

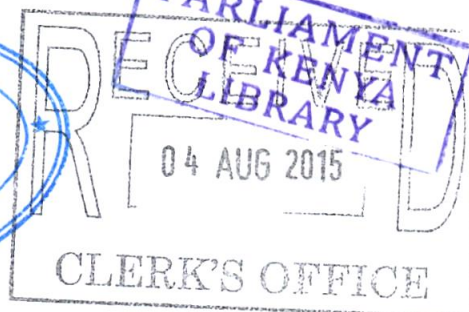
Institute of
H u m a n
R e s o u r c e
M a n a g e m e n t

The Professional Body of HR Practitioners in Kenya

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04th August 2015

The Clerk of the National Assembly,
Parliament Buildings,
NAIROBI



EXPLANATORY MEMORAMDA FOR L.N. 114 of 2015- The Human Resource Management Professional (Election to the Council) Regulations, 2015

As you are aware, the Institute of Human Resource Management (IHRM) is established under section 3 of the Human Resource Management Professionals Act, No. 52 of 2012 as the regulatory body of the human resource professionals in Kenya. The Act came into operation on 4th January, 2013 having been assented to by the President on the 31st December, 2012.

By dint of section 45 of the Act, IHRM, is given the mandate, albeit in transition, to operationalize the law in terms of facilitating the registration of members, issuing Practicing Certificates and to conduct an election of the Chairperson and six members of the Council. As the apex governing body contemplated under section 7 of the Act IHRM was to undertake these activities within 12 months. However, the operationalization of the Act was delayed due to a court case, **Petition No. 45 of 2013: Wycliffe Gisebe Nyakina & another vs. Institute of Human Resource Management & Attorney General**. This case arose out of a dispute as to which body ought to act as an Interim Council and undertake the implementation of the Act.

The orders of the court were, amongst others, as follows;

- a. That the respondents, do within six months hereof and in consultation with all stakeholders, reconsider the provisions of the Human Resource Management Professionals Act with a view to making necessary amendments to its provisions with regard to making of regulations that would ensure its proper implementation;
- b. That within 6 months from the date hereof, the 1st respondent do organize elections for the Council of the Institute to be conducted

with the participation of the members of the 2nd petitioner, the 1st respondent and all other institutions and bodies involved in the human resource management;

- c. That Gazette Notice Numbers 277, 278 and 279 of 13th January 2014 are null and void and are hereby quashed to the extent of non-compliance with the principles of Public Participation.

Consequently, in a bid to implement the judgment of the Court, we sought for the opinion of the Hon. Attorney General on which we were advised on the need to return to court and seek an interpretation on the following two issues:

- a. Whether it is necessary to amend the Act if the implementation is to be effected by means of regulations in view of the provisions of section 44 of the Act which does not limit the power of the Council to make rules and the Statutory Implementation Act No. 23 of 2013 which provides for the procedure of making of the rules; and
- b. Which is the relevant Ministry responsible for policy directions in view of the apparent conflict between the **Executive Order No. 2 of 2013** by the Presidency pursuant to **Articles 130 and 132(3)** and the **Human Resource Management Professionals Act**?

Pursuant to the advice, we made an application in which the court directed that we adopt the Ministry of Devolution and Planning as the line Ministry responsible for gazettment of the Regulations.

In a bid to comply with the Act, court orders, and the opinion of the Hon. Attorney General, we undertook the following:

- a. Requested for written submissions/memoranda from all stakeholders of the HR profession.
- b. Organized public hearing forums for participation and inclusion of all stakeholders in various regions.
- c. Collated the views from written submissions/memoranda and public hearing forums.
- d. Obtained legal expert inputs on the views
- e. Developed the draft regulations on membership registration, issuance of Practicing Certificates and election of Council Members.
- f. Organized a validation meeting with representatives from segments of the stakeholders
- g. Developed the Final Regulations membership registration, issuance of Practicing Certificates and election of Council Members.

We would like to assure your office of utmost compliance with the tenets of constitutionalism and the Rule of Law in the development of the Rules Regulations for Election of Council Members.

For and on Behalf of the Interim Council

A handwritten signature in black ink, appearing to read "S. Osero". The signature is fluid and cursive, with a large initial "S" and "O".

