or four years.</p>
3.	<p><i>Regulation 5: Requirements and procedure for submission of relevant information.</i></p>	<p>Proposed sub-Regulation 5 (2) (b) provides that there will be a format within which all Public Service Institutions are to provide information for a review to be conducted. A format needs to be provided to give legal effect, noting the SRC has made it mandatory.</p> <p>Consider providing for timelines within which Public Service Institutions will be required to give information to the SRC at proposed Regulations (5), noting the need for efficiency and accountability.</p>
4.	<p><i>Regulation 6: Parameters for review of remuneration and benefits</i></p>	<p>The SRC ought to consider changes in the work environment especially within the security sector as a parameter to be considered during the review of remuneration.</p>
5.	<p><i>Regulation 8: Review of</i></p>	<p>shall, in consultation with the relevant public officers, advise on the review of allowances and benefits of Public Officers, noting that the SRC needs to be mandated with the responsibility of reviewing the</p>

	management of national pensions.	<p>review pension by State Officers and Public Officers respectively.</p> <p>Related proposals:</p> <p>The SRC Act at Section 11 (g) provides that the SRC has the function of making a recommendation on the review of pensions payable to all Public Officers.</p> <p>This needs to be redrafted to provide for the function of 'setting' not more 'recommending' as far as State Officers are concerned as SRC has the function to set the remuneration and benefits of State Officers.</p>
<p>6. Regulation Considerations during setting, review and advice on remuneration and benefits.</p>	<p>2. Alongside using comparative surveys on Indian methods and means, the proposed 17% increase in the</p>	
<p>7. Regulation 15 Review of job evaluation results</p>	<p>1. For the time being, about 60% of the jobs to be within the 10th grade and 40% of the jobs to be within the 9th grade.</p>	

<p><i>structures, rewarding productivity and performance</i></p>	<p>Further, the policy, to be reviewed than that to date, in consultation with the SRC will seek to institutions maintain autonomy, avoid bureaucracy and ensure timely implementation and ultimately, improved productivity within their institutions.</p>	<p>Consider adding a proviso at proposed sub-Regulation 28 (3).</p>
<p>10.</p>	<p><i>Regulation 24: Procedure for rewarding productivity and performance</i></p>	<p>Advice to be given by SRC upon request by a Public Service institution needs to be done in accordance with proposed Regulations 4 and 6.</p>
<p>11.</p>	<p><i>Regulation 28: Review of the advice on remuneration and benefits.</i></p>	<p>Consider adding a proviso at proposed sub-Regulation 28 (3).</p>



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7th March, 2022

Ref. No: MOE/CONE/2/34

The CEO
Salaries & Remuneration Commission
P O Box 43126-00100
NAIROBI

WRITTEN SUBMISSION ON THE DRAFT OF SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

Please refer to letter Ref. No. SRC/ADM/18/2 of 23rd February, 2022 on the above subject.

We have read the Draft Remuneration and Benefits of State and other Public Officers Regulations, 2022 and noted that the Regulations are consistent with the Constitution 2010 and obtaining Statutes, Regulations and the Practices in Public Service.

Margaret Ratembo, OGW
FOR: PRINCIPAL SECRETARY

Hk's
Please find
a stakeholders
responsi
14/3 2022



REPUBLIC OF KENYA
MINISTRY OF EAST AFRICAN COMMUNITY (EAC) AND REGIONAL DEVELOPMENT
STATE DEPARTMENT FOR EAST AFRICAN DEVELOPMENT
OFFICE OF THE PRINCIPAL SECRETARY

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Website: www.meac.go.ke

NAIROBI, KENYA

REF: HRM/2/VI (183)

Handwritten notes:
HCS
Als note to
COP Submission.
Review \$ sample

25th April, 2022

The Chairman
Salaries & Remuneration Commission
P O Box 43126 - 00100
NAIROBI

Handwritten signature:
@P
25/04/22

WRITTEN SUBMISSION ON DRAFT SALARIES AND REMUNERATION COMMISSION
(REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS)
REGULATIONS 2022

The state Department East African Community wishes to forward the following comments:

1. **Sec 8 Pension** – SRC may consider and in conjunction with treasury on how pension may be fully privatized.
2. **Sec 9 Review of remuneration and benefits** – The SRC may also consider an upward review of remuneration and benefits of the lower cadre, due to economic challenges that these employees face.

Handwritten signature:
John K. Macharia

John K. Macharia
DIRECTOR HRM&D

Encl:-



ISO9001:200

Vision:

Deepen and widen East African Integration for Sustainable Development and improved livelihoods of all
Kenyans



Pension

*Private Pension
Fund*

- (2) The Commission shall from time to time issue guidance to give effect to the provisions of sub regulation 1.
8. (1) The Commission shall set the pension or gratuity due to a State officer.
- (2) The Commission shall advise on the pension or gratuity due to other public officers.
- (3) A State or other public officer shall not be paid both pension and gratuity for the same period of service.
- (4) Allowances payable to State and other public officers shall not form the basis of computation of pension or gratuity.
- (5) Where a public service institution establishes a pension scheme for State or other public officers, such pension scheme design shall be a defined contribution.
- (6) The Commission shall provide guidance to give effect to the provisions of sub-regulation 5.
- (7) The Commission shall undertake periodic reviews and make recommendations on pensions payable to persons eligible for such pension.
- (8) Setting, reviewing, advising and recommendations on pension review —
- (a) shall be subject to the prevailing economic conditions, affordability and fiscal sustainability; and
- (b) may, among others, be informed by the outcome of an actuarial valuation.

Considerations during setting, review and advise on remuneration and benefits.

9. (1) The Commission shall, in setting, reviewing and advising on remuneration and benefits, where applicable, consider—
- (a) the principles set out under Article 230 (5) of the Constitution, Section 12 of the Act and other legal provisions;
- (b) the economic performance of the country;
- (c) the capacity of a public service institution to afford the cost of proposed remuneration and benefits;
- (d) the ability of a public service institution to sustain payment of remuneration and benefits;
- (e) the outcome of comparative surveys on the labour markets and trends in remuneration;
- (f) comparative analysis between remuneration and benefits for similar jobs within institutions in the same sector to ensure equity and competitiveness:

- (g) job evaluation results;
 - (h) cost of living;
 - (i) existing collective bargaining agreements;
 - (j) achievement of performance and productivity targets;
 - (k) government policies and guidelines; and
 - (l) any other relevant factor in determination of remuneration or benefits.
- (2) In the discharge of its mandate, the Commission may invite views from stakeholders which include—
- (a) public service institutions;
 - (b) employees of the public service institution;
 - (c) relevant employer associations;
 - (d) relevant trade unions;
 - (e) professional bodies; and
 - (f) members of the public.
- Communication and effective date of advice.** 10. The Commission shall communicate the—
- (a) set and reviewed remuneration and benefits for State officers indicating the effective date of implementation; and
 - (b) advice on remuneration and benefits for other public officers indicating the effective date of implementation.
- Job evaluation.** 11. The Commission shall undertake job evaluation covering jobs in public service institutions in order to—
- (a) determine comparable and relative worth of jobs in the public service institutions;
 - (b) classify the jobs in the public service; and
 - (c) rationalise and harmonise job grading structures in the public service.
- Criteria for job evaluation.** 12. (1) The Commission shall undertake job evaluation where—
- (a) jobs in public service institutions have not been evaluated by the Commission;
 - (b) a public service institution is established;
 - (c) a public office is established;
 - (d) a new job is established arising from—
 - (i) change in the institutional mandate of a public service institution; or
 - (ii) change in the institutional structure of a public service institution.



REPUBLIC OF KENYA
 OFFICE OF THE DEPUTY PRESIDENT
 INTER-GOVERNMENTAL BUDGET AND ECONOMIC COUNCIL

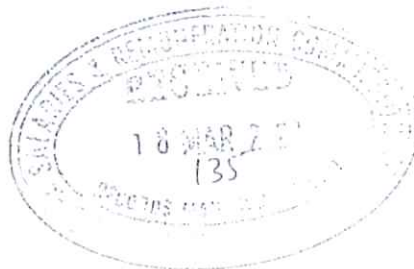
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When replying please quote
 Ref: ODP/ADM.1/93 (84)

16th March 2022

Anne R. Gitau, MBS
 Commission Secretary/CEO
 Salaries & Remuneration Commission
 NAIROBI



Handwritten notes:
 H. H. H.
 Please receive for review & analysis
 H. H. H.
 21/3/22

Dear Anne,

RE: SUBMISSION OF THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

Further to your letter SRC/ADM/18(2) of 23rd February, 2022 and the oral submission made during the virtual meeting held on Friday, 4th March 2022, the following are the written comments on the above captioned for record purposes.

- (1) To define under R2, the term "defined contribution" cited under R8(5) in terms of the relevant statute.
- (2) Notwithstanding R8(4) to consider specifying that takes effects after the next Collective Bargaining Agreement (CBA). Housing and commuter allowance currently form part of the pensionable sum under the County Government Pension Scheme. It is a contractual matter within the CBA which may be vacated during the next negotiation.

Yours sincerely,

Dr. Patrick Omutia, CBS
 SPECIAL SECRETARY, IBEC



KENYA DEFENCE FORCES

*H.H.S.
please
recom
feedback*

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Telephone: Nairobi 2721100
When replying please quote:

Defence Headquarters
ULINZI HOUSE
P O Box 40668 - 00100
NAIROBI, KENYA

H.H.S.

19.4.22

DHQ/PERS/DEFJET/410

14 April, 2022

The Chief Executive Officer,
Salaries and Remuneration Commission,
Williamson House,
NAIROBI

Dear Mrs. Anne R. Gitau

**SUBMISSION ON THE DRAFT SALARIES AND REMUNERATION COMMISSION
(REMUNERATION AND BENEFIT OF STATE AND OTHER PUBLIC OFFICERS)
REGULATIONS, 2022**

Reference. SRC/ADM/18 (2) dated 23rd February, 2022.

Attached herewith, please find the Kenya Defence Forces submission on the draft Salaries and Remuneration Commission (Remuneration and Benefit of State and other Public Officers) Regulations, 2022.

Kindly consider.

Yours sincerely,

J S HIRBO

Col

for Chief of the Defence Forces

KDF SUBMISSION ON THE DRAFT SRC REGULATIONS, 2022

S/No.	REGULATION	DESCRIPTION	KDF VIEWS AND PROPOSAL
1.	<p>Regulation 4(1)</p> <p>Regulation 4(1)(a)</p> <p>Regulation 4(1)(b)</p> <p>Regulation 4(1)(c)</p>	<p>Review cycle. The Commissioner shall undertake review of remunerations and benefits every four years.</p> <p>(1)(a) State officers' remunerations and benefits are to be reviewed every four year.</p> <p>(1)(b) Other public officers' remuneration every four years; and</p> <p>(1)(c) Allowances and benefits of other public officers.</p>	<p>It is proposed that under sub regulation 4(1)(c), allowances and benefits of other public officers be reviewed every four years as stated under sub regulation 4(1).</p>
2.	Regulation 7(2)	Review of allowances and other benefits The Commission shall from time to time issue guidance to give effect to the provisions of sub regulation 7(1).	<p>It is proposed that any reviews of remuneration and benefits be undertaken for both State Officers and other public officers at the same time (concurrently) in place of the current practice where review for State Officers are different from that of other public officers.</p>
3.	Regulation 8	Pension	<p>Regulation 8 violets section 244(1) of the KDF Act providing for pension as it is usurping the powers of the Defence Council (DC) and the Treasury to provide for and review pension regulations for KDF personnel. In addition, the draft regulations comprise subsidiary legislation which improperly purport to amend statute</p>
4.	Regulation 8(4)	Pension Allowances payable to State and other public officers shall not form basis of computation of pension or gratuity.	<p>The KDF (Pensions and Gratuities) (Officers and Service Members) Regulations, 2021 states as shown:</p> <p>Regulation 3 (1) "Pensionable emoluments" means the rate</p>

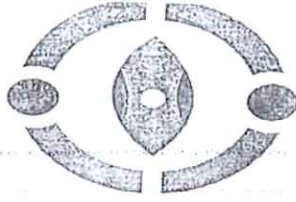
S/No.	REGULATION	DESCRIPTION	KDF VIEWS AND PROPOSAL
			<p>of pay including additional pay in issue to an officer or service member at the time of his retirement or discharge;</p> <p>Pensions Act CHAPTER 189 Revised 2012 (1986) Regulation 2 (1) (a) "pensionable emoluments" means— (a) in respect of service under the Government after the 31st December, 1953, includes salary, inducement and overseas addition to salary and personal allowance, but does not include duty allowance, house allowance, entertainment allowance or any other emoluments whatever;</p> <p>"Pensionable emoluments" includes salary and responsibility allowance but does not include any cost of living allowance, entertainment allowance or any other emoluments whatever; hence pensionable pay should be based on the contributions the employer makes to the pension scheme (defined benefit) on behalf of the employee.</p> <p>From the forgoing, it is evident that some allowances counts towards pension (remunerative allowance) while others are not. The proposed regulation needs to be consistent with Pensions Acts and other Regulations in use.</p>
5.	Regulation 8(7)	Pension The Commission shall undertake periodic reviews and make recommendations on pensions eligible for such persons.	<p>KDF Proposal on pension review:</p> <p>a. Consider a 4 (four) year review cycle instead of a <i>periodic review</i> which is a broad statement.</p> <p>b. Pension be protected against inflation by automatically increasing/adjusting in accordance with the inflation or</p>

RESTRICTED

S/No.	REGULATION	DESCRIPTION	KDF VIEWS AND PROPOSAL
6.	Regulation 9(1)(f) and Reg 9(2)	<p>Considerations during setting review and advise on remuneration and benefits comparative analysis between remuneration and benefits for similar jobs within institutions in the same sector to ensure equity and competitiveness;</p>	<p>consumer price index preferably on annual basis or as is reasonable</p> <p>It is proposed the considerations to include additional sub Para: External comparator where there is no local comparator for best practices.</p> <p>Article 201(1) of the constitution mandates public participation in public finance management hence regulation 9(2) ought to be amended to read in mandatory terms.</p>
7.	Regulation 10(a) and (b)	<p>Communication and effective date of advice</p>	<p>It is proposed that the Commission sets a common effective date of implementation of set, reviewed remuneration and benefits for both State Officer and other public officers</p>
8.	Regulation 13(1)(d)	<p>Procedure for undertaking Job Evaluation Use analytical, point-factor based job evaluation system that evaluates jobs using compensable factors as prescribed by the Commission.</p>	<p>The regulation in pointing out analytical system, it will have left out non analytical system. It is proposed that job evaluation system to be used is informed by suitability and peculiarity of the sector.</p>
9.	Regulation 14(2)	<p>Information to be submitted by a public service institution</p>	<p>In the case of KDF, this requirement is security classified in the interest of national security.</p>
10.	Regulation 25 and 26	<p>Collective bargaining negotiation; and Procedure for collective bargaining negotiation</p>	<p>Provisions to be made for public institutions whose employees cannot belong to trade union or engage in collective bargaining agreement.</p> <p>It is proposed a sub Para be introduced for engagement with such institutions for example through responsible department, branch or a select board.</p>

3

RESTRICTED



IGRTC
 INTERGOVERNMENTAL
 RELATIONS TECHNICAL
 COMMITTEE

Consultation, Cooperation & Coordination in Devolution

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 Tel: 0202101489

IGR/LGL/10/8/VOL.II (44)

*HS
 please
 send
 impact
 4th March, 2022
 10.3.2*

Mrs. Lyn Mengich
 Chairperson
 Salaries and Remuneration Commission
 Williamson House, 4th Floor
 P.O Box 43126-00100
 NAIROBI



Dear *Chairperson,*

RE: SUBMISSIONS ON THE ON THE DRAFT SALARIES AND
 REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF
 STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

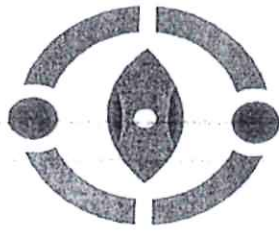
We refer to the above subject matter and to your letter Ref. No. SRC/ADM/18
 (2) dated 23rd February, 2022 whose contents we have duly noted.

IGRTC has perused the draft Salaries and Remuneration Commission
 Regulations, 2022 and hereby attaches its submissions on the same. The
 purpose of this letter is therefore to forward to your office the submissions for
 your kind consideration.

We thank you for your continued support.

Yours *Sincerely,*

John Burugu
 Ag. CHAIRMAN



IGRTC
INTERGOVERNMENTAL
RELATIONS TECHNICAL
COMMITTEE

Consultation, Cooperation & Coordination in Devolution

**COMMENTS/INPUTS ON THE DRAFT SALARIES AND REMUNERATION
COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER
PUBLIC OFFICERS) REGULATIONS, 2022**

IGRTC submits the below inputs and comments in the development of the above regulations.

No	Area	Comments/Inputs
1.	Section 4 (3) Review cycle	The Regulations should indicate clear circumstances that may necessitate a special review. The term “emerging circumstances and conditions” may lead to ambiguity in interpretation by the various stakeholders.
2.	Section 9 (f) and Section 23	On the issue of competitiveness and productivity, there is need to consider the provisions of the National Productivity and Competitiveness Council Bill, 2019, which seeks to establish a Council to provide a forum for an on-going dialogue on all matters related to productivity, quality and competitiveness.
3.	Section 15 Review of job evaluation results.	New sub-section 9. Pg 10 , Communicating back the reviewed job evaluation results to a public institution The observation of IGRTC is that the Commission should introduce a new sub-section under Section 15 indicating the timeline within which the Commission should submit back reviewed results. Previously the Commission had not been submitting results of reviewed job evaluation results after an appeal by public institution.
4.	Section 18 Salary Structures	Section 18 (1) (a), Pg 11 indicates that the Commission shall use job evaluation results when setting remuneration and benefits for a state officers and (b) for public officers.

No	Area	Comments/Inputs
		<p>Previously, IGRTC has received salary structure from SRC for the Secretariat that was not in tandem with the job evaluation results. The salary structure was introducing a grade that was not in the job grading results thus disadvantaging some cadres.</p> <p>Further, the members have been graded as Commissioner while the secretariat received a different job evaluation. The law says you can't have different salaries for same Job. See Employment act.</p>

H.H.S
Please find input for your review.



Our Ref: ICPAK/CE-PPR/03/2022

21st March 2022

Mrs. Anne R. Gitau, MBS
Chief Executive Officer
Salaries and Remuneration Commission
Williamson House
P.O BOX 43126 - 00100
NAIROBI



[Signature]
22/3/22

Dear *Mrs. Gitau*

RE: ICPAK SUBMISSION ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants established under by the Accountants Act of 1978 and repealed under the Accountants Act Number 15 of 2008, mandated to develop and regulate the Accountancy Profession in Kenya. It is also a member of the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession. The Institute is further mandated under Section 8 of the Act to advise the Cabinet Secretary on matters relating to financial accountability in all sectors of the economy.

Following your letter dated 23rd February 2022, REF: SRC/ADM/18 (2) requesting for comments on the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022, the Institute has reviewed the Regulations and developed a set of submissions for your consideration. Attached herein, please find a copy of the Institute's submission.

In case of need for clarification, please do not hesitate to contact the undersigned on ceo@icpak.com.

Thank you in advance for your kind consideration and continued support.

Yours Sincerely,

[Signature]

**CPA EDWIN MAKORI
CHIEF EXECUTIVE OFFICER**

Institute of Certified Public Accountants of Kenya
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Harambee Avenue



Institute of Certified Public Accountants of Kenya

SUBMISSION

ON

DRAFT REGULATIONS ON REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS, 2022

MARCH 2022

INTRODUCTION

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants established under the Accountants Act of 1978, and as repealed under the Accountants Act Number 15 of 2008, mandated to develop and regulate the Accountancy Profession in Kenya. It is also a member of the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession and Pan Africa Federation of Accountants (PAFA), the continental body of Accountants.

PREAMBLE

The public sector wage bill is an ever-increasing burden on taxpayers. The COVID-19 crisis is a unique situation and requires tough policy choices for managing the public sector wage bill to best achieve the difficult balance between fiscal consolidation, protection of lives and livelihoods and service delivery.

The ballooning wage bill has raised attention and the government has admitted that this increase is unsustainable, and more effort is needed to tame it. Most county governments are spending a large proportion of their allocations from the National government in payment of salaries to staff members. This in turn means that there is not enough revenue left for allocation towards development initiatives. In the financial year 2021/22, The Office of the Controller of Budget (OCOB) indicates that the wage bill accounted for 72.2% of total expenditure in the county governments during the first quarter of the financial year thus constraining funding to other programmes as the development budget accounted for 6.7% of total expenditure. Such data necessitates the need for a comprehensive regulatory framework that enables an affordable and sustainable wage bill.

The Institute would like to commend the Salaries and Remuneration Commission (SRC) for developing these Regulations and in turn, taking steps to control the public wage bill by aligning the wage system with best practices.

SUBMISSION ON THE REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS, 2022 REGULATIONS

The Institute has developed the following submissions for specific consideration and adoption:

#	Provision	Concern	Recommendations	Justification
1.	Regulation 8(2) Pension	The provision leaves room for public service institutions to set pension or gratuity to other public officers. With the growing burden of pensions due to public officers, there is need for harmonization so as to ensure pensions due are sustainable.	Amend Regulation 8(2) to read: <i>The Commission shall set the pension or gratuity due to other public officers.</i>	To facilitate proper planning.

#	Provision	Concern	Recommendations	Justification
2	Regulation 13(1) Procedure for undertaking job evaluation	The Regulation fails to provide mechanisms to address the mismatch between the function/responsibility against the requisite professional qualifications.	Insert a new sub-Regulation 13(1)(g) to read: <i>Liaise with the Public Service Commission, public sector agencies and professional associations to ensure professionals are rightly placed in accordance with their qualifications for effective service delivery.</i>	Professional custodianship is essential for enhanced regulation, professional development and ethical behavior.
3.	Regulation 13 (5) Procedure for undertaking job evaluation	The provision does not provide for recourse in the event that a public service institution does not provide a description for a specific public officer. This might leave room for abuse by way of a public service institution purposefully not providing a job evaluation description thus it would not be subject to the Regulations.	Amend Regulation 13(5) to read: <i>Where a job description for a public officer is not submitted, the Commission shall consult the Public Service Commission to evaluate the job.</i>	To enhance comprehensiveness of the Regulations.
4.	Regulation 31 (3) Compliance with Commission set and reviewed remuneration and benefits and advice	The provision is not clear on how often the compliance checks should be carried out.	Amend Regulation 31 (3) to read: <i>The Commission shall, pursuant to Section 13 of the Act conduct compliance checks every two years to ensure that public service institutions comply with these regulations, the set and reviewed remuneration and benefits and the advice of the Commission.</i>	For clarity.



REPUBLIC OF KENYA

REPUBLIC OF KENYA

COUNTY GOVERNMENT OF MAKUENI

COUNTY ASSEMBLY OF MAKUENI

P.O. Box 572-90300 WOTE, MAKUENI

Tel: 020-2393005, 0714392799, 0731633505, 0731663505

Email: info@makueniassembly.go.ke Website: www.makueniassembly.go.ke



Office of the Clerk

County Assembly of Makueni

REF: MKN/CA/ADM/2022 (113)

Date: 11th March, 2022

Mrs. Ann R. Gitau, MBS,
SRC Secretary/CEO,
P.O.Box 43126-00100,
Nairobi

Dear Madam,

**RE: WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND
RENUMERATION COMMISSION (RENUMERATION AND BENEFITS OF
STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022**

Reference is made to the above matter and to your letter dated 23rd February, 2022 referenced SRC/ADM/18 (2) in which you requested for the Assembly's input on the draft regulations on remuneration and benefits for state and other public officers.

We have reviewed the draft regulations as requested and attach herewith our written submissions on various observations made on the same.

We trust that our observations will be useful in enriching the regulations.

Kindly acknowledge receipt of the submissions.

Yours Faithfully,

Kevin Mutuku

CLERK OF THE COUNTY ASSEMBLY

Cc: Speaker of the County Assembly

COUNTY GOVERNMENT OF MAKUENI



MAKUENI COUNTY ASSEMBLY

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WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (RENUMERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

S/No	PARTICULARS	COMMENTS
Interpretation		
1.	“benefit” which are the non-financial benefits	Clarify
2.	Commission not defined. There are many commissions in Kenya eg Public service commission	Define Commission
3.	“job evaluation” which are the other jobs referred to in the interpretation	Define other jobs
4.	“performance” the work environment is a key factor influencing performance	Mention work environment in the definition
5.	“Productivity” inputs are translated to outputs through a set process	Include the words through a set process immediately after the word outputs
6.	“Review of remuneration and benefits” there is need to specify the desired change and the time frame	Specify type of change and the timeframe
Object of the regulations		
1.	Regulation 3(1) The object of the regulations is for the better carrying into effect the provisions of the Act.	Site the specific section of the Act that the regulations seek to give effect to
2.	Regulation 3(2) (a) setting and reviewing remuneration and benefits for state officers and other public officers. The	Include the word “other public officers” immediately after the word state officers

	SRC is mandated to set and review remuneration and benefits for both state and public officers	
3.	Regulation 3(2) (b) advising on remuneration and benefits for state officers and other public officers. The SRC advises on remuneration and benefits for both state and public officers	Include the word “state officers” before the word “other public officers
4.	Regulation 3 (2) (c) reviewing remuneration and benefits for state officers and other public officers. The SRC reviews remuneration and benefits for both state and public officers	Include the word “for state officers “immediately after the word “benefits
5	Regulation 3 (2) (d) harmonization of remuneration and benefits for state and public officers across the public service	Insert a new section 3 (2) (c) to provide for harmonization of salaries and remuneration for state and public service for state and public officers.
Review Cycle		
1.	Regulation 4 (1) (c) The commission shall undertake a review of the allowances and benefits for state officers and other public officers	Insert the words “state officers” immediately after the words “benefits of”
2.	Regulation 4 (3) special review to address emerging circumstances and conditions	Specify the emerging circumstances and conditions for ease of implementation as and when the need arises eg political instability, inflation, pandemics, endemics. In the absence of specifics, the SRC may not review remuneration and benefits when need arises
Parameters for review of remuneration and benefits		
1.	Regulation 6(e) Collective bargaining agreements	Insert a new regulation 6 (e) on collective bargaining agreements The commission should in undertaking a review consider among other things, collective bargaining agreements
Review of allowances and other benefits		

1.	Regulation 7 (2) The Commission shall from time to time issue guidelines on remuneration and benefits to public service institutions	Amend the regulation to read as proposed on the particulars column. Replace the word guidance with guidelines
Pension		
1.	Regulation 8(1) The commission shall set and advise on pension and gratuity due to state officers.	Insert the word "set" "immediately after the word "shall"
2.	Regulation 8 (2) The commission shall set and advise on pension and gratuity due to other public officers	Insert the word "set" "immediately after the word "shall"
3.	Regulation 8 (8) (c) Collective bargaining agreements	Insert a new regulation 8 (8) (c) On collective bargaining agreements. Pension review exercises should consider among other things collective bargaining agreements
Consideration during setting review and advise on remuneration and benefits		
1.	Regulation 9 (1) (c) Capacity of the public service to afford	Delete the word " institution." The financial capacity should be of the general public service and not particular public institution since all public service institutions are paid from public coffers
2.	Regulation 9 (1) (d) ability of the public service to sustain payment	Delete the word " institution" Comment similar to (1) above
3.	Regulation 9 (1) (e) the outcome of comparative surveys on the labour markets and trends in remuneration and benefits	Insert the words "and benefits" "immediately after the word "remuneration"
4.	Regulation 9 (1) (f) Comparative analysis between remuneration and benefits for similar and related jobs within institutions in the public service to ensure equity and competitiveness	Insert the word "related" "immediately after the word "similar"and delete the words "same sector"and substitute therefor "public service"
Communication and effective date of advise		
1.	Regulation 10 (a) set advise and review remuneration and benefits for state and other public officers	Insert the word "advise"immediately after the word "set" and the words "other public officers"immediately after the words "state officers". The SRC should set, advise and review

		on remuneration and benefits for both state and other public officers
2.	Regulation 10 (b) delete the regulation and merge it with 10 (a)	The two regulations provide for the same function
Job Evaluation		
1.	Regulation 11 (e) rationalize and harmonize job grading structures, remuneration and benefits in the public service.	Insert the words "remuneration and benefits " immediately after the words "grading structures" Remuneration and benefits go hand in hand with grading structures
Criteria for job evaluation		
1.	Regulation 12 (1) (a) after expiry of the timeframe for the existing job evaluation report for a respective public institution	Insert a new regulation 12 (1) (a) to provide for the need for the commission to undertake job evaluation after expiry of the existing job evaluation report. This is a critical factor to be considered in any job evaluation exercise.
2.	Regulation 12 (1) (e) a change arises in the job enrichment and job content of a role in a public service institution	Insert the words "job enrichment "immediately before the words "job content" Job enrichment may arise in cases where there is a merger of two departments into one warranting an evaluation of the job to be performed
Procedure for undertaking job evaluation		
1.	Regulation 13 (1) (a) Issue guidelines on undertaking job evaluation in the public service	Delete the word "guidance" and substitute thereof "guideline"
2.	Regulation 13 (1) (f) Communicate feedback on the job evaluation results	Insert the words "feedback on "immediately after the word "communicate"
3.	Regulation 13 (2) (c) Asses and identify jobs to be evaluated using the criteria prescribed by the commission	Delete the word "determine" to avoid abuse of power by public service institutions.
4.	Regulation 13 (2) (d) develop complete, accurate, approved and signed off job description manual for each specific job	Insert the words "for each specific job" "immediately after the word "manual"

5.	Regulation 13 (2) (e) provide feedback on the job evaluation results communicated by the commission	Delete the word “when immediately after the word “results”
6.	Regulation 13(3) A job description referred to in sub regulation (2) (d) shall be aligned to applicable laws and approved human resource instruments	Delete the words “the provisions of the law immediately after the word “aligned” and substitute with “applicable laws” Delete the words ‘where applicable
Information to be substituted by a Public Service Institution		
1.	Regulation 14(1) A public service institution shall provide the Commission with information relating to jobs within the institution for purposes of job evaluation in accordance with the constitutional principles set out under Articles 232- 236 of the Constitution of Kenya	Insert the following word immediately after the word evaluation “ in accordance with the constitutional principles set out under Articles 232- 236 of the Constitution if Kenya. It is important that job evaluation exercises take into account key constitutional principles on public service
Salary Structures		
1.	Regulation 18 (1) (a) Setting, reviewing and advising on remuneration and benefits for state officers	Insert the word “advising immediately after the word “reviewing” The role of the commission is to advise on remuneration and benefits to public officers in addition to setting and reviewing the same.
2.	Regulation 18 (1) (b) Setting, reviewing and advising on remuneration and benefits for other public officers	Insert the word “advising immediately after the word “reviewing” The role of the commission is to advise on remuneration and benefits to public officers in addition to setting and reviewing the same.
Procedure for Developing Salary Structures		
1.	Regulation 19 (c) Factor requirements of existing collective bargaining agreements	Insert a new regulation 19 (c) on collective bargaining agreements.

		It is important that requirements of collective bargaining agreements are considered in developing salary structures
2.	Regulation 19 (2) The commission shall develop, advise and communicate to public service institutions the set and reviewed salary structures for state and other public officers	Insert the word "advise" immediately after the word "communicate" Delete the words "advise on the salary structures" appearing immediately before the words "other public officers"
Guidance on Salary Structures, Rewarding Productivity and Performance		
1.	Regulation 23 (1) The commission shall issue guidelines on recognition and reward of productivity and performance	Delete the words "guidance, recognizing and rewarding" appearing immediately after the word "issue" and substitute therefor "guidelines on recognition and reward of productivity and performance"
2.	Regulation 23 (2) (b) The eligibility criteria for recognition and reward of productivity and performance in the public service	Delete the words "recognizing and rewarding" and substitute thereof "recognition and reward"
3.	Regulation 23 (4) (a) In accordance with the guidelines as prescribed and approved by the Commission.	Delete the entire sentence and substitute with "In accordance with the guidelines as prescribed and approved by the Commission."
Procedure for Rewarding Productivity and Performance.		
1.	Regulation 24 (1) A public service institution shall seek to comply with the commission guidelines on recognition and reward before awarding its public officers a reward	Delete the words "seek the prior advice of the commission" and substitute therefore "comply with the commission guidelines on recognition and reward of productivity"
2.	Regulation 24 (2) In awarding productivity and performance the commission shall be guided by the following	Delete the entire sentence and substitute therefor "In awarding productivity and performance the commission shall be guided by the following"

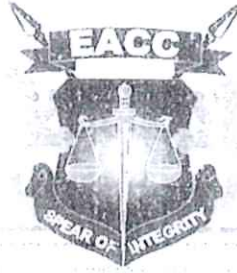
3.	Regulation 24 (2) (b) The capacity of a public service institution to afford the cost of proposed reward	Specify whether the reward is monetary or non-monetary
Procedure for Collective Bargaining Negotiations		
1.	Regulation 26 (1) A public service that has entered into a collective bargaining agreement with a trade union shall seek the prior advise of the commission before the commencement of collective bargaining negotiation	Delete the words “ a recognition agreement”
2.	Regulation 26 (2) A public service institution shall provide the following information required for provision of advise on collective bargaining process	Insert the word “process” immediately after the word “bargaining” The procedure should adhere to guidelines prescribed in the Labour Relations Act, 2007
3.	Regulation 26 (2) (a) trade union proposals and management of negotiation process	The procedure should adhere to guidelines prescribed in the Labour Relations Act, 2007
4.	Regulation 26 (2) (b) Institution’s financial performance	Which institution? Review and tie to relevant provisions of the Labour Relations Act, 2007
5.	Regulation 26 (2) (c) budget allocation	Which institution? Review and tie to relevant provisions of the Labour Relations Act, 2007
6.	Regulation 26 (3) A public service institution shall undertake negotiation within the parameters issued by the Commission and the trade unions	Insert the words “trade unions” immediately after the word “commission”
7.	Regulation 26 (4) Upon conclusion of collective bargaining negotiation within the parameters provided by the commission and the applicable laws	Insert the words “applicable laws” immediately after the word “commission”
Review of Advise on Remuneration and Benefits		
1.	The advise of the commission in relation to the remuneration and benefits of all other public officers is binding and may only be reviewed by the commission and in case of a dissatisfaction with a decision of the commission, by a court of competent jurisdiction.	Insert the words “in case of a dissatisfaction with the decision of the commission by a court of competent jurisdiction” immediately after the words “ commission”
Disputes Relating to Remuneration and Benefits		

1. "	Regulation 30 (2) A public service institution shall notify the Commission of any disputes relating to remuneration or benefits for its state officers or other public officers	Insert the word "officer" immediately after the word "state"
2.	Regulation 30 (3) The commission shall in any court proceedings relating to remuneration or benefits for state officers	Insert the word "officer" immediately after the word "state"
Compliance with Commission set and Reviewed Remuneration and Benefits Advice		
1.	Compliance with Commission's Guidelines on Remuneration and Benefits	Amend the marginal note accordingly
2.	Regulation 31(1) The commission may take any measures it considers necessary to ensure that public service institutions adhere to the set guidelines on remuneration and benefits .	Delete the following words "the set and reviewed remuneration and benefits and advice issued by the Commission" and substitute therefor " set guidelines on remuneration and benefits"
3.	Regulation 31(2) (a) Set guidelines on remuneration and benefits by the commission	Delete the entire sentence and substitute therefor "set guidelines on remuneration and benefits by the commission"
4.	Regulation 31 (2) (b) advice on remuneration and benefits for state and other public officers	Insert the words "state officers" immediately before the words "other public officers"
5.	Regulation 31 (3) The commission shall pursuant to section 13 of the Act conduct regular compliance checks to ensure that public service institutions comply with this regulations and set guidelines on remuneration and benefits for state and other public officers	Delete the words " the set and reviewed remuneration and benefits and the advice of the commission "and substitute therefor "set guidelines on remuneration and benefits for state and other public officers"
6.	Regulation 31(4) Take remedial action in compliance with the set guidelines on remuneration and benefits for state and other public officers and advise.	Delete the words " the commissions set remuneration and benefits and advice within the set time frame and provide proof of compliance" and substitute therefor " the set guidance on remuneration and

		benefits for state officers and and other public officers and advise”
Commission to provide guidance		
1.	Regulation 32 Commission to provide guidelines	Amend the marginal note accordingly
2.	Regulation 32 The commission shall from time to time issue guidelines on the implementation of these Regulations	Amend the word “guidance “appearing immediately before the word “guidance” and substitute therefor “guidelines”

DATED this.....day of2022

Kevin Mutuku
CLERK MAKUENI COUNTY ASSEMBLY



ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE (Jakaya Kikwete/Valley Road Junction) P. O. Box 61130 – 00200, NAIROBI, Kenya
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FAX: 254 (020) 2240954 EMAIL: eacc@integrity.go.ke WEBSITE: www.eacc.go.ke

When replying please quote:

Ref: EACC/.2/14/Vol. II/(110)

10th March, 2022

Anne Gitau, MBS

Commission Secretary/CEO

Salaries & Remuneration Commission

Williamson House, 6th Floor, 4th Ngong Avenue

P. O. Box 43126-00100

NAIROBI

Dear

Anne

**RE: SUBMISSION ON THE DRAFT SALARIES AND REMUNERATION
COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER
PUBLIC OFFICERS) REGULATIONS, 2022**

Reference is made to your letter **Ref. No: SRC/ADM/18 (2)** of 23rd February, 2022 on the above subject matter.

The Commission hereby submits comments on the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022.

Yours

Sincerely

**Twalib Mbarak, CBS
SECRETARY/CHIEF EXECUTIVE OFFICER**

SUBMISSION OF COMMENTS BY EACC ON THE PROPOSED DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFIT OF STATE AND PUBLIC OFFICERS), REGULATION, 2022

S/NO	Regulation (no.) in the draft regulation, 2022	Subject matter	Proposed amendment(s)/ Comment(s) Raised	Justification(s)/Rationale
PART I- PRELIMINARY				
1.	Regulation 2	Interpretation	It is proposed that the definition of benefits includes allowance.	The term benefit includes both financial and non-financial compensation in addition to basic salary whereas allowance means financial payment made in addition to basic or consolidated salary. The term benefit therefore includes allowance.
2.	Regulation 3(a), (b) and (c)	Objects of the Regulations	It is proposed that "other public officers" be defined in the Regulations so as to exclude State Officers	The use of "other public officers". Article 260 of the Constitution defines a public officer to include State Officers. This would therefore mean that the SRC cannot set the remuneration of State Officers as provided for in Article 230(2)(4) of the Constitution. To clear this, it is important that the term "other public officer" be defined in Regulation 2 on Interpretation as to include other public officers except State Officers.

PART II- SETTING, REVIEWING AND ADVISORY ON REMUNERATION AND BENEFIT OF STATE AND OTHER PUBLIC OFFICER

1.	Regulation 4(1)(c)	Review cycle	It is proposed that for regulation 4(1)(c), there be a provision for the time frame for the review of allowances and benefits for public officers as has been provided in 4(1) (a) and (b)	For fairness to public officers there needs to be a timeline within which allowances and benefits will be reviewed. A timeline has been provided for the review of benefits for state officers.
2.	Regulation 7	Review of allowances and other benefits	It is proposed that a time frame for the review of allowances and benefits for public officers be provided as has been provided for state officers in Regulation 4(1)(a)	For fairness to public officers there needs to be a timeline within which allowances and benefits will be reviewed. A timeline has been provided for the review of benefits for state officers.
4.	Regulation 8	Pension	Regulation 8(5)-it should be provided as to what format the guidance for the provisions of sub-regulation 5 will be. Perhaps it could be in the form of guidelines issued by the SRC.	When the format in which the guidance will be made is provided for in sub-regulation 5, it will provide a way forward for the SRC to come up with this guidance.
5.	Regulations 6 and 9	Parameters and considerations for review of remuneration and benefits	Regulations 6 and 9 seem to be discussing the same things. It is therefore proposed that regulation 6 be deleted and regulation 9 be left.	To avoid repetition, it is proposed that regulation 6 be deleted and regulation 9 be left in the Regulations.
6.	Regulation 24	Procedure for rewarding productivity and performance	It is proposed that Regulation 24(1) be deleted	It shall be onerous for all public institutions to seek prior advice of SRC before awarding public officers a reward for productivity and performance

PART III-MISCELLANEOUS PROVISIONS

1.	Regulation 30(4)	Dispute relating to remuneration and benefits	It is proposed that the timeframe be increased or provided as within a reasonable time.	The time-frame given of 7 days from commencement of suit, is short and may lapse before they are notified. The timeframe should be increased or given as a reasonable time.
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Homa Bay County Assembly



OUR REF: HBCA/SRC/3/6/VOL.I (71)

14TH MARCH, 2022

The Secretary,
Salaries and Remuneration Commission,
Williamson House, 6th Floor, 4th Ngong Avenue,
P.O. BOX 43126-00100
NAIROBI

ADVANCE COPY VIA EMAIL: info@hbcg.go.ke

**RE: MEMORANDUM ON SALARIES AND REMUNERATION COMMISSION
(REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS)
REGULATIONS, 2022**

Reference is made to the Draft on Salaries and Remuneration Commission (Remuneration and benefits of State and other Public Officers) Regulations, 2022 and the stakeholders' sensitization virtual meeting on 10th March, 2022.

We have perused through the entire regulations and have the following concerns.

Regulation 8(5) is not clear and conclusive thus opening window for abuse by a public institution. The amount of contribution should be well defined in the regulation to allow for consistency and predictability.

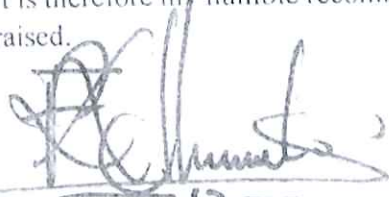
The section provides that "where a public service institution establishes a pension scheme for state or other public officers, such pension scheme design shall be a defined contribution.

Regulation 15(4) should be amended so that the timelines contemplated are well defined and laid out in the law rather than leaving the timelines undefined in the law. It is better when the law is clearly stipulated for the avoidance of doubts. This issue extends to regulation 15(5). The regulation provides that an application for review of job evaluation results shall be submitted to the commission within such timelines as may be prescribed by the commission.

Regulation 15(5) provides that a public service institution shall, where the commission requires and formally requests for more information relating to an application for review of job evaluation results, provide the information sought within such timelines as may be prescribed by the commission.

Regulation 20(1) raises eyebrows when it stipulates that the commission shall develop and advice on salary structures, notwithstanding failure by public service institution to submit the required information. It waters down the constitutional principle of public participation which cannot be derogated from by a statute.

It is therefore my humble recommendation that the regulations be amended to reflect the concerns raised.



FAITH A. APURO
COUNTY ASSEMBLY CLERK

Central Organization of Trade Unions (Kenya)

Rajabu W. Mwondi, MBS

Dr. Francis Atwoli, NOM (DZA), EBS, MBS

Rebecca Nyathogora



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COTU/ADM 3/B/VOL 1/58

Our Ref:

10th March, 2022

Mrs Anne R. Gitau, MBS
The Commission Secretary/CEO
Salaries and Remuneration Commission
P.O. Box 43126-00100
NAIROBI, KENYA

Dear Mrs. Gitau,

REQUEST FOR WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

The Central Organization of Trade Unions, Kenya (COTU-K) acknowledges your letter reference number SRC/ADM/18(2) dated 23rd February, 2022 over the above referenced matter.

PREAMBLE

The Kenyan Workers acknowledge the important role played by the Salaries and Remuneration Commission (SRC) as established under Article 230 of the Constitution of Kenya. It is on this premise that any public policy decision taken by the SRC has a multiplier effect on both the Public and Private Sector and, therefore, its proposed regulations must be sensitive to all workers in Kenya.

Article 41 of the Constitution of Kenya, 2010 on Labour Relations highlights that there are also several Government organs such as Public Service Commission and the Ministry of Labour among others whose duties and responsibilities are well defined but must work hand in hand to ensure a harmonious working relationship and articulation of workers' Agenda on salaries and remuneration.

After careful analysis of the proposed draft Salaries and Remuneration Commission (Remuneration and Benefits of State and other Public Officers) Regulations, 2022, COTU (K) submits as follows:

Section 4: Review cycle

According to International Labour Standards and various International Labour Organization (ILO) recommendations, a CBA should be within the period of two years. Kenya being a member of the ILO and a signatory to various ILO Conventions, MUST always take this Recommendation serious. A CBA must be reviewed within two years to take into consideration inflation, purchasing power parity and other changes in the economy. Anything above two years ceases being a CBA and becomes an MoU.

COTU (K) strongly believes that a four (4) year review period is too long thus efforts to reduce it to two (2) years should be carried out to harmonize with all sectors. This is equally in line with the Wage Guidelines issued by Ministry of Finance in November 2005 guideline number 4 which states that wages /salaries should be reviewed once every 24 months and in addition we know that the Kenyan Government Budget is reviewed every year.

Benson Okwaro
Rev. Joel Chebil, OGW
Francis Murage

Ernest N. Nadome
Carolyn Rutto
Bro Washington O Ododa

Secondly, timelines should be clearly spelt out so that all activities towards salaries and remuneration are carried out within a specific period to enable the parties concerned to effectively engage prior to review of remuneration and benefits.

Section 6: Parameters for review of remuneration and Benefits

Add (e) - Wage Guidelines 2005

Section 8: Pension

Pension Benefits are meant to cushion retirees and therefore trustees are appointed/elected to ensure members get the maximum benefit. COTU (K) recommends that SRC should not dictate on the type of scheme.

In addition, COTU (K) believes that Pensions is guided and regulated through the Retirement Benefits Authority and suggested changes by SRC will interfere and be in conflict with the mandate of Retirement Benefits Authority under the Act that governs its operations. The Authority further outlines how contributions by the employer and employee can be set out hence SRC cannot determine what levels of contributions can be made and how trustees to the pension schemes can be appointed.

Section 9 (e): Considerations during setting, review and advise on remuneration and benefits

The comparative surveys on Labour Markets and trends is important and should be given preference in weight.

(2) The word *may* should be changed to SHALL. This is a constitutional requirement

Section 10: Communication and effective date of advice

COTU (K) recommends that setting and advising on remuneration and benefits should be set clearly the way budget timelines are set so that every state/public institution is seized of its role and obligation and the duration.

Section 16: Validity of job evaluation results

Timelines should be provided.

Section 24: Procedure for rewarding productivity and performance

Workers expect a functional productivity centre to be able to provide the criteria for measurement for productivity.

Add (f)

The Productivity Centre under the Ministry of Labour should be operationalized to provide the criterion and how labour productivity indices can be developed.

Section 26: Procedure for Collective bargaining negotiation

We still insist that the cycle should be two (2) years and not four (4) years.

(4): Should be totally deleted

Yours Sincerely,



Dr. Francis Atwoli, NOM (DZA), CBS, EBS, MBS
SECRETARY GENERAL

Chairperson: Hon. Florence Kiprop MDS

Vice-Chairperson: Mr. Wanjau

Commissioner: Mrs. Lucy Bilayo



COMMISSION ON ADMINISTRATIVE JUSTICE

Office of the Ombudsman

Ref. CAJ/HRM/23/VOL II (16)

10th March, 2022

Anne R. Gitau (Mrs)
Commission Secretary/CEO
Salaries and Remuneration Commission
Williamson House, 6th Floor
P O Box 43126 - 00100
NAIROBI

Dear Madam,

RE: WRITTEN SUBMISSION ON THE DRAFT REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS, REGULATIONS 2022

Receive warm compliments from the Commission on Administrative Justice (Office of the Ombudsman).

We make reference to your letter Ref: No. SRC/ADM/18 (2) of 23rd February, 2022 on the above captioned subject.

Attached herewith, is the Commission's submission on the draft remuneration and benefits, Regulations, 2022.

We thank you for your continued support and assure you of our highest regards.

Yours faithfully,

A handwritten signature in dark ink, appearing to read "M. Wambua".

MERCY K. WAMBUA, OGW
COMMISSION SECRETARY/CEO

Encls.

THE COMMISSION ON
ADMINISTRATIVE JUSTICE



COMMENTS TABLE ON THE SALARIES AND REMUNERATION COMMISSION
(REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS)
REGULATIONS, 2022

No.	PARAGRAPH	PROPOSED CHANGE OR COMMENTS	JUSTIFICATION
1	3 (a) (b)	The word 'other' should be deleted	The sentences should read public officers as opposed to 'other public officer' in the same way it reads in the Constitution and Salaries and Remuneration Act, 2011.
2	6	The Commission should also consider other factors in undertaking a review.	Factors such as the nature and risks involved in a job should be taken into consideration by the Salaries and Remuneration Commission.
3	8 (7) &(8)	This paragraph should be amended to include a rider that any reduction in the recommended rates should not affect employees who are already benefiting from a higher rate.	- Any reviewed rate by the Salaries and Remuneration Commission that is lower than the set rate should only affect officers who join Pension Scheme after the new rates.

No.	PARAGRAPH	PROPOSED CHANGE OR COMMENTS	JUSTIFICATION
		The Commission further proposes that SRC sets a fixed rate of pension contribution for the employer and employees as opposed to giving a range as is the case currently.	This provision would ensure that there is harmony and fairness in pension contributions across the public service, and employers would not be at liberty to choose from a range.
4	9 (c)	This paragraph should be deleted.	P.E allocations are approved by the National Assembly. The SRC should not be the determinant on whether an institution has capacity to afford
5	24	This paragraph should be amended to read as follows: "The Commission shall provide guidance on the parameters for the type of rewards that institutions may give to employees for productivity and performance"	The Salaries and Remuneration Commission should give guidelines on the type of rewards that institutions may give to its officers for productivity and performance, as opposed to requiring institutions to seek approval from SRC for implementation of its rewards schemes.

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NAIROBI

COMMISSION ON REVENUE ALLOCATION

OUR REF: CRA/CSO/OC/8/VOL.V (15)

DATE: 11th March 2022

Ms. Anne Gitau, MBS
Commission Secretary/CEO
Salaries and Remuneration Commission
Williamson House, 6th Floor
NAIROBI

Dear *Anne,*



*Hil
Please
Revised
And*

H-3-21

**RE: WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND
REMUNERATION COMMISSION (REMUNERATION AND
BENEFITS OF STATE AND OTHER PUBLIC OFFICERS)
REGULATIONS 2022**

We thank you for this opportunity to submit written comments on the Draft Salaries and Remuneration Commission (Remuneration and benefits of State and other Public Officers) Regulations, 2022.

The Commission has reviewed and given a number of comments and observations noted and further proposed amendments to the drafted regulations. Please find attached the written submissions.

Yours *Sincerely,*

James Katule

CPA James Katule

COMMISSION SECRETARY/CEO



COMMENTS ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022.

A. GENERAL COMMENTS

SRC's mandate covers a complex area of state operations. It deals with a wide range of state institutions with diverse mandates and corresponding operational modalities and different state official responsibilities.

This enjoins the Commission to approach its regulatory functions from a thoroughly differentiated and carefully nuanced point of view. It cannot afford to tailor a suit that fits all, at least in a few distinctly unique areas. Such an approach would consider treating the following areas with the necessary differentiation and nuance:

- Structure of the state institutions
- Salary structure
- Determination of staff production
- Allowance and benefit etc.

Over-standardization and harmonization of structures and procedures of public service institutions, without due regard to the unique functions of particular agencies, e.g. the independent bodies, may end up compromising their mandates. The ceiling of use of fuel by public service officers needs a carefully nuanced standardization. At the moment the variance is too large and unilateral and with hardly any justification.

There is need to align these draft regulations with the Constitution of Kenya 2010. In addition, clarity is needed as to who has the final say when it comes to providing benefits and salaries for public office, Independent Commissions and County governments. Article 230 (4) states as follows: The powers and functions of the Salaries and Remuneration Commission shall be to—

- (a) set and regularly review the remuneration and benefits of all State officers; and
- (b) advise the national and county governments on the remuneration and benefits of all other public officers.

From the above, it is evident that the commission will set and regularly review the remuneration and benefits of all State officers and advise the remuneration and benefits for public officers. In some parts of the regulations, the Commission adheres to its constitutional mandate e.g. section 18 on salary structures, but then



it contradicts itself in other following regulations. CRA has included an additional regulation 7A at the end of the table to incorporate cognizant CRA equitable share to counties when it comes to the county ceilings.

TABLE WITH SPECIFIC COMMENTS AND OBSERVATIONS

S/No	Regulation No.	Provisions of the Regulations*	Rationale for Amendment Recommendation	Proposed Amendment**
1.	Title Part IN EXERCISE of the powers conferred by section 26 of the Salaries and Remuneration Commission Act, 2011, the chairperson makes the following regulations_	In introducing the title, the Regulations refer to Section 26 of the SRC Act to the effect that the "Chairperson of the SRC makes the following regulations".	It is not the chairperson's task to make regulations rather it is the work of the commission as a whole.	Replace the word Chairperson with the commission to say "IN EXERCISE of the powers conferred by section 26 of the Salaries and Remuneration Commission Act, 2011, the commission makes the following regulations
2.	Regulation 2 PART I— PRELIMINARY PROVISIONS	cost of living" means the cost of purchasing goods and services as measured by the changes in the Consumer Price Index as provided by the Kenya National Bureau of Statistics from time to time	This limits the definition to the standards set by KNBS only. How about other labor laws like ILO?	Cost of living means the cost of goods and services as indicated in legislation and labor guidelines



S/No	Regulation No.	Provisions of the Regulations*	Rationale for Amendment Recommendation	Proposed Amendment**
3.	Regulation 4 PART 11- SETTING, REVIEWING, AND ADVISING ON REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS	<p>4 1) The Commission shall undertake a review of;</p> <p>a) State officers' remuneration and benefits every four years.</p> <p>c) allowances and benefits of other public officers</p> <p>4(3) The Commission may, notwithstanding the provisions of sub-regulation (1) undertake a special review of the remuneration and benefits of State and other public officers to address emerging circumstances and conditions.</p> <p>The Commission shall undertake a review of other public officers' remuneration and benefits every 4 years, and allowances and</p>	<p>Does not refer to review of State Officers' allowances</p> <p>Does not refer to the duration for review of Other public officers' allowances and remuneration</p> <p>The regulation refers to the review of remuneration and benefits in several other sections and omits allowances altogether.</p> <p>This seems to interfere with independent offices, policy organs and the other government levels. SRC can evaluate but as advisory only. The other institutions can</p>	<p>Should also include a review of their allowances.</p> <p>Should stipulate the duration for review.</p> <p>The special review should also include a review of allowances.</p> <p>The Commission shall undertake a review of other public offices and advise them every 4 years.</p>



S/No	Regulation No.	Provisions of the Regulations*	Rationale for Amendment Recommendation	Proposed Amendment**
		benefits of other public officers.	independently carry out this evaluation and set SRC advice as a threshold	
4.	Regulation 8 PENSION	(6) The Commission shall guide to give effect to the provisions of sub-regulation 5. (7) The Commission shall undertake periodic reviews and make recommendations on pensions payable to persons eligible for such pension. (8) Setting, reviewing, advising and recommendations on pension review — (a) shall be subject to the prevailing economic conditions, affordability, and fiscal sustainability; and may, among others, be informed by the outcome of an actuarial valuation.	The Retirement and Benefits Act provides these guidelines. This is not a function of SRC. On the financial aspect, the MOF can always provide directions in the annual finance bill	Delete



S/No	Regulation No.	Provisions of the Regulations*	Rationale for Amendment Recommendation	Proposed Amendment**
5.	Regulation 9 CONSIDERATIONS DURING SETTING, REVIEW AND ADVISE ON REMUNERATION AND BENEFITS	<p>The commission shall, in setting, reviewing and advising on remuneration and benefits, where applicable</p> <p>(1)(c) the capacity of a public service institution to afford the cost of proposed remuneration and benefits.</p> <p>(d) the ability of a public service institution to sustain payment of remuneration and benefits.</p> <p>Addition of another variable ending with (l), (m)</p>	<p>The capacity of the public service institution is not an independent variable. It is dependent on factors that the commission should be in a position to hold constant and not allow to be relegated to the unknown.</p> <p>Is an important aspect that needs to be added.</p>	<p>The commission should hold constant and not allow to be relegated to the unknown.</p> <p>should be added to deal with the "unique features of public service institutions".</p>
6.	Regulation 10 COMMUNICATION AND EFFECTIVE DATE OF ADVICE.	The Commission shall communicate the advice on remuneration and benefits for other	This is not mandatory as it is advice.	The Commission shall communicate the advice on



S/No	Regulation No.	Provisions of the Regulations*	Rationale for Amendment Recommendation	Proposed Amendment**
		public officers indicating the effective date of implementation		remuneration and benefits for other public officers and will advise on the effective date of implementation
7.	Regulations 11 JOB EVALUATION.	The Commission shall undertake job evaluation covering jobs in public service institutions to— (a) determine the comparable and relative worth of jobs in the public service institutions; (b) classify the jobs in the public service; and (c) rationalize and harmonize job grading structures in the public service.	This provision does not comply with the constitution. The role of advice is not to set. Reword using the word “will” and leave room for the other government institution that are not state offices to use the SRC advice as to the minimum threshold and set their applicable standards	The Commission will undertake job evaluation covering jobs in public service institutions to— (a) advice on the comparable and relative worth of jobs in the public service institutions; (b) advice on job classification in the public service; and (c) advice on rationalizing and harmonizing job grading structures in the public service.
8.	Regulation 12 CRITERIA FOR JOB EVALUATION	The Commission shall undertake job evaluation where_	Direct consultation with public service institutions should be a “must” and not a “may.	May” should be substituted with “shall”.



S/No	Regulation No.	Provisions of the Regulations*	Rationale for Amendment Recommendation	Proposed Amendment**
		(a) Jobs in public service institutions have not been evaluated	"There is no clarity is to that bring the difference or convergence between evaluation by the Commission and the relevant committee within the remit of the public service institution in question.	More clarity is needed to bring out the difference or convergence between evaluation by the Commission and the relevant committee within the remit of the public service institution in question.
9.	Regulation 14 INFORMATION TO BE SUBMITTED BY A PUBLIC SERVICE INSTITUTION.	A public service institution shall provide the Commission with information relating to jobs within the institution for purposes of job evaluation. (2) The information to be provided in sub-regulation (1) shall include— (a) the approved institutional structure; (b) the approved staff establishment; (c) the approved career progression guidelines or schemes of service;	This section is a mandatory directive for public officers and governments to comply with which is unconstitutional.	A public service institution can/will provide the Commission with information relating to jobs within the institution for purposes of job evaluation. (2) The information to be provided in sub-regulation (1) shall include— (a) the approved institutional structure;



S/No	Regulation No.	Provisions of the Regulations*	Rationale for Amendment Recommendation	Proposed Amendment**
		(d) a list of jobs in the institution indicating current grades or levels; (e) the complete, accurate, approved and signed-off job description manual presented in a format as prescribed by the Commission; and (f) any other information that may be relevant for the job evaluation.		(b) the approved staff establishment; (c) the approved career progression guidelines or schemes of service; (d) a list of jobs in the institution indicating current grades or levels; (e) the complete, accurate, approved and signed-off job description manual presented in a format as prescribed by the Commission; and (f) any other information that may be relevant for the job evaluation.
10.	Regulation 15 REVIEW OF JOB EVALUATION RESULTS.	15. (1) A public service institution's State officer or other public officer dissatisfied with job evaluation results may seek	This section should only apply to state officers and not to public officers and other levels of government. They should have their	Review section and delete parts addressing public officers and other levels of government



S/No	Regulation No.	Provisions of the Regulations*	Rationale for Amendment Recommendation	Proposed Amendment**
		review of the results as provided for under this regulation. (2) Where a public service institution is dissatisfied with the job evaluation results, the public service institution shall submit to the Commission a request for review, the grounds	final say on these matters but use SRC as a minimum threshold just like the employment Act	
11.	Regulation 16 VALIDITY OF JOB EVALUATION RESULTS	"Job evaluation results shall remain valid until the job is re-evaluated by the commission."	There will be a problem where a re-evaluation is done but due to budgetary constraints is not implemented as it happened in 2019	Section 16 should therefore be revised to care for such situations.
12.	Regulation 19 PROCEDURE FOR DEVELOPING SALARY STRUCTURES	(3) A public service institution shall— (a) ensure its salary structure is as advised by the Commission; and	This is unconstitutional. Even for County governments	Delete
13.	Regulation 21 VALIDITY OF SALARY STRUCTURES	Salary structures that are set, reviewed, or advised shall remain valid until reviewed by the Commission.	Unconstitutional, even for county governments	Delete
14.	Regulation 23 REWARDING	23(2) The guidance referred to in sub-regulation (b)	These are decisions made by independent commissions,	Delete



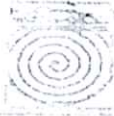
S/No	Regulation No.	Provisions of the Regulations*	Rationale for Amendment Recommendation	Proposed Amendment**
	PRODUCTIVITY AND PERFORMANCE.	approved by the Commission.	county, and national government. They can set SRC guidelines as minimum thresholds.	
15.	Regulation 24 PROCEDURE FOR REWARDING PRODUCTIVITY AND PERFORMANCE.	24. (1) A public service institution shall seek the prior advice of the Commission before awarding its public officers a reward for productivity and performance.	Public officers and the levels of government are not under any mandatory obligation to seek this advice because they have their structures in place including the hr department. This is unconstitutional	Delete
16.	Regulation 25 COLLECTIVE BARGAINING NEGOTIATION.	(2) Collective bargaining negotiation between a public service institution and a trade union shall cover a four-year cycle.	CBAs have their life cycles and SRC cannot dictate this. It is envisaged already in the agreement. This regulation is irrelevant	Delete
17.	Regulation 26 PROCEDURE FOR COLLECTIVE BARGAINING NEGOTIATION.	(1) A public service institution with a recognition agreement with a trade union shall seek the prior advice of the Commission before the commencement of collective bargaining negotiation.	This is an encroachment to the trade union rights as envisaged in the constitution Article 41 (4) Every trade union and every employers' organization has the right— (a) to determine its administration,	Delete



S/No	Regulation No.	Provisions of the Regulations*	Rationale for Amendment Recommendation	Proposed Amendment**
		(2) A public service institution shall provide the following information required for the provision of advice on collective	programs, and activities; (b) to organize; and (c) to form and join a federation. (5) Every trade union, employers' organization, and employer has the right to engage in collective bargaining.	
18.	Regulation 31 COMPLIANCE WITH COMMISSION SET AND REVIEWED REMUNERATION AND BENEFITS, AND ADVICE.	31. (1) The Commission may take any measures it considers necessary to ensure that public service institutions adhere to the set and reviewed remuneration and benefits, and advice issued by the Commission.	Based on the Advisory role, there is no need for compliance	Delete
19.	Regulation 7A NEW REGULATION ON SETTING BENEFITS AND SALARIES FOR BOTH LEVELS OF GOVERNMENT	To include a section to seek recommendations from CRA before setting benefits and salaries for both levels of government to avoid any confusion based on the equitable allocation	There have been several conflicts between the equitable allocations and the advice on benefits and salaries for government officials specifically county governments and CRA ceilings	Insert a regulation to say "When advising on remuneration and benefits for the County governments, SRC will seek to advise from the CRA on the thresholds available for



S/No	Regulation No.	Provisions of the Regulations*	Rationale for Amendment Recommendation	Proposed Amendment**
				setting the ceilings".



APSEA

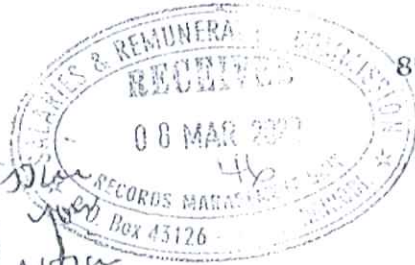
Association of Professional Societies in East Africa (APSEA)

Parliament Road, the Professional Centre, P.O. BOX -72643-00200, City Square, Nairobi

Tel: 0726 610498, 0733 610948

Email: apsea@apsea.or.ke Website: www.apsea.or.ke

8th March 2022



Mrs. Lyn Mengich,
Chairperson,
Salaries and Remuneration Commission
Williamson House 5th Floor, 4th Ngong Avenue
Box 43126 – 00100
Nairobi, Kenya.

Dear Sir,

RE: SUBMISSION OF MEMORANDUM ON THE REVIEW OF THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022.

Reference is made to your letter Ref: SRC/ADM/18(2), dated 23rd February 2022, requesting for written submissions on the above subject matter.

Association of Professional Societies in East Africa (APSEA) is a joint forum and an umbrella body of professionals associations established in 1961, comprising of a corporate membership of thirty two (32) professional associations from diverse professional disciplines in the country, with over 500,000 Professionals in Kenya.

The SRC regulations stated are drafted pursuant to section 26 of the SRC Act and are classified as delegated legislation. There are two (2) regimes that govern delegated legislation which include, inter alia: The constitution of Kenya 2010 and the Statutory Instruments Act, 2013.

Felix Okatch-Chairman Rosemary Njogu-Hon. Secretary Nicholas Letting-Hon. Treasurer
Association of Professional Societies in East Africa/P.O. BOX 72643-00200, Professional Centre, Parliament Nairobi.



www.apsea.or.ke



apsea@apsea.or.ke

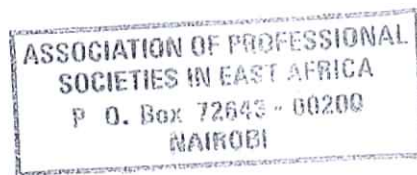
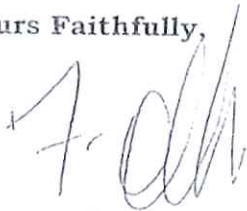
[@apseakenya](https://www.instagram.com/apseakenya)

The Association of Professional Societies in East Africa (APSEA) considers the need to establish;

1. Whether the regulations comply with the Statutory Instruments Act 2013.
2. Whether the Commission conducted a Regulatory Impact Assessment under the Statutory Instruments Act.
3. Whether the draft regulations were submitted to parliament for approval first as stated in section 26(2) of the SRC Act.

APSEA notes that the objective of conducting a Regulatory Impact Assessment is to determine the best option for resolving the particular issue the agency has identified. It would also determine if regulations are required and for what purpose.


Yours Faithfully,



Mr. Felix Okatch,
Chairman, Association of Professional Societies in East Africa (APSEA).

*Felix Okatch-Chairman Rosemary Njogu-Hon. Secretary Nicholas Letting-Hon. Treasurer
Association of Professional Societies in East Africa/P.O. BOX 72643-00200, Professional Centre, Parliament Nairobi.*

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 apsea@apsea.or.ke

[@apseakenya](#)

COUNTY ASSEMBLY OF EMBU



OFFICE OF THE CLERK

MEMORANDUM ON THE DRAFT SALARIES AND REMUNERATION
COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER
PUBLIC OFFICERS) REGULATIONS, 2022

PRESENTED TO:

SALARIES AND REMUNERATION COMMISSION

SUBMITTED TO:

THE SECRETARY/CEO, SALARIES AND REMUNERATION COMMISSION

PO BOX 43126-00100, NAIROBI

MARCH, 2022

MEMORANDUM ON THE DRAFT SALARIES AND REMUNERATION
COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER
PUBLIC OFFICERS) REGULATIONS, 2022

INTRODUCTION

The County Assembly of Embu is in receipt of the proposed draft Salaries and Remuneration Commission (remuneration and benefits of state and other public officers) regulations, 2022 which it has reviewed and interrogated. It submits this memorandum in line with its mandate. Further, it responds to the invitation for public participation and submission of memoranda by the Commission dated 23rd February. This memorandum highlights the County Assembly of Embu select views of the proposals included in the proposed Regulations.

COMMENTS

1. Regulation 9

For Public Officers, the level of education and period of active service seem not to form part of the considerations to be made during, review and advise on remuneration and benefits. The regulation should be revised to include the above as considerations as they are an important factor in ensuring that there is no stagnation of officers and that relevant job experience and advanced education are rewarded in order to promote job satisfaction amongst public officers as well as retention of valuable public officers.

2. Regulations 11, 12, 13, 14, 15, 16 and 17

These proposed Regulations make provisions on job evaluation by the Commission. The Constitution(Article 230) and Salaries and Remuneration Commission Act, 2011, have neither expressly nor impliedly given this mandate to the Commission. Job evaluation exercise in National Public Service is the sole responsibility of the Public Service Commission under Article 234 of the Constitution. This is the same with Judicial Service Commission (for Judiciary), Parliamentary Service Commission (for Parliament), County Public Service Boards (for county public service), County Assembly Service Boards (section 11 of the County Assembly Services Act, 2017- for county assembly service) among others. The responsibility

of the Commission is limited to setting, reviewing or advising on the salaries and benefits of those that hold positions in the respective institution(s). The object, intent and purpose of Article 230(4), section 26 of the Salaries and Remuneration Commission Act as read together with Article 94(6) of the Constitution, have therefore been negated by these proposed regulations, and should be struck out and expunged forthwith.

3. Regulation 26

On Collective bargaining, the role of the Commission when it comes to collective bargaining should be restricted to a strictly advisory role. Collective bargaining is a fundamental right that is rooted in the International Labour Organization Constitution and reaffirmed as such in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. As such it is well regulated and additional conventions as well as procedures have already been set up to offer guidelines when it comes to the procedure to be used during the process. The Clause as structured seeks to insert the commission into collective bargaining negotiations which may curtail the freedoms of trade unions as well as complicate/slow down the process entirely. The said Regulation violates Article 41 of the Constitution which guarantees workers the right to fair labour practices particularly the right to engage in collective bargaining. Further violates the provisions of Articles 36 and 37 of the Constitution since the Regulation attempts to curtail and limit the scope of collective bargaining agreements

4. Regulation 28

On review of advice on remuneration and benefits, Regulation 28 seeks to make advice issued by the Commission binding. The term "advice" in its literal meaning can never be binding as to advise is to offer a guideline or suggestion. Secondly, the role of the Commission when it comes to public officers, other than state officers, is clearly outlined in the Constitution and is limited to an advisory role. By making advice binding then the Commission would in fact be setting requirements for public officers which would be contrary to the provisions of Article 230(4) (b) of the Constitution. The regulation should therefore be revised accordingly.

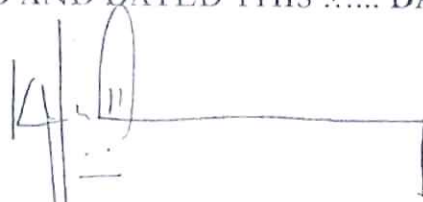
5. Transitional provisions

With regard to pensions and gratuities there is need to have a clear provision on transition as officers are already in existing pension schemes that may not necessarily meet the thresholds proposed in these regulations and it is vital to allow for reasonable time for transition or at least offer guidance/timelines on how the regulation shall be implemented

CONCLUSION AND RECOMMENDATIONS

Considering the above observations, the County Assembly of Embu acknowledges that the draft salaries and Remuneration Commission (Remuneration and Benefits of State and other public Officers) Regulations has presented important reform questions on issues of Remuneration of State and Public Officers. However, the selected and highlighted parts of the proposed regulations need to be reconsidered and revised accordingly in order to address the concerns raised and to be in compliance with the Constitution, Salaries and Remuneration Commission Act, 2011 and other existing laws.

MEMORANDUM EXECUTED AND DATED THIS ¹⁷ 17 DAY OF MARCH, 2022



JIM G. KAUMA
CLERK OF THE COUNTY ASSEMBLY.



PUBLIC SERVICE COMMISSION



*DAS
please
bid
for
review
[Signature]
7-3-22*

PSC/LEG/019/14/185 IV(16)

1st March, 2022

Chairperson
Salaries and Remuneration Commission
Williamson House
4th Ngong Avenue
NAIROBI.

REQUEST FOR WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND REMUNERATIONS COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

Reference is made to your letter dated 23rd February, 2022.

Attached is the written memorandum from the Public Service Commission.

[Handwritten signature]

Dr. Simon K. Rotich, CBS
Secretary/CEO
Public Service Commission

Attch.

SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF
STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

MEMORANDUM OF THE PUBLIC SERVICE COMMISSION

No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
PART I—PRELIMINARY PROVISIONS			
1.	2	The interpretation of “job evaluation” violates the mandate of PSC under Article 234(2)(a)(i) of the Constitution as read together with Section 27 of the Public Service Commission Act, 2017.	“Job Evaluation” should be interpreted to mean a systematic and objective process of determining the worth of a job in relation to other jobs. for purposes of establishing a rational grading structure; <i>(delete)</i>
2.	2	The interpretation of the term “public service institution” is unconstitutional as it purports to usurp the constitutional mandate of the Public service Commission specifically Art. 234(2)(g) by giving SRC the power to directly engage public service institutions that fall under the mandate of the Public Service Commission i.e. Ministries and State Corporations.	The definition should be as follows:- “public service institution” means a) Public Service Commission; b) Parliamentary Service Commission; c) Judicial Service Commission; d) National Police Service Commission; e) Teachers Service Commission; f) County Public Service Board; g) County Assembly Service Board; and h) Constitutional Commission and Independent Office.
3.	2	Review of remuneration and benefits	It should be amended to only provide for the definition of review.
4.	3(2)(c)	The provision contravenes Art. 234(2) (g) of the Constitution and it also contravenes the provisions of Section 11(b) of the Salaries and Remuneration Act which only gives SRC the power to keep under review all matters relating to the salaries and remuneration of public officers. It should be noted that under Article 230(4) of the Constitution SRC is only mandated to set and regularly review the remuneration and benefits of all State Officers and to	Clause 3(2)(c) should be deleted.

No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
		advise the National and County Governments on remuneration and benefits of all other public officers. Therefore, SRC cannot give itself powers, through Regulations, that exceed their Constitutional powers and functions.	
PART II- SETTING, REVIEWING AND ADVISING ON REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS			
5.	4	The entire clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.	<p>4(1) should read as follows</p> <p>4. "(1) The Commission shall —</p> <p>(a) undertake a review of State Officers' remuneration and benefits every four years;</p> <p>(b) Keep under review other public officers' remuneration every four years; and</p> <p>(c) Keep under review allowances and benefits of other public officers."</p> <p>(3) The Commission may, notwithstanding the provisions of sub-regulation (1), undertake a special review of the remuneration and benefits of State officers and other public officers (<i>delete</i>) to address emerging circumstances and conditions.</p>
6.	5	The clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.	5(1) Whenever a review is due, the Commission shall call for relevant information from public service institutions, on remuneration and benefits for their respective State officers. other public officers. (<i>delete</i>)
7.	6	<p>The clause contravenes the mandate of the Public Service Commission under Article 234(2) (a) (i) as read together with Section 27 of the Public Service Commission Act.</p> <p>The clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.</p>	<p>(6) The Commission shall, in undertaking a review or keeping under review all matters relating to the salaries and remuneration of public officers in accordance with these Regulations, consider —</p> <p>(a) the principles set out under Article 230 (5) of the Constitution, Section 12 of the Act and other legal</p>

No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
			provisions; (b) the economic performance of the country; (c) the outcome of comparative surveys on the labourmarkets and trends in remuneration; and (d) the job evaluation results <i>as undertaken by public service institutions</i> .
8.	7(1)	The clause contravenes on the mandate of the Public Service Commission under Article 234(2) (a) (i) as read together with Section 27 of the Public Service Commission Act. The clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.	7(1) The Commission shall undertake periodic review <i>or keep under review, as the case may be</i> , allowances and other benefits and advise public service institutions taking into account provisions of regulation 4.
9.	8	The entire clause contravenes the provisions of, among others, the Presidential Retirement Benefits Act, Retirement Benefits (Deputy President and Designated State Officers) Act, Retirement Benefits Act, Pensions Act and the Public Service Superannuation scheme Act.	Clause 8 should be deleted in its entirety.
10.	9	Clause 6 and 9 are dealing with the same or related issue.	Clauses 6 and 9 should be <i>merged</i> . In the merger, clause 9(1) should read: 9(1) The Commission shall, in setting, reviewing and or advising on remuneration and benefits, where applicable, consider... and 9(1)(g) should read; the job evaluation results <i>as undertaken by public service institutions</i> . And 9(2) should read; In the discharge of its mandate, the Commission may shall

No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
			invite views from stakeholders which include--
9.	10(b)	The clause exceeds the powers of SRC as provided for in Article 230 (4)(b) of the Constitution which has since been interpreted by the Supreme Court in Pet. No. 42 of 2019.	The clause should read; advice on remuneration and benefits for other public officers <i>indicating—the effective-date-of implementation.</i> (delete)
10.	11to 18	<p>The clauses contravene on the mandate of the Public Service Commission under Article 234(2) (a) (i) as read together with Section 27 of the Public Service Commission Act.</p> <p>The clauses exceed the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.</p> <p>With regard to State Officers their jobs are defined in the Constitution and enabling legislation.</p>	Clauses 11 to 18 should be deleted.

No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
11.	19 & 20(2)	The clauses exceed the constitutional and statutory powers and functions of SRC, specifically Article 230(4)(b) of the Constitution which has been interpreted by the Supreme Court in Petition No. 42 of 2019.	<p>19. 1) The Commission, shall, prior to developing salary structures for State Officers—</p> <p>(a) conduct comparative surveys on labour markets and trends in remuneration to determine the relativity of remuneration of public service in relation to the market trends; and</p> <p>(b) subject the outcome of the comparative surveys on labour markets and trends in remuneration to the provisions of regulation 9 (1).</p> <p>(2) The Commission shall develop and communicate to public service institutions the set and reviewed salary structures for State officers <i>and advice on the salary structures for other public officers. (delete)</i></p> <p>(3) A public service institution shall—</p> <p>(a) ensure its salary structure is as advised by the Commission; and</p> <p>(b) submit the information requested by the Commission while undertaking comparative surveys on labour markets and trends in remuneration; Delete</p> <p>Clause 20(2) should be deleted.</p>
12.	21	The clause exceeds the constitutional and statutory mandate of SRC.	(a) Salary structures that are set, reviewed <i>or advised Delete</i> shall remain valid until reviewed by the Commission.
13.	23	The clause encroaches on the Public Service Commission powers and functions in Article 234(2)(e) of the Constitution as read with Section 62 of the Public Service Commission Act.	Clause 23 should be deleted in its entirety.

No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
14.	26(3) & (4)	The clauses exceed the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.	Clause 26(3) & (4) should be deleted in entirety.
PART III— MISCELLANEOUS PROVISIONS			
15.	27	The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.	27A public service institution may, at any time, request the Commission, in writing, to- a) Set and review the remuneration and benefits for its State Officers, and b) Advise on the remuneration of its public officers.
16.	28	The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.	Clause 28 should be deleted.
17.	30(3)	The clause is superfluous as the procedures for dispute resolution in court is provided for in various rules of procedure for different courts.	Clause 30(3) should be deleted.
18.	31(1)	The clause exceed the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.	(1) The Commission may take any measures it considers necessary to ensure that public service institutions adhere to the set and reviewed remuneration and benefits for State Officers. and advice issued by the Commission. <i>Delete</i>
19.	31(3), (4) and (5)	The clauses exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.	Clauses 31(3), (4) and (5) should be deleted.

Ant

Amb. Anthony Muchiri

Chairperson, Public Service Commission

28th February 2022.



Salaries & Remuneration
Commission
Rewarding productivity

Ref.No: SRC/ADM/18 (2)

23rd February, 2022

Archbishop (Rtd) Eliud Wabukala, EBS
Chairperson
Ethics and Anti-corruption Commission
Integrity Centre
Jakaya Kikwete/Valley Road Junction
P O Box 61130 - 00200
NAIROBI

Dear Archbishop Wabukala,

REQUEST FOR WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022.

The Salaries and Remuneration Commission (SRC) is established under Article 230 of the Constitution of Kenya, 2010. Article 230(4) of the constitution gives the Commission powers and functions; a) to set and regularly review the remuneration and benefits of all State officers; and b) to advise the national and county governments on the remuneration and benefits of all other public officers.

Further, the Salaries and Remuneration Commission Act, 2011, which operationalises Article 230 of the constitution, vests the Commission with additional functions and powers. Section 26 of the Act mandates the Commission to make regulations for the better carrying into effect the provisions of the Act.

Pursuant to this, the Commission has developed the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022.

In line with Article 10 and 47 of the constitution, among other legal provisions, the Commission is requesting for memoranda and views from stakeholders and the public on the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022.

The purpose of this letter, therefore, is to invite you to provide written submissions on the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022 (**enclosed**). The submissions should be addressed to the Commission Secretary/CEO, and sent through the following email address: regulations@src.go.ke or info@src.go.ke, so as to be received on or before **11 March 2022**.

Further, the Commission invites you to participate in a virtual stakeholders' engagement meeting on the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022 scheduled to be held on **Monday, 28 February 2022**, from **2.30 PM to 4.30 PM**.

The virtual meeting credentials are as follows;

Zoom link: <https://us02web.zoom.us/j/86804314315?pwd=aTlwWEh6NDVQZzNxY1FlclhkYnFlZz09>

Meeting ID: 868 0431 4315

Passcode: 156245

Yours sincerely,



MRS. LYN MENGICH
CHAIRPERSON



Salaries & Remuneration
Commission

Rewarding productivity

Ref.No: SRC/ADM/18 (2)

23rd February, 2022

Dr. Jamleck Muturi

Chairperson

Teachers Service Commission

TSC House, Kilimanjoro Rd

P O Box Private Bag

NAIROBI

Dear Dr. Muturi,

REQUEST FOR WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022.

The Salaries and Remuneration Commission (SRC) is established under Article 230 of the Constitution of Kenya, 2010. Article 230(4) of the constitution gives the Commission powers and functions; a) to set and regularly review the remuneration and benefits of all State officers; and b) to advise the national and county governments on the remuneration and benefits of all other public officers.

Further, the Salaries and Remuneration Commission Act, 2011, which operationalises Article 230 of the constitution, vests the Commission with additional functions and powers. Section 26 of the Act mandates the Commission to make regulations for the better carrying into effect the provisions of the Act.

Pursuant to this, the Commission has developed the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022.

In line with Article 10 and 47 of the constitution, among other legal provisions, the Commission is requesting for memoranda and views from stakeholders and the public on the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022.

The purpose of this letter, therefore, is to invite you to provide written submissions on the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022 (**enclosed**). The submissions should be addressed to the Commission Secretary/CEO, and sent through the following email address: regulations@src.go.ke or info@src.go.ke, so as to be received on or before **11 March 2022**.

Further, the Commission invites you to participate in a virtual stakeholders' engagement meeting on the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022 scheduled to be held on **Monday, 28 February 2022**, from **2.30 PM to 4.30 PM**.

The virtual meeting credentials are as follows;

Zoom link: <https://us02web.zoom.us/j/86804314315?pwd=aTlwWEh6NDVQZzNxY1FlelhkYnFIZz09>

Meeting ID: 868 0431 4315

Passcode: 156245

Yours sincerely,



MRS. LYN MENGICH
CHAIRPERSON



Salaries & Remuneration
Commission
Rewarding productivity

Ref: SRC/ADM/18 (2)

23rd February, 2022

The Chairperson

Inter Public Universities Council Consultative Forum
NAIROBI

Dear Sir,

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The virtual meeting credentials are as follows;

Zoom link: <https://us02web.zoom.us/j/85768630571?pwd=cjRHdkFDLzBpR3NvU1plZTNydXNQdz09>

Meeting ID: 857 6863 0571

Passcode: 016219

Yours faithfully,



MRS. LYN MENGICH
CHAIRPERSON

Copy to: **Prof. Geoffrey Muluvi**
Chairperson, Vice-Chancellors' Committee and Vice Chancellor
South Eastern Kenya University
P O Box 170-90200
KITUI



Salaries & Remuneration
Commission
Rewarding productivity

Ref.No: SRC/ADM/18 (2)

23rd February, 2022

Archbishop (Rtd) Eliud Wabukala, EBS

Chairperson
Ethics and Anti-corruption Commission
Integrity Centre
Jakaya Kikwete/Valley Road Junction
P O Box 61130 - 00200

NAIROBI

Dear Archbishop Wabukala,

REQUEST FOR WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022.

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Yours sincerely,



MRS. LYN MENGICH
CHAIRPERSON



Salaries & Remuneration
Commission
Rewarding productivity

Ref.No: SRC/ADM/18 (2)

23rd February, 2022

Dr. Jamleck Muturi
Chairperson
Teachers Service Commission
TSC House, Kilimanjoro Rd
P O Box Private Bag
NAIROBI

Dear Dr. Muturi,

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Inter Public Universities Council Consultative Forum

NAIROBI

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Yours faithfully,



MRS. LYN MENGICH
CHAIRPERSON

Copy to: **Prof. Geoffrey Muluvi**
Chairperson, Vice-Chancellors' Committee and Vice Chancellor
South Eastern Kenya University
P O Box 170-90200
KITUI

Schedule of stakeholder engagement meetings

A. MEETINGS STAKEHOLDERS ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022.

	Monday 28 th February, 2022	Thursday 3 rd March, 2022	Friday 4 th March, 2022
8:30 – 10:30am			
11:00 – 1:00pm			
2:00 – 4:00pm			



Salaries & Remuneration
Commission

OVERVIEW OF THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

**By: SALARIES AND REMUNERATION COMMISSION
28th February, 2022**

INTRODUCTION

The Salaries and Remuneration Commission (SRC) is an independent Commission established under Article 230 of the Constitution. The mandate of SRC is set out under Article 230 (4) of the Constitution as:

- a) to set and regularly review the remuneration and benefits of all State Officers; and
- b) to advise the national and county governments on the remuneration and benefits of all other public officers.



Further, the SRC Act, 2011, which operationalises Article 230 of the constitution, vests SRC with additional functions and powers. Specifically, Section 26 of the Act provides that SRC may make regulations generally for the better carrying into effect of any provisions of the Act



Pursuant to the provisions of Section 26 (1) of the SRC Act, SRC has developed the **Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations, 2022.**

On 22nd February, 2022, and in line with the provisions of Articles 10 and 47 of the Constitution, among other legal provisions, SRC invited memoranda and views from stakeholders and the public on the draft regulations as part of public participation. Memoranda and views on the draft regulations are required to be submitted by **11th March, 2022.**

The purpose of this engagement is to sensitize the Head of Public Service, as a key stakeholder, on the scope and contents of the draft regulations before submitting views on the draft regulations.

Overview of the Draft SRC (Remuneration and Benefits of State and other public officers) Regulations, 2022

The objects and purpose of the Draft SRC (Remuneration and Benefits of State and other public officers) Regulations, 2022 is for the better carrying into effect the provisions of the SRC Act.

Without prejudice to the above, the draft regulations provide the procedure for—

- a) setting and reviewing remuneration and benefits for State officers;
- b) advising on remuneration and benefits for other public officers; and
- c) reviewing remuneration and benefits of other public officers.

Highlights of the regulations

The draft regulations are divided into 3 parts as follows:

1. part I—preliminary provisions;
2. part II- setting, reviewing and advising on remuneration and benefits of State and other public officers; and
3. part III— miscellaneous provisions.



a. Review cycle

Section 11 (e) of the SRC Act mandates SRC to determine the cycle of salaries and remuneration review upon which Parliament may allocate adequate funds for implementation.

Pursuant to the above, regulation 2 of the draft regulations defines the term 'review cycle' as follows:

The period after which, remuneration, allowances and benefits for State and other public officers are reviewed for budgeting and planning purposes.

Regulation 4 thereafter provides that SRC shall undertake a review of:

- a. State officers' remuneration and benefits after **every four years**; and
- b. other public officers remuneration after **every four years**.

SRC shall undertake periodic review of allowances and other benefits and advise public service institutions.



Parameters for review of remuneration and benefits

Regulation 2 defines 'review of remuneration and benefits' as evaluation of the remuneration and benefits with a view to institute change, if necessary.

A review of remuneration and benefits should be undertaken within the following parameters:



- i. the principles set out under Article 230 (5) of the Constitution, Section 12 of the Act and other legal provisions;
- ii. the economic performance of the country;
- iii. the outcome of comparative surveys on the labour markets and trends in remuneration; and
- iv. the job evaluation results.



b. Pension

Pension is an employment benefit payable by way of periodical payments. As such, SRC is vested, by dint of Article 230 (4) (a) and (b) of the Constitution, set and regularly review in respect of State officers, and advise the national and county governments with respect to other public officers.

With regard to pension, the regulations provide;

- i. That State or other public officers shall not be paid both pension and gratuity for the same period of service;
- ii. Allowances shall not form the basis of computation of pension or gratuity.
- iii. Pension schemes design shall be defined contribution.

c. Factors to be considered by the commission in setting, reviewing and advising on remuneration and benefits.

SRC in discharging its mandate, is required to consider:

- a) the principles set out under Article 230 (5) of the Constitution, Section 12 of the Act and other legal provisions;
- b) the economic performance of the country;
- c) the capacity of a public service institution to afford the cost of proposed remuneration and benefits;
- d) the ability of a public service institution to sustain payment of remuneration and benefits;



- e) the outcome of comparative surveys on the labour markets and trends in remuneration;
- f) comparative analysis between remuneration and benefits for similar jobs within institutions in the same sector to ensure equity and competitiveness;
- g) job evaluation results;
- h) cost of living;



- i) existing collective bargaining agreements;
- j) achievement of performance and productivity targets;
- k) government policies and guidelines; and
- l) any other relevant factor in determination of remuneration or benefits.



e. Job evaluation

Job evaluation is a systematic and objective process of determining the worth of a job in relation to other jobs for purposes of establishing a rational grading structure.

SRC shall undertake job evaluation covering jobs in public service institutions in order to

- i. determine comparable and relative worth of jobs in the public service institutions;
- ii. classify the jobs in the public service; and
- iii. rationalise and harmonise job grading structures in the public service.

When does SRC undertake job evaluation?

SRC shall undertake job evaluation where:

- a) jobs in public service institutions have not been evaluated by the Commission;
- b) a public service institution is established;
- c) a public office is established;
- d) a new job is established arising from—
 - i. change in the institutional mandate of a public service institution; or
 - ii. change in the institutional structure of a public service institution.
- e) a change arises in the job content of a role in a public service institution.



What are SRC's obligations during job evaluation?

- a) to issue guidance on undertaking job evaluation in the public service;
- b) to sensitise public service institutions on the job evaluation;
- c) to partner with relevant training institutions to facilitate training of public service institutions in matters relating to job evaluation;
- d) to use an analytical, point-factor based job evaluation system that evaluates jobs using compensable factors as prescribed by the Commission;
- e) to engage public service institutions on job evaluation results; and
- f) to communicate the job evaluation results.



What are public service institutions' obligations during job evaluation?

- a) to ensure that all the jobs in the institution are evaluated by the Commission;
- b) to ensure that the members of the committee in charge of the job evaluation in the institution are trained on matters relating to job evaluation;
- c) to assess, identify and determine the jobs to be evaluated using the criteria prescribed by the Commission;
- d) to develop complete, accurate, approved and signed-off job description manuals.
- e) to provide feedback on the job evaluation results when communicated by the Commission; and
- f) to submit request for review of the job evaluation results if dissatisfied with the job evaluation results as prescribed by the Commission.



What information is required to enable SRC undertake job evaluation?

A public service institution shall provide SRC with the following information:

- a) the approved institutional structure;
- b) the approved staff establishment;
- c) the approved career progression guidelines or schemes of service;
- d) a list of jobs in the institution indicating current grades or levels;
- e) the complete, accurate, approved and signed-off job description manual; and
- f) any other information that may be relevant for job evaluation.



Review of job evaluation results?

Job evaluation results may be reviewed by SRC where new material information or significant changes in the job content have been submitted to the Commission.

A public service institution, State officer or other public officer dissatisfied with job evaluation results may request SRC to review the results.

A request for review of job evaluation results should set out the grounds for review and include supporting documents.



What is the validity period of job evaluation results?

Job evaluation results shall remain valid until the job is re-evaluated by the Commission.



f. Salary structures

The Commission shall use job evaluation results to develop salary structures for State officers and advise the national and county governments on the salary structures for other public officers.

SRC, shall, prior to developing salary structures:

- a. conduct comparative surveys on labour markets and trends in remuneration to determine the relativity of remuneration of public service in relation to the market trends; and
- b. subject the outcome of the comparative surveys on labour markets and trends in remuneration to the factors to be considered by SRC in setting, reviewing and advising on remuneration and benefits.

Salary structures set, reviewed or advised by SRC shall remain valid until reviewed by SRC.



g. Performance and productivity

A public service institution shall seek the prior advice of SRC before awarding its public officers a reward for productivity and performance.

Public service institutions are required to develop frameworks for recognising and rewarding productivity and performance in their respective institutions. Such frameworks shall require to be:

- a) in accordance with guidance of SRC; and
- b) approved by SRC.



h. Collective negotiation

SRC shall advise public service institutions on the remunerative and benefit items payable out of public funds in collective bargaining negotiation.

Collective agreements in the public service shall cover a four year cycle.



What is the procedure for collective negotiation?

- A public service institution with a recognition agreement with a trade union shall seek the prior advice of the Commission before the commencement of collective bargaining negotiation.
- SRC shall, upon receipt of a request for advice, provide the public service institution with parameters for collective negotiation. A public service institution shall undertake negotiation within the parameters issued by SRC.
- Upon conclusion of collective negotiation, the public service institution shall request SRC for clearance of the draft collective agreement to facilitate its registration at the Employment and Labour Relations Court.

What information is required by SRC in order to issue parameters for collective negotiation?

A public service institution shall provide the following information required for provision of advice on collective negotiation—

- a) trade union proposals and management recommendations;
- b) institution's financial performance;
- c) budget allocation;
- d) approved salary structure and staff establishment; and
- e) any other information that may be required by the Commission.



Is the advice of SRC binding?

The advice of the Commission, in relation to the remuneration and benefits of all other public officers, is binding and may only be reviewed by the Commission.



j. Compliance with SRC set and reviewed remuneration and benefits and advice.

SRC may take any measures it considers necessary to ensure that public service institutions adhere to the set and reviewed remuneration and benefits, and advice issued by the Commission.

SRC shall conduct regular compliance checks to ensure that public service institutions comply with these regulations, the set and reviewed remuneration and benefits, and the advice of the Commission.



k. Issuance of guidance

The Commission may, from time to time, issue guidance on the implementation of these Regulations.



I. Way forward

As a stakeholder, you are requested to submit memoranda and views on the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022 on or before Friday, 11 March, 2022.