SAMSON K. OSERO
EXECUTIVE DIRECTOR



SPECIAL ISSUE

573

Kenya Gazette Supplement No. 84

12th June, 2015

(Legislative Supplement No. 36)

LEGAL NOTICE No. 114

THE HUMAN RESOURCE MANAGEMENT
PROFESSIONALS ACT, 2012

(No. 52 of 2012)

IN EXERCISE of the powers conferred by sections 7 and 44 of the Human Resource Management Professionals Act, 2012, the Council, with the approval of the Cabinet Secretary for Devolution and Planning, makes the following Regulations:—

THE HUMAN RESOURCE MANAGEMENT PROFESSIONALS
(ELECTIONS TO THE COUNCIL) REGULATIONS, 2015

PART I—PRELIMINARY

1. These Regulations may be cited as the Human Resource Management Professionals (Elections to the Council) Regulations, 2015.

Citation.

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

Interpretation.

“chairperson” means the chairperson appointed to the Council as a result of an election in accordance with the provisions of section 7 (1) (a) of the Act;

“Council” has the meaning assigned to it by the Act;

“elected member” means a member appointed to the Council as a result of an election in accordance with the provisions of section 7 (1) (d) of the Act;

“election” means election held under these Regulations for the purpose of electing, the chairperson and elected members in accordance with the provisions of section 7(1) (a) and (d) of the Act;

“nomination date” means the date determined by the returning officer under regulation 5; and

“returning officer” means the body appointed under regulation 3 to be in charge of election of the chairperson and new members to the Council.

PART II—ELECTIONS TO THE COUNCIL

3. (1) The Council shall, within two months upon a vacancy arising in the Council or at least four months before the date on which elected members cease to hold office, appoint an independent body to be the returning officer for the purpose of election of chairperson and members under section 7 (1) (a) and (d) of the Act.

Appointment of
returning officer.

(2) Subject to these Regulations, the returning officer shall be responsible for the conduct of the elections.

4. (1) In order to be eligible for election or to be entitled to nominate for or take part in the election, a person must have the requisite qualifications on the date to be fixed by the returning officer as the last day on which nomination papers shall be received. Qualification for election.
- (2) Despite the provisions of sub-regulation (1), to qualify for nomination or election as chairperson, a person must-
- (a) be a registered Member or Fellow of the Institute; and
 - (b) have at least fifteen (15) years human resource working experience, ten (10) years of which must have been at senior management level.
- (3) A person shall qualify for election as a Council member if the person—
- (a) is a registered Member of the Institute; and
 - (b) has at least ten (10) years human resource working experience, five (5) of which must have been at senior management level.
- (4) A person shall not qualify for election as the chairperson or Council member if the person—
- (a) is a member of Parliament or County Assembly;
 - (b) is an official of a governing body of a political party;
 - (c) has at any time within the preceding five (5) years, held or stood for elections as a member of Parliament, Governor or County assembly;
 - (d) is an undischarged bankrupt;
 - (e) has been convicted of a felony; or
 - (f) has been removed from office for contravening the provisions of the Constitution or any other written law.
- (5) Associate members shall be entitled to vote but shall not be eligible to contest for either the position of chairperson or Council member.
- (6) Honorary Fellows of the Institute shall not be eligible to participate or vote in the elections.
5. The returning officer shall fix the last date on which nomination papers shall be received and at least twenty-one days before the date so fixed he shall cause notice of the election to be published in the Gazette and at least two newspapers circulating in Kenya, which notice shall be as nearly as may be in Form A set out in the Schedule to these Regulations. Publication of notice of election.
6. (1) Each candidate for election as a chairperson shall be nominated on a separate nomination paper signed by a nominee, a proposer, a seconder and endorsed by thirteen other members of the Institute, all of whom must have paid the requisite subscriptions for the current year and qualified for nominating the candidate. Nomination of candidates.

(2) Each nomination form for election of a member to the Council shall be signed by a nominee, a proposer, a seconder and endorsed by eight other human resource professionals, all of whom must have paid their subscriptions for the current year to the Council.

7. (1) Forms of nomination papers may be obtained either from the Institute's offices, or downloaded online on the Institute's website (www.ihrm.or.ke) or by making a written request at the address referred to in paragraph (3), and in making the application it should be clearly stated for what part of the election the nomination form or forms are required.

Nomination
papers

(2) Every nomination paper shall contain the name, address and registered qualification, and other requisite qualifications, of any of the candidates nominated as set out in Form B in the Schedule to these Regulations and the address and registered qualifications of each of the persons nominating the candidates and shall be as nearly as may be in Form C set out in the Schedule.