Thank You



LIST OF STAKEHOLDER SENSITISATION SESSION PARTICIPANTS- SRC REGULATIONS

	INSTITUTION	INSTITUTIONAL REPRESENTATIVE	POSITION	DATE
1.	Head of Public Service	Rose Wanjohi	Head of Human Resource, Cabinet Office	28 th February, 2022
2.	Ministry of Tourism and Wildlife	Hon. Najib Balala	Cabinet Secretary, Ministry of Tourism and Wildlife	28 th February, 2022
3.	State Department For Cooperative	Dr. Ruth K Bosire	Director, Human Resource Management and Development	28 th February, 2022
4.	Ministry of Lands and Physical Planning	Janerose Karanja	Director, Human Resource Management and Development	28 th February, 2022
5.	State Department for Livestock	Silas Gitari	Director, Human Resource Management and Development	28 th February, 2022
6.	State Department for Livestock	J.K. Ingosi	Assistant Director, Human Resource Management and Development	28 th February, 2022
7.	State Department for Public Works	Robert Tonui	Director, Human Resource Management and Development	28 th February, 2022
8.	State Department for Crop Development and Agricultural Research.	Richard Rotich	Assistant Director, Human Resource Management and Development	28 th February, 2022
9.	State Department for Crop Development and Agricultural Research.	Ali Mwinyi	Senior Human Resource Management and Development Officer	28 th February, 2022
10.	Ministry of ICT	Abraham Odeng	Deputy Secretary ICT	28 th February, 2022

11.	Ministry of Devolution	Jacinta Mumbetsa	Human Resource Management and Development Officer II	28 th February, 2022
12.	State Department for Trade & Enterprise Development	Daniel Sonkori	Senior Human Resource Management and Development Officer.	28 th February, 2022
13.	Ministry of Devolution	Leonard Ngotho	Director, Human Resource Management and Development	28 th February, 2022
14.	Ministry of Health	Albert Mokua	Director, Human Resource Management and Development	28 th February, 2022
15.	State Department for Infrastructure	Joyce K.Gichomo	Director, Human Resource Management & Development	28 th February, 2022
16.	Ministry of Labour	Kephas Odhiambo	Director, Human Resource Management & Development	28 th February, 2022
17.	State Department for Crop Development and Agricultural Research	Catherine Mwenda	Director, Human Resource Management & Development	28 th February, 2022
18.	State Department for Physical Planning	Diyad Adan Abdi	Principal Physical Planner	28 th February, 2022
19.	State Department of Lands	Robert Maina	Human Resource Assistant	28 th February, 2022
20.	Ministry of Lands & Physical Planning	Joselyn Wangari Kiiru	Senior Clerical Officer	28 th February, 2022
21.	Ministry of Lands and Physical Planning	Cherutoh Zenah	Human Resource Assistant	28 th February,

				2022
22.	Ministry Of Public Service, Youth And Gender Affairs	Mary Maungu	Secretary, Human Resource Management	28 th February, 2022
23.	Ministry of Lands and Physical Planning	Naomi Ndambuki	Human Resource Assistant	28 th February, 2022
24.	Did not indicate	Patriciah Gatwiri Kirunja	Did not indicate	28 th February, 2022
25.	Independent Policing Oversight Authority	Anne Makori	Chairperson, Independent Policing Oversight Authority	28 th February, 2022
26.	National Police Service Commission	Eliud Kinuthia	Chairperson, National Police Service Commission	28 th February, 2022
27.	Judiciary	Dr. Nekesa Kalei	Director Human Resource Management & Development	28 th February, 2022
28.	Judiciary	Ruth kyengo	Deputy Director, Talent Management	28 th February, 2022
29.	Public Service Commission	Joan Machayo	Director, Human Resource Management & Development	28 th February, 2022
30.	Public Service Commission	Jackline Manani	Director, Legal Services	28 th February, 2022
31.	Kenya National Human Rights Commission	Catherine Mwikali	Director, Human Resource Management & Development	28 th February, 2022
32.	Kenya National Human Rights	Janet Kabaya	Senior Research and	28 th February,

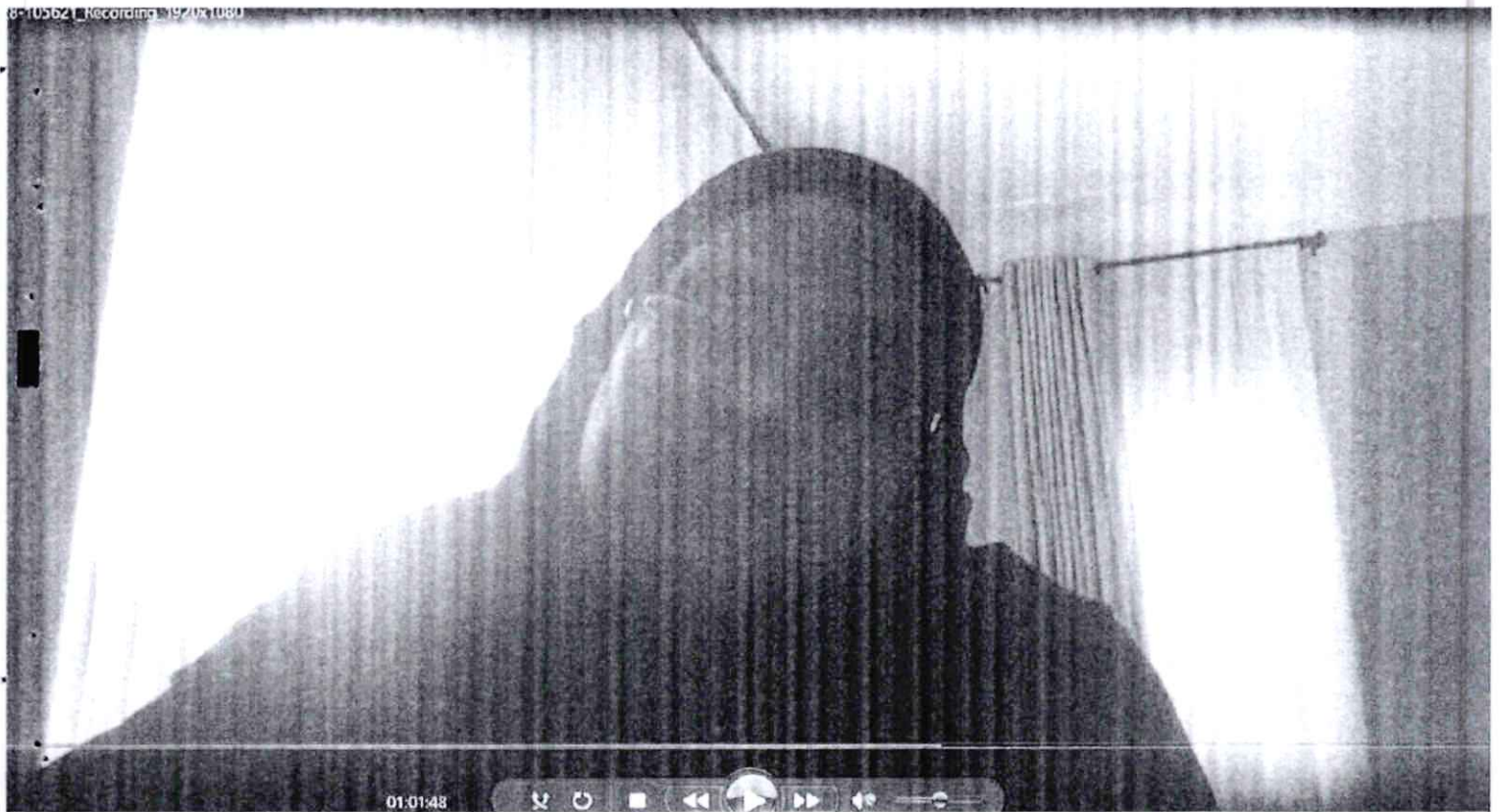
Commission		Compliance Officer	2022
33. Controller of Budget	Rhoda Rhuto	Director, Legal Services	28 th February, 2022
34. Controller of Budget	Irene Karimi	Head of Human Resources	28 th February, 2022
35. Ethics and Anti-corruption Commission	Joel Mukumu	Director, Finance and Planning	28 th February, 2022
36. Ethics and Anti-corruption Commission	Jackson Mue	Director, Field Services	28 th February, 2022
37. Ethics and Anti-corruption Commission	Ellyjoy Bundi	Director, Human Resource Management and Development	28 th February, 2022
38. National Gender and Equality Commission	Vicky Ocharo	Director, Human Resource Management and Development	28 th February, 2022
39. National Police Service Commission	Esther Mwachia	Deputy Director, Human Resource Management and Development	28 th February, 2022
40. National Police Service Commission	Christine Rotich	Director, Human Resource Management and Development	28 th February, 2022
41. Commission on Revenue Allocation	Angie Kariuki	Director, Corporate Services	28 th February, 2022

42.	Commission on Revenue Allocation	William Birech	Deputy Director, Human Resource Management and Development	28 th February, 2022
43.	Inter Government Relations Technical Committee	Sophie Amutavy	Ag. Director, Legal Services	3 rd March, 2022
44.	Inter Government Relations Technical Committee	Wilson Pere	Member, Inter Government Relations Technical Committee	3 rd March, 2022
45.	Inter Government Relations Technical Committee	Alice Mayaka	Member, Inter Government Relations Technical Committee	3 rd March, 2022
46.	County Assemblies Forum	Austin Munene	Legal Counsel	3 rd March, 2022
47.	Meru County Assembly Service Board	Benson Kinyua	Director Legislative Procedural & Committee Services, Meru County Assembly Service Board	3 rd March, 2022
48.	Meru County Public Service Board	Dr. Hellen Mugambi	Chairperson, Nyeri County Public Service Board	3 rd March, 2022
49.	Nyeri County Public Service Board	Kimondo Kariuki	Chairperson, Nyeri County Public Service Board	3 rd March, 2022
50.	Makueni County Public Service Board	Dr. Nicodemus Muteti	Chairperson, Makueni County Public Service Board	3 rd March, 2022
51.	Kisii County Public Service Board	Vincent Merala	Secretary, Kisii County Public Service Board	3 rd March, 2022
52.	Intergovernmental Budget and Economic Council	Dr. Patrick Omutia	Special Secretary	4 th March, 2022

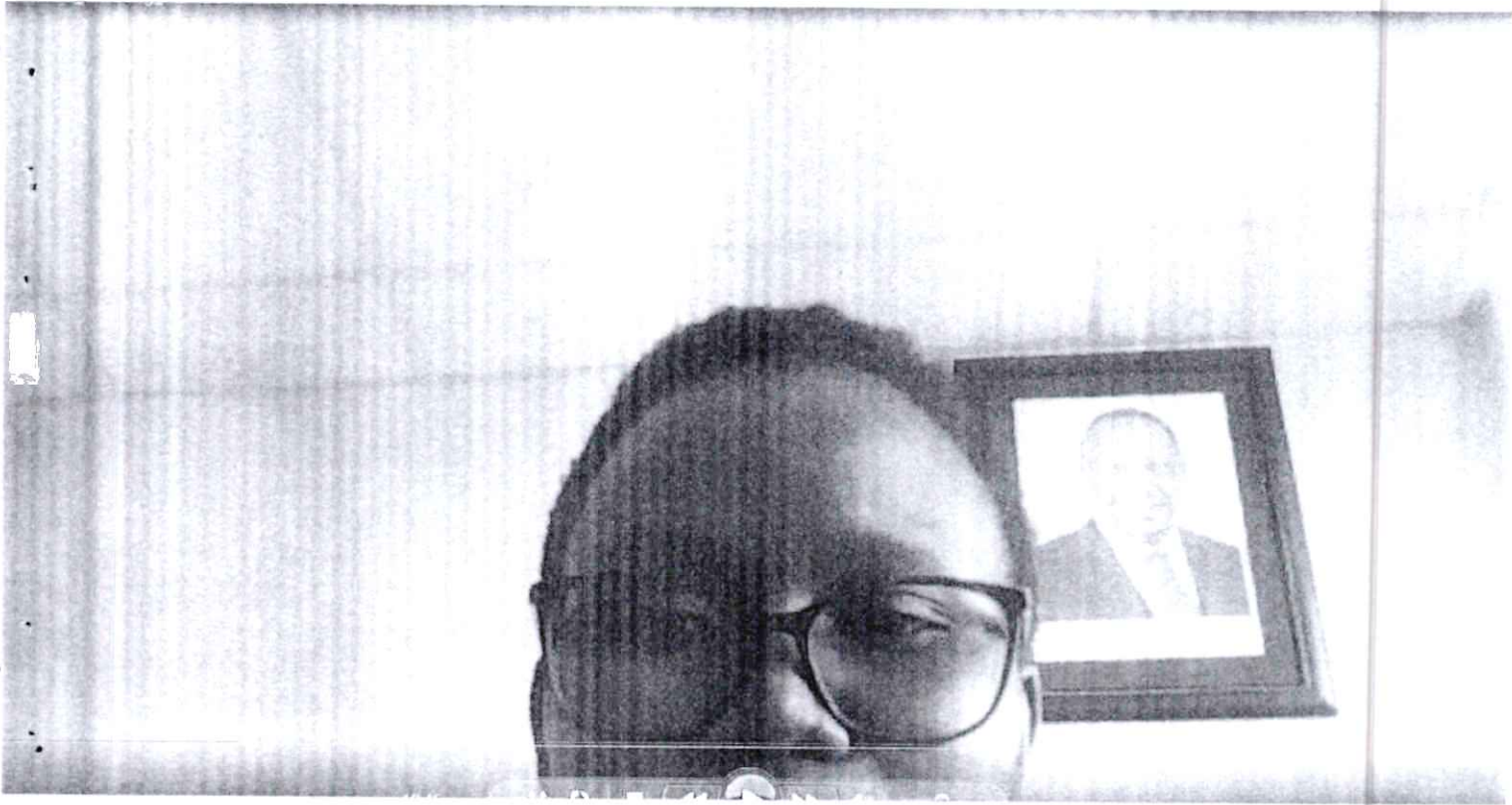
53.	Law Society of Kenya	Collins Odhiambo	Deputy CEO	4 th March, 2022
54.	National Taxpayers Association	Irene Otieno	Executive Director	4 th March, 2022
55.	Association of Professional Societies of East Africa	Felix Okatch	Chairperson	4 th March, 2022
56.	Inter Public Universities Councils Consultative Forum	Ruth Kirwa	Secretary/Legal Adviser, Inter Public Universities Councils Consultative Forum	4 th March, 2022
57.	Kenya Defence Forces	Colonel Hirbo Shore	Head, Defence Forces Job Evaluation	4 th March, 2022
58.	Kenya Defence Forces	Ambrose		4 th March, 2022
59.	Central Organisation of Trade Unions	Isaack Mbingi Okello	Administrative secretary	4 th March, 2022
60.	Kwale County Assembly Service Board	Celine Lusweti	Member, Kwale County Assembly Service Board	10 th March, 2022
61.	Bungoma County Assembly Service Board	Anthony Mabele	Member, Bungoma County Assembly Service Board	10 th March, 2022
62.	Kakamega County Assembly Service Board	Dr. Jaluo Murunga		10 th March, 2022
63.	Kiambu County Assembly Service Board	Godfrey Muriuki	Kimani Legal Counsel	10 th March, 2022
64.	Nyeri County Assembly Service Board	Paul Maina	Member, Nyeri County Assembly Service Board	10 th March, 2022
65.	Homa Bay County Assembly	Leah Lieta	Executive Secretary, Homa Bay County Assembly	10 th March, 2022
66.	Nyeri County Assembly Service	Monicah Njeri Kibui	Member, Nyeri County	10 th March,

	Board		Assembly Service Board	2022
67.	Busia County Assembly Service Board	Miriam Obura	Member, Busia County Assembly Service Board	10 th March, 2022
68.	Trans-nzoia County Assembly	Elkana Korir	Principal Human Resource Officer	10 th March, 2022
69.	Nairobi City County Assembly	Robert Situma	Director, Human Resource Management & Development	10 th March, 2022
70.	County Assemblies Forum	Austin Munene	Legal Counsel	10 th March, 2022
71.	Nandi County Assembly Service Board	Dr. Abraham Mulwo	Member, Nandi County Assembly Service Board	10 th March, 2022
72.	Kiambu County Assembly Service Board	Stephen Ndabi	Chairperson Kiambu County Assembly Service Board	10 th March, 2022
73.	Bungoma County Assembly Service Board	Emmanuel Situma	Chairperson Bungoma County Assembly Service Board	10 th March, 2022

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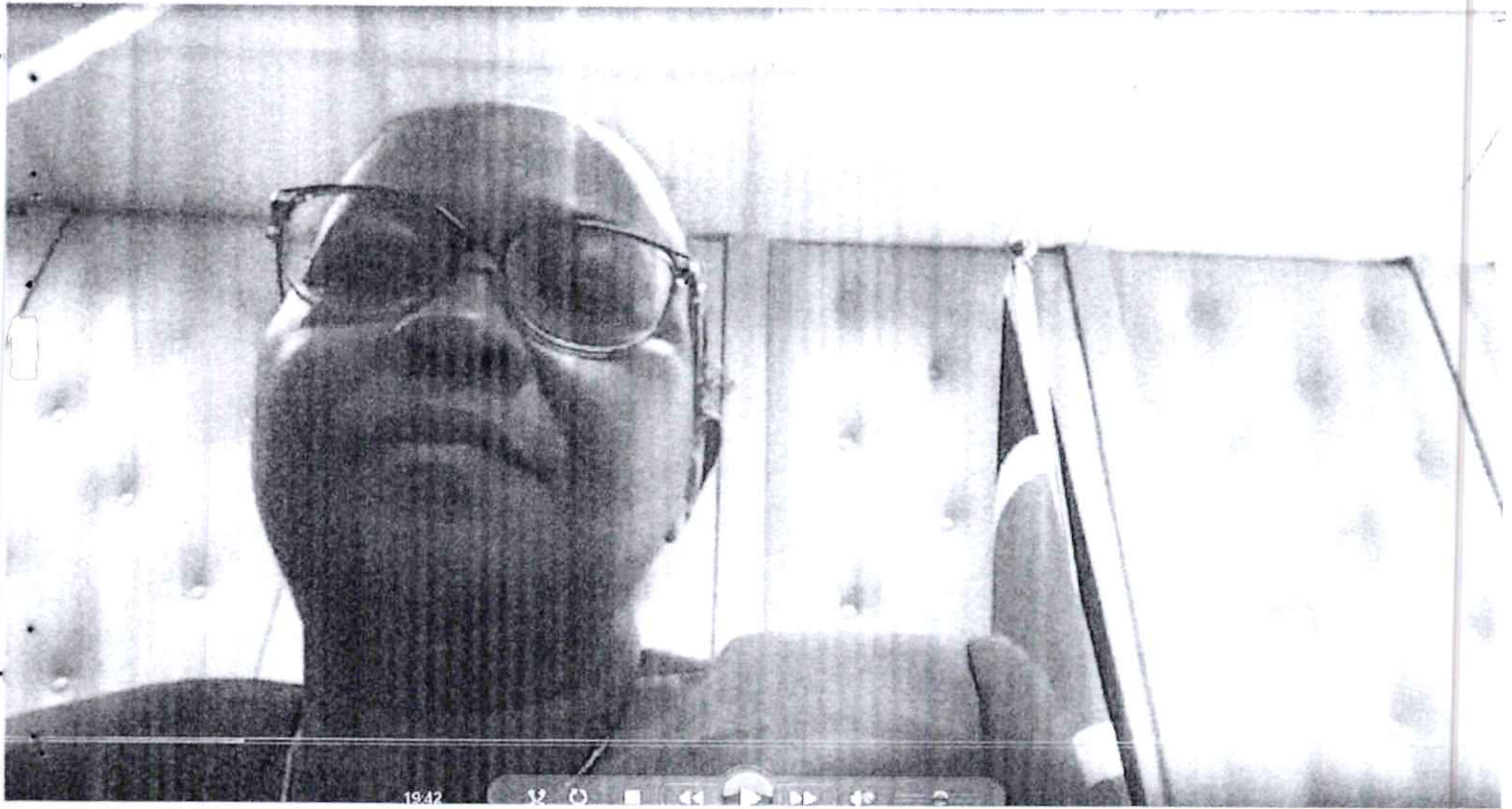






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THE REPUBLIC OF KENYA

LAWS OF KENYA

SALARIES AND REMUNERATION COMMISSION ACT

NO. 10 OF 2011

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NO. 10 OF 2011

SALARIES AND REMUNERATION COMMISSION ACT

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OATH/AFFIRMATION OF THE OFFICE OF
CHAIRPERSON/A MEMBER/SECRETARY

SECOND SCHEDULE —

CONDUCT OF BUSINESS AND AFFAIRS OF
THE COMMISSION

NO. 10 OF 2011

SALARIES AND REMUNERATION COMMISSION ACT

[Date of assent: 27th July, 2011.]

[Date of commencement: 29th July, 2011.]

An Act of Parliament to make further provision as to the functions and powers of the Salaries and Remuneration Commission, the qualifications and procedures for the appointment of the chairperson and members of the Commission, and for connected purposes

[Act No. 10 of 2011, Act No. 57 of 2012, Act No. 4 of 2018.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Salaries and Remuneration Commission Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“**chairperson**” means the chairperson of the Commission appointed under the Constitution, in accordance with the procedure set out in section 4;

“**Commission**” means the Salaries and Remuneration Commission established by Article 230 of the Constitution;

“**public officer**” means a person holding a public office as defined in the Constitution;

“**salary and remuneration**” includes the ordinary, basic or minimum wage or pay and any additional emoluments and benefits whatsoever payable, directly or indirectly, whether in cash or in kind, by an employer to an employee and arising out of the employment of that employee;

“**secretary**” means the secretary to the Commission appointed by the Commission under Article 250(12) of the Constitution, in accordance with the procedure set out in section 16;

“**State officer**” has the meaning assigned thereto in the Constitution.

(2) Despite subsection (1), until after the first general elections under the Constitution, references in this Act to the expression “**Cabinet Secretary**” shall be construed to mean “**Minister**”.

PART II – COMPOSITION AND ADMINISTRATION

3. Powers of the Commission as a body corporate

In addition to the powers of the Commission under article 253 of the Constitution, the Commission shall have the power to—

- (a) acquire, hold, charge and dispose of movable and immovable property; and

- (b) do or perform all such other things or acts for the proper discharge of its functions under the Constitution and this Act as may lawfully be done or performed by a body corporate.

4. Appointment of chairperson and members

(1) The chairperson and other members of the Commission shall be appointed in accordance with the provisions of Article 230 of the Constitution and this Act.

(2) The member of the Commission under Article 230 (2)(c)(iii) of the Constitution shall be nominated by a joint forum of professional bodies represented by the Association of Professional Societies of East Africa.

(3) The chairperson and members other than those appointed under Article 230 (2)(d) shall serve on a full time basis for a non-renewable term of six years.

[Act No. 4 of 2018, Sch.]

5. Qualification for appointment of chairperson and members

(1) A person shall be qualified for appointment as the chairperson if such person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has knowledge and at least ten years' experience in matters relating to either—
 - (i) public management;
 - (ii) finance and administration;
 - (iii) human resource management;
 - (iv) economics; or
 - (v) labour laws;
- (c) has knowledge of labour market trends in Kenya as relates to income in the public and private sector;
- (d) meets the requirements of Chapter Six of the Constitution; and
- (e) has had a distinguished career in their respective fields.

(2) A person shall be qualified for appointment as a member if the person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has knowledge and at least ten years' experience in either—
 - (i) finance and administration;
 - (ii) public management;
 - (iii) economics;
 - (iv) human resource management; or
 - (v) labour laws;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) has had a distinguished career in their respective fields.

(3) A person shall not be qualified for appointment as the chairperson or a member if the person—

- (a) is a member of Parliament or County Assembly;
- (b) is a member of a governing body of a political party;
- (c) is a member of a local authority;

Salaries and Remuneration Commission

- (d) is an undischarged bankrupt; or
- (e) has been removed from office for contravening the provisions of the Constitution or any other law.

6. Nomination of members

(1) Every nominating body under Article 230(2)(b) and (c) of the Constitution shall nominate its representative to the Commission in a competitive and transparent manner in accordance with section 7.

(2) A person shall not be qualified for nomination under Article 230 (2)(d) or (e) of the Constitution unless such person holds the qualifications specified in section 5(2).

7. Procedure for nominations

(1) Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the Commission relating to the members under Article 230(2)(b) and (c) of the Constitution, the relevant nominating body shall, by advertisement in at least two local daily newspapers of national circulation, invite applications from persons who qualify for nomination under the Constitution and this Act for nomination as a member of the Commission.

(2) The relevant nominating body shall consider the applications received under subsection (1) to determine their compliance with the provisions of the Constitution and this Act, interview the applicants and forward the names of two persons so qualified, who shall be of opposite gender, to the Cabinet Secretary for onward transmission to the President.

(3) Deleted by Act No. 4 of 2018, Sch.

(4) Deleted by Act No. 4 of 2018, Sch.

(5) Deleted by Act No. 4 of 2018, Sch.

(6) Deleted by Act No. 4 of 2018, Sch.

(7) Deleted by Act No. 4 of 2018, Sch.

(8) Deleted by Act No. 4 of 2018, Sch.

(9) Deleted by Act No. 4 of 2018, Sch.

(10) The President shall, within seven days receipt of the names forwarded under subsection (2) nominate the members of the Commission from each category and forward the names of the nominees, together with the name of his nominee for Chairperson of the Commission, to the National Assembly.

(11) The National Assembly shall, within fourteen days of the day it next sits after receipt of the names of the nominees under subsection (9), consider all nominations and may approve or reject any nomination.

(12) Where the National Assembly approves the nominees, the Speaker shall forward the names of the approved nominees to the President for appointment.

(13) The President shall, within seven days of the receipt of the approved nominees from the National Assembly, by notice in the *Gazette*, appoint the chairperson and members approved by the National Assembly.

(14) Where the National Assembly rejects any nomination, the Speaker shall communicate the decision to the President to submit fresh nominations.

(15) In appointing members under this section, the President shall observe the principle of gender equity, regional and ethnic balance and equal opportunities for persons with disabilities and shall ensure that at least one-third of the members are of either gender.

[Act No. 4 of 2018, Sch.]

8. Oath of office

The chairperson, members and secretary shall each make and subscribe before the Chief Justice to the oath or affirmation set out in the First Schedule.

9. Vacancy in office of chairperson or member

(1) The office of the chairperson or a member of the Commission shall become vacant if the holder—

- (a) dies;
- (b) by notice in writing addressed to the President resigns from office;
- (c) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.

(2) The President shall notify every resignation, vacancy or termination in the *Gazette* within fourteen days.

10. Filling of vacancy

(1) Where a vacancy occurs in the membership of the Commission under section 9, the appointment procedure provided for under the Constitution and this Act, shall apply.

(2) A member appointed under subsection (1) shall serve for a term of six years but shall not be eligible for reappointment.

11. Functions of the Commission

In addition to the powers and functions of the Commission under Article 230 (4), the Commission shall—

- (a) inquire into and advise on the salaries and remuneration to be paid out of public funds;
- (b) keep under review all matters relating to the salaries and remuneration of public officers;
- (c) advise the national and county governments on the harmonization, equity and fairness of remuneration for the attraction and retention of requisite skills in the public sector;
- (d) conduct comparative surveys on the labour markets and trends in remuneration to determine the monetary worth of the jobs of public offices;
- (e) determine the cycle of salaries and remuneration review upon which Parliament may allocate adequate funds for implementation;
- (f) make recommendations on matters relating to the salary and remuneration of a particular State or public officer;
- (g) make recommendations on the review of pensions payable to holders of public offices; and
- (h) perform such other functions as may be provided for by the Constitution or any other written law.

12. Guiding principles for the Commission

(1) In addition to the principles set under Article 230(5) of the Constitution, the Commission shall also be guided by the principle of equal remuneration to persons for work of equal value.

(2) Without prejudice to subsection (1), the Commission shall take into account the recommendations of previous commissions established to inquire into the matter of remuneration in the public service.

13. Powers of the Commission

(1) The Commission shall have all powers generally necessary for the execution of its functions under the Constitution and this Act, and without prejudice to the generality of the foregoing, the Commission shall have powers to—

- (a) gather, by any means appropriate, any information it considers relevant, including requisition of reports, records, documents or any information from any source, including governmental authorities;
- (b) interview any individual, group or members of organizations or institutions and, at the Commission's discretion, conduct such interviews;
- (c) hold inquiries for the purposes of performing its functions under this Act;
- (d) take any measures it considers necessary to ensure that in the harmonization of salaries and remuneration, equity and fairness is achieved in the public sector.

(2) In the performance of its functions, the Commission—

- (a) may inform itself in such manner as it thinks fit;
- (b) may receive written or oral statements from any person, governmental or non-governmental agency; and
- (c) shall not be bound by the strict rules of evidence.

14. Committees of the Commission

(1) The Commission may, from time to time, establish committees for the effective discharge of its functions.

(2) The Commission may co-opt into the membership of the committees established under subsection (1) persons whose knowledge and skills are considered necessary for the functions of the Commission.

15. Procedures of the Commission

(1) The business and affairs of the Commission shall be conducted in accordance with the Second Schedule.

(2) Except as provided in the Second Schedule, the Commission may regulate its own procedure.

(3) The Commission may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Commission.

16. Appointment of secretary of the Commission

(1) The appointment of the secretary to the Commission under Article 250(12) of the Constitution shall be through a competitive recruitment process and the prior approval of the National Assembly.

(2) A person shall be qualified for appointment under subsection (1) if such person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years' experience in human resource management, financial management or public management; and
- (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(3) As the chief executive officer, the secretary shall be responsible to the Commission for—

- (a) the implementation of functions of the Commission;
- (b) the formation and development of an efficient administration; and
- (c) the organization, control and management of staff.

17. Removal of secretary

(1) The secretary may be removed from office by the Commission, in accordance with the terms and conditions of service, for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or negligence of duty; or
- (d) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the secretary is removed under subsection (1), the secretary shall be given an opportunity to defend himself or herself against any allegations against him or her.

18. Secondment of staff

(1) In addition to the staff appointed by the Commission under Article 252(1) (c) of the Constitution, the Government may, upon the request by the Commission, second to the Commission such number of public officers as may be necessary for the purposes of the Commission.

(2) A public officer seconded to the Commission shall, during the period of secondment, be deemed to be an officer of the Commission and shall be subject only to the direction and control of the Commission.

19. The common seal of the Commission

(1) The common seal of the Commission shall be kept in such custody as the Commission shall direct and shall not be used except on the order of the Commission.

(2) The common seal of the Commission when affixed to a document and duly authenticated shall be judicially and officially noticed and unless the contrary is proved, any necessary order or authorization of the Commission under this section shall be presumed to have been duly given.

PART III – FINANCIAL PROVISIONS

20. Funds of the Commission

- (1) The funds of the Commission shall consist of—
- (a) monies provided by Parliament for the purposes of the Commission;
 - (b) such monies or assets as may accrue to the Commission in the course of the exercise of its powers or the performance of its functions under this Act; and
 - (c) all monies from any other source provided or donated or lent to the Commission.

(2) The receipts, earnings or accruals of the Commission and the balances at the close of each financial year shall not be paid into the Consolidated Fund but shall be retained for purposes of this Act.

21. Financial year

The financial year of the Commission shall be the period of twelve months ending on the thirtieth of June in every year.

22. Annual estimates

(1) Before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Commission for the financial year concerned and in particular, shall provide for the—

- (a) payment of remuneration in respect of the members of the Commission;
- (b) payment of salaries and remuneration in respect of staff of the Commission;
- (c) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Commission;
- (d) maintenance of the buildings and grounds of the Commission;
- (e) funding of training, research and development of activities of the Commission; and
- (f) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Commission may think fit.

(3) The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for tabling in the National Assembly.

23. Accounts and Audit

(1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Commission.

(2) Within a period of three months after the end of each financial year, the Commission shall submit to the Auditor General the accounts of the Commission in respect of that year together with—

Salaries and Remuneration Commission

- (a) a statement of the income and expenditure of the Commission during that year; and
- (b) statement of the assets and liabilities of the Commission on the last day of that financial year.

(3) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Audit Act, 2003 (No. 12 of 2003).

PART IV – MISCELLANEOUS PROVISIONS

24. Report of the Commission

(1) The report of the Commission under Article 254 of the Constitution shall, in respect of the financial year to which it relates, contain—

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) such other statistical information as the Commission considers appropriate relating to the Commission's functions; and
- (d) any other information relating to its functions that the Commission considers necessary.

25. Offences

A person who—

- (a) without justification or lawful excuse, obstructs or hinders, or assaults or threatens a member or staff of the Commission acting under this Act;
- (b) submits false or misleading information; or
- (c) misrepresents to or knowingly misleads a member or staff of the Commission acting under this Act,

commits an offence and is liable to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding five years, or to both.

26. Regulations

(1) The Commission may make regulations generally for the better carrying into effect of any provisions of this Act.

(2) The power to make Regulations shall be exercised only after a draft of the proposed Regulations has been approved by the National Assembly.

[Act No. 57 of 2012, s. 59.]

27. Code of conduct

The Commission shall develop a code of conduct for its members and staff.

28. Transitional and savings

Every person who immediately before the commencement of this Act was an employee of the Government attached to the former Permanent Public Service Remuneration Review Board shall, upon the commencement of this Act be given an option to serve in the Commission and if not appointed by the Commission, be redeployed in the Public Service.

Salaries and Remuneration Commission

FIRST SCHEDULE

[Section 8.]

OATH/AFFIRMATION OF THE OFFICE OF
CHAIRPERSON/A MEMBER/SECRETARY

I having been appointed (the Chairperson to/member of/Secretary to) the Salaries and Remuneration Commission under the Salaries and Remuneration Commission Act, 2011, do swear/solemnly affirm that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD)

Sworn/Declared by the said

Before me this day of

Chief Justice.

SECOND SCHEDULE

[Section 15.]

CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMISSION

1. Meetings

(1) The Commission shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.

(2) Meetings shall be convened by the secretary in consultation with the chairperson and shall be held at such times and such places as the chairperson shall determine.

(3) Unless three quarters of the members otherwise agree, at least seven days' notice of a meeting shall be given to every member.

(4) The chairperson shall preside over all meetings and in the absence of the chairperson, by a person elected by the Commission at the meeting for that purpose.

2. Conflict of interest

(1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

Salaries and Remuneration Commission

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subparagraph (1) commits an offence and shall be liable, upon conviction to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding seven years, or to both.

(4) No member or staff of the Commission shall transact any business or trade with the Commission.

3. Quorum

The quorum of the meeting shall not be less than half of the appointed members with voting rights under Article 230 of the Constitution.

4. Voting

A decision of the Commission shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

5. Minutes

Minutes of all meetings shall be kept and entered in records kept for that purpose.

NO. 10 of 2011

SALARIES AND REMUNERATION COMMISSION ACT

SUBSIDIARY LEGISLATION

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SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND PUBLIC OFFICERS) REGULATIONS, 2013

[L.N. 2/2013.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations, 2013.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**Commission**” means the Salaries and Remuneration Commission established under Article 230 of the Constitution;

“**expert**” means a person with a special skill in or knowledge of a particular field;

“**labour productivity index**” means rate of output per worker per unit of time as compared with an established standard or expected rate output;

“**organization**” means public service organization;

“**public office**” has the meaning assigned to it under Article 260 of the Constitution;

“**public officer**” has the meaning assigned to it under Article 260 of the Constitution;

“**public service organization**” means a State organ, a state corporation or national or county government entity and includes any organization in the public service established by law;

“**public service**” has the meaning assigned to it under Article 260 of the Constitution;

“**review cycle**” means the period of four years after which, remuneration and benefits for State and public officers are reviewed to allow for budgeting and planning;

“**State officer**” has the meaning assigned to it under Article 260 of the Constitution;

“**State organ**” has the meaning assigned to it under Article 260 of the Constitution;

“**Salary and remuneration**” has the meaning assigned to it under section 2 of the Act;

“**trade union**” has the meaning assigned to it under section 2 of the Labour Relations Act, (No. 12 of 2007); and

“**unionisable employee**” has the meaning assigned to it under section 2 of the Labour Relations Act, (No. 12 of 2007).

3. Object and purpose

The object and purpose of these Regulations shall be to enable the Commission manage, harmonise and rationalise remuneration and benefits of State and public officers and in particular provide procedure for—

- (a) submission of remuneration and benefits proposals for State and public officers to the Commission;
- (b) reviewing of remuneration and benefits of State and public officers by the Commission;
- (c) setting and reviewing of remuneration and benefits for State officers; and
- (d) advising on remuneration and benefits for all other public officers.

[Subsidiary]

**PART II – REVIEW OF REMUNERATION AND BENEFITS
AND PROCEDURE FOR SUBMISSION OF PROPOSALS****4. Review cycle**

(1) The Commission shall undertake a review of remuneration and benefits of State and public officers every four years.

(2) A review under paragraph (1) shall be conducted at the same time across the public sector.

5. Study to precede review

(1) The Commission shall, at least one year before the review, cause the following to be conducted—

- (a) a study on labour market efficiency and dynamics;
- (b) a survey of the prevailing economic situation; and
- (c) a comprehensive job evaluation.

(2) The Commission shall prepare a report on the findings under paragraph (1) and the report shall form the basis for review.

(3) The review shall be communicated to the Cabinet Secretary responsible for matters relating to finance, the Judicial Service Commission, the Parliamentary Service Commission and the national and county governments for inclusion in the subsequent budgetary estimates.

(4) Subject to the budgetary allocations approved by Parliament, a review may be implemented in phases across the public sector.

(5) Despite paragraph (4), an approved review shall vest in full in respect of State or public officers retiring from a public service organization before full implementation.

6. Special review

(1) Despite regulation 4, the Commission shall undertake special reviews to —

- (a) ensure attraction and retention of critical or scarce professional skills required to effectively execute the functions of the public service; or
- (b) compensate for increased cost of living.

(2) A special review under paragraph (1) shall not interrupt or replace the four year review cycle, but its results shall inform the review.

7. Application to the Commission by a public office

(1) Nothing under these Regulations may be construed as precluding a State or public office from making an application, in writing, to the Commission seeking guidance or advice on the remuneration and benefits accruing to its officers.

8. Procedure for submission of proposals

(1) Whenever a review is due, the Commission shall by notice in the Kenya Gazette and at least two daily newspapers with national circulation, call for proposals from every public service organization, on remuneration and benefits for their respective State and public officers.

(2) Submission of proposals under paragraph (1) shall be made—

- (a) in writing; and
- (b) by the fourth quarter of the third year of the review cycle.

(3) The proposals under this regulation shall be submitted in a predetermined format by the Commission.

PART III – FACTORS TO BE CONSIDERED BY PUBLIC SERVICE
ORGANIZATIONS WHEN SUBMITTING PROPOSALS TO THE COMMISSION

9. Factors to be considered when preparing and submitting proposals for review

(1) When submitting proposals on the review of remuneration and benefits under regulation 4, a public service organization shall take the following factors into account—

- (a) components of remuneration;
- (b) social, economic and environmental issues;
- (c) results of job evaluation;
- (d) key elements and factors of pay for consideration;
- (e) prevailing market rates from the result of comparative market surveys;
- (f) existing collective bargaining agreements;
- (g) specific cost of employment in relation to the resource capacity of the organization;
- (h) affordability and sustainability of compensation or proposed award to the organization, and available budgetary provisions;
- (i) performance or the productivity of the employee;
- (j) benchmark with similar local, regional or international organizations;
- (k) equity and competitiveness;
- (l) prevailing labour productivity index;
- (m) household market rate surveys; and
- (n) any other matter relevant to determination and advice on remuneration.

(2) In addition to the factors mentioned in paragraph (1), a state corporation or national or county government entity shall also take into account its nature of service, performance or financial turnover.

10. Factors to be considered when preparing and submitting proposals for allowances and other remunerative benefits

(1) When submitting proposals on the review of allowances and other remunerative benefits under regulation 4, a public service organization shall take the following factors into account—

- (a) existing legal provisions;
- (b) comparative market surveys;
- (c) prevailing market rates;
- (d) justification for the allowances or benefits;
- (e) best practices;
- (f) objectives of the allowances or benefits;
- (g) impact on salary package;
- (h) ratio of the allowance or benefits to the salary;
- (i) affordability and sustainability;
- (j) prevailing policy on allowances and other remunerative benefits; and
- (k) any other issue relevant in determination and advice on allowances and other remunerative benefits.

(2) In addition to the factors mentioned in paragraph (1), a state corporation or national or county government entity shall also take into account its nature of service, performance or financial turnover.

[Subsidiary]

11. Requirement to submit data annually

Despite regulation 8, a public service organization whether or not it seeks to review remuneration or benefits, is required to submit data of the prevailing remuneration and benefits of its employees annually to the Commission.

**PART IV – FACTORS TO BE CONSIDERED IN PAY DETERMINATION
AND ADVICE AND COMMUNICATION BY THE COMMISSION****12. Factors for pay determination for State Officers and advice on remuneration for other public officers**

In setting and reviewing the remuneration of State Officers and advising on remuneration for other public officers, the Commission shall consider the prevailing—

- (a) fixed and variable components of the remuneration;
- (b) legal, social, economic and environmental issues;
- (c) results of job evaluation, performance and productivity;
- (d) results of market studies;
- (e) key elements and factors of pay for consideration;
- (f) market rates from the results of comparative market surveys;
- (g) collective bargaining agreements;
- (h) overall and specific cost of employment, relating it to the resource capacity of the organization;
- (i) affordability and sustainability of compensation or award to Government and within the job market;
- (j) linkage to the national objectives, priorities and the human resource management strategy;
- (k) level of performance or productivity of the officer or level of performance and achievement of the national objectives by the organization;
- (l) salary structures in the public service;
- (m) benchmark with similar organizations or those organizations to which the organization loses staff to;
- (n) equity and competitiveness; and
- (o) any other relevant matter to remuneration setting and advice.

13. Factors for determination of allowances or benefits for State officers and advising on allowances for other public officers

(1) In determining and advising on allowances and other remunerative benefits, the Commission shall consider—

- (a) the factors highlighted under regulations 10 and 12, and
- (b) any other relevant issue in determination of allowances or benefits.

(2) The Commission shall undertake its mandate through consultations with its stakeholders.

14. Communication of set remuneration and benefits

(1) The Commission shall communicate the set remuneration and benefits for State Officers or advice thereon for other public officers not later than the second quarter of the fourth year of the review.

(2) Where a reviewed remuneration or benefit has been approved and is due, it shall be granted with effect from the 1st of July of the subsequent financial year after being factored in the national or respective county government budget.

(3) The communication under paragraph (1) shall be by notice in the Gazette.

PART V – MISCELLANEOUS

15. Annual increment

- (1) A State or public officer shall be entitled to an annual salary increment based on productivity and performance.
- (2) The effective date of an annual increment under paragraph (1) shall be based on the policy of each public service organization.
- (3) An annual increment under this regulation shall be awarded at least after one year of service.

16. Pension reviews

- (1) The Commission shall, in consultation with the National Treasury and other relevant parties, undertake periodic reviews and make recommendations on pensions to compensate for the rise in the cost of living.
- (2) Recommendations on pension reviews under paragraph (1)—
 - (a) shall be subject to the prevailing economic conditions, affordability and fiscal sustainability; and
 - (b) may be conducted during a salary review for State and public officers.

17. Hearings

- (1) The Commission may conduct a hearing whenever—
 - (a) it considers a request to advise the national or a county government; or
 - (b) it reviews the remuneration for State officers.
- (2) The Commission may request for written or oral representations during the hearings.
- (3) The Commission may conduct a hearing in any part of the country.
- (4) In the conduct of a hearing, the Commission shall consider views from—
 - (a) representatives from the organization seeking the advice of the Commission;
 - (b) relevant unions and professional bodies; and
 - (c) members of public.
- (5) Nothing under paragraph (4) shall preclude any interested party from submitting views to the Commission during a hearing.

18. Negotiations with Trade Unions

- (1) The Commission shall not negotiate with a trade union when determining, reviewing or advising on remuneration and benefits of State or public officers.
- (2) The management of a public service organization with unionisable employees shall seek the advice of the Commission before the commencement of any collective bargaining process with the respective union on the sustainability of the proposal of the union.
- (3) Where the collective bargaining process referred to in paragraph (2) is successful, the management shall, before the signing of the agreement, confirm the fiscal sustainability of the negotiated package with the Commission.

19. Hiring of an expert

- (1) Where a public service organization seeks to acquire the services of an expert whose remuneration and benefits is likely to be outside the public service remuneration structure, the concerned organization shall refer the issue of the expert's remuneration and benefits to the Commission.
- (2) An expert referred to under paragraph (1) shall be—
 - (a) recruited competitively from the labour market, including the international labour market; and

Salaries and Remuneration Commission

[Subsidiary]

(b) hired for a fixed term of not more than three years and remunerated for the assignment as advised by the Commission.

~~(3) In determining the remuneration of the expert hired under this regulation, the~~ Commission shall, in addition to the provisions under paragraph (2), take into consideration the—

- (a) prevailing market rate for such expertise;
- (b) need for such expertise;
- (c) sustainability of such expertise;
- (d) duration; and
- (e) scope of the assignment.

(4) Where the service period of the expert requires extension or the job subsequently takes a permanent nature, the special remuneration package shall cease and the expert shall be paid the prevailing remuneration and benefits package of an equivalent existing position in the public service.

20. Transition

A collective bargaining agreement concluded before the commencement of these Regulations but which was not registered and implemented shall be deemed to have been concluded under these Regulations and shall be submitted to the Commission for advice as provided under Article 230(4)(b) of the Constitution.

21. Varying of advice

The advice of the Commission in relation to the remuneration and benefits of all other public officers will hold and only be varied within the provisions of Article 259(11) of the Constitution.

REPORT ON STAKEHOLDERS FEEDBACK ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022.

1.0. PREAMBLE

This report provides an analysis on feedback from stakeholders and the public on the draft Salaries and Remuneration Commission (Remuneration and Benefits of State and other Public Officers) Regulations, 2022. The report comprises of an overview on stakeholders who provided written submission, analysis of the stakeholder submission, observation and recommendations.

2.0. INTRODUCTION

The Salaries and Remuneration Commission (SRC) is established under Article 230 of the Constitution of Kenya, 2010. Article 230(4) of the constitution gives the Commission powers and functions;

- a) to set and regularly review the remuneration and benefits of all State officers; and
- b) to advise the national and county governments on the remuneration and benefits of all other public officers.

Further, the Salaries and Remuneration Commission Act, 2011, which operationalises Article 230 of the constitution, vests the Commission with additional functions and powers. Section 26 of the Act mandates the Commission to make regulations for the better carrying into effect the provisions of the Act. Pursuant to this, the Commission developed the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022.

In line with Article 10 and 47 of the Constitution, among other legal provisions, the Commission requested for memoranda and views from stakeholders and the public on the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022. The Commission placed advertisements in the Daily Nation and Standard Newspapers which ran on 22nd February, 2022. Further, from 28th February to 4th March, 2022 and on 10th March, 2022 the Commission carried out stakeholder sensitisation sessions with a view to having a common understanding on the provisions of the Draft Regulations.

The Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and other Public Officers) Regulations, 2022, were also accessible via SRC website using the following link: <https://bit.ly/3579vIM>

The written views and memoranda were addressed to the Commission Secretary/CEO, and sent through the following email addresses: regulations@src.go.ke and/or info@src.go.ke, and/or addressed to the Commission Secretary/CEO, and sent through P.O. Box 43126 –

ANNEX I

00100, Nairobi, Kenya, and/or through online options and platforms, as follows: SRC social media platforms (@srckenya on Twitter and Instagram; @SRCKE on Facebook; and Salaries and Remuneration Commission on LinkedIn. A Submission Form was available on SRC website link: <https://src.go.ke/1669-2/>. All submissions ought to have reached the Commission on or **before 11th March 2022**.

Further, SRC sent letters to mapped stakeholders requesting them to provide written submissions, before 11th March, 2022, on the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and other Public Officers) Regulations, 2022. The stakeholders are as follows:

1. The Head of Public Service;
2. All Ministries;
3. The Hon. Attorney General;
4. All Constitutional Commissions and Independent Offices;
5. Council of Governors;
6. State Corporations Advisory Committee;
7. Independent Police Oversight Authority;
8. Kenya Institute for Public Policy Research and Analysis;
9. Interpublic Universities Councils' Consultative Forum;
10. Intergovernmental Budget and Economic Council;
11. Intergovernmental Relations Technical Committee;
12. All County Public Service Boards;
13. All County Assembly Service Boards;
14. County Assemblies Forum;
15. Association of Professional Societies in East Africa;
16. Law Society of Kenya;
17. National Tax Payers Association;
18. Institute of Certified Public Accountants of Kenya;
19. Institute of Human Resource Management;
20. Central Organisation of Trade Unions;
21. Trade Unions Congress Kenya; and
22. Federation of Kenya Employers;

As at 9th May 2022, SRC had received 23 memoranda and views from the following stakeholders:

1. Ministry of Energy;
2. Ministry of Labour;
3. Commission on Administrative Justice (CAJ);
4. Commission on Revenue Allocation (CRA);
5. Ethics and Anti-corruption Commission (EACC);
6. National Gender and Equality Commission (NGEC);
7. National Police Service Commission (NPSC);
8. Parliamentary Service Commission (PARLSCOM);
9. Public Service Commission (PSC);
10. Office of the Controller of Budget (OCOB);
11. State Corporations Advisory Committee (SCAC);
12. Kenya Institute for Public Policy Research and Analysis (KIPPRA);
13. Inter-governmental Relations Technical Committee (IGRTC);
14. County Assembly of Makueni;
15. County Assembly of Embu;
16. County Assemblies Forum (CAF);
17. Association of Professional Associations in East Africa (APSEA);

18. Coalition of Trade Unions (COTU);
19. Intergovernmental Budget and Economic Council (IBEC);
20. Teachers Service Commission (TSC);
21. Council of Governors (COG);
22. Kenya Defence Forces; and
23. Ministry of East African Community and Regional Development.

Table 1 shows the distribution of the written submissions received from stakeholders and the public per communication medium.

Table 1: Distribution of Stakeholder written submissions per medium of communication

Communication Medium	Number
Email/postal address	23
Social Media	28
Total	52

Table 2: General feedback from stakeholders and the public on Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022.

Table 2: General Comments and Inputs from Stakeholders

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
1.	<p>a) State Corporations Advisory Committee (SCAC)</p> <p>SRC is seeking to expand its mandate outside of the constitutional remits. SRC function as regards public officers is to "advise" on remuneration and benefits, and not to set said remuneration and benefits. The power to set is only in relation to State officers. The logic to distinguish between "setting" and "advising" for State and public officers respectively, was to address the mischief of State officers varying their terms indiscriminately, with this pursuit not targeted at public officers, whose pay was already regulated. If the Constitution intended to require SRC's advice to be binding, it would have specifically indicated so.</p>	<p>There is need to have the draft Regulations clearly outline the Commission's mandate with respect to State and other public officers.</p> <p>Prior to establishment of SRC, wage awards were granted to sub-sectors of the public service without regard to their implications on the other sectors of the public service, macro-economic stability and external competitiveness, effectiveness and service delivery and affordability of such award. To address these challenges and ensure fair and transparent harmonization of public service</p>	<p>The draft regulations have been revised to clearly distinguish the mandate of SRC in relation to;</p> <p>(a) setting and regularly reviewing the remuneration and benefits for State officers;</p> <p>(b) advising the national and county governments on the remuneration and benefits of other public officers; and</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
		<p>salaries and value for money, the constitution established the SRC, with the intention of upholding the principles of public finance and fiscal responsibility, the budgetary process and the complexity of salaries and benefits determination for public officers.</p>	<p>(c) Keeping under review and advising on the remuneration and benefits for other public officers.</p>
	<p>The regulations seek to appropriate the powers of the relevant Service Commissions and the Boards of Directors of State Corporations who are the respective employers of public officers within their domain. These regulations also seek to expand SRC's mandate into human resource management, by appropriating the responsibility of Service Commissions and Boards of Directors of state corporations to establish and review their internal organizational and staffing structures, appropriately.</p> <p>SRC does not have the constitutional or legal mandate to enter into the realm of defining the organizational structuring of government entities, including state corporations. By seeking to do so, SRC is transforming itself into the role of employer, but without the attendant responsibility of owning performance or assuring accountability – in addition to acting ultra vires the constitution and the law.</p>	<p>Regulation 11 (c) provides that the purpose of conducting job is to rationalize and harmonize job grading structures in the public service in order to set and/or advise on the appropriate salary.</p> <p>The mandate of SRC to conduct job evaluation in the public service is provided under section 11 (d) of the SRC act as affirmed by the of Court of Appeal in the case of TSC v KNUT & 3 Others [2015] eKLR which held that SRC has a role to play in job evaluation of public officers.</p>	<p>The draft regulations have been amended to clarify the purpose of conducting job evaluation—</p> <ol style="list-style-type: none"> i. Setting salary structures for state officers; ii. Advising on the salary structures for other public officers;
	<p>This proposal is further exacerbated by SRC's desire to set the pensions and gratuity for public officers, when the same is already prescribed by law. The SRC may give recommendations for law review, but not otherwise.</p>	<p>Pension is an employment benefit and is therefore subject to the mandate of SRC as set out under Article 230 (4) of the Constitution.</p> <p>There are numerous statutes that regulate pension in the public service. In addition, the statutes establish various bodies that regulate and/or manage the administration of pension in the public service.</p>	<p>The Commission has revised the regulation taking into account the existing legal and institutional framework on pensions in the public service.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>SCAC opposes the SRC's proposal to intervene in the process of rewards for productivity and performance as will be applicable to state corporations. The National Treasury, as ultimate government owner of the state corporation asset, is currently the prescribed agency to determine rewards and sanctions for state corporations with the advice of SCAC. This role is perfectly aligned, as the National Treasury sits on the Boards of all state corporations, and has direct line of site on the performance thereof. Secondly, it is the public body with the broad spectrum on fiscal management. Legal Notice No. 94 of 2004 defines the mechanisms for which productivity and equally, sanction is to be effected. An externalized process where SRC is to make such determinations is irrational, and solely focused on one ambit of performance. This is an employer role. Regulations on its implementation exist.</p>	<p>Article 230 (5) of the Constitution as read with section 11 of the SRC Act requires SRC to recognize productivity and performance in discharging her mandate.</p> <p>The purpose of the draft regulation is therefore to provide a framework and procedure for rewarding performance and productivity in the entire public service.</p> <p>Further, The Public Service Commission (Performance Management) Regulations, 2021, with regard to rewards provides as follows;</p> <p>42(3)(a) Where a public body establishes a financial reward scheme, the public body shall, first seek the advice of SRC for the proposed financial rewards.</p> <p>46(2) the PSC shall seek the advice of SRC where PSC intends to award cash prizes under the award scheme.</p>	<p>The draft regulation on rewarding productivity and performance has been revised appropriately.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>SRC ought to be guided by the Attorney General's legal opinion of no. AG/CONF/2/C/107 VOL.1 dated 17th December 2012 titled "Further Legal Opinion on Salaries and Remuneration Commission Mandate over State Corporations" and an advisory opinion of the Attorney General dated 21st August 2014 on the "Powers and Functions of the Public Service Commission over State Corporations and Other State Organs".</p> <p>The mandate of SRC over State Corporations is now settled vide judgments of the High Court in Chemelil Sugar Company Ltd & Others –vs- Kenya Union of Sugar Plantation and Allied workers & 2 others and NHIF – vs- KUCFAW. In both cases, the Courts held that SRC is only mandated to set the salaries and remuneration of State officers but when it comes to other public officers, SRC's role is advisory and SRC would therefore be acting in excess of jurisdiction if it were to purport to fix or set salaries for public officers.</p> <p>The Supreme Court in Kenya Vision 2030 Delivery Board v Commission on Administrative Justice (CAJ) & 2 others (2021) gave guidelines on how constitutional commissions giving advice or recommendations to public bodies are to be guided, to avoid unnecessary conflicts.</p>	<p>We have considered the authorities cited by SCAC and note that the issue of whether SRC can exercise her mandate over state corporations has attracted different interpretation by the Courts. For instance in the cases of Kenya Union of Domestic Hotels Education and Allied Workers (Kudheha Workers) vs Salaries and Remuneration Commission (2014) eKLR and National Union of Water and Sewerage Employees vs Mathira Water and Sanitation Company Ltd and Others, 1st Interested Party – The Hon. Attorney General, 2nd Interested Party – Salaries and Remuneration Commission the Courts held that the drafters of the Constitution intended that the values and principles of public service should govern not just employees of state organs but also those of state corporations and as such state corporations are subject to the mandate of SRC.</p> <p>SRC notes that one of the cases cited: NHIF –vs- KUCFAW is pending before the Court of Appeal.</p>	<p>The draft regulation has been amended in line with the provisions of the Constitution and the SRC Act.</p> <p>The provision on the effect of SRC's advice has been revised.</p>
	<p>SRC can undertake any reviews or job evaluation exercises to establish the obtaining status on the remuneration and benefits in the public service for the purpose of setting/advice as appropriate. However, the resultant advisory from such reviews should be issued once for predictability purposes, encompassing a class of standardized jobs, and channeled to the respective National and County Governments focal points for consideration. Specifically, in the case of National Government, such advisory could only be ideally directed to:</p>	<p>The issue of communication has been addressed administratively.</p>	<p>SRC has retained the provisions of the draft regulation.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>1. Head of Public Service- For State officers/Executive/State Corporations</p> <p>2. Public Service Commission – For the Executive Parliamentary Service Commission- For Parliament</p> <p>3. Judicial Service Commission – For the Judiciary for execution. We opine that SRC should not operate outside of the protocols established by Government. SRC should channel any set prescriptions, or advisory through a single framework for purposes of good order, and more importantly, for purposes of predictability, and aligning policy directives as issued by Government from time to time.</p> <p>We further opine that the SRC has in these Regulations, granulated the functions of job evaluation and remuneration and benefits advisory. The proposed processes as captured in the draft guidelines can be undertaken in a more efficient and cost-effective manner. Specific evaluations per each agency for job classes that are standardized is not meritorious. Incidences of differentiated treatment by SRC in comparable entities has often led to a haemorrhage of staff from one public institution to another. It also creates an untenable situation where the Government does not have a single framework (compendium) of applicable terms across the entire government, since individualized cases are determined by SRC on a case by case basis.</p>	<p>1. Job evaluation is conducted based on the content of the job as contained in the job descriptions provided by a public body. Job evaluation ensures that the relative worth of the job is assigned to a role and ensures that jobs with similar responsibilities are graded the same.</p> <p>Evaluation of jobs using job classes or nomenclature does not take account of responsibilities of individual jobs.</p> <p>The classes of jobs are designed by different public bodies and therefore different principles are applied in their design. Using such classes as the basis of evaluation may result to assigning same relative worth of jobs performing different responsibilities or assigning different worth of jobs for jobs performing same responsibilities.</p> <p>2. Job evaluation establishes a single framework (compendium) of applicable terms across the entire government. This is because, jobs are subjected to the same compensable factors, methodology</p>	<p>The draft regulations making provision on job evaluation have been revised to address some of the issues raised.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>Remuneration and benefit determination, whether for the purpose of setting the same for state officers, or advising on the same for public officers is not a full-time activity. Once prescribed, the public sector entity is expected upon determination of the specific bands, to implement these without regular resort to SRC. Oversight over their implementation is by the Ministry of Public Service/PSC for MDAS, SCAC for state corporations, and relevant service commissions.</p> <p>Suggestions in the regulations that seek to have public entities revert to SRC when there is a modification of assignment for officers, or minor reorganization of the office reporting structures is irrational, as the general principles once approved should offer necessary guidance to the authorized officers, oversight entities, and service commissions accordingly.</p>	<p>and point factor based job evaluation system.</p> <p>Internal and external relativities/ comparison of the job evaluation grading within peer jobs and institutions is also conducted while undertaking job evaluation.</p> <p>3. Job Evaluation creates a common framework to ensure jobs performing similar responsibilities are graded the same and progressively adhere to the principle of equal pay for work of equal value. The regulations provide a uniform approach to conducting job evaluation using an analytical point factor based system. This is expected to progressively address any disparities in job grading and salary structures.</p>	
		<p>The rational of the regulation is to give powers to institutions to determine the jobs that require evaluation for purposes of setting, reviewing and advising on remuneration and benefits for State and other public officers respectively within a scheduled review or special review.</p> <p>The regulation should be amended to clarify that a public body that meets the criteria for job evaluation may submit the required information when called for by the Commission during a review cycle or when the public body has requested for setting, review, or advice on remuneration and benefits and a job evaluation is required.</p>	<p>The regulation has been revised to clarify that a public body that meets the criteria for job evaluation may submit the required information when called for by the Commission during a review cycle or when the public body has requested for setting, review, or advice on remuneration and benefits and a job evaluation is required.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>Having pointed out the above facts, we recommend that the SRC withdraws the proposed regulations, pending formal consultation to be chaired by the Office of the Head of the Public Service with the relevant authorities. This would be for the purpose of defining a suitable way forward. The engagement would provide an opportunity for the objectives that SRC sought to achieve to be contextualized as against the prevailing legal position on its mandate, and define an appropriate whole of government mechanism that would be in the best interests of the public sector.</p>	<p>Change in jobs within a public body organization structure that do not necessitate changes in remuneration and benefits, need not to be submitted to the Commission for evaluation and advice.</p>	<p>SRC considered all feedback from all stakeholders and the public and where appropriate amended the final draft regulations to take into consideration such views.</p>
2.	<p>Teachers Service Commission (TSC)</p> <p>Pension Regime in Kenya</p> <p>Pension regime in Kenya is regulated by Constitution, the Pensions Act, the Retirement Benefits Act, and the Public Service Superannuation Scheme Act. These legislations provide statutory guidelines on the entire pension regime in public service.</p> <p>Further, the statutes and attendant Regulations vests the legal mandate for the management of retirement benefits in different institutions in the public service including the National Treasury, the Retirement Benefits Authority and various employers.</p> <p>Regulation 8 of the proposed Regulations seeks to upset the above substantive statutory framework through the "back door" i.e. subsidiary legislation. As a cardinal principle of law, Regulations cannot amend a substantive statutory provision. The net effect of the Regulation as currently</p>	<p>SRC has noted the concerns raised by SCAC and where appropriate incorporated the views alongside those of other stakeholders that are largely agreeable to the regulations in order to have an all inclusive draft regulation.</p> <p>In addition, the Head of Public Service as well as other public bodies, were invited to submit their considered views on the draft regulations. Notably, a majority of them submitted their views which have been considered.</p>	<p>SRC revised the provision on pension in the draft regulations.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>drafted are inconsistent with the provisions of the Pensions Act, the Retirement Benefits Act, and the Public Service Superannuation Scheme Act.</p> <p>For instance: The Regulations proposes that SRC shall set and advice pension or gratuity payable to state officer and public officers. This contradicts the provision of the first schedule of the Pensions Act that provides a statutory formula for calculating pension emoluments in public service.</p> <p>We further take note that, the Public Service Superannuation Scheme is a defined contribution scheme for employees in the public service. The same is founded on the provisions of the Public Service Superannuation Scheme Act. The scheme is further regulated by the Retirement Benefits Authority. To this end, therefore, the proposed provision by the Regulations to mandate SRC to regulate defined contribution schemes will not only be usurping the mandate of the RBA but also a contravention of the existing law.</p> <p>Under Section 11(g) of the Salary and Remuneration Act the Commission has the mandate to make recommendations on the review of pensions payable to holders of public offices. The proposed Regulations tends to extend this mandate beyond the provisions of the parent Act to include "setting, regulating, reviewing, advising on pension review." This creates inconsistency which will not stand the test of time and/or the legal threshold for law making.</p> <p>To the extent that the proposed Regulations tend to encroach on matters already sufficiently provided for by other existing legislations the same is not only in contravention to jurisprudence but may fail the ultra vires test.</p> <p>We reiterate that there are statutory legislations in place that creates, defines and regulates the right to pension. As such, except through an amendment of the parent Acts to place SRC in the implementation structure of pensions, an attempt to create, define, regulate or confine powers to any other entities than those contemplated under the relevant legislation will be illegal.</p> <p>The proposed Regulations will render impotent and circumvent the powers and roles granted to bodies under the Pension Act, Retirement Benefits Act, and Public Service Superannuation Scheme Act. In this regard, it is our view that the proposed Regulations should be limited to the Constitutional Mandate of SRC.</p>		

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>Managerial Prerogative of an Employer</p> <p>Generally, employers have the mandate to recruit, supervise, appraise, and reward employees based on achievements and productivity instruments developed by the employer.</p> <p>More specifically, teacher management functions is exclusive mandate of TSC under Article 237(2) including inter alia to recruit, employ and promote teachers. TSC constitutional power to undertake teacher management functions vests it with exclusive mandate to supervise, measure and evaluate performance of its employees. The same is further buttressed by Section 11(f) of the TSC Act that empowers the Commission to monitor the conduct and performance of teachers in the teaching service.</p> <p>Accordingly, the TSC just like other employers in public service has in place the Performance, Recognition, Rewards and Sanctions Policy for its employees. This policy framework compliments the Performance Contract and Performance Appraisal tools to measure productivity and consequently issue rewards or sanctions where appropriate.</p> <p>In the same spirit, the Public Service Commission has in place the Performance Rewards and Sanctions Policy Framework for the Public Service. This framework establishes performance management system and a basis for rewarding exemplary performance, and where necessary, administering sanctions for poor performance, with a view to enhance productivity in the Public Service.</p> <p>Regulation 23 and 24 seeks to irregularly grant SRC the mandate to approve internal policies or guidelines related to rewards and productivity. More dangerously, Regulation 23 (1) seeks to further grant SRC power to develop Guidelines on rewarding productivity and performance and that such Guidelines will be binding on employers in the public service.</p> <p>Accordingly, it is our considered view that Regulations 23 and 24 be deleted entirely as it seeks to unlawfully usurp the mandate of Public Service employers contrary to Article 249 of the Constitution.</p> <p>Issues of reward and productivity are managerial emanating from the administrative prerogative that vest exclusively on an employer. While we appreciate the mandate of SRC under the law, TSC being a Constitutional</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC revised the provision on rewarding productivity and performance and incentive schemes.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>Commission with operational independence cannot be directed by any other person or authority save as provided in law.</p> <p>It is also key to note that there is a proposed National Productivity and Competitiveness Council Bill, 2019 that seeks to establish framework to foster productivity and competitiveness improvement in the public sector.</p> <p>It is our view, therefore, that rewards and sanction framework are within the exclusive province of employers. It is also key to note that not all rewards contemplated under various policies in the public sector have financial implications.</p>		
3.	<p>Ministry of Labour</p> <p>Reference is made to your letter Ref. No. SRC/18 (2) dated 23rd February, 2022 on the above subject.</p> <p>The Ministry is satisfied with the Draft Policy on Remuneration and Benefits of State and other public officers Regulations, 2022 as presented.</p>	<p>The Ministry of Labour is satisfied with the provisions of the Draft regulations.</p>	
4.	<p>Ministry of Energy</p> <p>Regulations are consistent with the 2010 Constitution, obtaining Statutes, Regulations and the practices in the Public Service.</p>	<p>The Ministry of Energy is satisfied with the provisions of the Draft regulations.</p>	
5.	<p>ICPAK</p> <p>The public sector wage bill is an ever-increasing burden on taxpayers. The COVID-19 crisis is a unique situation and requires tough policy choices for managing the public sector wage bill to best achieve the difficult balance between fiscal consolidation, protection of lives and livelihoods and service delivery.</p> <p>The ballooning wage bill has raised attention and the government has admitted that this increase is unsustainable, and more effort is needed to tame it. Most county governments are spending a large proportion of their allocations from the National government in payment of salaries to staff members. This in turn means that there is not enough revenue left for allocation towards development initiatives. In the financial year 2021/22, The Office of the Controller of Budget (OCOB) indicates that the wage bill accounted for 72.2% of total expenditure in the county governments during the first quarter of the financial year thus constraining funding to other programmes as the development budget accounted for 6.7% of total expenditure. Such data necessitates the need for a comprehensive regulatory</p>	<p>ICPAK is satisfied with the provisions of the Draft regulations.</p>	

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>framework that enables an affordable and sustainable wage bill.</p> <p>The Institute would like to commend the Salaries and Remuneration Commission (SRC) for developing these Regulations and in turn, taking steps to control the public wage bill by aligning the wage system with best practices.</p>		
6.	<p>KIPPRA</p> <p>PART II is comprehensively detailed. However, the concern is how the Commission will ensure that the outcomes of the Section are adhered to by Public Service Institutions. The Commission may consider a periodic audit if not in place and outline it in the Regulations.</p>	<p>KIPPRA is satisfied with the provisions of the Draft regulations.</p>	
7.	<p>PARLSCOM</p> <p>Powers of the Salaries and Remuneration Commission</p> <p>It is important for the Salaries and Remuneration Commission to properly recognize the distinction between its constitutional power to set remuneration and benefits for State Officers and its power to advise on the remuneration and benefits for other public officers. During the Constitution making process, the Committee of Experts on Constitutional Review in their final report dated 11th October, 2010 stated as follows with regard to the Salaries and Remuneration Commission at paragraph 7.5.5.4</p> <p>"....7.5.5.4 <i>The Salaries and Remuneration Commission</i></p> <p><i>The functions of the Salaries and Remuneration Commission were revised in the RHDC. Its power to set the remuneration of MPs, members of the executive, including the president, members of commissions and other independent offices and other senior office holders was retained but its power to set the remuneration of other public officers was removed. This is because setting salaries in the public service is a matter closely linked to government policy and subject to collective bargaining. It is therefore not appropriately taken out of the hands of the executive (and unions) and given to an independent body. Instead, under the RHDC the Commission was to make recommendations on all other salaries etc. in the public service. The Commission was covered by the provisions of Chapter 16 of that draft and so is independent. A rigorous process must be followed to remove members of the Commission.</i></p>	<p>There is need to have the draft Regulations clearly outline the Commission's mandate with respect to State and other public officers.</p>	<p>The draft regulations have been revised to clearly distinguish the mandate of SRC in relation to;</p> <p>(a) setting and regularly reviewing the remuneration and benefits for State officers;</p> <p>(b) advising the national and county governments on the remuneration and benefits of other public officers; and</p> <p>keeping under review and advising on the remuneration and benefits for other public officers.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p><i>The composition of the Commission was also revised to ensure that each sector affected by its decisions can nominate members' to serve on' it. In addition, three additional members of the Commission were to supply professional advice and do not vote (these are persons designated by the Attorney-General's office, by the Cabinet Secretary responsible for finance and by the Cabinet Secretary responsible for human resources)</i></p> <p>The Salaries and Remuneration Commission protects constitutional democracy in two important ways. First, following practice in many modern democracies, it ensures that people do not set their own salaries – thus although MPs must pass the budget, they do not set their own salaries. Secondly, it protects the remuneration of members of the institutions that are intended to guard the Constitution and oversee the executive and Parliament. So, for instance, Parliament or the executive cannot intimidate judges by threatening to lower their salaries – the salaries are set and protected by the Commission.</p>		
8.	<p>Commission on Revenue Allocation (CRA)</p> <p>SRC's mandate covers a complex area of state operations. It deals with a wide range of state institutions with diverse mandates and corresponding operational modalities and different state official responsibilities.</p> <p>This enjoins the Commission to approach its regulatory functions from a thoroughly differentiated and carefully nuanced point of view. It cannot afford to tailor a suit that fits all, at least in a few distinctly unique areas. Such an approach would consider treating the following areas with the necessary differentiation and nuance:</p> <ol style="list-style-type: none"> 1. Structure of the state institutions 2. Salary structure 3. Determination of staff production 4. Allowance and benefit etc. <p>Over-standardization and harmonization of structures and procedures of public service institutions, without due regard to the unique functions of particular agencies, e.g. the independent bodies, may end up compromising their mandates. The ceiling of</p>	<p>The purpose of the draft regulation is for better carrying into effect the provisions of the SRC Act and specifically to provide the procedure for:</p> <ol style="list-style-type: none"> a) setting and reviewing remuneration and benefits for State officers; b) advising on remuneration and benefits for other public officers; and c) keeping under review remuneration and benefits of other public officers. <p>The draft regulations address issues relating to salary structure, allowances and benefits. However, the regulations do not address issues of organizational structure of public</p>	<p>Having considered the views from CRA and revised the draft regulations appropriately.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>use of fuel by public service officers needs a carefully nuanced standardization. At the moment the variance is too large and unilateral and with hardly any justification.</p>	<p>bodies and determination of staff production since they are beyond the mandate of the Commission under Article 230 (4) of the Constitution and SRC Act.</p> <p>The views on over-standardization negate the principle of equal remuneration for work of equal value as set out under Section 12 of the SRC Act. SRC upholds the principle of equal remuneration for work of equal value by:</p> <ol style="list-style-type: none"> 1. undertaking job evaluation to ascertain the relative worth of a job; 2. setting and advising on salary structures applicable across the public service. The salary structures are progressively harmonized subject to the principles of affordability and fiscal sustainability through harmonization. 	

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>There is need to align these draft regulations with the Constitution of Kenya 2010. In addition, clarity is needed as to who has the final say when it comes to providing benefits and salaries for public office, Independent Commissions and County governments. Article 230 (4) states as follows: The powers and functions of the Salaries and Remuneration Commission shall be to-</p> <ul style="list-style-type: none"> a) set and regularly review the remuneration and benefits of all State officers; and b) advise the national and county governments on the remuneration and benefits of all other public officers. <p>From the above, it is evident that the commission will set and regularly review the remuneration and benefits of all State officers and advise the remuneration and benefits for public officers. In some parts of the regulations, the Commission adheres to its constitutional mandate e.g. section 18 on salary structures, but then it contradicts itself in other following regulations.</p>	<p>There is need to have the draft Regulations clearly outline the Commission's mandate with respect to State and other public officers.</p>	<p>The draft regulations have been revised to clearly distinguish the mandate of SRC in relation to;</p> <ul style="list-style-type: none"> (a) setting and regularly reviewing the remuneration and benefits for State officers; (b) advising the national and county governments on the remuneration and benefits of other public officers; and <p>keeping under review and advising on the remuneration and benefits for other public officers.</p>
	<p>CRA has included an additional regulation 7A to incorporate cognizant CRA equitable share to counties when it comes to the county ceilings.</p>	<p>CRA proposes an additional regulation 7A to incorporate cognizant CRA equitable share to counties when it comes to the county ceilings. The proposed provision shall be part of the factors to be considered by SRC in setting, reviewing and advising on remuneration and benefits for State and other public officers.</p>	<p>The proposal has been adopted and incorporated into the draft regulations.</p>
9.	<p>National Police Service Commission. NPSC has perused the draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers), Regulations, 2022 and largely agrees with the proposed amendments, noting that the same will enhance productivity and performance within the Public Service.</p>	<p>NPSC is satisfied with the provisions of the Draft regulations.</p>	

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
10.	<p>County Assembly of Embu</p> <p>Considering the above observations, the County Assembly of Embu acknowledges that the draft Salaries and Remuneration Commission (Remuneration and Benefits of State and other public officers) Regulations has presented important reform questions on issues of Remuneration of State and public officers. However, the selected and highlighted parts of the proposed regulations need to be reconsidered and revised accordingly in order to address the concerns raised and to be in compliance with the Constitution, Salaries and Remuneration Commission, Act 2011 and other existing laws.</p>	<p>County Assembly of Embu has proposed specific amendments to the Draft regulations.</p>	<p>SRC considered the views and proposals from the County Assembly of Embu and revised the draft regulations appropriately.</p>
11.	<p>County Assemblies Forum (CAF) Remuneration and benefits of public officers</p> <p>Overall, the Regulations do not take into account the views of the officers affected by its decisions and the uniqueness of such officers' working circumstances especially with the advent of devolution. Such unilateral decision making of the SRC has been challenged successfully in Court.</p> <p>Proposal: Overhaul the draft Regulation.</p>	<p>CAF has proposed specific amendments to the Draft regulations.</p>	<p>SRC considered the views and proposals from the County Assemblies Forum and revised the draft regulations appropriately.</p>
12.	<p>Council of Governors</p> <p>CoG noted that the regulations provide for issues that are not provided under the SRC Act and thus states that the regulations cannot provide for issues that have not been provided for substantively under the enabling legislation and advises that such provisions need to be brought out in enabling framework first in order to operationalize the regulations.</p> <p>Noted that the position of County Governments that the constitutional mandate is not intended to prevent the Counties from setting up or determining how county governments choose to set up or adopt their pension scheme.</p> <p>It also noted the function of the National Government and ipso facto the national treasury is assigned to RBA under section 5(d) of the RBA act which states as follows;</p> <p>"the object and function of the Authority shall be to – advise the minister on the national policy to be followed with regard to retirement benefits schemes and to implement all</p>	<p>Pension is an employment benefit and therefore part of SRC's mandate under Article 230 (4) of the Constitution.</p> <p>There numerous statutes that regulate pension in the public service. It is necessary to revise the draft regulations taking into account the obtaining legal and institutional framework on pensions.</p>	<p>SRC considered the views and proposals from the Council of governors and revised the draft regulations appropriately.</p>

#	General Stakeholder Feedback Government policies relating thereto"	Observations by SRC	Response/Action by SRC
13.	<p>It further stated that the role of County Governments on pension matters is anchored under Article 235 of the Constitution and section 56 of the County Government Act both which recognizes County Governments as employers within their respective counties thus they have the authority to determine pension arrangements for their employees as exclusive county governments functions</p> <p>Association of Professional Societies in East Africa (APSEA) The Association considers the need to establish:</p> <ol style="list-style-type: none"> 1. Whether the regulations comply with the Statutory Instruments, Act, 2013. 2. Whether the Commission conducted a Regulatory Impact Assessment under the Statutory Instruments Act. 3. Whether the draft regulations were submitted to Parliament for approval first as stated in Section 26 (2) of the SRC Act. 	<p>The draft regulations are still in drafting stage and the commission intends to comply with procedures as set under the Statutory Instrument Act, 2013.</p> <p>Section 6 of the Statutory Instruments Act provides that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.</p> <p>In this case the proposed SRC regulations does not impose any financial costs on the community or part of the community and there as such SRC shall not undertake any Regulatory Impact Assessment as per the provision of Section 6 of the SIA.</p>	<p>SRC considered the views and proposals from the Association of Professional Societies in East Africa and shall comply with the provisions of the Statutory Instruments Act.</p>
11.	<p>Stephen Wambua The area we are working in is very hostile and hard stricken. Its unfair to have our counterparts from the TSC being given hardship allowances while we others in the Public service are not considered. Where is the problem? Kindly consider our fate.</p>	<p>The comment by Stephen Wambua is one of the items SRC considers in review of allowances and benefits. An inter-agency team comprising of MPSCS&SP and SRC is currently undertaking a study on hardship areas which</p>	<p>A study to inform review of hardship allowance is ongoing. SRC has retained the provisions of the draft regulation.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
12.	<p>Bernard Otieno There is a massive salary days especially in Homa bay county. Workers promotion from one Job group to another isn't followed in Homabay County. Case scenario - A worker given promotion letter in 2019 but hasn't been effected on the payslip in 2022. A disaster to the worker professional development. What to do: Do a follow up on the county Government of Homabay to find out why: a) There is a salary delay to works; i. The county Government of Homabay finds it difficult to effect promotions on the workers' pay slips; and Make necessary recommendations to the counties to streamline these.</p>	<p>will inform review of hardship allowance.</p> <p>The comment by Bernard Otieno is beyond the scope and objectives of these regulations.</p>	
13.	<p>Gabriel Mecheo Pliz review our salary house allowance commute even basic as compared to other ours is to low we cannot afford to pay even rent...and food travel to work ...Job group " E" pliz and above pliz consider us</p>	<p>The comment by Gabriel Mecheo is one of the items SRC shall consider in review of allowances and benefits as part of the 3rd remuneration review cycle 2021/22 – 2024/25. SRC is currently undertaking a study on house rent across the country which will inform review of house allowance.</p>	<p>A study to inform review of house allowance is ongoing. SRC has retained the provisions of the draft regulation.</p>
14.	<p>Mutwiri Why do some employees get hardship allowance while as others don't get and both serving in the same area but different ministry. TSC teachers get but interior don't in Igembe North Sub-county?</p>	<p>The comment by Mutwiri is one of the items SRC considers in review of allowances and benefits. An inter-agency team comprising of MPSC&SP and SRC is currently undertaking a study on hardship areas which will inform review of hardship allowance.</p>	<p>A study to inform review of hardship allowance is ongoing.</p>
15.	<p>Hassan Mohamed Ahmed Salary review is long due, government should increase the salaries of civil servants. Thank you!</p>	<p>The comment is one of the items SRC shall consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
16.	<p>Oliver keya In consideration of high cost of living, I would prefer you increase salaries as it was first proposed</p>	<p>The comment is one of the items SRC shall consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
17.	<p>Dalton Ochieng Owuor I would like our basic salary to be revised upwards. Life is unbearable and we need to give our children the best. Consider all the monthly bills and you will realize as much as we are smiling we are suffering somehow. Secondly, let our allowances march that of officers in the same cadre in judiciary.</p>	<p>The comment is one of the items SRC shall consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
18.	<p>Aggrey Omolo I kindly request for the review of the civil servant salary. This is because the cost of living has skyrocketed . Most of the civil servant at lower cadar can not afford three meals a day thus can be compromised</p>	<p>The comment is one of the items SRC shall consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
19.	<p>Brawan Kiprotich I kindly request that SRC reviews the clerical officers basic salary and allowances with a view of increasing them in a bid to confirm with high cost of living and the nature of the work.SRC should also consider promoting clerical officers who have served for more than two years and above as this will motivate them further and thus enhance efficiency at work. I will greatly appreciate your kind consideration.</p>	<p>The comment is one of the items SRC shall consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
20.	<p>Lilian mawilu Mumo Salaries should be reviewed for public servants especially officers in job groups J and below. Life has become so expensive now, they are barely surviving. House and commuter allowances too should be reviewed too</p>	<p>The comment is one of the items SRC shall consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
21.	<p>Benson Mulwa We argue the commission to allow those are in lower job group (A-F to be allowed to move to another cadre that is senior support staff to move up as clerical officers instead of retiring as support staff and they are capable of doing clerical jobs</p>	<p>Management of scheme of service is in the purview of employing institutions.</p>	
22.	<p>Emmanuel Kipruto We appreciate the work of this commission. Since the enactment of new</p>	<p>The comment is one of the items SRC shall consider as part of the 3rd remuneration</p>	<p>The Commission shall advise on salary structures under the third</p>

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>constitution in 2010 civil servants in lower cadre the salaries have been increased. The CBA of 2017 ended on 2021. The new CBA was to begin being implemented on 2021- 2025 which the commission frozen the increment that to COVID 19 and economy had recovered. Later the commission rewarded the MCAs with a package the same year. It is my request to SRC to also remember the CBA of 2020 of civil servants to implement so as to care for low cadre of civil servants.</p>	<p>review cycle 2021/22 – 2024/25.</p>	<p>remuneration review cycle upon the lapse of the freeze period.</p>
23.	<p>Monicah Wambua Please review house allowance and commuter allowance for clerical officers. Regards</p>	<p>The comment is one of the items SRC shall consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
24.	<p>Geoffrey Marube We need basic and allowances to tally with other parastatals</p>	<p>The comment is one of the items SRC shall consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
25.	<p>Wilfred Muriuki</p> <ul style="list-style-type: none"> - I would like to salary and allowances be harmonise to all cadre, for example a clerical officer stationed at huduma Centre earns 15,000 more than a clerical officer stationed at DCC's or Cc's office in the same locality; - House allowance also to be increased for example at EMBU, house rent is 5,500 whereas we are allocated 3,850 which is far below you; - Clerical officer is the cadre with the least job group and the only cadre requires one to sit for an exam to be promoted yet you can pass the exam and stagnate for years; <p>You can imagine how someone feels when you're employed and do almost all the work in an office where your boss pockets 5 times more than you. For example example DCC's Office, they are given fuel, cars, AIE, government house, and still needs clerk to help them can't we even be given an allowance or AIE to cater for our needs, remember we're also Kenyans with children to feed and pay school fees like them.</p>	<p>The comment is one of the items SRC shall consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
26.	<p>Irene mwikali munyao Great Job</p>		

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
27.	<p>Said Lugo Mwachiti I would wish to comment that the salary gap of the subordinate staffs in the ministries and the other government agencies are very big. Therefore, SRC kindly look to raise some of the allowances and salaries to the staffs working in the ministries. For example; a clerk in the ministry of Interior earns Gross of Kshs.25000 while in the Judiciary earns Kshs.80000 with all facing the same price of Unga. Too demoralizing.</p>	<p>The comment is one of the items SRC shall consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
28.	<p>Dominic Cheburet We request the review of salaries as far as academic/performance credentials are concerned.</p>	<p>Academic qualification is one of the compensable factors considered in job evaluation for assigning relative worth of the job and subsequently development of the salary structure. This is one of the items SRC will consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
29.	<p>Stephen Kuya Lokiru Civil servant are the lowest paid officers, there salaries must be reviewed</p>	<p>The comment by is one of the issues SRC will consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25.</p>	<p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.</p>
30.	<p>Stephen Okumu Why is there perennial salary delays in Homabay? Currently the county staff are being paid January salaries using February AIE most probably meaning someone must have misappropriated some salaries in the past. Are you the right agency to handle this?</p>	<p>The views go beyond the scope and objective of the draft regulations.</p>	
31.	<p>Anne Atieno Ogutu There should be equity and harmonized civil servants' allowances. House allowance should be reviewed. Suba should be considered as hardship area.</p>	<p>The comment by is one of the issues SRC will consider as part of the 3rd remuneration review cycle 2021/22 – 2024/25. SRC is currently undertaking a study on house rent and transport rates across the country which will inform review of house allowance, commuter allowance and hardship allowance.</p>	<p>A study to inform review of house allowance, commuter allowance and hardship allowance is ongoing.</p>
32.	<p>Tobias Otieno Am not impressed with the monthly salary delay with no notice it hurts us when it comes to humiliation we encounter with tenants, deleyance to pay</p>	<p>The views go beyond the scope and objective of the draft regulations.</p>	

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	rent, treatment when NHIF reads red, children sent home for school fees unpaid, unable to support church projects when in the list of eg. harambee. Payment should be based on performances, years of service and level of education.		
33.	Kiprop Kevin The drivers are underpaid and work throughout the week and weekends too without overtime or weekend allowances. Please consider to add something on their basic pay. Thanks	The comment by is one of the issues SRC will consider as part of the 3 rd remuneration review cycle 2021/22 – 2024/25.	The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the freeze period.
34.	Odoro O. Jacob As much as the salary and management of human resource is concerned, it's still much far better the way we were at the National. Counties are unable to handle human resource and salary. Delay in payment, No promotions, and no motivation to the workers 10 yrs. down the line we are stagnated in same job group. statutory deductions aren't remitted.	The views go beyond the scope and objective of the draft regulations.	
35.	Hillary Oracha Would love to know your take with regards to health risk allowances to nutritionists. The cadre has been disenfranchised in this regard and the irony is that the risk as defined under the health act of 2017, Occupational Health and Safety act clearly earmarks the environment and the hazards that informed the award of the allowance. The cadre works within this same environment but when it comes to being protected nothing has been forthcoming. Need to have a broad conversation over the same	SRC has advised on salaries and allowances for health workers.	
36.	Juma Jaffar Looking forward for favorable and pleasing entities into the pay slip for civil servants	Not clear.	
37.	Enock Osire Employees of county governments are never paid on time. There is a perennial problem of salary delay, as a result, the people of Kenya are not served effectively. The solution to this problem lies with SRC convening the following stakeholders for a collaborative discussion; COG, National treasury and Workers Unions preferably UKCS. I strongly believe that the above stakeholders are able to find a long lasting solution to this problem. They should be able to;	The views on delayed salaries go beyond the scope and objective of the draft regulations. With regard to hardship allowance, SRC is currently undertaking a study on house rent and transport rates across the country which will inform review of house allowance, commuter allowance and hardship allowance.	A study to inform review of house allowance, commuter allowance and hardship allowance is ongoing.

#	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
	<p>(a) Unravel weaknesses in the law and suggest amendments;</p> <p>(b) Amend county budget process and approval bureaucracy</p> <p>(c) s to exclude wages vote; and</p> <p>(d) Removal of incompetent county employees attached to finance and payroll department.</p> <p>The other issues I want SRC to take up seriously are;</p> <ol style="list-style-type: none"> 1. Hardship allowance to Suba region of Homabay county and other listed regions; and 2. Harmonisation of house allowance to civil servants. 		
38.	<p>Patrick Otiende Abondo</p> <p>In the last review of salaries Enrolled nurses were only added one job group for progression (up to L) while KRN's were awarded up top 4 job groups, please do something we are demotivated, you could have given us even up to March.</p>	<p>SRC has advised on salaries and allowances for health workers.</p>	
39.	<p>Jared Odhiambo Onyango</p> <p>As Clinical Officers, we need enhanced risk allowance. As the gatekeepers and first in contact with any patient before they are diagnosed and admitted, we meet them and find the diagnosis. The rest only deals with something that is already known and are able to adjust their PPEs accordingly. Thanks</p>	<p>SRC has advised on salaries and allowances for health workers.</p>	

Table 3 presents specific comments and feedback from stakeholders.

Table 3: Input from Stakeholders, observation and recommendations to the Commission on specific clauses of the Draft Salaries and Remuneration Commission (Remuneration and Benefits of State and Other Public Officers) Regulations, 2022

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>Enabling clause IN EXERCISE of the powers conferred by section 26 of the Salaries and Remuneration Commission Act, 2011, the Chairperson of the Salaries and Remuneration Commission makes the following Regulations—</p>	<p>Parlscm 1. "The draft Regulations are made pursuant to section 26 of the Salaries and Remuneration Commission Act, (No. 10 of 2011) which provides that- <i>"(1) The Commission may make regulations generally for the better carrying into effect of any provisions of this Act.;</i> <i>(2) The power to make Regulations shall be exercised only after a draft of the proposed Regulations has been approved by the National Assembly."</i> Proposal The enactment clause should be re-done to conform to section 26 of the Salaries and Remuneration Commission Act, and sections 13(a) and (h) of the Statutory Instruments Act. The power to make Regulations is granted to the Salaries and Remuneration Commission AND NOT the "Chairperson" whose role is to sign the Regulations. This is a drafting and policy error that ought to be corrected. 2. Pursuant to section 26(2) of the Salaries and Remuneration Commission Act, the draft Regulations can only be published after a draft of the proposed Regulations has been approved by the National Assembly. The Regulations refer to the word "Commission" severally in the text/body. Proposal The enactment clause should therefore indicate that the Regulations are made by the Salaries and Remuneration Commission after approval by the National Assembly.</p>	<p>The enabling clause should be aligned to the provisions of Section 26 (1) and (2) of the SRC Act as well as section 13 (a) and (h) of the Statutory Instruments Act.</p>	<p>Adopt the proposal by Parliament. Enabling clause should now read: IN EXERCISE of the powers conferred by section 26 of the Salaries and Remuneration Commission Act, 2011, the Commission makes the following regulations.</p>
	<p>CRA It is not the chairperson's task to make regulations rather it is the work of the commission as a whole.</p>	<p>The enabling clause should be aligned to the provisions of Section 26 (1) and (2) of the</p>	<p>Adopt the proposal by CRA.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>1. Short title These Regulations may be cited as the Salaries and Remuneration Commission (Remuneration and Benefits of State and other Public Officers) Regulations, 2022.</p>	<p>Replace the word Chairperson with the commission to say "IN EXERCISE of the powers conferred by section 26 of the Salaries and Remuneration Commission Act, 2011, the Commission makes the following regulations</p>	<p>SRC Act as well as section 13 (a) and (h) of the Statutory Instruments Act.</p>	
<p>2. Interpretation In these Regulations, unless the context otherwise requires—</p> <p>"allowance" means payment made to State or other public officers in addition to the basic or consolidated salary, as the case may be, for purposes of compensation, or any facilitative payment made to State or other public officers;</p>	<p>Parliscom Facilitative payments are neither remuneration nor benefits and therefore fall outside the mandate of the Salaries and Remuneration Commission. Facilitative payments are simply monies paid to State and public officers to enable them undertake their functions. The monies must be accounted for and do not benefit or remunerate the State or public officer. Examples of facilitative payments include imprest and per diem.</p> <p>Proposal The phrase "...or any facilitative payment made to State or other public officers..." should therefore be deleted</p>	<p>The proposed amendment raises issues on the mandate of SRC vis a vis Parliscom.</p>	<p>SRC to consider dropping the word "facilitative" in the definition of allowance. In the alternate, SRC to adopt an ordinary definition of allowances as follows: "Allowance" means any additional emoluments payable over and above the basic or consolidated salary, directly or indirectly, to a State or other public officer and arising out of the employment of that State or other public officer.</p>
<p>"benefit" means financial or non-financial compensation that is provided to a State or other public officer in addition to the basic or consolidated salary;</p>	<p>EACC It is proposed that the definition of benefits includes allowance and the rationale is that the term benefit includes both financial and non-financial compensation in addition to basic salary whereas allowance means financial payment made in addition to basic or consolidated salary. The term benefit therefore includes allowance.</p>	<p>The proposals defines benefit to include allowance.</p>	<p>Adopt the provision of the draft regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>Commission</p>	<p>County Assembly of Makueni Proposes that the clause clarifies which benefits are nonfinancial.</p>	<p>The proposal requires SRC to list all allowances in the definition section. This may not be practical.</p>	<p>Propose to have an addendum that will list all the allowances.</p>
<p>Commission</p>	<p>Parlscrom The Regulations refer to the word "Commission" severally in the text/body. Proposal There should be a definition of the term "Commission" as the Salaries and Remuneration Commission.</p>	<p>The proposal is in order.</p>	<p>Define the term "Commission" as follows: "Commission" means the Salaries and Remuneration Commission established by Article 230 of the Constitution;</p>
<p>Commission</p>	<p>County Assembly of Makueni Proposes the interpretation clause to define the word Commission as used in the regulation so as to provide a distinction from other Commissions.</p>	<p>The proposal is in order.</p>	<p>"</p>
<p>Commission</p>	<p>NPSC The term 'Commission' is not defined though it used severally in the document. Define the term 'Commission' as 'the Salaries and Remuneration Commission established under Article 230 of the Constitution'</p>	<p>The proposal is in order.</p>	<p>"</p>
<p>"compensable factor" means job attribute(s) used to provide a basis for determining the worth of a job in relation to other jobs.</p>	<p>-</p>	<p>-</p>	<p>-</p>
<p>"cost of living" means the cost of purchasing goods and services as measured by the changes in the Consumer Price Index as provided by the Kenya National Bureau of Statistics from time to time;</p>	<p>CRA This limits the definition to the standards set by KNBS only. How about other labor laws like ILO? Proposal Cost of living means the cost of goods and services as indicated in legislation and labor guidelines.</p>	<p>Only KNBS is mandated to set the rate of consumer price index.</p>	<p>Adopt the provision of the draft regulations.</p>
<p>"defined contribution"</p>	<p>IBEC To define under R2, the term "defined contribution" cited under R8(5) in terms of the relevant statute.</p>	<p>Pension is an employment benefit under Article 230 (4) of the Constitution and is therefore subject to the mandate of SRC to: a) set and</p>	<p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		<p>regularly review with regard to State officers; and b) advise the national and county governments with regard to other public officers.</p> <p>There exist 13 legal framework that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities.</p> <p>Public Service Superannuation Scheme Act, 2012 defines "contribution" to mean the amount payable by a member and by the Government into the Scheme;</p>	by the RBA.
"job description" means a standardized documentation of the duties, responsibilities, reporting relationships, critical performance areas and working conditions , and the minimum qualifications, experience, skills and competences required to perform a job;	-	-	-
"job description manual" means a document containing approved job descriptions;	-	-	-
"job evaluation" means a systematic and objective process of determining the worth of a job in relation to other jobs for purposes of establishing a rational grading structure;	<p>Public Service Commission</p> <p>The interpretation of "job evaluation" violates the mandate of PSC under Article 234(2)(a) (i) of the Constitution as read together with Section 27 of the Public Service Commission Act, 2017.</p> <p>Proposal</p> <p>"Job Evaluation" should be interpreted to mean a systematic and objective process of determining the</p>	<p>Article 234 (2) (a) (i) empowers the Public Service Commission to establish and abolish offices in the public service</p> <p>Article 252 (1) (c) empowers</p>	The draft regulation be amended to clarify the purpose of job evaluation and resultant JE grading structure, without contradicting the provisions of