(3) Every nomination paper shall be-

- (a) accompanied by the declaration in writing in Part II of Form C set out in the Schedule signed by the person nominated acknowledging that he consents to be nominated;
- (b) accompanied by a non-refundable fee of—
 - (i) twenty thousand shillings banker's cheque in favour of the Institute for the post of chairperson; and
 - (ii) ten thousand shillings banker's cheque in favour of the Institute for the post of elected member;
- (c) addressed to the Returning Officer, C/O The Institute of Human Resource Management, P.O. Box 6132-00300, Nairobi, and delivered to it before the hour of 4 p.m. on the last day fixed by the returning officer for the receipt of nomination papers.

(4) Any nomination paper which is not received at the address referred to in paragraph (3) before the hour and day specified in that paragraph shall be invalid.

(5) A candidate may only contest only one position, either of chairperson or of Council member.

8. (1) As soon as possible after the time fixed for the receipt of nomination papers has expired, the returning officer shall publish at the offices of the Council a list of the duly nominated candidates and shall on the same day send a copy of that list by registered post to each of the candidates.

List of
nominated
candidates.

(2) If the Returning Officer declines the nomination of a candidate, it shall as soon as practicable notify that candidate, in writing, giving reasons for the rejection.

9. (1) The election of chairperson and elected members of the Council shall be conducted online and in accordance with the provisions of this regulation.

Conduct of
the election.

(2) If the number of duly nominated candidates in respect of chairperson and elected members does not exceed the number to be elected in that category the returning officer shall forthwith declare those candidates to be elected.

(3) If the number of duly nominated candidates in respect of chairperson and elected members exceeds the number to be elected in that category the returning officer shall as soon as possible prepare voting papers to be forwarded electronically to every member whose subscription for the current year shall have been paid which voting paper shall be as nearly as may be in the Form D set out in the Schedule.

(4) The voting papers shall contain the names, addresses and registered qualifications of all candidates who have been duly nominated and shall state the last day on which voting papers may be received and the place to which they are to be returned.

(5) If no nomination papers are received on the appointed day the returning officer may extend the date for returning the nomination papers by fourteen days.

(6) The returning officer shall, at least twenty-one days before the election date, cause a voting paper to be forwarded electronically to each person qualified to vote in the election.

(7) No vote shall not be cast or accepted as valid except on the voting papers provided by the returning officer.

(8) Each person qualified to vote in the election shall mark the voting paper delivered to him with the symbol X against the names of the nominated candidate or nominated candidates for whom he votes and shall electronically send it to the returning officer at the address specified by the Institute.

(9) (1) The election of six members to the Council shall reflect regional diversity of the people of Kenya and shall be distributed in the regions set out in Form E in the Schedule to these Regulations as follows-

- (a) three (3) members to represent Nairobi, Central and North Eastern Regions;
- (b) one (1) member to represent the Coast and Eastern regions;
- (c) one (1) member to represent Rift Valley region; and
- (d) one (1) member to represent Western and Nyanza regions.

(2) A member vying for the position of a Council member must have worked in the specified region or regions, for at least one (1) year to enable him articulate issues for the respective region or regions.

10. (1) The returning officer shall, immediately after the last day fixed for receipt of voting papers, ascertain the validity of the votes cast, examine and count the valid votes cast for each candidate.

(2) The examination, opening and counting of the votes under paragraph (1) shall be done by the returning officer in the presence of the candidates or their duly nominated or appointed agents of whom

Counting of votes
and declaration of
elected members.

seven days notice shall be issued to their last known address but the absence of a candidate or his agent to whom due notice has been given shall not in any way prevent the returning officer from proceeding with the examination, opening and counting of the votes.

(3) In each of the categories for which the election is held the candidates having the greatest number of votes shall be declared elected by the returning officer.

(4) In the event of equality of votes between two or more candidates the returning officer shall determine by lot which of the candidates whose votes are equal shall be declared elected.

11. Any question arising with regard to the validity of a nomination or voting paper shall be determined by the returning officer.

Determination
by returning
officer.

12. The returning officer shall forthwith deliver to every candidate a written notice of the result of the election and shall deliver to the Council for onward transmission to the Cabinet Secretary, a list of candidates certified by it to have been elected showing the number of votes cast for each candidate.

Written notice of
election results.

13. (1) Any candidate unsuccessful at the poll may either personally or by his agent appointed in writing, notify the returning officer within fourteen days after the declaration of the result of the elections that he contests the validity of that part of the election in respect of which he was unsuccessful on the ground of non-compliance with the provisions of these Regulations, or of misdescription or miscount, or of the non-delivery or loss of any document.