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	<p>worth of a job in relation to other jobs;</p>	<p>Constitutional Commissions and Independent Officers to recruit their own staff.</p> <p>The above provisions, empowers employing institutions to establish offices and consequently organization structures. The organization structure defines a specific hierarchy within an organization and therefore the grading.</p> <p>The Draft SRC Regulation's definition of JE indicates its purpose as to establishment of a rational grading structure. Regulation 11 (c) highlights that one of the reason for conducting JE is to rationalize and harmonize job grading structures in the public service.</p> <p>Whereas the regulations provide for grading of jobs pursuant to job evaluation results for purpose of setting/advising on the appropriate salary structures, amendment to highlight to purpose of job evaluation and resultant JE grading structure should be incorporated.</p> <p>Establishment of grading</p>	<p>the Constitution.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		<p>structures is vested on the employing institutions as provided by the Constitution.</p> <p>JE should be defined within the context of Article 230 (4) of the constitution, that is, for purpose of setting/advising on the remuneration and benefits for state and other public officers.</p>	
Pension	<p>NPSC Consider the definition of pension as part of remuneration to be paid at exit from service giving effect to the function of the SRC to set and/or review pension to State Officers and Public Officers respectively.</p>	<p>Pension is a benefit. Pension is a generic term and its common parlance definition suffices.</p> <p>There exist 13 legal framework that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities.</p>	<p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>
"performance" means a measure of the extent of attainment of set objectives of a public service institution's goals in an effective and efficient manner;	<p>County Assembly of Makueni Proposes the inclusion of "work environment" in defining productivity and states that work environment is a key factor in performance.</p>	<p>Performance is a measure of the extent of attainment of set objectives of a public service institution's goals in an effective and efficient manner and work environment is not part of the measure.</p>	<p>Adopt the provision of the draft regulations.</p>
"productivity" means a measure of efficiency with which inputs are translated into outputs;	<p>County Assembly of Makueni Proposes the insertion of the word "set process" immediately after the word "outputs"</p>	<p>Productivity is a measure of efficiency with which inputs are translated into outputs. Set process is not part of the measure.</p>	<p>Adopt the provision of the draft regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
"public office" has the meaning assigned to it under Article 260 of the Constitution;		The proposed insertion would reduce clarity on the definition.	
"public officer" has the meaning assigned to it under Article 260 of the Constitution;	<p>-</p> <p>KIPPRA The term "other public officer" has been extensively used in the Regulations. However, there is no clear definition to the term. The Constitution under Article 260 only defines a "public officer". It would be important to clearly define the term based on the context of use or adhere to the term "public officer" as it is clearly defined.</p>	<p>-</p> <p>The qualification "other" is used at article 230 (4) (b) of the Constitution for purposes of setting out the mandate of SRC with respect to the remuneration and benefits of State and public officers. Note that State officers are also public officers by dint of Article 260 of the Constitution.</p>	<p>-</p> <p>Adopt the provision in the regulation but cite the explanation when referring to the stakeholders.</p>
"public service" has the meaning assigned to it under Article 260 of the Constitution;	-	-	-
"public service institution" means a State organ, a public office, a state corporation, national or county government entity and includes any institution in the public service established by law;	<p>SCAC The current case law position is that state corporations do not fall within the meaning of "public service" as relates to the functions of the Salaries and Remuneration Commission.</p>	<p>Constitutional Petition 331 of 2016 referred to by SCAC has been stayed by the Court of Appeal.</p>	<p>Substitute the term "Public Service Institution" with "employing Public Service Institution".</p> <p>The use of the term State organ implies that the body is established under the Constitution.</p>
	<p>Public Service Commission The interpretation of the term "public service institution" is unconstitutional as it purports to usurp the constitutional mandate of the Public Service Commission specifically Art. 234(2)(g) by giving SRC the power to directly engage public service institutions that fall under the mandate of the Public Service Commission i.e. Ministries and State Corporations.</p>	<p>The list of PSC is not exhaustive with respect to employing public institutions.</p>	<p>SRC to consider changing public service institution to public service body.</p> <p>In defining Public service body state that it means public body as defined by Interpretation and General</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>Proposal The definition should be as follows:-</p> <p>"public service institution" means</p> <ul style="list-style-type: none"> a) Public Service Commission; b) Parliamentary Service Commission; c) Judicial Service Commission; d) National Police Service Commission; e) Teachers Service Commission; f) County Public Service Board; g) County Assembly Service Board; and h) Constitutional Commission and independent Office. 		Provisions Act (IGPA) of 1968.
<p>"review of remuneration and benefits" means evaluation of the remuneration and benefits with a view to institute change, if necessary;</p>	<p>Public Service Commission It should be amended to only provide for the definition of review.</p>	<p>The regulations include "review of remuneration and benefits" and "review cycle".</p> <p>The proposal by PSC would alter the meaning of the terminology as used in the regulations.</p>	Adopt the provision of the draft regulations.
	<p>County Assembly of Makueni Proposes that the clause to specify the type of change and the time frame for the review.</p>	The proposed definition section does not expound	Adopt the provision of the draft regulations.
<p>"review cycle" means the period after which, remuneration, allowances and benefits for State and other public officers are reviewed for budgeting and planning purposes;</p>	<p>NPSC The term "review cycle" has not been defined to include a definitive period after which SRC shall conduct a review on the remuneration and benefits of State and Public Officers unlike in the previous Regulations of 2013 - though this has been provided for under proposed Regulation 4.</p> <p>While nothing in law mandates the SRC to specify a period after which to review the same, it is important to define the period to: Provide a timeline within which the SRC will be required to conduct the review; (a) Enable institutions attract and retain employees</p>	<p>The review cycle has been defined as 4 years. The specific timelines as proposed are administrative processes.</p> <p>The issues raised by NPSC have been addressed at regulation 4.</p>	Adopt the provision of the draft regulations.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>with the requisite skills</p> <p>(b) Ensure a fair balance within the public and private sectors and</p> <p>(c) Address the economic situation of the country within a given period including cost of living.</p> <p>Consider reverting to four year period after which the review cycle is to be done or defining the period.</p>		
"reward" means an incentive awarded in recognition of an achievement of performance and productivity;	-	-	-
"State officer" has the meaning assigned to it under Article 260 of the Constitution;	-	-	-
"State officer" has the meaning assigned to it under Article 260 of the Constitution;	-	-	-
"State organ" has the meaning assigned to it under Article 260 of the Constitution;	-	-	-
"trade union" has the meaning assigned to it under section 2 of the Labour Relations Act; and	-	-	-
"unionisable employee" has the meaning assigned to it under section 2 of the Labour Relations Act.	-	-	-
<p>3. Object of the regulations</p> <p>(1) The object of these Regulations is for the better carrying into effect the provisions of the Act.</p> <p>(2) Without prejudice to the generality of sub-regulation (1), these Regulations provide the procedure for—</p>	<p>County Assembly of Makueni</p> <p>Proposes citing of the specific section of the act that the regulation seeks to give effect to.</p> <p>County Assembly of Makueni</p> <p>(a) Proposes the inclusion of the word "other public officers" immediately after state officer;</p> <p>(b) Proposes the inclusion of the word "state officers" before the word other public officers;</p> <p>(c) Proposes the inclusion of the word "state officer" immediately after the word "benefit";</p> <p>(d) Proposes introduction of a new regulation 3(3) to provide for harmonization of salaries and remuneration for state and public officers.</p>	<p>The issue has been addressed under the enabling clause.</p> <p>The proposals is contrary to the provisions of Article 230 (4) of the Constitution which defines the mandate of SRC.</p> <p>The proposal for introduction of a new regulation 3(3) to provide for harmonization of salaries and remuneration for state and public officers as one of the objectives of the regulations is not practical as harmonization is a progressive process which is subsumed</p>	<p>Adopt as in the draft regulations.</p> <p>Adopt the provision of the draft regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		under other processes provided under the draft regulations.	
(a) setting and reviewing remuneration and benefits for State officers;	-	-	-
(b) advising on remuneration and benefits for other public officers; and	<p>CAJ The word 'other' should be deleted. The sentences should read public officers as opposed to 'other public officer' in the same way it reads in the Constitution and Salaries and Remuneration Commission Act, 2011.</p>	<p>The qualification "other" is used at article 230 (4) (b) of the Constitution for purposes of setting out the mandate of SRC with respect to the remuneration and benefits of State and public officers.</p> <p>Note that State officers are also public officers by dint of Article 260 of the Constitution.</p>	Adopt the provision of the draft regulations.
	<p>EACC It is proposed that "other public officers" be defined in the Regulations so as to exclude State Officers and the rationale is that the use of "other public officers". Article 260 of the Constitution defines a public officer to include State Officers. This would therefore mean that the SRC cannot set the remuneration of State Officers as provided for in Article 230(2)(4) of the Constitution. To clear this, it is important that the term "other public officer" be defined in Regulation 2 on Interpretation as to include other public officers except State Officers.</p>	<p>The qualification "other" is used at article 230 (4) (b) of the Constitution for purposes of setting out the mandate of SRC with respect to the remuneration and benefits of State and public officers.</p> <p>Note that State officers are also public officers by dint of Article 260 of the Constitution.</p>	Adopt the provision of the draft regulations.
(c) reviewing remuneration and benefits of other public officers.	<p>SCAC (With regard to Regulation 3 (2) (c)) The Constitution and law does not grant SRC the power to review remuneration of public officers, but only to advise on the remuneration and benefits. Consequently, all references in the regulations related to review of public officer remuneration and benefits is ultra vires SRC mandate.</p>	Owing to the ambiguity of the word "reviewing" it would be necessary to qualify it to address the concerns raised by the stakeholders.	Amended Regulation 3 (2) (c) to read: Keeping under review all matters relating to salaries and remuneration of other public officers.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>4. Review cycle (1) The Commission shall undertake a review of —</p>	<p>Public Service Commission 3(2)(c) The provision contravenes Art. 234(2) (g) of the Constitution and it also contravenes the provisions of Section 11(b) of the Salaries and Remuneration Act which only gives SRC the power to keep under review all matters relating to the salaries and remuneration of public officers.</p> <p>It should be noted that under Article 230(4) of the Constitution SRC is only mandated to set and regularly review the remuneration and benefits of all State Officers and to advise the National and County Governments on remuneration and benefits of all other public officers. Therefore, SRC cannot give itself powers, through Regulations, that exceed their Constitutional powers and functions.</p> <p>Public Service Commission The entire clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act. 4(1) should read as follows 4. "(1) The Commission shall – (a) undertake a review of State Officers' remuneration and benefits every four years; (b) Keep under review other public officers' remuneration every four years; and (c) Keep under review allowances and benefits of other public officers." (3) The Commission may, notwithstanding the provisions of sub-regulation (1), undertake a special review of the remuneration and benefits of State officers to address emerging circumstances and conditions.</p>	<p>Owing to the ambiguity of the word "reviewing" it would be necessary to qualify it to address the concerns raised by the stakeholders.</p>	<p>Amended Regulation 3 (2) (c) to read: Keeping under review all matters relating to salaries; and remuneration of other public officers.</p>
<p>4. Review cycle (1) The Commission shall undertake a review of —</p>	<p>Public Service Commission The entire clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act. 4(1) should read as follows 4. "(1) The Commission shall – (a) undertake a review of State Officers' remuneration and benefits every four years; (b) Keep under review other public officers' remuneration every four years; and (c) Keep under review allowances and benefits of other public officers." (3) The Commission may, notwithstanding the provisions of sub-regulation (1), undertake a special review of the remuneration and benefits of State officers to address emerging circumstances and conditions.</p>	<p>The draft Regulations outline the Commission's mandate with respect to State and other public officers. The mandate of the Commission with respect to setting the remuneration and benefits for State officers is distinct from that of advising national and county governments on the remuneration and benefits of other public officers.</p>	<p>Amend the provisions of Regulation 4 to now read: 4 (1) The Commission shall review and set remuneration and benefits for State officers every four years. 4 (2) The Commission shall review and advise on remuneration and benefits for public officers every four years.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>COTU</p> <p>According to International Labour Standards and various international Labour Organization (ILO) recommendations, a CBA should be within the period of two years. Kenya being a member of the ILO and a signatory to various ILO Conventions, MUST always take this Recommendation serious. A CBA must be reviewed within two years to take into consideration inflation, purchasing power parity and other changes in the economy. Anything above two years seizes being a CBA and becomes an MoU.</p> <p>COTU (K) strongly believes that a four (4) year review period is too long thus efforts to reduce it to two (2) years should be carried out to harmonize with all sectors. This is equally in line with the Wage Guidelines issued by Ministry of Finance in November 2005 guideline number 4 which states that wages /salaries should be reviewed once every 24 months and in addition we know that the Kenyan Government Budget is reviewed every year.</p> <p>Secondly, timelines should be clearly spelt out so that all activities towards salaries and remuneration are carried out within a specific period to enable the parties concerned to effectively engage prior to review of remuneration and benefits.</p>	<p>The proposal by COTU was considered unfortunately the International Labour Organization Conventions does not make provision or recommendation that CBAs should be within the period of two years.</p>	<p>Propose that the said the provisions of Regulation 4 be amended as follows;</p> <p>4 (1) The Commission shall review and set remuneration and benefits for State officers every four years.</p> <p>4 (2) The Commission shall review and advice on remuneration and benefits for public officers every four years.</p>
	<p>County Assembly of Makueni</p> <p>Proposes insertion of the word "state officers" immediately after the words "benefits of"</p>	<p>The proposal would duplicate the provisions of regulation 4(1)(a).</p>	<p>"</p>
(a) State Officers' remuneration and benefits every four years;	<p>CRA:</p> <p>4(1)(a) does not refer to review of State Officers' allowances. It should include review of state officers' allowances.</p>	<p>Remuneration for state officers is consolidated.</p>	<p>"</p>
(b) other public officers' remuneration	<p>County Assemblies Forum</p>	<p>Section 11 (b) of the SRC Act</p>	

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
every four years; and	The Constitution does not give SRC the mandate to 'review other public officers' remuneration. Rather, SRC's mandate is limited to 'advise' the public institution involved which has autonomy over its affairs. Amend to retain the mandate of SRC on remuneration and benefits of other public officers as advisory.	mandates SRC to keep under review all matters relating to the salaries and remuneration of public officers.	"
	CRA: 4(1)(a/b) This seems to interfere with independent offices, policy organs and other government levels. SRC can evaluate but as advisory only. The other institutions can independently carry out this evaluation and set SRC advice as a threshold. SRC to only advise every 4 years.	Section 11 (b) of the SRC Act mandates SRC to keep under review all matters relating to the salaries and remuneration of public officers. The Court of Appeal in TSC -vs- KNUT case affirmed the advice of SRC to be binding.	Adopt the provision of the draft regulations.
(c) allowances and benefits of other public officers.	KIPPRA The timeline for the review of the allowance and benefits of other public officers is not provided. As provided, in section (a) and (b), the Commission could consider stating the stipulated timelines.	The purpose for not setting a timeline for review of allowances and benefits for other public officers is to give the Commission a leeway to review when appropriate and also to manage expectations.	The Commission may consider review of allowances and benefits for other public officers every four year as part of the remuneration review cycles.
	KDF It is proposed that under sub regulation 4 (1) (c) allowances and benefits of all other public officers be reviewed every four years as stated under sub regulation 4 (1)	"	"
	EACC It is proposed that for regulation 4(1)(c), there be a provision for the time frame for the review of allowances and benefits for public officers as has been provided in 4(1) (a) and (b). The rationale is that for fairness to public officers there needs to be a timeline within which allowances and benefits will be reviewed. A timeline has been provided for the review of benefits for state officers.	"	"

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>CRA: 4(1)(c) It does not refer to the duration for review of Other public officers' allowances and remuneration. It should stipulate the duration for review.</p>	"	"
	<p>NPSC The SRC should be clear after how long it will review allowances and benefits of Public Officers other than that of State Officers (refer to proposed sub-Regulation 4 (1) (c)) noting that where need arises to review allowances and/or benefits, the SRC is allowed to conduct a special review under proposed sub- 1 Regulation 4 (3) In addition, the SRC needs to take into consideration inflation coupled with economic recession in African states. Consider specifying the period after which allowances and benefits of Public Officers other than that of State Officers to every three or four years.</p>	"	"
<p>(2) The Commission shall undertake the review taking into account the applicable national budgeting and planning cycles.</p>	<p>PARLSCOM This is contrary to section 11(e) of the Principal Act which provides for the Commission to simply undertake the review. It is thereafter the responsibility of Parliament to determine whether to allocate funds for implementation of the review. It is Parliament's role to make the budget as well as plan for the country's medium term expenditure framework. The Commission should therefore work closely with Parliament and the National Treasury with undertaking reviews of remuneration and benefits.</p>	<p>The proposed regulation is not contrary to Section 11(e) of the Principal Act which outlines "determine the cycle of salaries and remuneration Review upon which Parliament may allocate adequate funds for implementation". Rather, it gives effect and clarifies Section 11(e) of the SRC Act.</p>	<p>Adopt as proposed in the regulations.</p>
<p>(3) The Commission may, notwithstanding the provisions of sub-regulation (1), undertake a special review of the remuneration and benefits of State and other public officers to address emerging circumstances and conditions.</p>	<p>IGRTC The Regulations should indicate clear circumstances that may necessitate a special review. The term 'emerging circumstances and conditions' may lead to ambiguity in interpretation by the various stakeholders</p> <p>CRA The regulation refers to the review of remuneration and benefits in several other sections and omits allowances</p>	<p>It is not practical to list all emerging circumstances and conditions that would warrant a special review.</p> <p>Allowances are a subset of benefit.</p>	<p>Adopt the contents of the Regulation.</p> <p>Adopt the provision as contained in the regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>5. Requirements and procedure for submission of relevant information</p> <p>(1) Whenever a review is due, the Commission shall call for relevant information from public service institutions, on remuneration and benefits for their respective State and other public officers.</p>	<p>altogether. The review should include allowances.</p> <p>County Assembly of Makeni Proposes the regulation to specify the emerging circumstances and conditions for ease implementation as when the need arises e.g political instability, inflation, pandemic, endemic.</p> <p>County Assemblies Forum The Constitution does not give SRC the mandate to 'review other public officers' remuneration. Rather, SRC's mandate is limited to 'advise' the public institution involved which has autonomy over its affairs. Amend to retain the mandate of SRC on remuneration and benefits of other public officers as advisory.</p> <p>SCAC The regulation should follow the constitutional mandate of SRC to advise Government. Advise to national government (the Executive branch in particular) has already been guided to be channeled as above. This principle applies in all references in the regulations on communication to and from public service institutions under the national executive e.g (7)(1); 13(1)(f); 13(2)(e) and (f); 14(1); 15 (1) to (8); 17; 19 (2); 20(1) and (2); 22; 27; 28; 30(4); 31.</p> <p>Public Service Commission: The clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act. 5(1) Whenever a review is due, the Commission shall call for relevant information from public service institutions, on remuneration and benefits for their respective State officers.</p>	<p>It is not practical to list all emerging circumstances and conditions that would warrant a special review.</p> <p>Section 11 (b) of the SRC Act mandates SRC to keep under review all matters relating to the salaries and remuneration of public officers.</p>	<p>Adopt the contents of the Regulation.</p> <p>Adopt the contents of the Regulation subject to the proposed amendments in 4(1).</p>
		<p>Pursuant to Article 230(4) of the constitution, SRC is mandated to set remuneration and benefits for state officers and advise the national and county governments on the remuneration and benefits of all other public officers.</p> <p>There are several public service employing institutions in the nation and county governments.</p> <p>Section 11 (b) of the SRC Act mandates SRC to keep under review all matters relating to the salaries and remuneration of public officers. The Commission may therefore call for relevant information from public service institutions on remuneration and benefits for other public officers.</p>	<p>SRC to consider amending public service institution to public body.</p> <p>Adopt the provision as contained in the regulations subject to the amendment above.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
(2) Submission of relevant information under sub-regulation (1) shall be made—	-	-	-
(a) in writing; and	-	-	-
(b) in a format and within such timelines as may be prescribed by the Commission.	<p>NPSC Proposed sub-regulation 5(2)(b) provides that there will be a format within which all Public Service Institutions are to provide for a review to be conducted. A format needs to be provided to give legal effect, noting that SRC has made it mandatory.</p> <p>Consider providing for timelines within which Public Service Institutions will be required to give information to SRC at proposed regulations (5), noting the need for efficiency and accountability</p>	That submission of relevant information to SRC is administrative in nature and the format may vary from time to time due to the variance of information required.	Adopt the provision as proposed in the regulations.
<p>6. Parameters for review of remuneration and benefits The Commission shall, in undertaking a review in accordance with these Regulations, consider —</p>	<p>EACC: Regulations 6 and 9 seem to be discussing the same things. It is therefore proposed that regulation 6 be deleted and regulation 9 be left. The rationale is to avoid duplication/repetition.</p>	The provisions of Regulation 6 and 9 are similar.	Proposed to merge the provisions of regulation 6 and 9.
	<p>OCOB Merge Clause 6 and 9 of Regulations. This will avoid duplication of the provisions and improve the flow of the Regulations.</p>	"	"
	<p>NPSC The SRC ought to consider changes in the work environment especially within the security sector as a parameter to be considered during the review of remuneration</p>	Changes in the work environment are some of the factors taken into account during job evaluation.	Proposal not adopted as the same is addressed under regulation 9 (g) on job evaluation.
	<p>Public Service Commission The clause contravenes the mandate of the Public Service Commission under Article 234(2) (a) (i) as read together with Section 27 of the Public Service Commission Act. The clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act. Proposal It should read as follows:</p>	The mandate of SRC to conduct job evaluation in the public service is provided for in Section 11 (d) of the SRC act. In addition, the Court of Appeal in the TSC v KNUT & 3 Others [2015] eKLR case also found and held that SRC has a role to play in job	Adopt clause 6(d) as contained in the regulations.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>(a) the principles set out under Article 230 (5) of the Constitution, Section 12 of the Act and other legal provisions;</p>	<p>The Commission shall, in undertaking a review or keeping under review all matters relating to the salaries and remuneration of public officers in accordance with these regulations, consider -</p> <p>(a) the principles set out under Article 230 (5) of the Constitution, Section 12 of the Act and other legal provisions;</p> <p>(b) the economic performance of the country;</p> <p>(c) the outcome of comparative surveys on the labour markets and trends in remuneration; and</p> <p>(d) the job evaluation results as undertaken by public service institutions.</p> <p>Parliscom Reference to the words "other legal provisions" in the proposed Regulation 6(a) are vague and should clearly specify the written laws that the principles are anchored on.</p> <p>Proposal These include the Employment Act, the Income Tax Act, the Public Service Commission Act, the Parliamentary Service Commission Act, the Judicial Service Commission Act, the Retirement Benefits Act, the Pensions Act, the Parliamentary Pensions Act, and the Retirement Benefits (Deputy President and Designated State Officers) Act.</p>	<p>evaluation of public officers.</p> <p>Allowing institutions to undertake job evaluation may lead to disparities and thus hinder SRC from objectively discharging its mandate.</p>	<p>SRC has retained the provisions of the draft regulation.</p> <p>Delete the words "other legal provisions" and substitute with "other applicable laws".</p>
<p>(b) the economic performance of the country;</p> <p>(c) the outcome of comparative surveys on the labour markets and trends in remuneration; and</p> <p>(d) the job evaluation results.</p>	<p>-</p> <p>-</p> <p>-</p>	<p>-</p> <p>-</p> <p>-</p>	<p>-</p> <p>-</p> <p>-</p>
<p>(a) the principles set out under Article 230 (5) of the Constitution, Section 12 of the Act and other legal provisions;</p>	<p>CAJ The Commission should also consider other factors in undertaking a review.</p> <p>Proposal Factors such as the 'nature and risks' involved in a job should be taken into consideration by the Salaries and Remuneration Commission.</p>	<p>Changes in the work environment are some of the factors taken into account during job evaluation as one of the compensable factors.</p>	<p>Proposal not adopted as the same is addressed under regulation 9 (g) on job evaluation.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>COTU Proposed an additional clause (e) to include Wage guidelines, 2005.</p> <p>County Assembly of Makueni Proposes insertion of new regulation 6 (e) on Collective Bargaining Agreement and states that when undertaking a review the Commission should consider other factors like the Collective Bargaining Agreement.</p>	<p>The concerns have been addressed under Regulation 9 (k)</p> <p>The concerns have been addressed under Regulation 9 (i)</p>	<p>The concerns have been addressed under Regulation 9 (k)</p> <p>The concerns have been addressed under Regulation 9 (i)</p>
<p>7. Review of allowances and other benefits (1) The Commission shall undertake periodic review of allowances and other benefits and advise public service institutions taking into account provisions of regulations 4 and 6.</p>	<p>EACC: It is proposed that a time frame for the review of allowances and benefits for public officers be provided as has been provided for state officers in Regulation 4(1)(a). The rationale is that for fairness to public officers there needs to be a timeline within which allowances and benefits will be reviewed. A timeline has been provided for the review of benefits for state officers.</p>	<p>Proposal is in order.</p>	<p>The proposal has been reflected in the revised regulation 4 (2).</p>
	<p>Public Service Commission The clause contravenes on the mandate of the Public Service Commission under Article 234(2) (a)(i) as read together with Section 27 of the Public Service Commission Act. The clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.</p> <p>Proposal The Commission shall undertake periodic review or keep under review, as the case may be, allowances and other benefits and advise public service institutions taking into account provisions of regulation 4.</p>	<p>Proposal is in order.</p>	<p>The proposal has been reflected in the revised regulation 4 (2).</p>
<p>(2) The Commission shall from time to time issue guidance to give effect to the provisions of sub regulation 1.</p>	<p>Parlscm Regulation 7(2) contravenes section 13(m) of the Statutory Instruments Act. Regulation 7(2), in effect, delegates the power to make further statutory instruments to the Commission without reference to the legislative role of Parliament. Article 94(5) of the Constitution of Kenya, 2010 states as follows:</p>	<p>Proposal is in order.</p>	<p>Consider reviewing the provisions of Regulation 7(2).</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>SETTING BENEFITS AND SALARIES FOR BOTH LEVELS OF GOVERNMENT</p>	<p>"No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation."</p> <p>This is further contrary to section 13(m) of the Statutory Instruments Act as it amounts to an inappropriate delegation of legislative powers.</p> <p>The guidelines contemplated should be set out in the Regulations for approval together with the other provisions of the Regulations.</p> <p>Regulation 24(e) contravenes section 13(m) of the Statutory Instruments Act as it amounts to an inappropriate delegation of legislative powers.</p> <p>Regulation 29(2) is in contravention of section 13(m) of the Statutory Instruments Act in so far as it purports to delegate the timelines for submission of the information sought.</p> <p>Regulation 32 is in contravention of section 13(m) of the Statutory Instruments Act in so far as it purports to give powers to the Commission to issue guidance on implementation of the Regulations and amounts to an inappropriate delegation of legislative power.</p> <p>KDF</p> <p>It is proposed that any reviews and benefits be undertaken for both State and other public officers at the same time (concurrently) in place of the current practice where review for State officers are different from that of other public officers.</p> <p>County Assembly Of Makeni</p> <p>Proposes the replacement of the word "guidance" with "guidelines"</p> <p>CRA</p> <p>To include a section to seek recommendations from CRA before setting benefits and salaries for both levels of government to avoid any confusion based on the equitable allocation.</p> <p>There have been several conflicts between the equitable allocations and the advice on benefits and salaries for</p>	<p>Proposal is in order.</p> <p>Proposal is in order.</p> <p>CRA has proposed an additional regulation 7A to incorporate cognizant CRA equitable share to counties when it comes to the county ceilings. The proposal by CRA will ensure affordability and</p>	<p>The proposal has been reflected in the revised regulation 4 (2).</p> <p>Consider reviewing the provisions of Regulation 7(2).</p> <p>SRC to consider adopting the proposal by CRA on regulation 7A to incorporate cognizant CRA equitable share to counties when it comes to the county ceilings.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>government officials specifically county governments and CRA ceilings.</p> <p>Proposal Insert a regulation to say "When advising on remuneration and benefits for the County governments, SRC will seek advise from the CRA on the thresholds available for setting the ceilings.</p>	<p>fiscally sustainability of remuneration and benefits payable in the county governments.</p>	
<p>8. Pension</p> <p>(1) The Commission shall set the pension or gratuity due to a State officer.</p>	<p>Public Service Commission: The entire clause contravenes the provisions of, among others, the Presidential Retirement Benefits Act, Retirement Benefits (Deputy President and Designated State Officers) Act, Retirement Benefits Act, Pensions Act and the Public Service Superannuation scheme Act.</p> <p>Proposal Clause 8 should be deleted in its entirety.</p> <p>MINISTRY OF EAST AFRICAN COMMUNITY AND REGIONAL DEVELOPMENT SRC may consider and in conjunction with Treasury on how pension may be fully privatized.</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p> <p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p> <p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		<p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	<p>Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>
<p>KDF Regulation 8 violates section 244(1) of the KDF Act providing pension as it is usurping the powers of the Defence Council (DC) and the Treasury to provide for and review pension regulation for KDF personnel. In addition, the draft regulation comprise subsidiary legislation which improperly purport to amend statute.</p>		<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>
<p>TSC The First Schedule of Pensions Act provides for a formula for calculation of pensions due to a public officer. Further, Public Service Superannuation Scheme Act</p>		<p>"</p>	<p>"</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>provides for contributions and payment of retirement benefits for defined contribution. It is our considered view therefore that the proposed regulation tend to bestow functions provided by other statutes on SRC without any basis in law.</p> <p>Proposal</p> <p>The entirety of Regulation 8 be deleted.</p>		
	<p>OCOB</p> <p>Pensions should be addressed by the Pension Act. Further, from practice, seconded staff can earn both pension and gratuity since institutions are required to remit pensions to Director Pensions. The Pension is based on the officer's basic salary from the parent ministry. At the end of the contract, the officer is paid gratuity based on the basic salary at the institution where the officer is on secondment.</p> <p>Proposal</p> <p>Regulation 8 should be deleted.</p>	"	"
	<p>NPSC</p> <p>It would be prudent to provide that the SRC shall, in consultation with the National Treasury set the pensions of State Officers and advice and review the pensions of other Public Officers, noting that the National Treasury is mandated with the formulation and management of national pensions.</p>	"	"
	<p>Parlscom</p> <p>The Regulations should provide that the pension or gratuity shall be based on a scientific formula and further be in tandem with the relevant pension laws (Retirement Benefits Act, the Pensions Act, the Parliamentary Pensions Act, and the Retirement Benefits (Deputy President and Designated State Officers) Act. This shall bring the Regulations into conformity with section 13(k) of the Statutory Instruments Act which provides that statutory instruments should not make</p>	<p>The determination of pensions may require one or more formulas scientific or otherwise, and therefore the process cannot be fixed in the regulations based on one formula.</p>	"

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>rights, liberties or obligations of any person unduly dependent on insufficiently defined administrative powers.</p> <p>COTU States that pension benefit are meant to cushion retirees and trustees are appointed to ensure members get maximum benefit. It states that the Commission ought not to dictate the type of scheme; It also states that Pension is guided and regulated through the RBA and the proposed change by SRC shall interfere and conflict with the mandate of RBA under the Act that governs it. Further states that the Authority outlines how contribution by employer and employee can be set out and SRC cannot determine what level of contribution can be made and how trustee to pension scheme can be appointed.</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>	
<p>County Assembly Of Makeni Proposes the insertion of the word " set" immediately after "shall"</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>	

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		<p>public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	
<p>(2) The Commission shall advise on the pension or gratuity due to other public officers.</p>	<p>SCAC This proposal is ultra vires the mandate of SRC. Pension in public service is guided by the Public Service Superannuation Scheme and pensions Act as advised by the National Treasury in consultation with other relevant Government entities.</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>
	<p>NPSC It would be prudent to provide that the SRC shall, in consultation with the National Treasury set the pensions of State Officers and advice and review the pensions of other Public Officers, noting that the National Treasury is mandated with the formulation and management of national pensions.</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>County Assembly of Makueni Proposes the insertion of the word " set" immediately after "shall"</p>	<p>government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	<p>with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>
		<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>ICPAK</p> <p>The provision leaves room for public service institutions to set pension or gratuity to other public officers. With the growing burden of pensions due to public officers, there is need for harmonization so as to ensure pensions due are sustainable.</p> <p>Proposal</p> <p>Amend regulation 8(2) to read:</p> <p>The Commission shall set the pension or gratuity due to other public officers.</p> <p>Justification</p> <p>To facilitate proper planning.</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exists 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p>	<p>This provision of regulation 8 in its entirety should be relooked at.</p> <p>SRC to consider revising the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>	<p>Reevaluate the provision of regulation 8 in its entirety.</p> <p>SRC to review the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>
<p>TSC</p> <p>The proposed Regulation contradicts Section 4 of the Pensions Act that provides that every person has absolute right to pensions and gratuity.</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exist 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for</p>	<p>Pension is an employment benefit and therefore falls within the mandate of SRC to: a) set and regularly review for State Officers; and b) advise the national and county government on with respect to other public officers.</p> <p>There exist 13 legal frameworks that guide provision of pension in the public service. The laws and regulations provide varying retirement benefits for</p>	<p>Reevaluate the provision of regulation 8 in its entirety.</p> <p>SRC to review the regulation to include liaising with the Retirement Benefits Authority and the National Treasury to ensure all public service retirement schemes are regulated and supervised by the RBA.</p>
<p>(3) A State or other public officer shall not be paid both pension and gratuity for the same period of service.</p>			

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>(4) Allowances payable to State and other public officers shall not form the basis of computation of pension or gratuity.</p>	<p>IBEC Notwithstanding R8(4) to consider specifying that takes effects after the next collective bargaining agreement (CBA). Housing and commuter allowance currently form part of the pensionable sum under the County Government Pension Scheme. It is a contractual matter within the CBA which may be vacated during the next negotiation.</p> <p>KDF The KDF (Pensions and Gratuities) (Officers and Service Members) Regulations, 2021 states as shown: Regulation 3 (1) "Pensionable emoluments" means the rate of pay including additional pay in issue to an officer or service member at the time of his retirement or discharge; Pensions Act CHAPTER 189 reised 2012 (1986) Regulation 2 (1) (a) "pensionable emoluments" means— (a) in respect of servie under the Government after the 31st December, 1953, includes salary, inducement and overseas addition to salary and personal allowance, but does not include duty allowance, house allowance, entertainment allowance or any other emoluments whatsoever; "Pensionable emoluments" includes salary and responsibility allowance but does not include any cost of living allowance, entertainment allowance or any other emoluments whatsoever, hence pensionable pay should be based on the contributions the employer makes to the pensions scheme (defined benefit) on behalf of the employee.</p>	<p>the different state officers and other public officers which has led to inequities. Therefore, it may be necessary to relook at Regulation 8 in its entirety.</p> <p>"</p> <p>"</p>	<p>"</p> <p>"</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>From the foregoing, it is evident that some allowances counts towards pension (remunerative allowance) while others are not. The proposed regulation needs to be consistent with Pensions Acts and other regulations in use.</p>		
<p>(5) Where a public service institution establishes a pension scheme for State or other public officers, such pension scheme design shall be a defined contribution.</p>	<p>County Assembly of Embu With regard to pensions and gratuities there is need to have a clear provision on transition as officers are already in existing pension schemes that may not necessarily meet the thresholds proposed in these regulations and it is vital to allow for reasonable time for transition or at least offer guidance/timelines on how the regulation shall be implemented.</p>	"	"
	<p>Council of Governors The COG proposed Regulation 8(5) and (6) to be deleted stating that setting up of pension schemes for county government is a function of the County Government under Article 185 of the Constitution. They also stated that SRC should be able to provide guidance for County Governments by providing advice on the quantum and benefits payable to State and public officers in the counties.</p>	"	"
	<p>TSC The Public Service Superannuation Scheme Act creates a defined contribution for public service and gives guidance to contribution and payment of retirement benefits under the scheme.</p>	"	"
<p>(6) The Commission shall provide guidance to give effect to the provisions of sub-regulation 5.</p>	<p>EACC: It should be provided as to what format the guidance for the provisions of sub-regulation 5 will be. Perhaps it could be in the form of guidelines issued by the SRC. The rationale is that it will provide a way forward for the SRC to come up with this guidance.</p>	"	"
	<p>CRA: The Retirement and Benefits Act provides these guidelines. This is not a function of SRC. On the</p>	"	"

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>financial aspect, the MOF can always provide directions in the annual finance bill, therefore delete 8(6)</p>		
	<p>Council of Governors The COG proposed Regulation 8(5) and (6) to be deleted stating that setting up of pension schemes for county government is a function of the County Government under Article 185 of the Constitution. They also stated that SRC should be able to provide guidance for County Governments by providing advice on the quantum and benefits payable to State and public officers in the counties.</p>	"	"
	<p>TSC The Public Service Superannuation Scheme Act creates a defined contribution for public service and gives guidance to contribution and payment of retirement benefits under the scheme.</p>	"	"
<p>(7) The Commission shall undertake periodic reviews and make recommendations on pensions payable to persons eligible for such pension. (in consultation with)</p>	<p>CAJ (with regard to 8 (7) and (8)) This paragraph should be amended to include a rider that any reduction in the recommended rates should not affect employees who are already benefiting from a higher rate.</p> <p>The Commission further proposes that SRC sets a fixed rate of pension contribution for the employer and employees as opposed to giving a range as is the case currently. Any reviewed rate by the Salaries and Remuneration Commission that is lower than the set rate should only affect officers who join Pension Scheme after the new rates</p> <p>This provision would ensure that there is harmony and fairness in pension contributions across the public service, and employers would not be at liberty to choose from a range.</p> <p>TSC</p>	"	"

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>The proposed Regulation extend to the mandate of SRC beyond what is provided under Section 11(g) of the SRC Act. The Regulation is thus ultra vires.</p> <p>KDF</p> <p>a. Consider a 4 (four) year review cycle instead of a periodic review which is a broad statement.</p> <p>b. Pension be protected against inflation by automatically increasing/adjusting in accordance with the inflation or</p> <p>CRA:</p> <p>The Retirement and Benefits Act provides these guidelines. This is not a function of SRC. On the financial aspect, the MOF can always provide directions in the annual finance bill, therefore delete 8(7).</p>	"	"
(8) Setting, reviewing, advising and recommendations on pension review —	-	-	-
(a) shall be subject to the prevailing economic conditions, affordability and fiscal sustainability; and	-	-	-
(b) may, among others, be informed by the outcome of an actuarial valuation.	-	-	-
(c)	<p>County Assembly of Makueni</p> <p>Proposes the insertion of a new regulation 8(8)(c) on the Collective Bargain Agreement.</p> <p>Proposes that pension review exercise should consider among other issues the Collective Bargain Agreement.</p>	"	"
<p>9. Considerations during setting, review and advise on remuneration and benefits.</p> <p>(1) The Commission shall, in setting, reviewing and advising on remuneration and benefits, where applicable, consider—</p>	<p>EACC</p> <p>Regulations 6 and 9 seem to be discussing the same things. It is therefore proposed that regulation 6 be deleted and regulation 9 be left.</p> <p>The rationale is to avoid duplication/repetition.</p> <p>MINISTRY OF EAST AFRICAN COMMUNITY AND REGIONAL DEVELOPMENT</p> <p>The SRC may also consider an upward review of remuneration and benefits of the lower cadre, dut to</p>	<p>The provisions of Regulation 6 and 9 are similar.</p> <p>The comment by is one of the issues SRC will consider as part of the 3rd remuneration review cycle 2021/22 –</p>	<p>Proposed to merge the provisions of regulation 6 and 9.</p> <p>The Commission shall advise on salary structures under the third remuneration review cycle upon the lapse of the</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>economic challenges that these employees face.</p> <p>COTU Recommends that before a review is carried out, it is important to carry out comparative survey on labour markets and trends.</p>	<p>2024/25.</p> <p>The outcome of comparative surveys on the labour markets and trends in remuneration is one of the considerations provided for during setting, review and advise on remuneration and benefits under Regulation 9.</p>	<p>freeze period.</p> <p>Retain as provided in the draft regulation</p>
	<p>County Assembly of Makueni Regulation 9(1)(c) it proposes the word "institution" to be deleted.</p> <p>States that financial capacity should be of general public service and not particular public institution since all public service institution are paid from the public coffers.</p> <p>Proposes the insertion of the words "and benefits" immediately after the word remuneration in (1) (e)</p> <p>(1)(f) proposes the insertion of the word "related immediately" after the word "similar" and also proposes the words "same sector" be deleted and replaced with "public service"</p> <p>Public Service Commission Clause 6 and 9 are dealing with the same or related issue. Clauses 6 and 9 should be merged.</p> <p>Proposal In the merger, clause 9(1) should read: The Commission shall, in setting, reviewing or advising on remuneration and benefits, where applicable, consider ...</p>		
	<p>NPSC Alongside using comparative surveys on labour markets and trends, the SRC ought to consider risks involved in undertaking various tasks especially within the security sector.</p>	<p>Some of the factors taken into account during job evaluation as a compensable factor are risks involved in undertaking a tasks .</p>	<p>The proposal has been addressed under regulation 9 (g) on job evaluation.</p>
	<p>County Assembly of Embu For public officers, the level of education and period of active service seem not to form part of the consideration to be made during, review and advise on remuneration</p>	<p>The level of education and period of active service are some of the factors taken into account during job evaluation</p>	<p>The proposal has been addressed under regulation 9 (g) on job evaluation</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>a. the principles set out under Article 230 (5) of the Constitution, Section 12 of the Act and other legal provisions;</p>	<p>and benefits. The regulation should be revised to include the above as consideration as they are an important factor in ensuring that there is no stagnation of officers and that relevant job experience and advanced education are rewarded in order to promote job satisfaction amongst public officers as well as retention of valuable public officers.</p> <p>Parliscom Reference to the words "other legal provisions" in the proposed Regulation 9(1)(a) are vague and should clearly specify the written laws that the principles are anchored on.</p> <p>Proposal These include the Employment Act, the Income Tax Act, the Public Service Commission Act, the Parliamentary Service Commission Act, the Judicial Service Commission Act, the Retirement (Benefits) Act, the Pensions Act, the Parliamentary Pensions Act, and the Retirement Benefits (Deputy President and Designated State Officers) Act.</p>	<p>as one of the compensable factors.</p> <p>It may not be practical to set out in these regulations all the other legal provisions the Commission take into account when reviewing remuneration and benefits.</p>	<p>SRC has retained the provisions of the draft regulation.</p>
<p>b. the economic performance of the country;</p>	<p>-</p>	<p>-</p>	<p>-</p>
<p>c. the capacity of a public service institution to afford the cost of proposed remuneration and benefits;</p>	<p>CAJ This paragraph should be deleted. P.E allocations are approved by the National Assembly. The SRC should not be the determinant on whether an institution has capacity to afford.</p> <p>CRA 9(1) (c) The capacity of the public service institution is not an independent variable. It is dependent on factors that the commission should be in a position to hold constant and not allow to be relegated to the unknown. The Commission should hold constant and not allow to be relegated to the unknown.</p> <p>CRA 9(1) (d) should be added to deal with the "unique features" of public service institutions.</p>	<p>Principle on affordability</p>	<p>Principle on affordability</p> <p>SRC has retained the provisions of the draft regulation.</p>
<p>d. the ability of a public service institution to sustain payment of remuneration and benefits;</p>	<p>-</p>	<p>-</p>	<p>SRC has retained the provisions of the draft regulation.</p>
<p>e. the outcome of comparative surveys on the labour markets and trends in</p>	<p>-</p>	<p>-</p>	<p>-</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>remuneration;</p> <p>f. comparative analysis between remuneration and benefits for similar jobs within institutions in the same sector to ensure equity and competitiveness;</p>	<p>KDF It is proposed the considerations to include additional sub Para: External comparator where there is no local comparator for best practices.</p>	<p>The outcome of comparative surveys on the labour markets and trends in remuneration as set out under regulation 9(1)(e) addresses both local and international comparators.</p>	<p>The proposal has been addressed under regulation 9(1) (e) on job evaluation comparative surveys on the labour markets and trends in remuneration.</p>
<p>g. job evaluation results as undertaken by SRC;</p>	<p>Public Service Commission 9(1)(g) should read; The job evaluation results as undertaken by public service institutions;</p>	<p>Use of job evaluation results from job evaluation conducted by different public service institutions will violate the uniformity principle of the evaluation. Public Service Institutions will apply different compensable factors, JE systems among others which will make comparability across the public service difficult. (add practice of job analysis at the institutional level pursuant to which final job descriptions are submitted to SRC for J.E)</p>	<p>Retain as provided in the draft regulation</p>
<p>h. cost of living; i. existing collective bargaining agreements;</p>	<p>-</p>	<p>-</p>	<p>-</p>
<p>j. achievement of performance and productivity targets;</p>	<p>IGRTC On the issue of competitiveness and productivity, there is need to consider the provisions of the National Productivity and Competitiveness Council Bill, 2019 which seeks to establish a Council to provide a forum for an on-going dialogue on all matters related to productivity, quality and competitiveness.</p>	<p>The provisions of the National Productivity and Competitiveness Council Bill, 2019 have already considered during the formulation of these regulations. The Commission shall work in collaboration with the institution mandated to provide standards on productivity.</p>	<p>SRC has retained the provisions of the draft regulation.</p>
<p>k. government policies and guidelines; and</p>	<p>-</p>	<p>-</p>	<p>-</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
i. any other relevant factor in determination of remuneration or benefits.	-	-	-
(2) In the discharge of its mandate, the Commission may invite views from stakeholders which include—	<p>Parlscm Under Article 10 of the Constitution, participation of the people is a national value and therefore mandatory. Regulation 9(2) should therefore provide that the Commission "shall" invite the views of the stakeholders while discharging its mandate.</p>	<p>Public participation of the people is one of the core national values and principles of governance as set out under Article 10 of the Constitution. The objective of public participation in decision making is to ensure that the Government is aware of the concerns of the public thus eliminating the risk of arbitrariness and irrationality in the formulation of policy or legislation. Public participation is therefore an essential pillar of decision making as it ensures that the Government is open, accessible, accountable and responsive to its citizens.</p> <p>The use of the word "may" in the Regulation 9(2) is interpreted to mean that the Commission is not obliged to undertake public participation during setting, review and advise on remuneration and benefits.</p>	Proposal in order. Replace the word "may" with the word "shall".
	<p>Public Service Commission 9(2) should read; In the discharge of its mandate, the Commission shall invite views from stakeholders which include-</p>	"	"
	<p>OCOB To be aligned to the review and advice by the</p>	"	"

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>Commission on the remuneration of State and Public officers as well as to the general public. Our view is that the views of the stakeholders should always be considered. Use of the term "may" makes it discretionary and not mandatory.</p> <p>Proposal Delete the word "may" and replace with the word "shall".</p> <p>COTU Recommended the use of "shall" as opposed to may as it's a constitutional mandate.</p> <p>KDF Article 201(1) of the constitution mandates public participation in public finance management regulation 9(2) ought to be amended to read in mandatory terms.</p> <p>- public service institutions;</p> <p>(a) public service institutions;</p> <p>(b) employees of the public service institution;</p> <p>(c) relevant employer associations;</p> <p>(d) relevant trade unions;</p> <p>(e) professional bodies; and</p> <p>(f) members of the public.</p> <p>10. Communication and effective date of advice The Commission shall communicate the—</p>	<p>Commission on the remuneration of State and Public officers as well as to the general public. Our view is that the views of the stakeholders should always be considered. Use of the term "may" makes it discretionary and not mandatory.</p> <p>Proposal Delete the word "may" and replace with the word "shall".</p> <p>COTU Recommended the use of "shall" as opposed to may as it's a constitutional mandate.</p> <p>KDF Article 201(1) of the constitution mandates public participation in public finance management regulation 9(2) ought to be amended to read in mandatory terms.</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>KDF It is proposed that the Commission sets a common effective date of implementation of set, reviewed remuneration and benefits for both State officers and other public officers.</p>	<p>"</p> <p>"</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>It may not be practical to have a common effective date of implementation of set, reviewed remuneration and benefits for both State and other public officers as public bodies may request SRC to either set, review or advise on remuneration and benefits for State and other public officers respectively at different times.</p> <p>The proposals is contrary to the provisions of Article 230 (4) of the Constitution with respect to the mandate of SRC.</p>	<p>"</p> <p>"</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>Retain the provision as contained in the regulations.</p>
<p>(a) set and reviewed remuneration and benefits for State officers indicating the effective date of implementation; and</p>	<p>County Assembly Of Makueni 10 (a) Proposes the insertion of the word "advise" immediately after the word "set" and insertion of the word "other public officers" immediately after "state officer"</p>	<p>The proposals is contrary to the provisions of Article 230 (4) of the Constitution with respect to the mandate of SRC.</p>	<p>Retain the provision as contained in the regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>Also states that SRC should set, advise and review on remuneration and benefit of both state and other public officers.</p>	<p>10 (a) focuses on state officers while 10 (b) focusses on other public officers</p>	
(b) advice on remuneration and benefits for other public officers indicating the effective date of implementation.	<p>Further proposes the merging of 10 (a) and (b).</p> <p>Parliscom The role of the Salaries and Remuneration with other public officers is to advise and not to set the remuneration. The role of setting the remuneration and benefits of other public officers falls within the remit of their respective employers who also appoint and supervise the office holders.</p> <p>The Salaries and Remuneration Commission has no powers to 'redefine contractual relations between an employer and employee.</p>	<p>The mandate of the Commission with respect to setting the remuneration and benefits for State officers is distinct from that of advising national and county governments on the remuneration and benefits of other public officers.</p> <p>By dint of Article 259 (11) of the Constitution and the judgment of the Court of Appeal in Teachers Service Commission (TSC) v Kenya Union of Teachers (KNUT) & 3 Others [2015] eKLR to SRC's advice under Article 230 (4) (b) is mandatory and binding.</p> <p>The issue raised by Parliscom has been addressed</p>	<p>Retain</p>
	<p>SCAC Communication and effective date of any advisories for public officers shall be subject to the consideration and issuance by the respective focal point organs as listed above.</p>	<p>By dint of Article 259 (11) of the Constitution and the judgment of the Court of Appeal in Teachers Service Commission (TSC) v Kenya Union of Teachers (KNUT) & 3 Others [2015] eKLR to SRC's advice under Article 230</p>	<p>Retain the provision as contained in the regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		<p>(4) (b) is mandatory and binding.</p> <p>SRC guides on the effective date of implementation which is across all employing institutions. Leaving the effective date to be determined by the focal point organization may result to disparity in implementing SRC'S advice. For example if the advice has cost implication, the commission will have discussed with the national treasury on the cost implication and therefore the effective date will be uniform across all institutions.</p>	
<p>CRA</p> <p>This is not mandatory as it is advice. The Commission should communicate the advice on remuneration and benefits for other public officers and will advise on the effective date of implementation.</p>		<p>By dint of Article 259 (11) of the Constitution and the judgment of the Court of Appeal in Teachers Service Commission (TSC) v Kenya Union of Teachers (KNUT) & 3 Others [2015] eKLR to SRC's advice under Article 230 (4) (b) is mandatory and binding.</p> <p>LOOK AT WHT WAS DISCUSSED</p>	<p>Retain the provision as contained in the regulations.</p>
	<p>Public Service Commission</p> <p>The clause exceeds the powers of SRC as provided for in Article 230(4) (b) of the Constitution which has since been interpreted by the Supreme Court in Pet. No. 42 of 2019.</p>	<p>The mandate of SRC to issue advice to the national and county governments under Article 230 (4) (b) of the Constitution can be</p>	<p>Retain the clause.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>Proposal The Clause should read Advice on remuneration and benefits for other public officer. indicating the effective date of implementation (delete)</p>	<p>distinguished from the mandate of CAJ to make recommendations under the CAJ Act. This is because, by dint of Article 259 (11) of the Constitution, the national and county government cannot proceed without the advice of SRC.</p> <p>The judgment of the Supreme Court in in Pet. No. 42 of 2019 is also distinguishable with respect the mandate of SRC under Article 230 (4) (b) of the Constitution as the Supreme Court did not address the advice or recommendations contemplated under Article 259 (11) of the Constitution.</p> <p>SRC guides on the effective date of implementation which is across all employing institutions. Leaving the effective date to be determined by the focal point organization may result into disparity in implementing SRC'S advice. For example if the advice has cost implication, the commission will have discussed with the national treasury on the cost implication and therefore the effective date will be uniform across all institutions.</p>	

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	<p>COTU Proposes the need to introduce timelines the way budget timelines are set to enable public institution know their role , obligation and duration.</p>	<p>Regulation 4 highlights the review cycle which is tired to the national budgeting and sub regulation 3 provides for a special review under special circumstances.</p> <p>A month by month breakdown of the timelines in line with the budget making process is administrative when it comes to remuneration and benefit review cycle.</p>	
<p>11. Job evaluation The Commission shall undertake job evaluation covering jobs in public service institutions in order to—</p>	<p>Public Service Commission (with regard to Regulations 11- 18)</p> <p>The clauses contravene on the mandate of the Public Service Commission under Article 234 (2) (a) (i) as read together with Section 27 of the Public Service Commission Act.</p> <p>The clauses exceed the powers and functions of SRC as provided in Article 230 (4) of the Constitution and Section 11 of the SRC Act.</p> <p>With regard to State officers their jobs are defined in the Constitution and enabling legislation.</p> <p>Proposal</p> <p>Clauses 11 to 18 should be deleted.</p>	<p>The mandate of SRC to conduct job evaluation in the public service is provided for in Section 11 (d) of the SRC Act. In addition, the Court of Appeal in the TSC v KNUT & 3 Others [2015] eKLR case also confirmed that SRC has a role to play in job evaluation of public officers.</p> <p>Section 12 of the SRC Act requires SRC to take into account the principle of equal pay for work of equal value. Job evaluation is a mechanism through which SRC upholds the principle of equal pay for work of equal value.</p> <p>Further, whereas the roles of state officers are determined by the Constitution, SRC still</p>	<p>The provisions on job evaluation, as set out in the draft regulations have been revised to clarify the conduct and purpose of job evaluation by SRC.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		undertakes job evaluation to determine their relative worth.	
	<p>County Assembly of Embu (with regard to Regulations 11 -17)</p> <p>These proposed Regulations make provisions on job evaluation by the Commission. The Constitution (Article 230) and Salaries and Remuneration Commission Act, 2011, have neither expressly nor impliedly given this mandate to the Commission. Job evaluation exercise in National Public Service is the sole responsibility of the Public Service Commission under Article 234 of the Constitution. This is the same with Judicial Service Commission (for Judiciary), Parliamentary Service Commission (for Parliament) County Public Service Boards (for county public service), County Assembly Service Boards (Section 11 of the County Assembly Services Act, 2017- for county assembly service) among others. The responsibility of the Commission is limited to setting, reviewing or advising on the salaries and benefits of those that hold positions in the respective institutions. The object, intent and purpose of Article 230 (4), Section 26 of the Salaries and Remuneration Commission Act as read together with Article 94 (6) of the Constitution, have therefore been negated by these proposed regulations, and should be struck out and expunged forthwith.</p>	<p>The mandate of SRC to conduct job evaluation in the public service is provided for in Section 11 (d) of the SRC Act. In addition, the Court of Appeal in the TSC v KNUT & 3 Others [2015] eKLR case also confirmed that SRC has a role to play in job evaluation of public officers.</p> <p>Section 12 of the SRC Act requires SRC to take into account the principle of equal pay for work of equal value. Job evaluation is a mechanism through which SRC upholds the principle of equal pay for work of equal value.</p>	<p>The draft regulations on job evaluation have been revised to clearly distinguish the mandate of SRC in relation to;</p> <ul style="list-style-type: none"> (a) setting and regularly reviewing the remuneration and benefits for State officers; (b) advising the national and county governments on the remuneration and benefits of other public officers; and (c) keeping under review and advising on the remuneration and benefits for other public officers.
	<p>CRA This provision does not comply with the constitution. The role of advice is not to set. Reword using the word "will" and leave room for the other government institution that are not state offices to use the SRC advice as to the minimum threshold and set their applicable standards.</p> <p>Proposal The proposed wording should be: The Commission will</p>	<p>The mandate of SRC to conduct job evaluation in the public service is provided for in Section 11 (d) of the SRC Act. In addition, the Court of Appeal in the TSC v KNUT & 3 Others [2015] eKLR case</p>	<p>The draft regulations on job evaluation have been revised to clarify the conduct and purpose of job evaluation by SRC.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>a. determine comparable and relative worth of jobs in the public service institutions; determine equal pay for work of equal value; ensure fairness and transparency in pay.</p>	<p>undertake job evaluation covering jobs in public service institutions to-</p> <p>(a) advice on the comparable and relative worth of jobs in the public service institutions;</p> <p>(b) advice on job classification in the public service; and</p> <p>(c) advice on rationalizing and harmonizing job grading structures in the public service.</p>	<p>also confirmed that SRC has a role to play in job evaluation of public officers.</p> <p>Section 12 of the SRC Act requires SRC to take into account the principle of equal pay for work of equal value. Job evaluation is a mechanism through which SRC upholds the principle of equal pay for work of equal value.</p>	
<p>a. classify the jobs in the public service; and</p>	<p>SCAC</p> <p>Proposal is ultra vires. Rationalization of job grading structures and classification of jobs within public service (in particular State Corporations) is a policy function of the Ministry of Public Service in consultation with the Public Service Commission and in the case of State Corporations, SCAC.</p> <p>SRC can undertake job evaluation covering jobs in the public service institutions but the penultimate aim should be to advise the national government strictly in terms of Article 230 (4) (b). If SRC delves into harmonizing job grading structures (euphemism for developing grading structures) and classifying jobs for individual state corporation and the ministries, then they would be operating ultra vires the constitution.</p>	<p>It is important to recast the purpose of job evaluation by SRC in line with its constitutional and statutory mandate.</p>	<p>The draft Regulations have been revised to now provide that –</p> <p>The Commission shall undertake job evaluation covering jobs in public bodies in order to—</p> <ol style="list-style-type: none"> a. determine comparable and relative worth of jobs in public bodies; b. determine equal pay for work of equal value; and c. ensure fairness and

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
			transparency in pay.
<p>c. rationalise and harmonise job grading structures in the public service.</p>	<p>SCAC Proposal is ultra vires. Rationalization of job grading structures and classification of jobs within public service (in particular State Corporations) is a policy function of the Ministry of Public Service in consultation with the Public Service Commission and in the case of State Corporations, SCAC. SRC can undertake job evaluation covering jobs in the public service institutions but the penultimate aim should be to advise the national government strictly in terms of Article 230 (4) (b). If SRC delves into harmonizing job grading structures (euphemism for developing grading structures) and classifying jobs for individual state corporation and the ministries, then they would be operating ultra vires the constitution.</p>	<p>It is important to recast the purpose of job evaluation by SRC in line with its constitutional and statutory mandate.</p>	<p>The draft Regulations have been revised to now provide that –</p> <p>The Commission shall undertake job evaluation covering jobs in public bodies in order to—</p> <ol style="list-style-type: none"> a. determine comparable and relative worth of jobs in public bodies; b. determine equal pay for work of equal value; and c. ensure fairness and transparency in pay.
	<p>Parlscom Regulation 11(c) is not in tandem with section 11(c) of the Salaries and Remuneration Commission Act in that the objective of the rationalization and harmonization of job grading structures in the public service has not been set out in the Regulations.</p> <p>Section 11(c) of the Salaries and Remuneration Commission Act provides that the purpose of harmonization, equity and fairness of remuneration is for</p>	<p>It is important to recast the purpose of job evaluation by SRC in line with its constitutional and statutory mandate.</p>	<p>The draft Regulations have been revised to now provide that –</p> <p>The Commission shall undertake job evaluation covering jobs in public bodies in order to—</p>

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	<p>the attraction and retention of requisite skills in the public service. The said section 11(c) provides that in addition to the powers and functions of the Commission under Article 230(4) of the Constitution, the Commission shall "advise the national and county governments on the harmonization, equity and fairness of remuneration for the attraction and retention of requisite skills in the public sector."</p>		<p>a. determine comparable and relative worth of jobs in public bodies;</p> <p>b. determine equal pay for work of equal value; and</p> <p>c. ensure fairness and transparency in pay.</p>
	<p>County Assembly of Makueni 11(c) proposes the word "remuneration and benefits" to be inserted immediately "grading structure"</p>	<p>It is important to recast the purpose of job evaluation by SRC in line with its constitutional and statutory mandate.</p>	<p>The draft Regulations have been revised to now provide that –</p> <p>The Commission shall undertake job evaluation covering jobs in public bodies in order to—</p> <p>a. determine comparable and relative worth of jobs in public bodies;</p> <p>b. determine equal pay for work of equal value; and</p> <p>c. ensure fairness and transparency in pay.</p>
<p>12. Criteria for job evaluation (1) The Commission shall undertake job evaluation</p>	<p>SCAC The proposal is moot as this is a function of the PSC or in</p>	<p>The mandate of SRC to conduct job evaluation in the</p>	<p>The regulation has been revised to clarify that a public</p>

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<p>where—</p>	<p>the case of a newly established State Corporation, SCAC in consultation with the line Ministry. SRC in this regard prescribes the applicable bands in global terms. Day to day execution is to be administered by service commissions/SCAC.</p> <p>Once a principle is established, it does not require day to day consultation.</p> <p>This was and has been the practice of the Ministry of Public Service, whose guidelines once issued (e.g allowances, leave etc) were the benchmark for application throughout the public service without recourse to day to day consultation/requests for advice.</p> <p>The proposal is also extremely intrusive of state corporation/MDA operations, and the responsibilities for which authorized officers/Boards are expected to play. Simple reorganization actions, ought not to result in SRC advisory, as this would risk the inference of frittered time.</p>	<p>public service is provided for in Section 11 (d) of the SRC Act. In addition, the Court of Appeal in the TSC v KNUT & 3 Others [2015] eKLR case also confirmed that SRC has a role to play in job evaluation of public officers.</p> <p>The rationale of the regulation is to give powers to institutions to determine the jobs that require evaluation for purposes of setting, reviewing and advising on remuneration and benefits for State and other public officers respectively within a scheduled review or special review.</p> <p>The regulation should be amended to clarify that a public body that meets the criteria for job evaluation may submit the required information when called for by the Commission during a review cycle or when the public body has requested for setting, review, or advice on remuneration and benefits and a job evaluation is required.</p> <p>Change in jobs within a public body organization structure that do not necessitate changes in remuneration and</p>	<p>body that meets the criteria for job evaluation may submit the required information when called for by the Commission during a review cycle or when the public body has requested for setting, review, or advice on remuneration and benefits and a job evaluation is required.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	12 (1) proposes insertion of a new regulation 12 (1) a to provide for the Commission to undertake job evaluation after the expiry of the existing job evaluation report.	benefits, need not to be submitted to the Commission for evaluation and advice. Job evaluation results are valid until the job is re-evaluated by the Commission. The proposal is already accommodated by the validity clause at regulation 16.	The draft regulations make provision for validity of job evaluation results.
(a)	jobs in public service institutions have not been evaluated by the Commission;	<p>CRA Direct consultation with public service institutions should be a "must" and not a "may", "May" should be substituted with "shall".</p> <p>12 (1)(a) There is no clarity that brings the difference or convergence between evaluation by the Commission and the relevant committee within the remit of the public service institution in question. More clarity is needed on this aspect.</p>	SRC has considered the views and retains the provision as contained in the draft regulations.
(b)	a public service institution is established;	1. Regulation 12 (1) employs use of the word "shall" and not "may" as pointed out by CRA.	
(c)	a public office is established;	2. Job Evaluation is a participatory exercise and the Committee in charge of job evaluation in a public body is responsible for identifying jobs to be submitted to the Commission for evaluation, in addition development of complete and comprehensive job descriptions which are critical input to the job evaluation by the Commission.	
(d)	a new job is established arising from—		
i.	change in the institutional mandate of a public service institution; or		

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
ii. change in the institutional structure of a public service institution;			
(e) a change arises in the job content of a role in a public service institution.	County Assembly of Makueni 12(1)(e) proposes the insertion of the word "job enrichment" immediately before the word job content. "job enrichment may arise in cases where there is a merger of department warranting the need to carry out job evaluation."	Change in job content covers the job enrichment.	SRC has considered the proposal and retains the provision as contained in the draft regulations.
(2) A public service institution that meets the criteria set out in sub-regulation (1) shall submit the required information as per regulation 14.	-	-	-
13. Procedure for undertaking job evaluation (1) The Commission shall—	ICPACK The regulation fails to provide mechanisms to address the mismatch between the function/responsibility against the requisite professional qualifications. Proposal Insert a new sub-regulation 13(1)(g) to read: Liaise with the Public Service Commission, public sector agencies and professional associations to ensure professionals are rightly placed in accordance with their qualifications for effective service delivery. Justification Professional custodianship essential enhanced regulation, professional development and ethical behavior.	Job evaluation takes into account professional qualifications as a compensable factor as derived from the job description provided by a public body.	SRC has considered the proposal and notes that professional qualifications as a compensable factor are adequately provided for in regulation 11 (1) (b).
a. issue guidance on undertaking job evaluation in the public service;	County Assembly of Makueni proposes the word "guidance" to be substituted with "guideline"	The draft provisions on issuance of guidance may need to be reconsidered on account of the provisions of the Statutory Instruments Act.	The draft provisions on issuance of guidance have been deleted from the draft regulations.
b. sensitise public service institutions on the job evaluation;	-	-	-
c. partner with relevant training institutions to facilitate training of public service	Parlscom Regulation 13(1)(c) makes it mandatory for the	Regulation 13(1)(c) makes it mandatory for SRC to partner	SRC has considered the proposal and amended the

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>institutions in matters relating to job evaluation;</p> <p>d. use an analytical, point-factor based job evaluation system that evaluates jobs using compensable factors as prescribed by the Commission;</p>	<p>Commission to partner with training institutions to facilitate training of public service institutions in matters relating to job evaluation. The partnering with training institutions should be optional and determined by the Commission's internal capacity</p> <p>Parliscorn Regulation 13(1)(d) provides that the Commission shall prescribe the compensable factors for job evaluation. The compensable factors must be determined after taking into account the functions of a job as set out in the Constitution, an Act of Parliament, job description or schemes of service as is applicable to the job. The compensable factors must further be defined and publicized in order to be in conformity with section 13(k) of the Statutory Instruments Act which provides that statutory instruments should not make rights, liberties or obligations of any person unduly dependent on insufficiently defined administrative powers. The compensable factors further need to be set out in the regulations to avoid the same being in contravention of section 13(m) of the Statutory Instruments Act which prohibits an inappropriate delegation of legislative powers.</p> <p>KDF The regulation in pointing out analytical system, it will have left out non analytical system. It is proposed that job evaluation system to be used is informed by sustainability and peculiarity of the Sector.</p>	<p>with relevant training institutions to facilitate training of public service institutions. Partnering with training institutions should be optional and may be determined administratively. It may not be feasible to set out in these regulations the compensable factors.</p>	<p>provision appropriately.</p> <p>SRC has considered the proposal and retains the clause as provided in the regulations.</p> <p>Retain the provision as contained in the regulations.</p> <p>An analytical point factor based system is the most systematic and objective method of determining the relative worth of a job. It provides a framework for uniformly applying the job evaluation principles to all jobs in the public service. An non-analytical system on the other hand is subjective and makes it difficult to have a</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>e. engage public service institutions on job evaluation results; and</p> <p>f. communicate the job evaluation results.</p>	<p>County Assembly of Makueni proposes insertion of the word "feedback" immediately after "communicate"</p>	<p>framework for uniformly applying the job evaluation principles to all jobs in the public service.</p>	
<p>(2) A public service institution shall—</p>	<p>SCAC SRC can undertake a general job evaluation of jobs within a single classification structure, and give appropriate guidance on remuneration and benefits to the designated focal point organ as above, without recourse to a review of every officer job in the entire public service to obviate the risk of duplication and differentiated outcomes. Incidences of differentiated treatment by SRC in comparable entities has often led to a hemorrhage of staff from one public institution to another. It also creates an untenable situation where the Government does not have a single framework (compendium) of applicable terms across the entire government, since individualized cases are determined by SRC without reference to the sector. The suggestion to review changes arising in the job content of a role in the public service institution is irrational, and will limit the ability of an employer to create multi-tasking capabilities for officers, or build capacity for high flying officers to be assigned additional responsibility. We refer once again to the practice of the Ministry of Public Service pre-SRC for guidance.</p>	<p>insertion of the word "feedback" as proposed shall distort the intended purpose of the provision.</p> <p>1. Job evaluation is conducted based on the content of the job as contained in the job descriptions provided by a public body. Job evaluation ensures that the relative worth of the job is assigned to a role and ensures that jobs with similar responsibilities are graded the same. Evaluation of jobs using job classes or nomenclature does not take account of responsibilities of individual jobs. The classes of jobs are designed by different public bodies and therefore different principles are applied in</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p> <p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		<p>their design. Using such classes as the basis of evaluation may result to assigning same relative worth of jobs performing different responsibilities or assigning different worth of jobs for jobs performing same responsibilities.</p> <p>2. Job evaluation establishes a single framework (compendium) of applicable terms across the entire government. This is because, jobs are subjected to the same compensable factors, methodology and point factor based job evaluation system.</p> <p>Internal and external relativities/ comparison of the job evaluation grading within peer jobs and institutions is also conducted while undertaking job evaluation.</p> <p>Job Evaluation creates a common framework to ensure jobs performing similar responsibilities are graded the same and progressively adhere to the principle of equal pay for work of equal value. The</p>	

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		regulations provide a uniform approach to conducting job evaluation using an analytical point factor based system. This is expected to progressively address any disparities in job grading and salary structures.	
a) ensure all the jobs in the institution are evaluated by the Commission;	-	-	-
b) ensure the members of the Committee in charge of the job evaluation in the institution are trained on matters relating to job evaluation;	-	-	-
c) assess, identify and determine the jobs to be evaluated using the criteria prescribed by the Commission;	<p>Parliscom Regulation 13(2)(c) which provides for the Commission to prescribe the criteria for assessing, identifying and determining the jobs to be evaluated is ultra vires to section 13(m) of the Statutory Instruments Act which prohibits an inappropriate delegation of legislative powers. The criteria for this should be set out in the regulations and is indeed set out at Regulation 12(1).</p> <p>County Assembly of Makueni proposes insertion of the word " for each specific job" immediately after "manual"</p>	The criteria is provided for under the provisions of regulation 12 of the draft regulations.	SRC has considered the proposal and deleted the terms "using the criteria prescribed" by the Commission" appearing immediately after the words "and determine jobs to be evaluated". Retain as contained in the draft regulation
d) develop complete, accurate, approved and signed-off job description manuals.		A job description manual is defined as a document containing approved job descriptions. Consequently, there is no need to insert the word "for each specific job" immediately after "manual"	
e) provide feedback on the job evaluation results when communicated by the Commission; and	-	-	-
f) Submit request for review of the job evaluation results if dissatisfied with the job evaluation results as prescribed by the	-	-	-

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>Commission.</p>			
<p>(3) A job description referred to in sub-regulation (2)(d) shall be aligned to the provisions of the law, where applicable, and the approved human resource instruments.</p>	<p>County Assembly of Makueni proposes deleting of the word "the provision of law" immediately after the word "aligned " and substitute with "applicable law" proposes the word "where applicable" to be deleted.</p>	<p>Not all the jobs are provided by the provisions of the law and therefore the need to have the term "where applicable"</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>
<p>(4) Where a job description for a State officer is not submitted, the Commission shall use the information provided in the relevant law to evaluate the job, where applicable.</p>			
<p>(5) Where a job description for a public officer is not submitted, the position shall not be evaluated.</p>	<p>KIPPRA (with regard to 13 (5) & (6)) On the procedure for undertaking job evaluation, point no. (5) and (6) on instances where a job description is not submitted are conflicting. There is need for clarification for instances where shall be evaluated and when it shall not be evaluated.</p>	<p>The rationale for regulation 13 (5) is to address instances where job descriptions for other public officers are not submitted to the Commission for job evaluation.</p>	<p>SRC has considered the proposal amended the provision.</p>
<p>ICPAK The provision does not provide for recourse in the event that a public service institution does not provide a description for a specific public officer. This might leave room for abuse by way of a public service institution purposefully not providing a job evaluation description thus it would not be subject to the Regulations. Proposal Amend Regulation 13(5) to read: Where a job description for a public officer is not submitted, the Commission shall consult the Public Service Commission to evaluate the job. Justification</p>		<p>The proposal has been addressed.</p>	<p>SRC has considered the proposal and amended the provision.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>(6) Where a public service institution fails to provide feedback on job evaluation results, the Commission shall proceed to conclude the job evaluation.</p>	<p>To enhance comprehensiveness of the Regulations.</p>	<p>Regulation 13 (6) relates failure to provide feedback on preliminary JE results by a public service institution.</p> <p>To bring more clarity, the regulation to be amended to mean failure to provide feedback after the JE results are communicated (After the JE clinic or after communication of final JE results- Request for review)</p>	<p>Amend the regulation to read "Where a public service institution does not provide feedback on job evaluation results, the Commission shall proceed to conclude the job evaluation."</p>
<p>14. Information to be submitted by a public service institution (1) A public service institution shall provide the Commission with information relating to jobs within the institution for purposes of job evaluation.</p>	<p>SCAC Refer to the comment above and the communication protocol.</p> <p>County Assembly Of Makueni Proposes the insertion of the following word immediately after the word "evaluation", "in accordance with the constitutional principles set out under Articles 232- 236 of the Constitution of Kenya. It is important that job evaluation exercises take into account key constitutional principles on public service</p> <p>CRA This section is a mandatory directive for public officers and governments to comply with which is unconstitutional. Proposal A public service institution can/ will provide information relating to jobs within the institution for purposes of job evaluation.</p>	<p>The issue of communication has been addressed administratively.</p> <p>The objects of the regulations is for the better carrying into effect the provisions of the SRC Act. It is therefore not necessary to invoke the provisions of Articles 232- 236 of the Constitution as proposed.</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p> <p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>
<p>(2) The information to be provided in sub-</p>	<p>Regulation 14 (2) should be amended to read:</p>	<p>The information required in this regulation is mandatory, without which job evaluation to determine the relative worth of jobs cannot be undertaken.</p> <p>Further, Section 13(1)(a) of the SRC Act provides for supply of information to the Commission.</p> <p>The proposal is provided for in sub-regulation (2).</p>	<p>SRC has considered the proposal and retains the</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>regulation (1) shall include—</p> <p>(a) the approved institutional structure;</p> <p>(b) the approved staff establishment;</p> <p>(c) the approved career progression guidelines or schemes of service;</p> <p>(d) a list of jobs in the institution indicating current grades or levels;</p> <p>(e) the complete, accurate, approved and signed-off job description manual presented in a format as prescribed by the Commission; and</p> <p>(f) any other information that may be relevant for the job evaluation.</p>	<p>(2) The information to be provided in sub-regulation (1) shall include- as indicated in the sub-regulation (2)</p> <p>KDF</p> <p>In the case of KDF, this requirement is security classified in the interest of national security.</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p>	<p>The issues raised by KDF are noted and shall be addressed administratively.</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p>	<p>clause as provided in the draft regulations.</p> <p>Retain the provisions in the regulations.</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>-</p>
<p>15. Review of job evaluation results</p> <p>(1) A public service institution, State officer or other public officer dissatisfied with job evaluation results may seek review of the results as provided for under this regulation.</p>	<p>SCAC</p> <p>(on regulation 15 (1-8))</p> <p>Refer to comment above and the communication protocol. Further it is the opinion of SCAC that JE results are guidelines, non-binding and operate as a benchmark for determining remuneration and benefits that are then set by the employer. A review on grounds of dissatisfaction is based on the premise of their binding nature, which is not the case; and further usurps the role of the employer in determining the merit or otherwise of the advisory and exercise of discretion, based on the broad parameters of the advisory issued.</p>	<p>The provision on review of job evaluation results is an important administrative mechanism for further engagement between the public body and SRC in the event of dissatisfaction with the job evaluation results.</p> <p>Job evaluation results, among other factors, inform the advice of SRC on salary structures for other public officers.</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>
<p>CRA</p>	<p>This section should only apply to state officers and not to public officers and other levels of government. They should have their final say on these matters but use SRC as a minimum threshold just like the employment Act. SRC to review section and delete parts addressing public</p>	<p>The provision on review of job evaluation results is an important administrative mechanism for further engagement between the</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	officers and other levels of government.	public body and SRC in the event of dissatisfaction with the job evaluation results. Job evaluation results, among other factors, inform the advice of SRC on salary structures for other public officers.	
(2) Where a public service institution is dissatisfied with the job evaluation results, the public service institution shall submit to the Commission a request for review, the grounds for review and supporting documents;	NPSC Definite timelines need to be stipulated within which an institution is expected to submit grievances after receipt of the evaluation results e.g. 14 days after receipt of the job evaluation results.	For good order, it is important to provide timelines within which certain actions should be taken.	SRC has considered the proposal and revised the draft regulations to provide for timelines.
(3) Where a State or other public officer is dissatisfied with the job evaluation results, the officer may upon release of the results—			
(a) raise their grounds for review with the public service institution; and	Parlscrom Regulation 15(3) needs to be re-drafted to more accurately communicate the procedure of applying for review of job evaluation results.	The draft regulations provide a clear procedure for submission of request for review of job evaluation results.	SRC has considered the proposal and retains the clause as provided in the draft regulations.
(b) the public service institution shall, if satisfied that the grounds have merit, submit to the Commission a request for review, the grounds for review and supporting documents.			
(4) An application for review of job evaluation results shall be submitted to the Commission within such timelines as may be prescribed by the Commission.	Parlscrom Regulation 15(4) provides that the Commission shall prescribe the timelines for an application for review of a job evaluation. This is a derogation from section 13(m) of the Statutory Instruments Act which prohibits an inappropriate delegation of legislative powers. The timelines should be	For good order, it is important to provide timelines within which certain actions should be taken.	SRC has considered the proposal and revised the draft regulations to provide for timelines.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	detailed in the Regulations or in a schedule to the Regulations.		
51. Again, the timelines set out in Regulations 15(5)&(6) should be detailed in the Regulations or in a schedule to the Regulations and not prescribed by the Commission.			
OCOB Provide the specific timelines for addressing the review of the evaluation results. The timelines need to be known and clear. The Commission should not give itself other prescriptive powers in the Regulations.	For good order, it is important to provide timelines within which certain actions should be taken.	SRC has considered the proposal and revised the draft regulations to provide for timelines.	
(5) A public service institution shall, where the Commission requires and formally requests for more information relating to an application for a review of job evaluation results, provide the information sought within such timelines as may be prescribed by the Commission.			
(6) Where the Commission does not receive additional information relating to an application for review of job evaluation results within the stipulated time, the Commission may—			
a. prescribe additional time for submission of the required information; or			
b. make any other determination as the Commission may deem fit.			
(7) Job evaluation results may be reviewed by the Commission where new material information or significant changes in the job content have been submitted to the Commission.			
(8) Nothing in this regulation precludes any public service institution, State officer or other public officer from engaging the Commission further			

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<p>on job evaluation results.</p>	<p>IGRTC New Sub regulation 9. Communicating back the reviewed job evaluation results to a public institution. The observation of IGRTC is that the Commission should introduce a new sub-regulation Regulation 15, indicating the timeline within which the Commission should submit back reviewed results. Previously, the Commission had not been submitting results of reviewed job evaluation results after an appeal by public institution.</p>	<p>For good order, it is important to provide timelines within which certain actions should be taken.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for timelines.</p>
<p>16. Validity of job evaluation results Job evaluation results shall remain valid until the job is re-evaluated by the Commission.</p>	<p>SCAC Refer to comment above and the communication protocol. Further it is the opinion of SCAC that JE results are guidelines, non-binding and operate as a benchmark for determining remuneration and benefits that are then set by the employer. A review on grounds of dissatisfaction is based on the premise of their binding nature, which is not the case; and further usurps the role of the employer in determining the merit or otherwise of the advisory and exercise of discretion, based on the broad parameters of the advisory issued.</p>	<p>The provision on review of job evaluation results is an important administrative mechanism for further engagement between the public body and SRC in the event of dissatisfaction with the job evaluation results. Job evaluation results, among other factors, inform the advice of SRC on salary structures for other public officers.</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>
	<p>Parlscorn Regulation 16 infringes on the powers and responsibilities of employers of public officers to undertake their own job evaluations for employees. In particular, the Parliamentary Service Commission, the Judicial Service Commission and the Public Service Commission have the power to undertake job evaluation for public officers who are employees of these Commissions.</p>	<p>Employers of other public officers can undertake their own job evaluation for their employees for different purposes. However, with respect to remuneration and benefits for other public officers, the Commission shall advise in accordance with section 11 (d) of the SRC Act.</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>
	<p>CRA There will be a problem where a re-evaluation is done</p>	<p>The effective date for implementation of the advice</p>	<p>SRC has considered the proposal and retains the</p>

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	<p>but due to budgetary constraints is not implemented as it happened in 2019.</p> <p>Section 16 should therefore be revised to care for such situation.</p>	<p>on salary structures takes into account availability of funds.</p>	<p>clause as provided in the draft regulations.</p>
	<p>NPSC</p> <p>There's need to allow flexibility in the event that emerging issues call for review, consider adding an exception.</p>	<p>The emerging issues that might affect the worth of the job to warrant re-evaluation are set out in the criteria for job evaluation in Regulation 12 (1)</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>
	<p>COTU</p> <p>Recommends the need to provide timelines for validity of job evaluation results.</p>	<p>The worth of the job remains the same as long as the content of the job remains the same. Evaluating a job whose content has not changed will yield the same job evaluation results, therefore validity of the job evaluation results in not time bound, rather its determined by the factors set out under criteria for job revaluation (Regulation 12)</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>
<p>17. Guidance on job evaluation</p> <p>A public service institution may request for guidance or clarification from the Commission on job evaluation process and implementation of job evaluation results.</p>	-	-	-
<p>18. Salary structures</p> <p>(1) The Commission shall use job evaluation results, among other factors set out in regulation 9 (1), when—</p>	-	-	-
<p>(a) setting and reviewing remuneration and benefits for a State officer; and</p>	<p>IGRTC</p> <p>Regulation 18(1) (a) indicates that the Commission shall use the job evaluation results when setting remuneration and benefits for a state officer.</p> <p>Previously, IGRTC has received salary structure from SRC for the Secretariat that was not in tandem with the job</p>	<p>The rationale for Regulation 18(1) (a) is that job evaluation results, among other factors set out in regulation 9 (1), form the basis for setting</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>evaluation results. The salary structure was introducing a grade that was not in the job grading results, this disadvantaging some cadres.</p> <p>Further, the members have been graded as Commissioner while Secretariat received a different job evaluation. The law says you cannot have different salaries for same job. (See Employment Act)</p>	<p>salary structures for state officers.</p> <p>The views by IGRTC shall be addressed by the Commission administratively</p>	
	<p>County Assembly of Makueni Insert the word "advising" immediately after the word "reviewing" The role of the Commission is to advise on remuneration and benefits to public officers in addition to setting and reviewing the same.</p>	<p>Regulation 18 (1)(a) addresses the state officers and therefore setting and reviewing of remuneration and benefits is only applicable to them.</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>
(b) advising on the remuneration and benefits for other public officers.	<p>County Assembly of Makueni 18(1) (b) Insert the word "advising" immediately after the word "reviewing". The role of the commission is to advise on remuneration and benefits to public officers in addition to setting and reviewing the same.</p>	<p>Regulation 18 (1)(b) addresses the other public officers and therefore advising on remuneration and benefits is only applicable to them.</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations.</p>
<p>19. Procedure for developing salary structures (1) The Commission, shall, prior to developing salary structures—</p>	<p>Public Service Commission Regulation 19 exceeds the constitutional and statutory powers and functions of SRC, specifically Article 230(4)(b) of the Constitution which has been interpreted by the Supreme Court in Petition No. 42 of 2019.</p> <p>Proposal 19(1) The Commission, shall, prior to developing salary structures for State Officers-</p> <p>(a) conduct comparative surveys on labour markets and trends in remuneration to determine the relativity of remuneration of public service in relation to the market trends; and</p> <p>(b) subject the outcome of the comparative surveys on labour markets and trends in remuneration to the provisions of regulation 9 (1).</p>	<p>There is need to have the draft Regulations clearly address the Commission's mandate with respect to salary structures for State and other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>(a) conduct comparative surveys on labour markets and trends in remuneration to determine the relativity of remuneration of public service in relation to the market trends; and</p> <p>(b) subject the outcome of the comparative surveys on labour markets and trends in remuneration to the provisions of regulation 9 (1).</p>	<p>(2) The Commission shall develop and communicate to public service institutions the set and reviewed salary structures for State officers.</p>		
<p>(c)</p>	<p>County Assembly of Makueni Insert a new regulation 19 (c) on collective bargaining agreements. It is important that requirements of collective bargaining agreements are considered in developing salary structures.</p>	<p>The outcome of the comparative surveys on labour markets and trends in remuneration in Regulation 19 (1) (a) is subjected to the provisions of Regulation 9 (1) which includes existing collective bargaining agreements -Regulation 19 (1) (1)</p>	<p>SRC has considered the proposal and retains the clause as provided in the draft regulations as it would be repetitive to include the additional proposed provision.</p>
<p>(2) The Commission shall develop and communicate to public service institutions the set and reviewed salary structures for State officers and advice on the salary structures for other public officers.</p>	<p>County Assembly of Makueni Insert the word "advise" immediately after the word "communicate" Delete the words "advise on the salary structures" appearing immediately before the words "other public officers"</p>	<p>There is need to have the draft Regulations clearly address the Commission's mandate with respect to salary structures for State and other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
<p>(3) A public service institution shall—</p>	<p>Parlison Regulation 19(3) is ultra vires the powers of the Salaries and Remuneration Commission as set out in the Constitution and the Salaries and Remuneration Commission Act which is to advise on the remuneration and benefits of other public officers. The Commission</p>	<p>The provision on implementation and review of salary structures for other public officers should be recast in line with the Commission's</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>cannot compel a public service institution to ensure that the salary structure of its public officers is as advised by the Commission.</p> <p>The role of setting the remuneration and benefits of other public officers falls within the remit of their respective employers who also appoint and supervise the office holders and the Commission has no powers to redefine contractual relations between an employer and employee.</p> <p>In particular, section 11(1)(b) of the Parliamentary Service Act, 2019 provides that the Parliamentary Service Commission</p> <p>"(1) In addition to the functions set out in Article Functions of the 127(6) of the Constitution, the Commission shall:</p> <p>a) direct and supervise the administration of the services and facilities provided by, and exercise budgetary control over, the Service;</p> <p>b) determine and review the terms and conditions of service of persons holding or acting in the offices of the Service;</p> <p>c) initiate, co-ordinate and harmonize policies and strategies relating to the development of the Service;</p>	mandate.	
(a) ensure its salary structure is as advised by the Commission; and	<p>SCAC</p> <p>Salaries as advised by SRC for public officers cannot be binding. The application of the advice is subject to the constraints of the Constitution and the Supreme Court advisory.</p>	The provision on implementation and review of salary structures for other public officers should be recast in line with the Commission's mandate.	SRC has considered the proposal and revised the draft regulations appropriately.
	<p>County Assemblies Forum</p> <p>The decision on salary structure of a public service institution belongs to the institution itself. The role of SRC is advisory in nature. The public service institution only needs to show that it sought, obtained and considered the advice from SRC.</p> <p>Omit this provision.</p>	The provision on implementation and review of salary structures for other public officers should be recast in line with the Commission's mandate.	SRC has considered the proposal and revised the draft regulations appropriately.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>CRA This is unconstitutional even for County governments and therefore should be deleted.</p>	<p>The provision on implementation and review of salary structures for other public officers should be recast in line with the Commission's mandate.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
<p>(b) submit the information requested by the Commission while undertaking comparative surveys on labour markets and trends in remuneration;</p>	-	-	Proposed for deletion.
<p>20. Information to be submitted to the Commission (1) A public service institution shall provide information on remuneration and benefits as may be required by the Commission.</p>	-	-	-
<p>(2) The Commission shall develop and advise on salary structures, notwithstanding failure by a public service institution to submit the required information.</p>	<p>Public Service Commission Regulation 20 exceeds the constitutional and statutory powers and functions of SRC, specifically Article 230(4)(b) of the Constitution which has been interpreted by the Supreme Court in Petition No. 42 of 2019. Proposal Clause 20(2) should be deleted.</p>	<p>There is need to provide clarity in this provision on salary structures for state and other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
<p>21. Validity of salary structures Salary structures that are set, reviewed or advised shall remain valid until reviewed by the Commission.</p>	<p>SCAC Salaries as advised by SRC for public officers cannot be binding. The application of the advice is subject to the constraints of the Constitution and the Supreme Court advisory. Parliscorn Regulation 19(3) is ultra vires the powers of the Salaries and Remuneration Commission as set out in the Constitution and the Salaries and Remuneration Commission Act which is to advise on the remuneration and benefits of other public officers. The Commission cannot compel a public service institution to ensure that the salary structure of its public officers is as advised by</p>	<p>There is need to provide clarity in this provision on salary structures for state and other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
		<p>There is need to provide clarity in this provision on salary structures for state and other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>the Commission. The role of setting the remuneration and benefits of other public officers falls within the remit of their respective employers who also appoint and supervise the office holders and the Commission has no powers to redefine contractual relations between an employer and employee.</p> <p>In particular, section 11(1)(b) of the Parliamentary Service Act, 2019 provides that the Parliamentary Service Commission</p> <p>"(1) In addition to the functions set out in Article Functions of the 127(6) of the Constitution, the Commission shall:</p> <p>a) direct and supervise the administration of the services and facilities provided by, and exercise budgetary control over, the Service;</p> <p>b) determine and review the terms and conditions of service of persons holding or acting in the offices of the Service;</p> <p>c) initiate, co-ordinate and harmonize policies and strategies relating to the development of the Service;</p>		
	<p>County Assemblies Forum SRC has no mandate to set or review the salary structures of public service institutions. Its mandate is limited to advising the said institutions. Delete Regulation.</p>	<p>There is need to provide clarity in this provision on salary structures for state and other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>CRA This is unconstitutional. even for County governments and therefore should be deleted.</p>	<p>There is need to provide clarity in this provision on salary structures for state and other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>Public Service Commission The clause exceeds the constitutional and statutory mandate of SRC. Proposal</p>	<p>There is need to provide clarity in this provision on salary structures for state and other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>22. Guidance on salary structures. A public service institution may request for guidance or clarification from the Commission on its salary structure.</p>	<p>Salary structures that are set, reviewed or advised (Delete) shall remain valid until reviewed by the Commission.</p> <p>Parliscom This is ultra vires the powers of the Commission which is to advise public service institutions and not to offer "guidance".</p>	<p>There is need to provide clarity in this provision on the implementation of salary structures for state officers and advice on salary structures for other public officers.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
<p>23. Rewarding productivity and performance (1) The Commission shall issue guidance on recognizing and rewarding productivity and performance.</p>	<p>SCAC The proposal is ultra vires. Performance rewards in public service and state corporations is based on the Public Service Commission (Performance Management) Regulations 2021 and the State Corporation (Performance Contracting) Regulations 2004, respectively. Implementation is based on prior consultation with the National Treasury.</p> <p>The proposal seeks to transform SRC into the employer without a mechanism for determining the context and conditions on performance, externalizing a process that only an employer can prescribe. The same ought to be deleted in entirety.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>OCOB To provide the criteria for rewarding productivity instead of stating that the Commission shall issue guidance. These regulations should operationalize the Act by providing the "how", not by stating once again that the Commission shall do certain things but providing how those things will be done. This would also increase accountability and transparency in that there will be a set mechanism for measuring performance.</p>	<p>There is need to set out the criteria for rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>TSC Firstly, rewards and sanctions is an exclusive prerogative of the employer and TSC being an independent constitutional body its functions cannot be supervised by another body. Secondly, we note that the nature of Productivity and Rewards regime does not require guidelines, approvals and supervision by SRC. Thirdly, SRC has no such mandate in law. It is only the employer in consultation with the employee who can effectively measure the productivity of an employee. Fourth, the proposed National Productivity and Competitiveness Council Bill, 2019 seeks to establish a council that will be in charge of productivity and competitiveness in the public sector. Teachers are employees of TSC and therefore, their productivity and performance can only be measured by TSC through its internal Performance Evaluation instruments.</p>	<p>Proposal The regulations be deleted in entirety. Parlscom This is ultra vires the powers of the Commission which is to advise public service institutions and not to offer "guidance". IGRTC On the issue of competitiveness and productivity, there is need to consider the provisions of the National Productivity and Competitiveness Council Bill, 2019 which seeks to establish a Council to provide a forum for an on-going dialogue on all matters related to productivity, quality and competitiveness.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes. There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
<p>Public Service Commission</p>	<p>The regulations be deleted in entirety.</p>	<p>There is need to set out the criteria for rewarding productivity and performance. While the National Productivity and Competitiveness Council Bill, 2019 is yet to be enacted into law, SRC took into account its legislative proposals in drafting these regulations. The rationale for the</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately. SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>The clause encroaches on the Public Service Commission powers and functions in Article 234(2) (e) of the Constitution as read with Section 62 of the Public Service Commission Act.</p> <p>Clause 23 should be deleted in its entirety.</p>	<p>regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>proposal and revised the draft regulations appropriately.</p>
	<p>County Assemblies Forum</p> <p>Any legal obligation should be traceable either to the Constitution or the Principal Act. There doesn't seem to be a clear function given to SRC concerning performance management. The Regulation assumes that recognition and reward relates only to remuneration and benefits which is not the case. Public service institutions should be free to manage their own performance in accordance with their own human resource policies and those of relevant regulatory bodies such as Public Service Commission. In any event, there is no legal obligation to adhere to 'guidance'.</p> <p>Proposal</p> <p>Delete Regulation.</p> <p>County Assembly of Makueni</p> <p>Delete the words "guidance, recognizing and rewarding appearing immediately after the word "issue" and substitute therefor "guidelines on recognition and reward of productivity and performance".</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
<p>(2) The guidance referred to in sub-regulation (1) may provide for—</p> <p>(a) the mechanisms for linking rewards in the public service to measurable productivity and performance; and</p>			<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
(b) the eligibility criteria for recognising and rewarding productivity and performance in the public service.	<p>CRA 23(2)(b) These are decisions made by independent commissions, county, and national government. They can set SRC guidelines as minimum thresholds and should therefore be deleted.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	SRC has considered the proposal and revised the draft regulations appropriately.
(3) A public service institution shall develop a framework for recognising and rewarding productivity and performance.	<p>County Assembly of Makueni 23 (2) (b) Delete the words "recognizing and rewarding" and substitute thereof " recognition and reward"</p> <p>NPSC Institutions should be mandated to develop a reward and sanction policy to guide rewarding of performance, in consultation with SRC. Further the policy to be reviewed from time to time in consultation with the SRC will enable institutions maintain autonomy, avoid bureaucracies and endure timely implementation and ultimately improved productivity within their institution.</p>	<p>There is need to provide clarity in this provision on rewarding productivity and performance.</p> <p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p> <p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
(4) The framework referred to in sub-regulation (3) shall be—	-	-	-
(a) in accordance with the Commission's guidance referred to in sub-regulation (1); and	<p>County Assembly of Makueni Delete the entire sentence and substitute with "In accordance with the guidelines as prescribed and approved by the Commission</p>	<p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	SRC has considered the proposal and revised the draft regulations appropriately.