Validity of
election.

(2) If after consideration of the contention disclosed in the notice, the returning officer is satisfied in respect of that part that the election was conducted substantially in accordance with the provisions of these Regulations and that any non-compliance, misdescription, miscount, non-delivery or loss, did not affect the result of that part of the election, it may, within fourteen days of receiving the notice, so certify and in that event it shall forward a copy of its certificate to the unsuccessful candidate, who may, within seven days of receiving that copy, appeal to the Cabinet Secretary.

(3) Where the returning officer does not so certify, it shall, not later than the fifteenth day after receiving the notice forward a copy thereof to the Cabinet Secretary together with such comments as it thinks fit.

(4) The Cabinet Secretary shall consider any appeal made under paragraph (2) or any notice received under paragraph (3) and his decision as to whether the result of the relevant part of the election was so affected shall be, final.

14. (1) Upon receipt of the names under regulation 12, the Cabinet Secretary shall, by notice in the Gazette, appoint the persons elected as chairperson and members of the Council.

Appointment of
chairperson and
elected members.

(2) No person shall be appointed under paragraph (1) unless such person—

- (a) is qualified in accordance with the Act;
- (b) obtains clearance from—
 - (i) Kenya Revenue Authority;
 - (ii) Higher Education Loans Board (HELB);
 - (iii) Criminal Investigations Department;
 - (iv) Credit Reference Bureau; and
 - (v) Ethics and Anti-Corruption Commission; and
- (c) otherwise satisfies the requirements of Chapter Six of the Constitution.

PART III—MISCELLANEOUS

17. (1) Any person who—

- (a) commits the offence of personation, treating, undue influence or bribery as defined in the Elections Act, 2011 (No. 24 of 2011);
 - (b) makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of withdrawal of any other candidate at such election;
 - (c) forges, defaces or destroys any nomination paper, or delivers to the returning officer any nomination paper knowing it to be forged;
 - (d) interferes with the voting paper by removing, destroying, concealing or mutilating or assists in the removal, destruction, concealment or mutilation of any such material;
 - (e) obstructs or hinders the returning officer, candidate or agent in the execution of their lawful duties;
 - (f) makes a false statement or furnishes false particulars in any statement which is required under these Regulations knowing the statement or particulars to be false or without reasonable grounds for believing the same to be true;
 - (g) forges, counterfeits, defaces or destroys any voting paper or the official perforation, stamp or mark on any voting paper or any campaign or promotional material of an opposing candidate;
 - (h) without authority destroys, takes, opens, disposes of or otherwise interferes with any election material in use or intended to be used for the purposes of an election;
 - (i) votes at any election when he is not entitled to vote; or
 - (j) votes more than once in any election,
- commits an offence.

(2) Any person who commits an offence under paragraph (1) shall be liable to a fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Election offences.

SCHEDULE

FORM A

(r. 5)

THE HUMAN RESOURCE MANAGEMENT PROFESSIONALS ACT, 2012

(No. 52 of 2012)

NOTICE OF ELECTION

NOTICE IS HEREBY GIVEN that pursuant to the provisions of section 7 (l) (a) and (d) of the Act, an election for chairperson and new members to the Council shall be held on.....

The election shall be in respect of-

- (a) the chairperson to the Council; and
- (b) six members to the Council.

Dated the.....

Signed.....
Returning Officer.

FORM B

(r. 7(2))

APPLICATION FOR NOMINATION TO CONTEST ELECTION AS
CHAIRPERSON/MEMBER TO THE COUNCIL

PART I

PERSONAL DETAILS:

1. Full Name of Applicant (Nominee).....
2. National ID/Passport No.....
3. Current Address.....
4. Telephone.....Mobile.....
5. Fax No.....E-Mail.....
6. Membership Registration Number.....
7. Category of Membership.....
8. Post applied for.....

PART II

DECLARATION BY APPLICANT

I, (Full Name).....

DECLARE that:

- (a) I am eighteen years and above.
- (b) I am to the best of my knowledge in sound physical and mental health to be able to carry out the responsibilities required of me by the profession.