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>(b) approved by the Commission.</p> <p>24. Procedure for rewarding productivity and performance.</p> <p>(1) A public service institution shall seek the prior advice of the Commission before awarding its public officers a reward for productivity and performance.</p>	<p>SCAC</p> <p>The proposal is ultra vires. Performance rewards in public service and state corporations is based on the Public Service Commission (Performance Management) Regulations 2021 and the State Corporation (Performance Contracting) Regulations 2004, respectively. Implementation is based on prior consultation with the National Treasury.</p> <p>The proposal seeks to transform SRC into the employer without a mechanism for determining the context and conditions on performance, externalizing a process that only an employer can prescribe. The same ought to be deleted in entirety.</p> <p>TSC</p> <p>Firstly, rewards and sanctions is an exclusive prerogative of the employer and TSC being and independent constitutional body its functions cannot be supervised by another body.</p> <p>Secondly, we note that the nature of Productivity and Rewards regime does not require guidelines, approvals and supervision by SRC.</p> <p>Thirdly, SRC has no such mandate in law. It is only the employer in consultation with the employee who can effectively measure the productivity of an employee.</p> <p>Fourth, the proposed National Productivity and Competitiveness Council Bill, 2019 seeks to establish a council that will be in charge of productivity and competitiveness in the public sector.</p> <p>Teachers are employees of TSC and therefore, their productivity and performance can only be measured by TSC through its internal Performance Evaluation instruments.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p> <p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p> <p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>Proposal The regulations be deleted in entirety.</p> <p>Parliscom Again, this derogates from the power of employer public service institutions and goes beyond the powers of the Commission to advise.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>	
<p>COTU It recommended for a functional productivity center to provide criteria for measurement for productivity.</p>	<p>SRC is agreeable to the proposal to have a functional National Productivity Center. This, however, goes beyond the scope and objectives of these regulations.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC shall take up the matter administratively.</p>	
<p>County Assembly of Makueni Delete the words "seek the prior advice of the commission" and substitute therefore "comply with the commission guidelines on recognition and reward of productivity."</p> <p>OCOB If an institution develops a framework for recognizing and rewarding productivity in accordance with Reg. 23(4). That is, the framework should be in accordance with the guidelines approved and issued by the Commission. The public institution should therefore not seek advice on implementing its framework.</p> <p>Proposal Regulation 24 (1) should be deleted.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p> <p>SRC has considered the proposal and revised the draft regulations appropriately.</p>	

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>CAJ This paragraph should be amended to read as follows: "The Commission shall provide guidance on the parameters for the type of rewards that institutions may give to employees for productivity and performance" The Salaries and Remuneration Commission should give guidelines on the type of rewards that institutions may give to its officers for productivity, as opposed to requiring institutions to seek approval from SRC for implementation of its rewards schemes.</p>	<p>in this provision on rewarding productivity and performance.</p> <p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>County Assemblies Forum Refer to 4. Above. Besides, seeking advice for every reward for productivity will be cumbersome and unnecessary. The Regulation inhibits the autonomy of public institutions which are empowered by law to make independent decisions. Delete Regulation In the alternative, issue a one off circular to advice on the reward resulting in remuneration or benefits to public officers.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>EACC It is proposed that Regulation 24(1) be deleted. The rationale is that it shall be onerous for all public institutions to seek prior advice of SRC before awarding public officers a reward for productivity and performance.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
		<p>schemes.</p> <p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	
	<p>CRA Public officers and the levels of government are not under any mandatory obligation to seek this advice because they have their structures in place including the HR department. This is unconstitutional and should therefore be deleted.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p> <p>Further, The Public Service Commission (Performance Management) Regulations, 2021, with regard to rewards provides as follows;</p> <p>42(3)(a) Where a public body establishes a financial reward scheme, the public body shall, first seek the advice of SRC for the proposed financial rewards.</p> <p>46(2) the PSC shall seek the advice of SRC where PSC intends to award cash prizes under the award scheme.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
<p>(2) The Commission shall in advising on productivity and performance be guided by the following—</p>	<p>County Assembly of Makueni 24 (2) Delete the entire sentence and substitute therefor " In awarding productivity and performance the commission shall be guided by the following</p>	<p>There is need to provide clarity in this provision on rewarding productivity and performance.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
(a) achievement of productivity and performance targets;	-	-	-
(b) the capacity of a public service institution to afford the cost of proposed reward;	County Assembly of Makeni 24 (2) (b)Specify whether the reward is monetary or non-monetary	There is need to provide clarity in this provision on rewarding productivity and performance.	SRC has considered the proposal and revised the draft regulations appropriately.
(c) the ability of a public service institution to sustain payment of the reward;	-	-	-
(d) government policies and guidelines; and	-	-	-
(e) any other relevant factor that may be prescribed by the Commission.	-	-	-
(f)	COTU Proposed additional of clause (f) to provide for productivity center which shall be under the Ministry of Labour and shall be operationalized to provide the criterion and how labour productivity indices can be developed;	The object of the draft regulations is for the better carrying into effect the provisions of the SRC Act. The proposal goes beyond the scope and object of the draft regulations.	SRC has considered the proposal and revised the draft regulations appropriately.
25. Collective bargaining negotiation. (1) The Commission shall, pursuant to section 11 of the Act, advise public service institutions on the remunerative and benefit items payable out of public funds in collective bargaining negotiation.	SCAC The function cannot be undertaken by SRC in isolation, but in tandem with the National Treasury, Service Commissions and SCAC.	The Commission, in advising on collective bargaining negotiation, consults stakeholders.	SRC has considered the proposal and revised the draft regulations appropriately.
(2) Collective bargaining negotiation between a public service institution and a trade union shall cover a four year cycle.	KDF (On Regulation 25 and 26) Provisions to be made for public institutions whose employees cannot belong to trade union or engage in collective bargaining agreement. It is proposed a sub para be introduced for engagement with such institutions for example through responsible department, branch or a select board. Parlscorn The Commission may advise on the period of a collective bargaining agreement but may not prescribe the period of the agreements.	The proposal by KDF is beyond the scope of collective bargaining negotiation as contemplated in the draft regulations. SRC is mandated to set the cycle for review of remuneration and benefits. This includes collective	Retain the provisions as contained in the regulations. SRC has considered the proposal and retains the provision as contained in the

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>CRA CBAs have their life cycles and SRC cannot dictate this. It is envisaged already in the agreement. This regulation is irrelevant. Delete</p>	<p>bargaining agreements. The four year cycle is informed by the need for planning and allocation of funds to implement the collective bargaining agreement. This is aligned to the government budgeting and planning cycle.</p>	<p>draft regulations.</p>
	<p>COTU Proposes the review cycle to be within 2years.</p>	<p>SRC is mandated to set the cycle for review of remuneration and benefits. This includes collective bargaining agreements. The four year cycle is informed by the need for planning and allocation of funds to implement the collective bargaining agreement. This is aligned to the government budgeting and planning cycle.</p>	<p>SRC has considered the proposal and retains the provision as contained in the draft regulations.</p>
<p>26. Procedure for collective bargaining negotiation (1) A public service institution with a recognition agreement with a trade union shall seek the prior advice of the Commission before the commencement of collective bargaining negotiation.</p>	<p>SCAC The function cannot be undertaken by SRC in isolation, but in tandem with the National Treasury, Service Commissions and SCAC County Assembly of Makeni Delete the words "a recognition agreement" County Assembly of Embu On collective bargaining, the role of the Commission</p>	<p>The Commission, in advising on collective bargaining negotiation, consults stakeholders. Recognition agreement is a legal requirement between parties in a CBA. There is need to provide clarity on the mandate of SRC to</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately. SRC has considered the proposal and revised the draft regulations appropriately. SRC has considered the proposal and revised the draft regulations appropriately.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>when it comes to collective bargaining should be restricted to a strictly advisory role. Collective bargaining is a fundamental right that is rooted in the International Labour Organisation Constitution and reaffirmed as such in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. As such it is well regulated and additional conventions as well as procedures have already been set up to offer guidelines when it comes to the procedure to be used during the process. The Clause as structured seeks to insert the Commission into collective bargaining negotiations which may curtail the freedoms of trade unions as well as compliance/ slow down the process entirely. The said Regulation violates Article 41 of the Constitution which guarantees workers the right to fair labour practices particularly the right to engage in collective bargaining. Further violates the provisions of Articles 36 and 37 of the Constitution since the Regulation attempts to curtail and limit the scope of collective bargaining agreements.</p>	<p>advise public bodies on the remunerative and benefits items payable out of public funds.</p>	<p>regulations appropriately.</p>
	<p>Parliscorn This derogates from the power of employer public service institutions and goes beyond the powers of the Commission to advice. Regulations 26(2)(3)&(4) are similarly ultra vires to the powers of the Commission and derogate from the power of employer public service institutions and goes beyond the powers of the Commission to advice.</p>	<p>There is need to provide clarity on the mandate of SRC to advice public bodies on the remunerative and benefits items payable out of public funds.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>County Assemblies Forum The procedure is restrictive and invasive on the public service institution. This defeats the essence of such negotiations. Proposal Redraft to give adequate latitude to the parties to a negotiation.</p>	<p>There is need to provide clarity on the mandate of SRC to advice public bodies on the remunerative and benefits items payable out of public funds.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>CRA This is an encroachment to the trade union rights as envisaged in the constitution Article 41 (4). Every trade union and every employers' organization has the right- (a) to determine its administration, programs, and</p>		

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>activities;</p> <p>(b) to organize; and</p> <p>(c) to form and join a federation.</p> <p>The clauses exceed the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.</p> <p>Proposal The clause should be deleted.</p>		
(2) A public service institution shall provide the following information required for provision of advice on collective bargaining negotiation—	<p>Parlscom Regulation 26(2) is similarly ultra vires to the powers of the Commission and derogate from the power of employer public service institutions and goes beyond the powers of the Commission to advise.</p>	There is need to provide clarity on the mandate of SRC to advice public bodies on the remunerative and benefits items payable out of public funds.	SRC has considered the proposal and revised the draft regulations appropriately.
	<p>County Assembly of Makueni Insert the word "process" immediately after the word "bargaining".</p>	It may not be necessary to add the word "process" before the word "bargaining" it may distort the purpose of the provision.	SRC has considered the proposal and revised the draft regulations appropriately.
(a) trade union proposals and management recommendations;	<p>County Assembly of Makueni The procedure should adhere to guidelines prescribed in the Labour Relations Act, 2007</p>	There is no contradiction with the Act.	No action by the Commission
(b) institution's financial performance;	<p>County Assembly of Makueni Which institution? Review and tie to relevant provisions of the Labour Relations Act, 2007</p>	The term "institution's financial performance" refers to the financial performance of the public body seeking the advice of the Commission.	SRC has considered the proposal and revised the draft regulations appropriately
(c) budget allocation;	<p>County Assembly of Makueni Which institution? Review and tie to relevant provisions of the Labour Relations Act, 2007</p>		
(d) approved salary structure and staff establishment; and	-	-	-
(e) any other information that may be required by the Commission.	-	-	-
(3) The Commission shall, upon receipt of a	Parlscom	The mandate of SRC to issue	SRC has considered the

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>request for advice, provide the public service institution with parameters for collective bargaining negotiation taking into account the provisions of regulation 9 (1).</p>	<p>Regulation 26(3) is similarly ultra vires to the powers of the Commission and derogate from the power of employer public service institutions and goes beyond the powers of the Commission to advise.</p>	<p>advice to the national and county governments under Article 230 (4) (b) of the Constitution needs to be set out clearly in these regulations.</p>	<p>proposal and revised the draft regulations appropriately with regard to its advisory mandate.</p>
	<p>Public Service Commission The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019. Proposal Clause 26(3) should be deleted in entirety.</p>	<p>The mandate of SRC to issue advice to the national and county governments under Article 230 (4) (b) of the Constitution needs to be set out clearly in these regulations.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately with regard to its advisory mandate.</p>
<p>(4) A public service institution shall undertake negotiation within the parameters issued by the Commission.</p>	<p>Parlscorn Regulation 26(4) is similarly ultra vires to the powers of the Commission and derogate from the power of employer public service institutions and goes beyond the powers of the Commission to advise. Public Service Commission The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019. Proposal Clause 26(4) should be deleted in entirety.</p>	<p>The draft proposal needs to be revised clearly set out the mandate of SRC under Article 230 (4) (b) of the Constitution and Section 11 of the SRC Act.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately with regard to its advisory mandate.</p>
	<p>County Assembly of Makueni Insert the words "trade unions" immediately after the word "commission"</p>	<p>The Commission issues its advice to the public service organization who in-turn use the advice to negotiate with the trade unions.</p>	<p>It is not necessary to insert the word trade unions.</p>
<p>Upon conclusion of collective bargaining negotiation within the parameters provided by the Commission, the public service institution shall request the Commission for clearance of the draft collective bargaining agreement to facilitate its registration at the Employment and Labour Relations Court.</p>	<p>COTU Proposes the subsection to be deleted.</p>	<p>The clause is to ensure that public bodies adhere to the advice before the CBA's are registered. ELRC Act and rules recognize the role of SRC in CBN and CBA registration.</p>	<p>SRC has considered the proposal and retains the provision as contained in the draft regulations.</p>
	<p>County Assembly of Makueni</p>	<p>There is need to consider</p>	<p>SRC has considered the</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>27. Submission of request for advice A public service institution may, at any time, request the Commission, in writing, to set, review and, advise on the remuneration and benefits for its State or other public officers.</p>	<p>Insert the words "applicable laws" immediately after the word "commission".</p> <p>Public Service Commission The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.</p> <p>Proposal 27 A public service institution may, at any time, request the Commission, in writing, to-</p> <p>(a) set and review the remuneration and benefits for its State Officers; and</p> <p>(b) advise on the remuneration of its public officers.</p>	<p>adopting the proposal.</p> <p>There is need to have the draft Regulations clearly outline the Commission's mandate with respect to other public officers.</p>	<p>proposal and revised the draft regulations appropriately with regard to its advisory mandate.</p> <p>The draft regulations have been revised to clearly distinguish the mandate of SRC in relation to;</p> <p>(c) setting and regularly reviewing the remuneration and benefits for State officers;</p> <p>(d) advising the national and county governments on the remuneration and benefits of other public officers; and</p> <p>(a) keeping under review and advising on the remuneration and benefits for other public officers.</p>
<p>28. Review of advice on remuneration and benefits. (1) The advice of the Commission, in relation to the remuneration and benefits of all other public officers, is binding and may only be reviewed by</p>	<p>SCAC The proposed binding nature of SRC advice is unconstitutional and ultra vires. The SRC should be guided by the Supreme Court advisory hereinabove. The entire section should be excluded for manifest breach reasons.</p>	<p>There is need to have the draft Regulations clearly outline the Commission's mandate with respect to State</p>	<p>The provision on the effect of SRC's advice has been revised.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
the Commission.	<p>Parlscom Regulation 28(1) is ultra vires to the powers of the Commission in so far as it provides that the advice of the Commission is binding in relation to the remuneration and benefits of all other public officers and may only be reviewed by the Commission.</p> <p>County Assembly of Embu On review of advice on remuneration and benefits, Regulation 28 seeks to make advice issued by the Commission binding. The term 'advice' in its literal meaning can never be binding as to advise is to offer a guideline or suggestion. Secondly, the role of the Commission when it comes to public officers, other than State officers, is clearly outlined in the Constitution and is limited to an advisory role. By making advice binding then the Commission would in fact be setting requirements for public officers which would be contrary to the provisions of Article 230 (4) (b) of the Constitution. The regulation should therefore be revised accordingly.</p> <p>County Assemblies Forum This provision redefines the meaning of the word 'advice'. It also obliterates the differentiation created by the Constitution between 'setting and reviewing of remuneration' and advising on the same.</p> <p>Proposal Delete Regulation.</p>	and other public officers.	
	<p>Public Service Commission The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.</p> <p>Proposal Clause 28 should be deleted.</p>		
	<p>County Assembly of Makueni Insert the words "in case of a dissatisfaction with the decision of the commission by a court of competent jurisdiction" immediately after the words "commission"</p>	-	

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>(2) A public service institution seeking review of the advice of the Commission shall do so in writing.</p>	<p>OCOB It is important to provide the timeline for seeking the review and the time when the Commission should respond.</p>	<p>SRC has considered the proposal and finds it impractical to prescribe timelines for review of advice as review of advice may be contingent on emerging issues the timing of which is not foreseeable.</p>	<p>SRC has considered the proposal and retains the provision as contained in the draft regulations.</p>
<p>(3) The Commission may review its advice upon receipt of new material information or justification not previously placed before it.</p>	<p>NPSC Advice to be given by SRC upon request by a Public Service Institution needs to be done in accordance with proposed Regulation 4 and 6. Consider adding a provision at proposed sub-regulation 28(3)</p>	<p>Review of remuneration and benefits should be subject to the factors set out under Regulation 9(1).</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
<p>(4) The advice of the Commission once reviewed supersedes any prior advice.</p>	<p>OCOB It is important to provide the timeline for seeking the review and the time when the Commission should respond.</p>	<p>SRC has considered the proposal and finds it impractical to prescribe timelines for review of advice as review of advice may be contingent on emerging issues the timing of which is not foreseeable.</p>	<p>SRC has considered the proposal and retains the provision as contained in the draft regulations.</p>
<p>29. Request for information. (1) The Commission may pursuant to section 13(1)(a) of the Act, request a public service institution to provide information.</p>	<p>SCAC As reiterated, communication to and from the Commission should be channeled through the focal point organs in the Executive, Judiciary and Parliament. Any variant from the same would be distortional, cause confusion and operate contra good order.</p>	<p>Communication protocols will be managed administratively and need not be in the regulations.</p>	<p>SRC has considered the proposal and retains the provision as contained in the draft regulations.</p>
<p>(2) A public service institution shall, upon receipt of the request in sub-regulation (1) provide the required information to the Commission within the timelines set by the Commission.</p>	<p>-</p>	<p>-</p>	<p>-</p>
<p>30. Disputes relating to remuneration and benefits. (1) The Commission shall encourage the application of alternative dispute resolution</p>	<p>The entire section 30 is irregular. The Attorney General as principal legal advisor to the Government is the first port of call in all disputes. The AG would engage SRC as</p>	<p>The proposal is meant to encourage the application of alternative dispute resolution in disputes relating to</p>	<p>SRC has considered the proposal and retains the provision as contained in the</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>mechanisms in any disputes relating to remuneration or benefits for State and other public officers.</p> <p>(2) A public service institution shall notify the Commission of any dispute relating to remuneration or benefits for its State or other public officers.</p>	<p>appropriate. The section further seeks to shield SRC from court action by prescribing the action to be undertaken by the Commission upon suit, which is contra legal practice.</p> <p>County Assembly of Makueni Insert the word "officer" immediately after the word "state".</p>	<p>remuneration and benefits in line with Articles 159 (2) (c) and 252 (1) (b) of the Constitution and Section 11 (h) of the SRC Act.</p> <p>SRC has considered the proposal and is of the view that it is not necessary to insert the word "officer" immediately after the word "State".</p>	<p>draft regulations.</p> <p>SRC has considered the proposal and retains the provision as contained in the draft regulations.</p>
<p>(3) The Commission shall in any court proceedings relating to remuneration or benefits for State or other public officers, file a report within thirty days of service of the pleadings or such other time as the Court may direct.</p>	<p>PARLSCOM Regulation 30(3) is ultra vires to the powers of the Commission with regard to advise to employer public service institutions as well as the established procedure of litigation before the judiciary.</p>	<p>A similar provision exists in the Employment and Labour Relations Court Rules, 2016. It is therefore not necessary to have similar provisions in these regulations.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
	<p>County Assembly of Makueni Insert the word "officer" immediately after the word "state"</p>	<p>SRC has considered the proposal and is of the view that it is not necessary to insert the word "officer" immediately after the word "State".</p>	<p>SRC has considered the proposal and retains the provision as contained in the draft regulations.</p>
	<p>Public Service Commission The clause is superfluous as the procedures for dispute resolution in court is provided for in various rules of procedure for different courts. Proposal Clause 30(3) should be deleted.</p>	<p>A similar provision exists in the Employment and Labour Relations Court Rules, 2016. It is therefore not necessary to have similar provisions in these regulations.</p>	<p>SRC has considered the proposal and revised the draft regulations appropriately.</p>
<p>(4) Where the Commission is not a party to proceedings referred to in sub-regulation (3), the public service institution shall within seven days of the commencement of the suit or service of pleadings, notify the Commission of such proceedings.</p>	<p>Parlscm Regulation 30(4) is ultra vires to the powers of the Commission with regard to advise to employer public service institutions as well as the established procedure of litigation.</p>	<p>The provision addresses situations where disputes relating to remuneration and benefits for State or other public officers are determined without the Courts having the benefit of considering SRC's position.</p>	<p>SRC has considered the proposal and retains the provision as contained in the draft regulations.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>EACC It is proposed that the timeframe be increased or provided as within a reasonable time. The rationale is that the time-frame given of 7 days from commencement of suit, is short and may lapse before they are notified.</p>	<p>The proposal on timelines is appropriate and shall give public bodies ample time to notify SRC of any disputes.</p>	<p>SRC has considered the proposal and revised the time-frame to 14 days.</p>
<p>31. Compliance with Commission set and reviewed remuneration and benefits, and advice. (1) The Commission may take any measures it considers necessary to ensure that public service institutions adhere to the set and reviewed remuneration and benefits, and advice issued by the Commission.</p>	<p>SCAC The advisory on public officer remuneration and benefits is non-binding. SRC cannot by regulation provide a blanket cover of consequential action not premised on powers under the constitution or the law. SRC is to be guided by the Supreme Court advisory and channel any noncompliance action to parliament in accordance with Article 254 (1). County Assembly of Makueni Delete the following words "the set and reviewed remuneration and benefits and advice issued by the Commission" and substitute therefor " set guidelines on remuneration and benefits</p>	<p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p>
	<p>Public Service Commission The clause exceed the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019. 31(1) The Commission - may take any measures it considers necessary to ensure that public service institutions adhere to the set and reviewed remuneration and benefits for State Officers, and advice issued by the Commission Delete.</p>	<p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p>
	<p>CRA Based on the Advisory role, there is no need for compliance, therefore delete.</p>	<p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p>
	<p>OCOB To avoid ambiguity and uncertainty, the measures to be taken by the Commission should be clearly provided for.</p>	<p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p>Parlscm Regulation 31(1) is ultra vires to the powers of the Commission as the Commission has no power to enforce the remuneration that it sets for State Officers. Further, the advice given on the remuneration for public officers is not binding. The power to investigate, determine compliance and enforce the same (including sanctions for non-compliance) is placed on other state agencies such as the Office of the Auditor General, the EACC, DCI and the judiciary. Regulation 31(2),(3),(4)&(5) are ultra vires in so far as the Commission has no powers to investigate and determine compliance.</p> <p>County Assemblies Forum The Constitution does not create an obligation for the public service institutions to adhere to the advice given by SRC. Proposal Redraft sub-regulation (1) to apply only to state officers.</p>	<p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p>
(2) The Commission may sensitize public service institutions on implementation of the—	<p>County Assemblies Forum Under Regulation 32 (2), it should be an obligation of SRC to sensitize the public service institutions. Proposal In sub-regulation (2) delete the word 'may' and substitute therewith the word 'shall'</p> <p>Parlscm Regulation 31(2) is ultra vires in so far as the Commission has no powers to investigate and determine compliance.</p>	<p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p>
	<p>County Assembly of Makueni Delete the entire sentence and substitute therefor "set guidelines on remuneration and benefits by the Commission. 31 (2) (b) Insert the words "state officers" immediately before the words "other public officers.</p>	<p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p>
(a) set and reviewed remuneration and	-	-	-

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
benefits for State officers; and			
(b) advise on remuneration and benefits for other public officers.			
(3) The Commission shall, pursuant to Section 13 of the Act, conduct regular compliance checks to ensure that public service institutions comply with these regulations, the set and reviewed remuneration and benefits, and the advice of the Commission.	<p>Parliscom Regulation 31(3) is ultra vires in so far as the Commission has no powers to investigate and determine compliance.</p> <p>ICPAK The provision is not clear on how often the compliance checks should be carried out.</p> <p>Proposal Amend Regulation 31 (3) to read: The Commission shall, pursuant to Section 13 of the Act conduct compliance checks every two years to ensure that public service institutions comply with these regulations, the set and reviewed remuneration and benefits and the advice of the Commission.</p> <p>Justification For clarity.</p> <p>Public Service Commission The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.</p> <p>Proposal The clause should be deleted.</p> <p>County Assembly of Makueni Delete the words " the set and reviewed remuneration and benefits and the advice of the commission "and substitute therefor "set guidelines on remuneration and benefits for state and other public officers"</p> <p>Parliscom Regulation 31(4) is ultra vires in so far as the</p>	<p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p>
(4) The Commission may require a public service		<p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
<p>institution to take remedial action in compliance with the Commission's set remuneration and benefits, and advice within a set time frame and provide proof of such compliance.</p>	<p>Commission has no powers to investigate and determine compliance.</p> <p>Public Service Commission The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.</p> <p>Proposal The clause should be deleted.</p> <p>County Assembly of Makueni Delete the words "the commissions set remuneration and benefits and advice within the set time frame and provide proof of compliance" and substitute therefor "the set guidance on remuneration and benefits for state officers and and other public officers and advise</p>	<p>Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p>	<p>regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p>
<p>(5) Where a public service institution fails to comply with the Commission's requirement in sub-regulation (4), the Commission may initiate or recommend action as provided by law.</p>	<p>Parlscom Regulation 31(5) is ultra vires in so far as the Commission has no powers to investigate and determine compliance.</p> <p>Public Service Commission The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.</p> <p>Proposal: The clause should be deleted.</p> <p>County Assembly of Makueni Amend the marginal note accordingly Amend the word "guidance" appearing immediately before the word "guidance" and substitute therefor "guidelines"</p> <p>Parlscom Regulation 7(2) contravenes section 13(m) of the Statutory Instruments Act. Regulation 7(2), in effect, delegates the power to make further statutory instruments to the Commission without reference to the legislative role of Parliament. Article 94(5) of the Constitution of Kenya, 2010 states as follows: "No person or body, other than Parliament, has</p>	<p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>The draft provision needs to be revised in line with Section 13 of the Statutory Instruments Act.</p> <p>The draft provision needs to be revised in line with Section 13 of the Statutory Instruments Act.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations on provision of guidance.</p> <p>SRC has considered the proposal and revised the draft regulations on provision of guidance.</p>
<p>32. Commission to provide guidance. The Commission may, from time to time, issue guidance on the implementation of these Regulations.</p>	<p>Public Service Commission The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.</p> <p>Proposal: The clause should be deleted.</p> <p>County Assembly of Makueni Amend the marginal note accordingly Amend the word "guidance" appearing immediately before the word "guidance" and substitute therefor "guidelines"</p> <p>Parlscom Regulation 7(2) contravenes section 13(m) of the Statutory Instruments Act. Regulation 7(2), in effect, delegates the power to make further statutory instruments to the Commission without reference to the legislative role of Parliament. Article 94(5) of the Constitution of Kenya, 2010 states as follows: "No person or body, other than Parliament, has</p>	<p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>It is necessary to revise the provision on compliance with Commission set and reviewed remuneration and benefits, and advice in entirety.</p> <p>The draft provision needs to be revised in line with Section 13 of the Statutory Instruments Act.</p> <p>The draft provision needs to be revised in line with Section 13 of the Statutory Instruments Act.</p>	<p>SRC has considered the proposal and revised the draft regulations to provide for monitoring and evaluation.</p> <p>SRC has considered the proposal and revised the draft regulations on provision of guidance.</p> <p>SRC has considered the proposal and revised the draft regulations on provision of guidance.</p>

PROVISION	STAKEHOLDER FEEDBACK	OBSERVATIONS BY SRC	RESPONSE/ACTION BY SRC
	<p><i>the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation."</i></p> <p>This is further contrary to section 13(m) of the Statutory Instruments Act as it amounts to an inappropriate delegation of legislative powers.</p> <p>The guidelines contemplated should be set out in the Regulations for approval together with the other provisions of the Regulations.</p> <p>Regulation 24(e) contravenes section 13(m) of the Statutory Instruments Act as it amounts to an inappropriate delegation of legislative powers.</p> <p>Regulation 29(2) is in contravention of section 13(m) of the Statutory Instruments Act in so far as it purports to delegate the timelines for submission of the information sought.</p> <p>Regulation 32 is in contravention of section 13(m) of the Statutory Instruments Act in so far as it purports to give powers to the Commission to issue guidance on implementation of the Regulations and amounts to an inappropriate delegation of legislative power.</p>		

ANNEX 2

REPUBLIC OF KENYA

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Parliamentary Service Commission
Parliament Buildings
P. O. Box 41842 -00100
NAIROBI, Kenya

SPEAKER OF THE NATIONAL ASSEMBLY/CHAIR OF THE PARLIAMENTARY SERVICE COMMISSION

OUR REF: DLC/ADM/1/19(63)

9th March, 2022

Mrs. Lyn C. Mengich,
Chairperson,
Salaries & Remuneration Commission, info@src.go.ke
Williamson House, 6th floor, 4th Ngong Avenue, regulations@src.go.ke
P. O. Box 43126-00100,
NAIROBI.

Dear *Chair person,*

REQUEST FOR WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022.

We refer to your letter ref: SRC/ADM/18(2) dated 23rd February, 2022.

Please note that the Parliamentary Service Commission was unable to participate in the virtual stakeholders' engagement meeting scheduled to be held on Monday, 28th February 2022 due to the short notice given for the meeting. It is important for effective and meaningful public participation that stakeholders be given adequate notice of the meetings to enable them attend. In this particular instance, your letter was received on Friday, 25th February 2022 yet the meeting was scheduled for Monday, 28th February 2022.

Be that as it may, the Parliamentary Service Commission has now considered the draft Regulations in light of the provisions of the Constitution of Kenya, 2010, the Salaries and Remuneration Commission Act, (No. 10 of 2011), the Interpretation and General Provisions Act (Cap 2 Laws of Kenya) and the Statutory Instruments Act (No. 23 of 2013) now proceeds to give its views on the draft Regulations as follows:

PROCEDURAL MATTERS

(a) Regulations making powers

1. The enactment clause of the Regulations states that “IN EXERCISE of the powers conferred by section 26 of the Salaries and Remuneration Commission Act, 2011, **the Chairperson** of the Salaries and Remuneration Commission makes the following Regulations-...”
2. The draft Regulations are made pursuant to section 26 of the Salaries and Remuneration Commission Act, (*No. 10 of 2011*) which provides that-
 - “(1) *The Commission may make regulations generally for the better carrying into effect of any provisions of this Act.*
 - “(2) *The power to make Regulations shall be exercised only after a draft of the proposed Regulations has been approved by the National Assembly.*”
3. The enactment clause should be re-done to conform to section 26 of the Salaries and Remuneration Commission Act, and sections 13(a) and (h) of the Statutory Instruments Act. The power to make Regulations is granted to the Salaries and Remuneration Commission AND NOT the “Chairperson” whose role is to sign the Regulations. This is a drafting and policy error that ought to be corrected.

(b) Regulations making procedure

4. Pursuant to section 26(2) of the Salaries and Remuneration Commission Act, the draft Regulations can only be published after a draft of the proposed Regulations has been approved by the National Assembly.
5. The enactment clause should therefore indicate that the Regulations are made by the Salaries and Remuneration Commission after approval by the National Assembly.

(c) Definition of “commission”.

6. The Regulations refer to the word “Commission” severally in the text/body. There should be a definition of the term “Commission” as the Salaries and Remuneration Commission.

(d) Vague provision

7. Reference to the words “other legal provisions” in the proposed Regulation 6(a) and 9(1)(a) are vague and should clearly specify the written laws that the principles are anchored on. These include the Employment Act, the Income Tax Act, the Public

Service Commission Act, the Parliamentary Service Commission Act, the Judicial Service Commission Act, the Retirement Benefits Act, the Pensions Act, the Parliamentary Pensions Act, and the Retirement Benefits (Deputy President and Designated State Officers) Act.

SUBSTANTIVE MATTERS

Definition of “allowance”

8. Regulation 2 defines “allowance” as meaning “... payment made to State or other public officers in addition to the basic or consolidated salary, as the case may be, for purposes of compensation, **or any facilitative payment made to State or other public officers.**”
9. Facilitative payments are neither remuneration nor benefits and therefore fall outside the mandate of the Salaries and Remuneration Commission. Facilitative payments are simply monies paid to State and public officers to enable them undertake their functions. The monies must be accounted for and do not benefit or remunerate the State or public officer. Examples of facilitative payments include imprest and per diem.
10. The phrase “...or any facilitative payment made to State or other public officers...” should therefore be deleted.

ROLE OF THE SALARIES AND REMUNERATION COMMISSION WITH REGARD TO OTHER PUBLIC OFFICERS

Powers of the Salaries and Remuneration Commission

11. It is important for the Salaries and Remuneration Commission to properly recognize the distinction between its constitutional power to set remuneration and benefits for State Officers and its power to advise on the remuneration and benefits for other public officers. During the Constitution making process, the Committee of Experts on Constitutional Review in their final report dated 11th October, 2010 stated as follows with regard to the Salaries and Remuneration Commission at paragraph 7.5.5.4:

7.5.5.4 The Salaries and Remuneration Commission

The functions of the Salaries and Remuneration Commission were revised in the RHDC. Its power to set the remuneration of MPs, members of the executive, including the president, members of commissions and other independent offices and other senior office holders was retained but its power to set the remuneration of other public officers was removed. This is because setting salaries in the public service is a matter closely linked to government policy and subject to collective bargaining. It is therefore not appropriately taken out of the hands of the executive (and unions) and given to an independent body. Instead, under the RHDC the Commission was to make recommendations on all other salaries etc in the public service. The Commission was covered by the provisions of Chapter 16 of that draft and so is independent. A rigorous process must be followed to remove members of the Commission.

The composition of the Commission was also revised to ensure that each sector affected by its decisions can nominate members to serve on it. In addition, three additional members of the Commission were to supply professional advice and do not vote (these are persons designated by the Attorney-General's office, by the Cabinet Secretary responsible for finance and by the Cabinet Secretary responsible for human resources).

The Salaries and Remuneration Commission protects constitutional democracy in two important ways. First, following practice in many modern democracies, it ensures that people do not set their own salaries – thus although MPs must pass the budget, they do not set their own salaries. Secondly, it protects the remuneration of members of the institutions that are intended to guard the Constitution and oversee the executive and Parliament. So, for instance, Parliament or the executive cannot intimidate judges by threatening to lower their salaries – the salaries are set and protected by the Commission.

Object of the Regulations

12. Regulation 3(1)(c) states that one the objectives of the Regulations is to provide for the procedure for reviewing the remuneration and benefits of other public officers. This is contrary to Article 230(4)(b) of the Constitution and section 11(a), (b) and (c) of the Salaries and Remuneration Act, 2011 which envisages that the Salaries

and Remuneration Commission shall play an advisory role in terms of remuneration and benefits of all other public officers;

13. Article 230(4)(b) of the Constitution provides as follows:

The powers and functions of the Salaries and Remuneration Commission shall be to—

- (a) set and regularly review the remuneration and benefits of all State officers; and*
- (b) advise the national and county governments on the remuneration and benefits of all other public officers.*

14. Sections 11(a), (b) and (c) of the Salaries and Remuneration Act, 2011 provide as follows:

Functions of the Commission

In addition to the powers and functions of the Commission under Article 230 (4), the Commission shall—

- (a) inquire into and advise on the salaries and remuneration to be paid out of public funds;*
- (b) keep under review all matters relating to the salaries and remuneration of public officers;*
- (c) advise the national and county governments on the harmonization, equity and fairness of remuneration for the attraction and retention of requisite skills in the public sector;*
- (d) conduct comparative surveys on the labour markets and trends in remuneration to determine the monetary worth of the jobs of public offices;*
- (e) determine the cycle of salaries and remuneration review upon which Parliament may allocate adequate funds for implementation;*
- (f) make recommendations on matters relating to the salary and remuneration of a particular State or public officer;*
- (g) make recommendations on the review of pensions payable to holders of public offices; and*
- (h) perform such other functions as may be provided for by the Constitution or any other written law.*

15. Regulation 4(2) provides that the Salaries and Remuneration Commission shall undertake the review taking into account the applicable national budgeting and

planning cycles. This is contrary to section 11(e) of the Principal Act which provides for the Commission to simply undertake the review. It is thereafter the responsibility of Parliament to determine whether to allocate funds for implementation of the review. It is Parliament's role to make the budget as well as plan for the country's medium term expenditure framework. The Commission should therefore work closely with Parliament and the National Treasury with undertaking reviews of remuneration and benefits.

16. Regulation 10(b) provides that the Commission shall communicate its advice on the remuneration and benefits for other public officers indicating the effective date of implementation.
17. The role of the Salaries and Remuneration with other public officers is to advise and not to set the remuneration. The role of setting the remuneration and benefits of other public officers falls within the remit of their respective employers who also appoint and supervise the office holders.
18. The Salaries and Remuneration Commission has no powers to redefine contractual relations between an employer and employee.
19. Regulation 11(c) is not in tandem with section 11(c) of the Salaries and Remuneration Commission Act in that the objective of the rationalization and harmonization of job grading structures in the public service has not been set out in the Regulations. Section 11(c) of the Salaries and Remuneration Commission Act provides that the purpose of harmonization, equity and fairness of remuneration is for the attraction and retention of requisite skills in the public service. The said section 11(c) provides that in addition to the powers and functions of the Commission under Article 230(4) of the Constitution, the Commission shall-

"advise the national and county governments on the harmonization, equity and fairness of remuneration for the attraction and retention of requisite skills in the public sector."

Validity of job evaluation results

20. Regulation 16 infringes on the powers and responsibilities of employers of public officers to undertake their own job evaluations for employees. In particular, the Parliamentary Service Commission, the Judicial Service Commission and the Public Service Commission have the power to undertake job evaluation for public officers who are employees of these Commissions.

Procedure for developing salary structures

21. Regulations 19(3) and 21 are *ultra vires* the powers of the Salaries and Remuneration Commission as set out in the Constitution and the Salaries and Remuneration Commission Act which is to advise on the remuneration and benefits of other public officers. The Commission cannot compel a public service institution to ensure that the salary structure of its public officers is as advised by the Commission.
22. The role of setting the remuneration and benefits of other public officers falls within the remit of their respective employers who also appoint and supervise the office holders and the Commission has no powers to redefine contractual relations between an employer and employee.
23. In particular, section 11(1)(b) of the Parliamentary Service Act, 2019 provides that the Parliamentary Service Commission-

“(1) In addition to the functions set out in Article Functions of the 127(6) of the Constitution, the Commission shall —

- (a) direct and supervise the administration of the services and facilities provided by, and exercise budgetary control over, the Service;*
 - (b) determine and review the terms and conditions of service of persons holding or acting in the offices of the Service;*
 - (c) initiate, co-ordinate and harmonize policies and strategies relating to the development of the Service;*
- ... ”*

Guidance on salary structures, rewarding productivity and performance

24. Regulations 22 and 23 provide that the Commission shall issue guidance on recognizing productivity and performance as well as guidance on a public service institutions salary structure. Again, this is *ultra vires* the powers of the Commission which is to advise public service institutions and not to offer “guidance”.
25. Regulations 24 provides that a public service institution shall seek the prior advice of Commission before awarding its public officers a reward for productivity and performance. Again, this derogates from the power of employer public service institutions and goes beyond the powers of the Commission to advice.

Collective Bargaining negotiation

26. Regulation 25(2) is *ultra vires* the powers of the Commission by prescribing the period of collective bargaining agreements. The Commission may advise on the period of a collective bargaining agreement but may not prescribe the period of the agreements.
27. Regulation 26(1) provides that a public service institution with a recognition agreement with a trade union shall seek the prior advice on the Commission before commencement of collective bargaining negotiation. This derogates from the power of employer public service institutions and goes beyond the powers of the Commission to advice.
28. Regulations 26(2)(3)&(4) are similarly *ultra vires* to the powers of the Commission and derogate from the power of employer public service institutions and goes beyond the powers of the Commission to advice.
29. Regulation 28(1) is *ultra vires* to the powers of the Commission in so far as it provides that the advice of the Commission is binding in relation to the remuneration and benefits of all other public officers and may only be reviewed by the Commission.

Litigation

30. Regulations 30(3)&(4) are *ultra vires* to the powers of the Commission with regard to advise to employer public service institutions as well as the established procedure of litigation before the judiciary.

Compliance

31. Regulation 31(1) is *ultra vires* to the powers of the Commission as the Commission has no power to enforce the remuneration that it sets for State Officers. Further, the advice given on the remuneration for public officers is not binding.
32. The power to investigate, determine compliance and enforce the same (including sanctions for non-compliance) is placed on other state agencies such as the Office of the Auditor General, the EACC, DCI and the judiciary.
33. Regulation 31(2),(3),(4)&(5) are *ultra vires* in so far as the Commission has no powers to investigate and determine compliance.

Contravention of section 13(m) of the Statutory Instruments Act

34. Regulation 7(2) provides that the Commission shall from time to time issue guidelines to give effect to the provisions of regulation 1.
35. This, in effect, delegates the power to make further statutory instruments to the Commission without reference to the legislative role of Parliament. Article 94(5) of the Constitution of Kenya, 2010 states as follows:

"No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation."

36. This is further contrary to section 13(m) of the Statutory Instruments Act as it amounts to an inappropriate delegation of legislative powers.
37. The guidelines contemplated should be set out in the Regulations for approval together with the other provisions of the Regulations.
38. Regulation 24(e) contravenes section 13(m) of the Statutory Instruments Act as it amounts to an inappropriate delegation of legislative powers.
39. Regulation 29(2) is in contravention of section 13(m) of the Statutory Instruments Act in so far as it purports to delegate the timelines for submission of the information sought.
40. Regulation 32 is in contravention of section 13(m) of the Statutory Instruments Act in so far as it purports to give powers to the Commission to issue guidance on implementation of the Regulations and amounts to an inappropriate delegation of legislative powers.

Pension

41. Regulation 8 provides that the Commission shall set the pension or gratuity due to a State Officer and advise on the pension or gratuity due to other public officers. The Regulations should provide that the pension or gratuity shall be based on a scientific formula and further be in tandem with the relevant pension laws (Retirement Benefits Act, the Pensions Act, the Parliamentary Pensions Act, and the Retirement Benefits (Deputy President and Designated State Officers) Act)

42. This shall bring the Regulations into conformity with section 13(k) of the Statutory Instruments Act which provides that statutory instruments should not make rights, liberties or obligations of any person unduly dependent on insufficiently defined administrative powers.

Public participation

- Regulation 9(2) provides that the Commission “may” invite views from stakeholders while discharging its mandate. Under Article 10 of the Constitution, participation of the people is a national value and therefore mandatory.
43. Regulation 9(2) should therefore provide that the Commission “shall” invite the views of the stakeholders while discharging its mandate.

Partnering with training institutions

44. Regulation 13(1)(c) makes it mandatory for the Commission to partner with training institutions to facilitate training of public service institutions in matters relating to job evaluation. The partnering with training institutions should be optional and determined by the Commission’s internal capacity.

Compensable factors

45. Regulation 13(1)(d) provides that the Commission shall prescribe the compensable factors for job evaluation. The compensable factors must be determined after taking into account the functions of a job as set out in the Constitution, an Act of Parliament, job description or schemes of service as is applicable to the job.
46. The compensable factors must further be defined and publicized in order to be in conformity with section 13(k) of the Statutory Instruments Act which provides that statutory instruments should not make rights, liberties or obligations of any person unduly dependent on insufficiently defined administrative powers.
47. The compensable factors further need to be set out in the regulations to avoid the same being in contravention of section 13(m) of the Statutory Instruments Act which prohibits an inappropriate delegation of legislative powers.
48. Regulation 13(2)(c) which provides for the Commission to prescribe the criteria for assessing, identifying and determining the jobs to be evaluated is *ultra vires* to section 13(m) of the Statutory Instruments Act which prohibits an inappropriate

delegation of legislative powers. The criteria for this should be set out in the regulations and is indeed set out at Regulation 12(1).


Review of job evaluation

49. Regulation 15(3) needs to be re-drafted to more accurately communicate the procedure of applying for review of job evaluation results.
50. Regulation 15(4) provides that the Commission shall prescribe the timelines for an application for review of a job evaluation. This is a derogation from section 13(m) of the Statutory Instruments Act which prohibits an inappropriate delegation of legislative powers. The timelines should be detailed in the Regulations or in a schedule to the Regulations.
51. Again, the timelines set out in Regulations 15(5)&(6) should be detailed in the Regulations or in a schedule to the Regulations and not prescribed by the Commission.

CONCLUSION

The Parliamentary Service Commission thanks the Salaries and Remuneration Commission for the opportunity to give its views on the draft Regulations and assures it of its highest regard.

Yours,


**HON. JUSTIN MUTURI, E.G.H., M.P.,
SPEAKER OF THE NATIONAL ASSEMBLY/CHAIRMAN,
PARLIAMENTARY SERVICE COMMISSION.**

TEACHERS SERVICE COMMISSION

ANNEX 3



**TSC MEMORANDUM ON THE DRAFT SRC (REMUNERATION
AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS)
REGULATIONS 2022**

PRESENTED

TO

THE SALARIES AND REMUNERATION COMMISSION

BY

THE TEACHERS SERVICE COMMISSION

TEACHERS SERVICE COMMISSION

Telephone: Nairobi 2892000

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TSC HOUSE
KILIMANJARO ROAD
UPPER HILL
PRIVATE BAG- 00100
NAIROBI, KENYA

When replying please quote

Ref. N^o:CS/TSC/46/VOL.VII

Date: 16th March, 2022

Anne R. Gitau, MBS (Mrs)
Secretary/Chief Executive
Salaries and Remuneration Commission
P.O. Box 30050 – 00100,
NAIROBI

Dear Madam,

TSC MEMORANDUM ON THE DRAFT SRC (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS 2022

This is in reference to your letter SRC/ADM/18 (2) dated 23rd February, 2022, and our letter Ref:TSC/FIN/SDD/SRC/70/VOL.II/4 dated 11/3/2022 on the above matter.

We have subjected the proposed Regulations on the Remuneration and Benefits of State and Public Officers 2022 to a thorough review.

Attached hereto, find Memorandum elaborating the position of the Teachers Service Commission on the same.

We await the opportunity to reiterate and/or elaborate on the same.

Yours Sincerely,

DR. NANCY NJERI MACHARIA, CBS
SECRETARY/CHIEF EXECUTIVE

**TSC MEMORANDUM ON THE DRAFT SRC (REMUNERATION
AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS)
REGULATIONS 2022**

1. INTRODUCTION

- 1.1 The Teachers Service Commission (the Commission) is established under **Article 237 (1)** of the Constitution as a constitutional Commission with primary functions being to: - register trained teachers; recruit and employ registered teachers; assign teachers for service in any public school or institution; promote and transfer teachers; exercise disciplinary control over teachers; and terminate the employment of teachers engaged in public service.
- 1.2 The Commission is further mandated Under **Article 237 (3)** of the Constitution to:- review the standards of education and training of persons entering the teaching service; review the national demand for, and the supply of teachers; and advise the National Government on matters relating to the teaching profession.
- 1.3 On the other hand, section 11 of the Teachers Service Commission Act requires the Commission to: -
 - 1.3.1 Formulate policies to achieve its mandate;
 - 1.3.2 Provide strategic leadership and direction;
 - 1.3.3 Prescribe teaching standards and ensure compliance;
 - 1.3.4 Manage the Teachers payroll;
 - 1.3.5 Facilitate career progression & professional development;
 - 1.3.6 Monitor the Conduct and Performance of teachers; and
 - 1.3.7 Do all such other things as may be necessary for the effective discharge of its functions and the exercise of its powers.
- 1.4 TSC is therefore an independent body bestowed with a specific mandate to undertake all teacher management functions. Under **Article 250** of the Constitution, the membership of the Commission is constituted to discharge and/or execute such mandate while **Article 249(2) (b)** of the Constitution acknowledges that the Commission is independent hence not subject to direction or control by any person or authority.

- 1.5 The Commission is the single largest employer in the public sector. Notably, the proposed Regulations will have huge implication in the teaching service in Kenya. It is against this background that the Commission has carefully studied the proposed Regulations and hereby presents its views on the same for consideration.

2. GENERAL VIEW ON THE PROPOSED REGULATIONS

Pension Regime in Kenya

- 2.1 Pension regime in Kenya is regulated by Constitution, the Pensions Act, the Retirement Benefits Act, and the Public Service Superannuation Scheme Act. These legislations provide statutory guidelines on the entire pension regime in public service.
- 2.2 Further, the statutes and attendant Regulations vests the legal mandate for the management of retirement benefits in different institutions in the public service including the National Treasury, the Retirement Benefits Authority and various employers.
- 2.3 **Regulation 8** of the proposed Regulations seeks to upset the above substantive statutory framework through the "back door" i.e. subsidiary legislation. As a cardinal principle of law, Regulations cannot amend a substantive statutory provision. The net effect of the Regulation as currently drafted are inconsistent with the provisions of the Pensions Act, the Retirement Benefits Act, and the Public Service Superannuation Scheme Act.
- 2.4 **For instance:** The Regulations proposes that SRC shall set and advice pension or gratuity payable to state officer and public officers. This contradicts the provision of the first schedule of the Pensions Act that provides a statutory formula for calculating pension emoluments in public service.
- 2.5 We further take note that, the Public Service Superannuation Scheme is a defined contribution scheme for employees in the public service. The same is founded on the provisions of the Public Service Superannuation Scheme Act. The scheme is further regulated by the Retirement Benefits Authority. To this end, therefore, the proposed provision by the Regulations to mandate SRC to regulate defined contribution schemes will not only be usurping the mandate of the RBA but also a contravention of the existing law.

- 2.6 Under Section 11(g) of the Salary and Remuneration Act the Commission has the mandate to **make recommendations on the review of pensions payable to holders of public offices**. The proposed Regulations tends to extend this mandate beyond the provisions of the parent Act to include “setting, regulating, reviewing, advising on pension review.” This creates inconsistency which will not stand the test of time and/or the legal threshold for law making.
- 2.7 To the extent that the proposed Regulations tend to encroach on matters already sufficiently provided for by other existing legislations the same is not only in contravention to jurisprudence but may fail the *ultra vires* test.
- 2.8 We reiterate that there are statutory legislations in place that creates, defines and regulates the right to pension. As such, except through an amendment of the parent Acts to place SRC in the implementation structure of pensions, an attempt to create, define, regulate or confine powers to any other entities than those contemplated under the relevant legislation will be illegal.
- 2.9 The proposed Regulations will render impotent and circumvent the powers and roles granted to bodies under the Pension Act, Retirement Benefits Act, and Public Service Superannuation Scheme Act. In this regard, it is our view that the proposed Regulations should be limited to the Constitutional Mandate of SRC.

Managerial Prerogative of an Employer

- 2.10 Generally, employers have the mandate to recruit, supervise, appraise, and reward employees based on achievements and productivity instruments developed by the employer.
- 2.11 More specifically, teacher management functions is exclusive mandate of TSC under Article 237(2) including inter alia to recruit, employ and promote teachers. TSC constitutional power to undertake teacher management functions vests it with exclusive mandate to supervise, measure and evaluate performance of its employees. The same is further buttressed by **Section 11(f)** of the TSC Act that empowers the Commission to monitor the conduct and performance of teachers in the teaching service.

- 2.12 Accordingly, the TSC just like other employers in public service has in place the Performance, Recognition, Rewards and Sanctions Policy for its employees. This policy framework compliments the Performance Contract and Performance Appraisal tools to measure productivity and consequently issue rewards or sanctions where appropriate.
- 2.13 In the same spirit, the Public Service Commission has in place the Performance Rewards and Sanctions Policy Framework for the Public Service. This framework establishes performance management system and a basis for rewarding exemplary performance, and where necessary, administering sanctions for poor performance, with a view to enhance productivity in the Public Service.
- 2.14 **Regulation 23** and **24** seeks to irregularly grant SRC the mandate to approve internal policies or guidelines related to rewards and productivity. More dangerously, **Regulation 23 (1)** seeks to further grant SRC power to develop Guidelines on rewarding productivity and performance and that such Guidelines will be binding on employers in the public service.
- 2.15 Accordingly, it is our considered view that **Regulations 23 and 24** be deleted entirely as it seeks to unlawfully usurp the mandate of Public Service employers contrary to **Article 249** of the Constitution.
- 2.16 Issues of reward and productivity are managerial emanating from the administrative prerogative that vest **exclusively** on an employer. While we appreciate the mandate of SRC under the law, TSC being a Constitutional Commission with operational independence cannot be directed by any other person or authority save as provided in law.
- 2.17 It is also key to note that there is a proposed National Productivity and Competitiveness Council Bill, 2019 that seeks to establish framework to foster productivity and competitiveness improvement in the public sector.

2.18 It is our view, therefore, that rewards and sanction framework are within the exclusive province of employers. It is also key to note that not all rewards contemplated under various policies in the public sector have financial implications.

3. MATRIX ON SPECIFIC RECOMMENDATIONS ON THE PROPOSED REGULATIONS

S/N	CLAUSE	VIEWS	RECOMMENDATIONS
1.	Regulation 8 (1) and (2): SRC shall set/advise on pension due to state officers and public officers.	<p>The First Schedule of Pensions Act provides for a formula for calculation of pensions due to a public officer.</p> <p>Further, the Public Service Superannuation Scheme Act provides for contributions and payment of retirement benefits for defined contribution.</p> <p>It is our view therefore that the proposed Regulation tend to bestow functions provided by other statutes on SRC without any basis in law.</p>	The entirety of Regulation 8 be deleted.
	Regulation 8(3): State or other public officer shall not be paid both pension and gratuity for the same period of time.	The proposed Regulation contradicts Section 4 of the Pensions Act that provides that every person has absolute right to pensions and gratuity.	

<p>Regulation 8(5) and (6): SRC to give guidance to effect defined contribution</p>	<p>The Public Service Superannuation Scheme Act creates a defined contribution for public service and gives guidance to contribution and payment of retirement benefits under the scheme.</p> <p>Further, the Retirement Benefits Authority established by the Retirement Benefits Authority Act is mandated to regulate Pension Schemes.</p> <p>Thus, the proposed Regulation contravenes the powers/functions provided by statute and donated to other bodies.</p>	
<p>Regulation 8(7): SRC to set, review advise and recommend on pension review</p>	<p>The proposed Regulation extend to the mandate of SRC beyond what is provided under section 11(g) of the SRC Act. The Regulation is thus <i>ultra vires</i></p>	

<p>2.</p>	<p>Regulation 23 & 24: Rewarding productivity and performance</p>	<p>Firstly, Rewards and Sanctions is an exclusive prerogative of the employer and TSC being an independent constitutional body its functions cannot be supervised by another body.</p> <p>Secondly, we note that the nature of Productivity and Rewards regime does not require guidelines, approvals and supervision by SRC.</p> <p>Thirdly, SRC has no such mandate in law. It is only the employer in consultation with the employee who can effectively measure the productivity of an employee.</p> <p>Fourth, the proposed National Productivity and Competitiveness Council Bill, 2019 seeks to establish a council that will be in charge of productivity and competitiveness in the public sector.</p> <p>Teachers are employees of TSC and therefore, their productivity and performance can only be measured by TSC through its internal Performance Evaluation instruments.</p>	<p>The regulations be deleted in entirety.</p>
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-----ENDS-----



PUBLIC SERVICE COMMISSION

PSC/LEG/019/14/185 IV(16)

1st March, 2022

Chairperson
Salaries and Remuneration Commission
Williamson House
4th Ngong Avenue
NAIROBI.



*DRS
please
find
for
review
file
7-3-22*

**REQUEST FOR WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND
REMUNERATIONS COMMISSION (REMUNERATION AND BENEFITS OF
STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022**

Reference is made to your letter dated 23rd February, 2022.

Attached is the written memorandum from the Public Service Commission.

Don
Dr. Simon K. Rotich, CBS
Secretary/CEO
Public Service Commission

Attch.

SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF
STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

MEMORANDUM OF THE PUBLIC SERVICE COMMISSION

No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
PART I—PRELIMINARY PROVISIONS			
1.	2	The interpretation of “job evaluation” violates the mandate of PSC under Article 234(2)(a)(i) of the Constitution as read together with Section 27 of the Public Service Commission Act, 2017.	“Job Evaluation” should be interpreted to mean a systematic and objective process of determining the worth of a job in relation to other jobs. for purposes of establishing a rational grading structure; <i>(delete)</i>
2.	2	The interpretation of the term “public service institution” is unconstitutional as it purports to usurp the constitutional mandate of the Public service Commission specifically Art. 234(2)(g) by giving SRC the power to directly engage public service institutions that fall under the mandate of the Public Service Commission i.e. Ministries and State Corporations.	The definition should be as follows:- “public service institution” means a) Public Service Commission; b) Parliamentary Service Commission; c) Judicial Service Commission; d) National Police Service Commission; e) Teachers Service Commission; f) County Public Service Board; g) County Assembly Service Board; and h) Constitutional Commission and Independent Office.
3.	2	Review of remuneration and benefits	It should be amended to only provide for the definition of review.
4.	3(2)(c)	The provision contravenes Art. 234(2) (g) of the Constitution and it also contravenes the provisions of Section 11(b) of the Salaries and Remuneration Act which only gives SRC the power to keep under review all matters relating to the salaries and remuneration of public officers. It should be noted that under Article 230(4) of the Constitution SRC is only mandated to set and regularly review the remuneration and benefits of all State Officers and to	Clause 3(2)(c) should be deleted.

No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
		<p>advise the National and County Governments on remuneration and benefits of all other public officers. Therefore, SRC cannot give itself powers, through Regulations, that exceed their Constitutional powers and functions.</p>	
PART II- SETTING, REVIEWING AND ADVISING ON REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS			
5.	4	<p>The entire clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.</p>	<p>4(1) should read as follows</p> <p>4. "(1) The Commission shall —</p> <p>(a) undertake a review of State Officers' remuneration and benefits every four years;</p> <p>(b) Keep under review other public officers' remuneration every four years;and</p> <p>(c) Keep under review allowances and benefits of other public officers."</p> <p>(3) The Commission may, notwithstanding the provisions of sub-regulation (1), undertake a special review of the remuneration and benefits of State officers and other public officers (delete) to address emerging circumstances and conditions.</p>
6.	5	<p>The clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.</p>	<p>5(1) Whenever a review is due, the Commission shall call forrelevant information from public service institutions, onremuneration and benefits for their respective State officers. other public officers. (delete)</p>
7.	6	<p>The clause contravenes the mandate of the Public Service Commission under Article 234(2) (a) (i) as read together with Section 27 of the Public Service Commission Act.</p> <p>The clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.</p>	<p>(6) The Commission shall, in undertaking a review or keeping under review all matters relating to the salaries and remuneration of public officers inaccordance with these Regulations, consider —</p> <p>(a) the principles set out under Article 230 (5) of the Constitution, Section 12 of the Act and other legal</p>

No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
			provisions; (b) the economic performance of the country; (c) the outcome of comparative surveys on the labourmarkets and trends in remuneration; and (d) the job evaluation results <i>as undertaken by public service institutions.</i>
8.	7(1)	The clause contravenes on the mandate of the Public Service Commission under Article 234(2) (a) (i) as read together with Section 27 of the Public Service Commission Act. The clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.	7(1) The Commission shall undertake periodic review <i>or keep under review, as the case may be</i> , allowances and other benefits and advise public service institutions taking into account provisions of regulation 4.
9.	8	The entire clause contravenes the provisions of, among others, the Presidential Retirement Benefits Act, Retirement Benefits (Deputy President and Designated State Officers) Act, Retirement Benefits Act, Pensions Act and the Public Service Superannuation scheme Act.	Clause 8 should be deleted in its entirety.
10.	9	Clause 6 and 9 are dealing with the same or related issue.	Clauses 6 and 9 should be <i>merged</i> . In the merger, clause 9(1) should read: 9(1) The Commission shall, in setting, reviewing and or advising on remuneration and benefits, where applicable, consider... and 9(1)(g) should read; the job evaluation results <i>as undertaken by public service institutions.</i> And 9(2) should read; In the discharge of its mandate, the Commission may shall

No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
			invite views from stakeholders which include—
9.	10(b)	The clause exceeds the powers of SRC as provided for in Article 230 (4)(b) of the Constitution which has since been interpreted by the Supreme Court in Pet. No. 42 of 2019.	The clause should read; advice on remuneration and benefits for other public officers <i>indicating—the effective date of implementation.</i> (delete)
10.	11to 18	<p>The clauses contravene on the mandate of the Public Service Commission under Article 234(2) (a) (i) as read together with Section 27 of the Public Service Commission Act.</p> <p>The clauses exceed the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.</p> <p>With regard to State Officers their jobs are defined in the Constitution and enabling legislation.</p>	Clauses 11 to 18 should be deleted.

No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
11.	19 & 20(2)	The clauses exceed the constitutional and statutory powers and functions of SRC, specifically Article 230(4)(b) of the Constitution which has been interpreted by the Supreme Court in Petition No. 42 of 2019.	<p>19. 1) The Commission, shall, prior to developing salary structures for State Officers—</p> <p>(a) conduct comparative surveys on labour markets and trends in remuneration to determine the relativity of remuneration of public service in relation to the market trends; and</p> <p>(b) subject the outcome of the comparative surveys on labour markets and trends in remuneration to the provisions of regulation 9 (1).</p> <p>(2) The Commission shall develop and communicate to public service institutions the set and reviewed salary structures for State officers and advice on the salary structures for other public officers. (delete)</p> <p>(3) A public service institution shall—</p> <p>(a) ensure its salary structure is as advised by the Commission; and</p> <p>(b) submit the information requested by the Commission while undertaking comparative surveys on labour markets and trends in remuneration; Delete</p> <p>Clause 20(2) should be deleted.</p>
12.	21	The clause exceeds the constitutional and statutory mandate of SRC.	(a) Salary structures that are set, reviewed or advised Delete shall remain valid until reviewed by the Commission.
13.	23	The clause encroaches on the Public Service Commission powers and functions in Article 234(2)(e) of the Constitution as read with Section 62 of the Public Service Commission Act.	Clause 23 should be deleted in its entirety.

No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
14.	26(3) & (4)	The clauses exceed the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.	Clause 26(3) & (4) should be deleted in entirety.
PART III— MISCELLANEOUS PROVISIONS			
15.	27	The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.	27A public service institution may, at any time, request the Commission, in writing, to- <ul style="list-style-type: none"> a) Set and review the remuneration and benefits for its State Officers, and b) Advise on the remuneration of its public officers.
16.	28	The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.	Clause 28 should be deleted.
17.	30(3)	The clause is superfluous as the procedures for dispute resolution in court is provided for in various rules of procedure for different courts.	Clause 30(3) should be deleted.
18.	31(1)	The clause exceed the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.	(1) The Commission may take any measures it considers necessary to ensure that public service institutions adhere to the set and reviewed remuneration and benefits for State Officers. and advice issued by the Commission. Delete
19.	31(3), (4) and (5)	The clauses exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.	Clauses 31(3), (4) and (5) should be deleted.



Amb. Anthony Muchiri

Chairperson, Public Service Commission

28th February 2022.

MATRIX OF VIEWS ON DRAFT SRC REGULATIONS AS SUBMITTED BY TSC AND PSC

1.	Provision	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
<p>"public body" has the same meaning assigned to it under section 3 of the Interpretation and General Provisions Act;</p>	<p>PSC The definition of "public body" in the Regulations has the effect of usurping the functions and powers of the PSC is provided for in Article 234 of the Constitution. The Commission is the constitutional entity that is responsible for human resource management in the public service which encompasses Ministries, Departments and State Agencies including State Corporations and Public Universities.</p> <p>This is in the same manner as the Parliamentary Service Commission is responsible for the Parliamentary Service, National Police Service Commission is responsible for the police service, Judicial Service Commission is responsible for the teachers' service. Whereas SRC deals directly with the other mention service commissions on the areas of their mandate, when it comes to the mandate of the Public Service Commission, SRC always proceeds to deal directly with entities under the PSC. The effect is a distortion of the service.</p> <p>It is noteworthy that the definition adopted</p>	<p>The definition of the term "public body" as used in the draft regulations has the same meaning assigned to it under Section 3 of the IGPA.</p> <ul style="list-style-type: none"> i. As rule of law making, a regulation cannot assign a different meaning than what is prescribed in an Act of Parliament. ii. The definition proposed by PSC is inconsistent with the definition as set out in Section 3 of the IGPA. iii. The 6th Schedule of the Constitution provides that all law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution. Section 3 of the IGPA, on the definition of the term "public body" should thus be read with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution. 	<p>It is proposed that the definition be retained.</p> <p align="center"><i>XXXXX W</i></p>	

	<p>by the SRC is contained in the Interpretation and General Provisions Act, which specific definition has not been amended since the promulgation of the Constitution. If that definition is adopted as proposed in the draft regulations, the SRC will be given a greenlight to unconstitutionally ignore PSC which is the one responsible for the public service.</p> <p>Proposal by PSC</p> <p>"public body" means:</p> <ul style="list-style-type: none"> a. Public Service Commission; b. Parliamentary Service Commission; c. Judicial Service Commission; d. National Police Service Commission; e. Teachers Service Commission; f. County Public Service Board; g. County Assembly Service Board; and h. Constitutional Commission and Independent Office. 		
<p>2.</p>	<p>3.(1) The objective of these Regulations is to—</p>	<p>Regulation 3(b)(iii) contravenes Article PSC</p>	<p>i. The powers and functions of SRC are not limited to only what is denoted under Article</p> <p>It is proposed that Regulation</p>

	<p>(a) To facilitate the discharge of the mandate of the Commission;</p> <p>(b) provide for the procedure to—</p> <p>(i) set and review remuneration and benefits for State officers;</p> <p>(ii) advise on remuneration and benefits for other public officers; and</p> <p>(iii) keep under review all matters relating to salaries and remuneration of other public officers.</p>	<p>234(2)(g) of the Constitution and it also contravenes the provisions of Section 11(b) of the Salaries and Remuneration Act which only gives SRC the power to keep under review all matters relating to the salaries and remuneration of public officers.</p> <p>It should be noted that under Article 230(4) of the Constitution SRC is only mandated to set and regularly review the remuneration and benefits of all State officers and to advise the national and county governments on remuneration and benefits of all other public officers. Therefore, SRC cannot give itself powers, through regulations, that exceed their constitutional powers and functions.</p>	<p>230 (4) (a) and (b) of the Constitution.</p> <p>ii. Section 11 of the SRC Act confers SRC with additional powers and functions.</p> <p>iii. Regulation 3(b)(iii) is drawn from the provisions of Section 11(b) of the principal Act which mandates SRC to keep under review all matters relating to the salaries and remuneration of public officers.</p>	<p>3(b)(iii) be retained.</p>
<p>3.</p>	<p>6. (1) Pursuant to Article 230(4)(a) of the Constitution, the Commission shall set the pension or gratuity due to a State officer.</p> <p>(2) The Commission shall, in consultation with relevant stakeholders—</p> <p>(a) advise on the pension or gratuity due to other public officers taking into account the applicable</p>	<p>Teachers Service Commission (TSC)</p> <p>Regulation 6 of the proposed Regulations seeks to upset the existing Pension statutory framework through subsidiary legislation. As a principal of law, Regulation cannot amend a substantive statutory provision. We noted that Regulation 6 as drafted is inconsistent with the provisions of the Pensions Act, the Retirement Benefits Act, and the Public Service Superannuation Scheme Act.</p> <p>Proposal</p> <p>Regulation 6 be deleted.</p>	<p>i. Pension is an employment benefit and therefore part of SRC's mandate under Article 230 (4) of the Constitution to: a) set and regularly review in respect of State officers; and b) advise on with regard to all other public officers.</p> <p>ii. The existing statutes that govern the administration of pension ought to be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the provisions of Article 230 (4) of the Constitution.</p>	<p>It is proposed that Regulation 6 be retained.</p>

<p>laws; and</p> <p>(b) undertake periodic reviews and make recommendations on pensions payable to eligible persons.</p>		<p>iii. The proposed Regulation 6 does not amend any Act of Parliament.</p>	
<p>4. 7.(1) The Commission shall, in setting, reviewing and advising on remuneration and benefits, where applicable, consider any or a combination of the following principles and factors—</p> <p>(a) the principles set out under Article 230(5) of the Constitution, section 12 of the Act and other applicable laws;</p> <p>(b) the economic performance of the country;</p> <p>(a) the capacity of a public body to afford the cost of proposed remuneration and benefits;</p> <p>(b) the ability of a public body to sustain payment of remuneration and benefits;</p>	<p>PSC</p> <p>Clause 7(1)(g) takes away a public body's power to undertake its own job evaluation.</p> <p>Clause 7(1)(h) as read together with clause 7(2) has the effect of removing the current annual salary increments that are based on the cost-of-living adjustment.</p> <p>Proposal</p> <p>Clause 7(1) & (2) should be amend to as follows:</p> <p>(g) job evaluation results as undertaken by public bodies.</p> <p>(NB: public bodies as defined in the PSC proposal above)</p> <p>(h) cost of living adjustment.</p>	<p>i. Clause 7(1)(g) does not take away a public body's power to undertake its own job evaluation.</p> <p>ii. The purpose of the SRC carrying out job evaluation is so as to:</p> <p>(a) determine comparable and relative worth of jobs in public bodies;</p> <p>(b) determine equal pay for work of equal value; and</p> <p>(c) ensure fairness and transparency in pay.</p>	<p>Proposed for retention.</p>

<p>(c) the outcome of comparative surveys on the labour markets and trends in remuneration;</p> <p>(d) comparative analysis between remuneration and benefits for similar jobs within institutions in the same sector to ensure equity and competitiveness;</p> <p>(e) job evaluation results as undertaken by the Commission;</p> <p>(f) cost of living;</p> <p>(g) existing collective bargaining agreements;</p> <p>(h) achievement of performance and productivity targets;</p> <p>(i) government policies and guidelines;</p> <p>(j) the equitable share of revenue to county governments; and</p> <p>(k) any other relevant factor in determination of remuneration or benefits.</p>			
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	<p>(2) In this regulation "cost of living " means the cost of purchasing goods and services as measured by the changes in the Consumer Price Index as provided by the Kenya National Bureau of Statistics from time to time.</p>			
<p>5.</p>	<p>8. The Commission shall communicate the—</p> <p>(a) set and reviewed remuneration and benefits for State officers indicating the effective date of implementation; and</p> <p>(b) advice on remuneration and benefits for other public officers indicating the effective date of implementation.</p>	<p>The clause exceeds the constitutional and statutory functions and powers of SRC.</p> <p>On this point, the Commission relies on the Supreme Court decision in Petition no. 42 of 2019 where the Court at paragraph 43 of its judgment, gave guiding principles on the recommendations from commissions and public bodies and stated that "recommendations do not necessarily bind the person to whom or entity to which it is addressed" and that "the manner in which recommendation is to be implemented is discretionary".</p> <p>SRC only has power to advise and cannot go beyond that power to force implementation of its advise by determining the date of implementation.</p> <p style="text-align: center;">Proposal</p> <p>Clause 8(b) should be amended to read as follows:</p>	<p>i. indicating the effective date of any advice on remuneration and benefits does not exceed the constitution and statutory functions and powers of SRC.</p> <p>ii. Section 11(e) of the Principal Act mandates SRC to determine the cycle of salaries and remuneration review upon which Parliament may allocate adequate funds for implementation. It is therefore within the mandate of SRC to indicate the effective date so that Parliament may allocate adequate funds for implementation.</p>	<p>Proposed for retention.</p>

		(b) advise on remuneration and benefits for other public officers.		
6.	9 – 16 (Job Evaluation)	<p style="text-align: center;">PSC</p> <p>The clauses contravene on the mandate of the Public Service Commission under Article 234(2) (a) (i) as read together with Section 27 of the Public Service Commission Act.</p> <p>The clauses exceed the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.</p> <p>With regard to State officers their jobs are defined in the Constitution and enabling legislation.</p> <p style="text-align: center;">Proposal</p> <p>Clauses 9 to 19 should be deleted.</p>	<p>The mandate of SRC to conduct job evaluation in the public service is provided for in Section 11 (d) of the SRC Act. In addition, the Court of Appeal in the TSC v KNUT & 3 Others [2015] eKLR case also confirmed that SRC has a role to play in job evaluation of public officers.</p> <p>Section 12 of the SRC Act requires SRC to take into account the principle of equal pay for work of equal value. Job evaluation is a mechanism through which SRC upholds the principle of equal pay for work of equal value.</p> <p>Further, whereas the roles of state officers are determined by the Constitution, SRC still undertakes job evaluation to determine their relative worth.</p>	Proposed for retention.
7.	<p>19.(1) The salary structures set for State officers shall remain in place until reviewed by the Commission.</p> <p>(2) The salary structures for other public officers may only be reviewed on the advice of the Commission.</p>	<p style="text-align: center;">PSC</p> <p>The clause exceeds the constitutional and statutory mandate of SRC.</p> <p style="text-align: center;">Proposal</p> <p>The clause should be deleted in its entirety.</p>	<p>Article 230 of the Constitution as read together with Article 259 (11) of the Constitution imposes an obligation on public bodies to first seek the advice of SRC on the remuneration and benefits for all other public officers.</p>	Proposed for retention.

<p>8.</p>	<p>Regulation 21 & 22</p> <p>21.(1) A public body may establish a financial reward and cash award scheme based on productivity and performance management frameworks or incentive schemes established by the public body in accordance with existing laws, regulations, government policies and guidelines.</p> <p>(2) A public body shall seek the advice of the Commission on proposed financial rewards or cash awards before establishing a financial reward or cash award scheme.</p> <p>22. The Commission shall, in recognising productivity and performance, be guided by the following factors—</p> <p>(a) achievement of productivity and performance targets as set by the public body;</p>	<p>TSC</p> <p>Regulation 21 and 22 seeks to irregularly grant SRC the mandate to approve internal policies related to rewards and productivity. More dangerously, regulation 23(1) seeks to further grant SRC power to develop guidelines on rewarding productivity and performance and that such guidelines will be binding on employers in the public.</p> <p>Proposal</p> <p>Regulation 21 and 22 be deleted.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p>	<p>Proposed for retention.</p>
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	<p>(b) the capacity of a public body to afford the cost of proposed reward;</p> <p>(c) the ability of a public body to sustain payment of the reward; and</p> <p>(d) government policies and guidelines.</p>			
9.	<p>24.(1) A public body with a recognition agreement with a trade union shall seek the advice of the Commission on remuneration and benefits items payable out of public funds before the commencement of collective bargaining negotiation.</p> <p>(2) A public body shall provide the following information required for provision of advice on collective bargaining negotiation—</p> <p>(a) any trade union proposals and management recommendations;</p>	<p>PSC</p> <p>Regulation 24 (4) & (5) exceed the constitutional mandate of SRC in Article 230(4)(b) of the Constitution as interpreted by the Supreme Court in Petition no. 42 of 2019.</p> <p>Proposal</p> <p>Clause 24(4) and (5) should be deleted in entirety.</p>	Regulation 24 (4) & (5) does not exceed the mandate of SRC.	Proposed for retention.

<p>(b) the public body's financial performance;</p>			
<p>(c) the budget allocation;</p>			
<p>(d) the approved salary structure and staff establishment; and</p>			
<p>(e) any other information that may be required by the Commission.</p>			
<p>(3) The Commission shall, upon receipt of a request for advice, provide the public body with advice on the remunerative and benefits items payable out of public funds for purposes of collective bargaining negotiation, taking into account the principles and factors set out in regulation 7.</p>			
<p>(4) A public body shall undertake negotiation based on</p>			

	<p>the advice of the Commission.</p> <p>(5) Upon conclusion of collective bargaining negotiation, the public body shall request the Commission for clearance of the draft collective bargaining agreement to facilitate its registration at the Employment and Labour Relations Court.</p>			
10.	<p>29.(1) The Commission may monitor and evaluate the implementation of its set remuneration and benefits for State officers or advice on remuneration and benefits for other public officers to—</p> <p>(a) assess effectiveness in the implementation of the set or reviewed remuneration and benefits of State officers and advice on remuneration and benefits for other public officers.</p>	<p>PSC</p> <p>The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the Constitution as interpreted by the Supreme Court in Petition no. 42 of 2019.</p> <p>Proposal</p> <p>Clause 29 should be deleted.</p>	The clause does not exceed the mandate of SRC.	Proposed for retention.

<p>(b) identify challenges in the implementation of paragraph (a) above; and</p> <p>(c) in liaison with public bodies, identify remedies, where appropriate, for continuous improvement.</p> <p>(2) The Commission shall sensitize public bodies on implementation of the—</p> <p>(a) set and reviewed remuneration and benefits for State officers; and</p> <p>(b) advice on remuneration and benefits for other public officers.</p>			
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MATRIX OF VIEWS ON DRAFT SRC REGULATIONS AS SUBMITTED BY TSC AND PSC

	Provision	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
1.	<p>"public body" has the same meaning assigned to it under section 3 of the Interpretation and General Provisions Act;</p>	<p>PSC</p> <p>The definition of "public body" in the Regulations has the effect of usurping the functions and powers of the PSC is provided for in Article 234 of the Constitution. The Commission is the constitutional entity that is responsible for human resource management in the public service which encompasses Ministries, Departments and State Agencies including State Corporations and Public Universities.</p> <p>This is in the same manner as the Parliamentary Service Commission is responsible for the Parliamentary Service, National Police Service Commission is responsible for the police service, Judicial Service Commission is responsible for the teachers' service. Whereas SRC deals directly with the other mention service commissions on the areas of their mandate, when it comes to the mandate of the Public Service Commission, SRC always proceeds to deal directly with entities under the PSC. The effect is a distortion of the service.</p> <p>It is noteworthy that the definition adopted</p>	<p>The definition of the term "public body" as used in the draft regulations has the same meaning assigned to it under Section 3 of the IGPA.</p> <ul style="list-style-type: none"> i. As rule of law making, a regulation cannot assign a different meaning than what is prescribed in an Act of Parliament. ii. The definition proposed by PSC is inconsistent with the definition as set out in Section 3 of the IGPA. iii. The 6th Schedule of the Constitution provides that all law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution. Section 3 of the IGPA, on the definition of the term "public body" should thus be read with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution. 	<p>It is proposed that the definition be retained.</p>

ANNEX 3

by the SRC is contained in the Interpretation and General Provisions Act, which specific definition has not been amended since the promulgation of the Constitution. If that definition is adopted as proposed in the draft regulations, the SRC will be given a greenlight to unconstitutionally ignore PSC which is the one responsible for the public service.

Proposal by PSC

"public body" means:

- a. Public Service Commission;
- b. Parliamentary Service Commission;
- c. Judicial Service Commission;
- d. National Police Service Commission;
- e. Teachers Service Commission;
- f. County Public Service Board;
- g. County Assembly Service Board; and
- h. Constitutional Commission and Independent Office.

		<p>by the SRC is contained in the Interpretation and General Provisions Act, which specific definition has not been amended since the promulgation of the Constitution. If that definition is adopted as proposed in the draft regulations, the SRC will be given a greenlight to unconstitutionally ignore PSC which is the one responsible for the public service.</p> <p>Proposal by PSC</p> <p>"public body" means:</p> <ul style="list-style-type: none"> a. Public Service Commission; b. Parliamentary Service Commission; c. Judicial Service Commission; d. National Police Service Commission; e. Teachers Service Commission; f. County Public Service Board; g. County Assembly Service Board; and h. Constitutional Commission and Independent Office. 		
2.	3.(1) The objective of these Regulations is to—	<p style="text-align: center;">PSC</p> <p>Regulation 3(b)(iii) contravenes Article</p>	<p>i. The powers and functions of SRC are not limited to only what is denoted under Article</p>	<p>It is proposed that Regulation</p>

	<p>(a) To facilitate the discharge of the mandate of the Commission;</p> <p>(b) provide for the procedure to—</p> <p>(i) set and review remuneration and benefits for State officers;</p> <p>(ii) advise on remuneration and benefits for other public officers; and</p> <p>(iii) keep under review all matters relating to salaries and remuneration of other public officers.</p>	<p>234(2)(g) of the Constitution and it also contravenes the provisions of Section 11(b) of the Salaries and Remuneration Act which only gives SRC the power to keep under review all matters relating to the salaries and remuneration of public officers.</p> <p>It should be noted that under Article 230(4) of the Constitution SRC is only mandated to set and regularly review the remuneration and benefits of all State officers and to advise the national and county governments on remuneration and benefits of all other public officers. Therefore, SRC cannot give itself powers, through regulations, that exceed their constitutional powers and functions.</p>	<p>230 (4) (a) and (b) of the Constitution.</p> <p>ii. Section 11 of the SRC Act confers SRC with additional powers and functions.</p> <p>iii. Regulation 3(b)(iii) is drawn from the provisions of Section 11(b) of the principal Act which mandates SRC to keep under review all matters relating to the salaries and remuneration of public officers.</p>	<p>3(b)(iii) be retained.</p>
<p>3.</p>	<p>6. (1) Pursuant to Article 230(4)(a) of the Constitution, the Commission shall set the pension or gratuity due to a State officer.</p> <p>(2) The Commission shall, in consultation with relevant stakeholders—</p> <p>(a) advise on the pension or gratuity due to other public officers taking into account the applicable</p>	<p>Teachers Service Commission (TSC)</p> <p>Regulation 6 of the proposed Regulations seeks to upset the existing Pension statutory framework through subsidiary legislation. As a principal of law, Regulation cannot amend a substantive statutory provision. We noted that Regulation 6 as drafted is inconsistent with the provisions of the Pensions Act, the Retirement Benefits Act, and the Public Service Superannuation Scheme Act.</p> <p>Proposal</p> <p>Regulation 6 be deleted.</p>	<p>i. Pension is an employment benefit and therefore part of SRC's mandate under Article 230 (4) of the Constitution to: a) set and regularly review in respect of State officers; and b) advise on with regard to all other public officers.</p> <p>ii. The existing statutes that govern the administration of pension ought to be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the provisions of Article 230 (4) of the Constitution.</p>	<p>It is proposed that Regulation 6 be retained.</p>

	<p>laws; and</p> <p>(b) undertake periodic reviews and make recommendations on pensions payable to eligible persons.</p>		<p>iii. The proposed Regulation 6 does not amend any Act of Parliament.</p>	
4.	<p>7.(1) The Commission shall, in setting, reviewing and advising on remuneration and benefits, where applicable, consider any or a combination of the following principles and factors—</p> <p>(a) the principles set out under Article 230(5) of the Constitution, section 12 of the Act and other applicable laws;</p> <p>(b) the economic performance of the country;</p> <p>(a) the capacity of a public body to afford the cost of proposed remuneration and benefits;</p> <p>(b) the ability of a public body to sustain payment of remuneration and benefits;</p>	<p>PSC</p> <p>Clause 7(1)(g) takes away a public body's power to undertake its own job evaluation.</p> <p>Clause 7(1)(h) as read together with clause 7(2) has the effect of removing the current annual salary increments that are based on the cost-of-living adjustment.</p> <p>Proposal</p> <p>Clause 7(1) & (2) should be amend to as follows:</p> <p>(g) job evaluation results as undertaken by public bodies.</p> <p>(NB: public bodies as defined in the PSC proposal above)</p> <p>(h) cost of living adjustment.</p>	<p>i. Clause 7(1)(g) does not take away a public body's power to undertake its own job evaluation.</p> <p>ii. The purpose of the SRC carrying out job evaluation is so as to:</p> <p>(a) determine comparable and relative worth of jobs in public bodies;</p> <p>(b) determine equal pay for work of equal value; and</p> <p>(c) ensure fairness and transparency in pay.</p>	Proposed for retention.

<p>(c) the outcome of comparative surveys on the labour markets and trends in remuneration;</p> <p>(d) comparative analysis between remuneration and benefits for similar jobs within institutions in the same sector to ensure equity and competitiveness;</p> <p>(e) job evaluation results as undertaken by the Commission;</p> <p>(f) cost of living;</p> <p>(g) existing collective bargaining agreements;</p> <p>(h) achievement of performance and productivity targets;</p> <p>(i) government policies and guidelines;</p> <p>(j) the equitable share of revenue to county governments; and</p> <p>(k) any other relevant factor in determination of remuneration or benefits.</p>			
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	<p>(2) In this regulation "cost of living " means the cost of purchasing goods and services as measured by the changes in the Consumer Price Index as provided by the Kenya National Bureau of Statistics from time to time.</p>			
<p>5.</p>	<p>8. The Commission shall communicate the—</p> <p>(a) set and reviewed remuneration and benefits for State officers indicating the effective date of implementation; and</p> <p>(b) advice on remuneration and benefits for other public officers indicating the effective date of implementation.</p>	<p>The clause exceeds the constitutional and statutory functions and powers of SRC.</p> <p>On this point, the Commission relies on the Supreme Court decision in Petition no. 42 of 2019 where the Court at paragraph 43 of its judgment, gave guiding principles on the recommendations from commissions and public bodies and stated that "recommendations do not necessarily bind the person to whom or entity to which it is addressed" and that "the manner in which recommendation is to be implemented is discretionary".</p> <p>SRC only has power to advise and cannot go beyond that power to force implementation of its advise by determining the date of implementation.</p> <p style="text-align: center;">Proposal</p> <p>Clause 8(b) should be amended to read as follows:</p>	<p>i. indicating the effective date of any advice on remuneration and benefits does not exceed the constitution and statutory functions and powers of SRC.</p> <p>ii. Section 11(e) of the Principal Act mandates SRC to determine the cycle of salaries and remuneration review upon which Parliament may allocate adequate funds for implementation. It is therefore within the mandate of SRC to indicate the effective date so that Parliament may allocate adequate funds for implementation.</p>	<p>Proposed for retention.</p>

<p>(b) identify challenges in the implementation of paragraph (a) above; and</p> <p>(c) in liaison with public bodies, identify remedies, where appropriate, for continuous improvement.</p> <p>(2) The Commission shall sensitize public bodies on implementation of the—</p> <p>(a) set and reviewed remuneration and benefits for State officers; and</p> <p>(b) advice on remuneration and benefits for other public officers.</p>			
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	<p>the advice of the Commission.</p> <p>(5) Upon conclusion of collective bargaining negotiation, the public body shall request the Commission for clearance of the draft collective bargaining agreement to facilitate its registration at the Employment and Labour Relations Court.</p>			
10.	<p>29.(1) The Commission may monitor and evaluate the implementation of its set remuneration and benefits for State officers or advice on remuneration and benefits for other public officers to—</p> <p>(a) assess effectiveness in the implementation of the set or reviewed remuneration and benefits of State officers and advice on remuneration and benefits for other public officers.</p>	<p>PSC</p> <p>The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the Constitution as interpreted by the Supreme Court in Petition no. 42 of 2019.</p> <p>Proposal</p> <p>Clause 29 should be deleted.</p>	The clause does not exceed the mandate of SRC.	Proposed for retention.

	<p>(b) the public body's financial performance;</p> <p>(c) the budget allocation;</p> <p>(d) the approved salary structure and staff establishment; and</p> <p>(e) any other information that may be required by the Commission.</p> <p>(3) The Commission shall, upon receipt of a request for advice, provide the public body with advice on the remunerative and benefits items payable out of public funds for purposes of collective bargaining negotiation, taking into account the principles and factors set out in regulation 7.</p> <p>(4) A public body shall undertake negotiation based on</p>			
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	<p>(b) the capacity of a public body to afford the cost of proposed reward;</p> <p>(c) the ability of a public body to sustain payment of the reward; and</p> <p>(d) government policies and guidelines.</p>			
9.	<p>24.(1) A public body with a recognition agreement with a trade union shall seek the advice of the Commission on remuneration and benefits items payable out of public funds before the commencement of collective bargaining negotiation.</p> <p>(2) A public body shall provide the following information required for provision of advice on collective bargaining negotiation—</p> <p>(a) any trade union proposals and management recommendations;</p>	<p>PSC</p> <p>Regulation 24 (4) & (5) exceed the constitutional mandate of SRC in Article 230(4)(b) of the Constitution as interpreted by the Supreme Court in Petition no. 42 of 2019.</p> <p>Proposal</p> <p>Clause 24(4) and (5) should be deleted in entirety.</p>	Regulation 24 (4) & (5) does not exceed the mandate of SRC.	Proposed for retention.

<p>8.</p>	<p>Regulation 21 & 22</p> <p>21.(1) A public body may establish a financial reward and cash award scheme based on productivity and performance management frameworks or incentive schemes established by the public body in accordance with existing laws, regulations, government policies and guidelines.</p> <p>(2) A public body shall seek the advice of the Commission on proposed financial rewards or cash awards before establishing a financial reward or cash award scheme.</p> <p>22. The Commission shall, in recognising productivity and performance, be guided by the following factors—</p> <p>(a) achievement of productivity and performance targets as set by the public body;</p>	<p>TSC</p> <p>Regulation 21 and 22 seeks to irregularly grant SRC the mandate to approve internal policies related to rewards and productivity. More dangerously, regulation 23(1) seeks to further grant SRC power to develop guidelines on rewarding productivity and performance and that such guidelines will be binding on employers in the public.</p> <p>Proposal</p> <p>Regulation 21 and 22 be deleted.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p>	<p>Proposed for retention.</p>
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		(b) advise on remuneration and benefits for other public officers.		
6.	9 – 16 (Job Evaluation)	<p style="text-align: center;">PSC</p> <p>The clauses contravene on the mandate of the Public Service Commission under Article 234(2) (a) (i) as read together with Section 27 of the Public Service Commission Act.</p> <p>The clauses exceed the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.</p> <p>With regard to State officers their jobs are defined in the Constitution and enabling legislation.</p> <p style="text-align: center;">Proposal</p> <p>Clauses 9 to 19 should be deleted.</p>	<p>The mandate of SRC to conduct job evaluation in the public service is provided for in Section 11 (d) of the SRC Act. In addition, the Court of Appeal in the TSC v KNUT & 3 Others [2015] eKLR case also confirmed that SRC has a role to play in job evaluation of public officers.</p> <p>Section 12 of the SRC Act requires SRC to take into account the principle of equal pay for work of equal value. Job evaluation is a mechanism through which SRC upholds the principle of equal pay for work of equal value.</p> <p>Further, whereas the roles of state officers are determined by the Constitution, SRC still undertakes job evaluation to determine their relative worth.</p>	Proposed for retention.
7.	<p>19.(1) The salary structures set for State officers shall remain in place until reviewed by the Commission.</p> <p>(2) The salary structures for other public officers may only be reviewed on the advice of the Commission.</p>	<p style="text-align: center;">PSC</p> <p>The clause exceeds the constitutional and statutory mandate of SRC.</p> <p style="text-align: center;">Proposal</p> <p>The clause should be deleted in its entirety.</p>	Article 230 of the Constitution as read together with Article 259 (11) of the Constitution imposes an obligation on public bodies to first seek the advice of SRC on the remuneration and benefits for all other public officers.	Proposed for retention.

	<p>(2) In this regulation "cost of living " means the cost of purchasing goods and services as measured by the changes in the Consumer Price Index as provided by the Kenya National Bureau of Statistics from time to time.</p>			
<p>5.</p>	<p>8. The Commission shall communicate the—</p> <p>(a) set and reviewed remuneration and benefits for State officers indicating the effective date of implementation; and</p> <p>(b) advice on remuneration and benefits for other public officers indicating the effective date of implementation.</p>	<p>The clause exceeds the constitutional and statutory functions and powers of SRC.</p> <p>On this point, the Commission relies on the Supreme Court decision in Petition no. 42 of 2019 where the Court at paragraph 43 of its judgment, gave guiding principles on the recommendations from commissions and public bodies and stated that "recommendations do not necessarily bind the person to whom or entity to which it is addressed" and that "the manner in which recommendation is to be implemented is discretionary".</p> <p>SRC only has power to advise and cannot go beyond that power to force implementation of its advise by determining the date of implementation.</p> <p style="text-align: center;">Proposal</p> <p>Clause 8(b) should be amended to read as follows:</p>	<p>i. indicating the effective date of any advice on remuneration and benefits does not exceed the constitution and statutory functions and powers of SRC.</p> <p>ii. Section 11(e) of the Principal Act mandates SRC to determine the cycle of salaries and remuneration review upon which Parliament may allocate adequate funds for implementation. It is therefore within the mandate of SRC to indicate the effective date so that Parliament may allocate adequate funds for implementation.</p>	<p>Proposed for retention.</p>

<p>(c) the outcome of comparative surveys on the labour markets and trends in remuneration;</p> <p>(d) comparative analysis between remuneration and benefits for similar jobs within institutions in the same sector to ensure equity and competitiveness;</p> <p>(e) job evaluation results as undertaken by the Commission;</p> <p>(f) cost of living;</p> <p>(g) existing collective bargaining agreements;</p> <p>(h) achievement of performance and productivity targets;</p> <p>(i) government policies and guidelines;</p> <p>(j) the equitable share of revenue to county governments; and</p> <p>(k) any other relevant factor in determination of remuneration or benefits.</p>			
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	<p>laws; and</p> <p>(b) undertake periodic reviews and make recommendations on pensions payable to eligible persons.</p>		<p>iii. The proposed Regulation 6 does not amend any Act of Parliament.</p>	
<p>4.</p>	<p>7.(1) The Commission shall, in setting, reviewing and advising on remuneration and benefits, where applicable, consider any or a combination of the following principles and factors—</p> <p>(a) the principles set out under Article 230(5) of the Constitution, section 12 of the Act and other applicable laws;</p> <p>(b) the economic performance of the country;</p> <p>(a) the capacity of a public body to afford the cost of proposed remuneration and benefits;</p> <p>(b) the ability of a public body to sustain payment of remuneration and benefits;</p>	<p>PSC</p> <p>Clause 7(1)(g) takes away a public body's power to undertake its own job evaluation.</p> <p>Clause 7(1)(h) as read together with clause 7(2) has the effect of removing the current annual salary increments that are based on the cost-of-living adjustment.</p> <p>Proposal</p> <p>Clause 7(1) & (2) should be amend to as follows:</p> <p>(g) job evaluation results as undertaken by public bodies.</p> <p>(NB: public bodies as defined in the PSC proposal above)</p> <p>(h) cost of living adjustment.</p>	<p>i. Clause 7(1)(g) does not take away a public body's power to undertake its own job evaluation.</p> <p>ii. The purpose of the SRC carrying out job evaluation is so as to:</p> <p>(a) determine comparable and relative worth of jobs in public bodies;</p> <p>(b) determine equal pay for work of equal value; and</p> <p>(c) ensure fairness and transparency in pay.</p>	<p>Proposed for retention.</p>

	<p>(a) To facilitate the discharge of the mandate of the Commission;</p> <p>(b) provide for the procedure to—</p> <p>(i) set and review remuneration and benefits for State officers;</p> <p>(ii) advise on remuneration and benefits for other public officers; and</p> <p>(iii) keep under review all matters relating to salaries and remuneration of other public officers.</p>	<p>234(2)(g) of the Constitution and it also contravenes the provisions of Section 11(b) of the Salaries and Remuneration Act which only gives SRC the power to keep under review all matters relating to the salaries and remuneration of public officers.</p> <p>It should be noted that under Article 230(4) of the Constitution SRC is only mandated to set and regularly review the remuneration and benefits of all State officers and to advise the national and county governments on remuneration and benefits of all other public officers. Therefore, SRC cannot give itself powers, through regulations, that exceed their constitutional powers and functions.</p>	<p>230 (4) (a) and (b) of the Constitution.</p> <p>ii. Section 11 of the SRC Act confers SRC with additional powers and functions.</p> <p>iii. Regulation 3(b)(iii) is drawn from the provisions of Section 11(b) of the principal Act which mandates SRC to keep under review all matters relating to the salaries and remuneration of public officers.</p>	<p>3(b)(iii) be retained.</p>
<p>3.</p>	<p>6. (1) Pursuant to Article 230(4)(a) of the Constitution, the Commission shall set the pension or gratuity due to a State officer.</p> <p>(2) The Commission shall, in consultation with relevant stakeholders—</p> <p>(a) advise on the pension or gratuity due to other public officers taking into account the applicable</p>	<p>Teachers Service Commission (TSC)</p> <p>Regulation 6 of the proposed Regulations seeks to upset the existing Pension statutory framework through subsidiary legislation. As a principal of law, Regulation cannot amend a substantive statutory provision. We noted that Regulation 6 as drafted is inconsistent with the provisions of the Pensions Act, the Retirement Benefits Act, and the Public Service Superannuation Scheme Act.</p> <p>Proposal</p> <p>Regulation 6 be deleted.</p>	<p>i. Pension is an employment benefit and therefore part of SRC's mandate under Article 230 (4) of the Constitution to: a) set and regularly review in respect of State officers; and b) advise on with regard to all other public officers.</p> <p>ii. The existing statutes that govern the administration of pension ought to be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the provisions of Article 230 (4) of the Constitution.</p>	<p>It is proposed that Regulation 6 be retained.</p>

		<p>by the SRC is contained in the Interpretation and General Provisions Act, which specific definition has not been amended since the promulgation of the Constitution. If that definition is adopted as proposed in the draft regulations, the SRC will be given a greenlight to unconstitutionally ignore PSC which is the one responsible for the public service.</p> <p>Proposal by PSC</p> <p>"public body" means:</p> <ul style="list-style-type: none"> a. Public Service Commission; b. Parliamentary Service Commission; c. Judicial Service Commission; d. National Police Service Commission; e. Teachers Service Commission; f. County Public Service Board; g. County Assembly Service Board; and h. Constitutional Commission and Independent Office. 		
2.	3.(1) The objective of these Regulations is to—	<p style="text-align: center;">PSC</p> <p>Regulation 3(b)(iii) contravenes Article</p>	i. The powers and functions of SRC are not limited to only what is denoted under Article	It is proposed that Regulation

MATRIX OF VIEWS ON DRAFT SRC REGULATIONS AS SUBMITTED BY TSC AND PSC

	Provision	General Stakeholder Feedback	Observations by SRC	Response/Action by SRC
1.	<p>"public body" has the same meaning assigned to it under section 3 of the Interpretation and General Provisions Act;</p>	<p>PSC</p> <p>The definition of "public body" in the Regulations has the effect of usurping the functions and powers of the PSC is provided for in Article 234 of the Constitution. The Commission is the constitutional entity that is responsible for human resource management in the public service which encompasses Ministries, Departments and State Agencies including State Corporations and Public Universities.</p> <p>This is in the same manner as the Parliamentary Service Commission is responsible for the Parliamentary Service, National Police Service Commission is responsible for the police service, Judicial Service Commission is responsible for the teachers' service. Whereas SRC deals directly with the other mention service commissions on the areas of their mandate, when it comes to the mandate of the Public Service Commission, SRC always proceeds to deal directly with entities under the PSC. The effect is a distortion of the service.</p> <p>It is noteworthy that the definition adopted</p>	<p>The definition of the term "public body" as used in the draft regulations has the same meaning assigned to it under Section 3 of the IGPA.</p> <ul style="list-style-type: none"> i. As rule of law making, a regulation cannot assign a different meaning than what is prescribed in an Act of Parliament. ii. The definition proposed by PSC is inconsistent with the definition as set out in Section 3 of the IGPA. iii. The 6th Schedule of the Constitution provides that all law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution. Section 3 of the IGPA, on the definition of the term "public body" should thus be read with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution. 	<p>It is proposed that the definition be retained.</p>

ANNEX 3

		(b) advise on remuneration and benefits for other public officers.		
6.	9 – 16 (Job Evaluation)	<p style="text-align: center;">PSC</p> <p>The clauses contravene on the mandate of the Public Service Commission under Article 234(2) (a) (i) as read together with Section 27 of the Public Service Commission Act.</p> <p>The clauses exceed the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.</p> <p>With regard to State officers their jobs are defined in the Constitution and enabling legislation.</p> <p style="text-align: center;">Proposal</p> <p>Clauses 9 to 19 should be deleted.</p>	<p>The mandate of SRC to conduct job evaluation in the public service is provided for in Section 11 (d) of the SRC Act. In addition, the Court of Appeal in the TSC v KNUT & 3 Others [2015] eKLR case also confirmed that SRC has a role to play in job evaluation of public officers.</p> <p>Section 12 of the SRC Act requires SRC to take into account the principle of equal pay for work of equal value. Job evaluation is a mechanism through which SRC upholds the principle of equal pay for work of equal value.</p> <p>Further, whereas the roles of state officers are determined by the Constitution, SRC still undertakes job evaluation to determine their relative worth.</p>	Proposed for retention.
7.	<p>19.(1) The salary structures set for State officers shall remain in place until reviewed by the Commission.</p> <p>(2) The salary structures for other public officers may only be reviewed on the advice of the Commission.</p>	<p style="text-align: center;">PSC</p> <p>The clause exceeds the constitutional and statutory mandate of SRC.</p> <p style="text-align: center;">Proposal</p> <p>The clause should be deleted in its entirety.</p>	<p>Article 230 of the Constitution as read together with Article 259 (11) of the Constitution imposes an obligation on public bodies to first seek the advice of SRC on the remuneration and benefits for all other public officers.</p>	Proposed for retention.

<p>8.</p>	<p>Regulation 21 & 22</p> <p>21.(1) A public body may establish a financial reward and cash award scheme based on productivity and performance management frameworks or incentive schemes established by the public body in accordance with existing laws, regulations, government policies and guidelines.</p> <p>(2) A public body shall seek the advice of the Commission on proposed financial rewards or cash awards before establishing a financial reward or cash award scheme.</p> <p>22. The Commission shall, in recognising productivity and performance, be guided by the following factors—</p> <p>(a) achievement of productivity and performance targets as set by the public body;</p>	<p>TSC</p> <p>Regulation 21 and 22 seeks to irregularly grant SRC the mandate to approve internal policies related to rewards and productivity. More dangerously, regulation 23(1) seeks to further grant SRC power to develop guidelines on rewarding productivity and performance and that such guidelines will be binding on employers in the public.</p> <p>Proposal</p> <p>Regulation 21 and 22 be deleted.</p>	<p>The rationale for the regulations on rewarding productivity and performance is to ensure that public bodies seek the advice of the Commission on financial reward and cash award schemes.</p>	<p>Proposed for retention.</p>
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	<p>(b) the capacity of a public body to afford the cost of proposed reward;</p> <p>(c) the ability of a public body to sustain payment of the reward; and</p> <p>(d) government policies and guidelines.</p>			
9.	<p>24.(1) A public body with a recognition agreement with a trade union shall seek the advice of the Commission on remuneration and benefits items payable out of public funds before the commencement of collective bargaining negotiation.</p> <p>(2) A public body shall provide the following information required for provision of advice on collective bargaining negotiation—</p> <p>(a) any trade union proposals and management recommendations;</p>	<p>PSC</p> <p>Regulation 24 (4) & (5) exceed the constitutional mandate of SRC in Article 230(4)(b) of the Constitution as interpreted by the Supreme Court in Petition no. 42 of 2019.</p> <p>Proposal</p> <p>Clause 24(4) and (5) should be deleted in entirety.</p>	Regulation 24 (4) & (5) does not exceed the mandate of SRC.	Proposed for retention.

<p>(b) the public body's financial performance;</p> <p>(c) the budget allocation;</p> <p>(d) the approved salary structure and staff establishment; and</p> <p>(e) any other information that may be required by the Commission.</p> <p>(3) The Commission shall, upon receipt of a request for advice, provide the public body with advice on the remunerative and benefits items payable out of public funds for purposes of collective bargaining negotiation, taking into account the principles and factors set out in regulation 7.</p> <p>(4) A public body shall undertake negotiation based on</p>			
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	the advice of the Commission.			
	(5) Upon conclusion of collective bargaining negotiation, the public body shall request the Commission for clearance of the draft collective bargaining agreement to facilitate its registration at the Employment and Labour Relations Court.			
10.	<p>29.(1) The Commission may monitor and evaluate the implementation of its set remuneration and benefits for State officers or advice on remuneration and benefits for other public officers to—</p> <p>(a) assess effectiveness in the implementation of the set or reviewed remuneration and benefits of State officers and advice on remuneration and benefits for other public officers.</p>	<p>PSC</p> <p>The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the Constitution as interpreted by the Supreme Court in Petition no. 42 of 2019.</p> <p>Proposal</p> <p>Clause 29 should be deleted.</p>	The clause does not exceed the mandate of SRC.	Proposed for retention.

<p>(b) identify challenges in the implementation of paragraph (a) above; and</p> <p>(c) in liaison with public bodies, identify remedies, where appropriate, for continuous improvement.</p> <p>(2) The Commission shall sensitize public bodies on implementation of the—</p> <p>(a) set and reviewed remuneration and benefits for State officers; and</p> <p>(b) advice on remuneration and benefits for other public officers.</p>			
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