- (c) I have not impersonated anybody on any issue concerning the profession or otherwise.
- (d) I have not altered or falsified any document(s) relating to the profession or otherwise.
- (e) I am of good professional/ethical standing as required by the Professional Code of Conduct and Ethics.
- (f) I am free from any criminal record(s) related to the profession or otherwise.
- (g) I will, at all times in the practice of my profession observe and strictly maintain adherence to the provisions and requirements of the Professional Code of Conduct and Ethics.

(h)The facts deponed herein are true to the best of my knowledge.

SWORN at.....)

this.....day of.....20.....)

)
)

BEFORE ME:).....

) DEPONENT

)
)

COMMISSIONER FOR OATHS/)

MAGISTRATE)

FORM C

(r. 7(2))

PART I

LIST OF PROPOSERS, SECONDEES AND ENDORSERS

We, the undersigned, being members of the Institute () or human resource professionals () [Tick whichever is applicable] hereby nominate MR/MRS/MISS/DR/PROF.....

of (Address).....

who is a registered member registration No.....

and who is employed at.....

where he/she is engaged in.....

- () Private Practice.
- () Government employment.
- () Parastatal employment.
- () {Other employment please specify}.

NAMES OF PROPOSERS/SECONDDERS/ENDORERS

	Full Name	Address	Proposer/Seconder/ Endorser (Tick As Appropriate)	Membership Reg. No.	Sign
1.					
2.					
3.					
4.					
5.					
6.					
7.					

Date.....

FOR OFFICIAL USE:

Accepted/ Rejected.....

Reasons.....

Signature/Seal of Returning Officer.....Date.....

PART II

DECLARATION BY APPLICANT

I, (Full Names).....

consent to be nominated as a candidate for election as chairperson/ member of the Council by members/ human resource professionals in the Register.

I declare that the statement in the nomination paper regarding my qualifications is correct.

Signature..... Registration Number.....

Address.....

NOTE:

(a) This declaration form, which must accompany the nomination paper, must be received by the Returning Officer, C/O The Institute of Human Resource Management P.O. Box 6132-00300, NAIROBI not later than 4pm on.....

(b) Only registered members and human resource professionals.....

FORM D

(r.9(3))

PROTOTYPE VOTING PAPERS

VOTING PAPER 1

Election of chairperson to the Council

<i>Elector's Mark X</i>	<i>Nominated candidate's name</i>	<i>Qualifications of candidate</i>

VOTING PAPER 2

Election of member to the Council

<i>Elector's Mark X</i>	<i>Nominated candidate's name</i>	<i>Qualifications of candidate</i>

NB: Each category of the voting paper shall have a different colour.

These voting papers must be returned so as to be received by the returning officer on.....at.....

FORM E

(r. 9(9))

(a) COAST/EASTERN REGIONS-

- (i) Mombasa County;
- (ii) Kwale County;
- (iii) Kilifi County;
- (iv) Tana River County;
- (v) Lamu County;
- (vi) Taita Taveta County;
- (vii) Marsabit County;
- (viii) Isiolo County;
- (ix) Meru County;
- (x) Tharaka Nithi County;
- (xi) Embu County;
- (xii) Kitui County;
- (xiii) Machakos County;
- (xiv) Makueni County.

(b) RIFT VALLEY REGION-

- (i) Turkana County;
- (ii) West Pokot County;

- (iii) Samburu County;
 - (iv) Trans Nzoia County;
 - (v) Uasin Gishu County;
 - (vi) Elgeyo-Marakwet County;
 - (vii) Nandi County;
 - (viii) Baringo County;
 - (ix) Laikipia County;
 - (x) Nakuru County;
 - (xi) Narok County;
 - (xii) Kajiado County;
 - (xiii) Kericho County;
 - (xiv) Bomet County.
- (c) WESTERN/ NYANZA REGIONS-
- (i) Kakamega County;
 - (ii) Vihiga County;
 - (iii) Bungoma County;
 - (iv) Busia County;
 - (v) Siaya County;
 - (vi) Kisumu County;
 - (vii) Homa Bay County;
 - (viii) Migori County;
 - (ix) Kisii County;
 - (x) Nyamira County.
- (d) NAIROBI/CENTRAL/NORTH EASTERN REGIONS-
- (i) Nairobi County;
 - (ii) Nyandarua County;
 - (iii) Nyeri County;
 - (iv) Kirinyaga County;
 - (v) Murang'a County;
 - (vi) Kiambu County;
 - (vii) Garissa County;
 - (viii) Wajir County; and
 - (ix) Mandera County.

Dated the 26th May, 2015.

S. K. OSERO,
Executive Director,
Institute of Human Resource Management.