

REPUBLIC OF KENYA



Draft as at October, 2018

PUBLIC SERVICE COMMISSION
REGULATIONS, 2018

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LEGAL NOTICE NO. ----- OF 2018

THE PUBLIC SERVICE COMMISSION ACT

IN EXERCISE of the powers conferred by Section 92 of the Public Service Commission Act, the Public Service Commission makes the following Regulations –

**THE PUBLIC SERVICE COMMISSION
REGULATIONS, 2018**

PART I - PRELIMINARY

Citation. 1. These Regulations may be cited as the Public Service Commission Regulations, 2018.

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

“Act” means the Public Service Commission Act;

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

“advisor” means an expert with rare exceptional skills in a particular field appointed to give technical advice;

“affirmative action” means any measure designed to overcome or ameliorate an inequity or the systemic denial of opportunities;

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

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

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

“Cabinet Secretary” means a Cabinet Secretary appointed in accordance with the provision of Article 152 (2) of the Constitution;

“casual employee” means a person-

- a) whose terms of engagement provide for payment at the end of each day; and
- b) who is engaged for a period not exceeding twenty four hours at a time.

“Chief Executive Officer” means the highest ranking corporate officer of a public body responsible for the day to day management of the body;

“Chairperson” means the chairperson of the Commission appointed in accordance with Article 233(2) of the Constitution;

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

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

“Commission” means the Public Service Commission established under Article 233 of the Constitution;

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

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

“county government” means a county government established under Article 176 (1) of the Constitution;

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

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

“delegation instrument” means a document by which the Commission delegates its powers and functions under the Constitution, the Act and these Regulations to an authorized officer;

“indent” means an instrument for declaration of a vacancy to be filled and includes job descriptions and specifications;

“induction” means training provided to new appointee by the employer in order to assist in adjustment to the new work environment and responsibilities;

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

“Job families” means the clustering of cadres with related functions.

“Judicial Service Commission” means the Judicial Service Commission established under Article 171(1) of the Constitution;

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

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

“minor offence” means any crime which upon conviction, the prescribed sentence is a fine or in default, imprisonment for a period not exceeding six months;

“National Police Service Commission” means the National Police Service Commission established under Article 246(1) of the Constitution;

“official document” means any document or paper prepared by any public officer in the course of employment or any document or paper which comes into the custody of any public officer in the course of employment;

“orientation” means familiarization and socialization of a public officer in a new work environment;

“Parliamentary Service Commission” means the Parliamentary Service Commission established under Article 127(1) of the Constitution;

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

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

“professional body” means a statutory body representative of members of a given profession.

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

“a public body” includes—

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

“public officer” means any person other than a state officer who holds a public office;

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

“publish” in relation to a document, includes—

- a) preparing and issuing a document in a newspaper with national circulation, Kenya Gazette or other publication of general circulation in Kenya;

b) publication of an abridged or summary version of the document without losing the core content of the document; and

c) posting the document on a Government website;

“Public Service” means the collectivity of all individuals, other than State officers, performing a function within a State organ;

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

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

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

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

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

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

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

“Secretary” means the Secretary to the Commission appointed in accordance with the provisions of Article 233(6) of the Constitution;

“State office” has the meaning assigned to it in Article 260 of the Constitution.

“State officer” means a person holding a state office;

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

“suitability interview” means the non-competitive assessment of the degree to which an employee possesses the knowledge, ability, skills and other characteristics identified as important for successfully performing the position being filled.

“Teachers Service Commission” means the Teachers Service Commission established under Article 237(1) of the Constitution;

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

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

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

“virtual meeting” means a meeting that is held online through teleconference, video conference or any other electronic means without the physical presence of one or more participants at the same location.

PART II – GENERAL

Scope and application.

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

(2) For avoidance of doubt, under these Regulations, “a public body” includes–

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

or a commission established under the Constitution or legislation and is not exempted under Articles 234 (3) and 252(1)(c) of the Constitution; and

(b) any public body brought under the jurisdiction of the Commission by an Act of Parliament for a specified function to the extent of that function.

Delegation.

4 (1) Subject to the provisions of Section 31 of the Act, a delegation issued by the Commission to an authorized officer shall be in writing through a delegation instrument.

(2) Nothing in these Regulations empowering an authorized officer or any other person to perform any function vested in the Commission shall preclude the Commission from itself performing that function in any particular case.

(3) Where the Commission has delegated any of its functions and powers, the Commission shall retain the power to take corrective measures on its own motion or upon complaint or request on appeal or review.

(4) Where the Commission has delegated any of its functions and powers, the authority or person exercising the delegated function or power shall be entitled to be heard by the Commission personally or through a representative on any issue touching on the delegation.

(5) Where the Commission has delegated any of its functions and powers, the Commission shall institute mechanisms for regular feedback on compliance from the authority or person exercising the delegated function or power in accordance with Section 96 of the Act.

Values and principles of public service.

(6) The Commission shall monitor and evaluate the exercise of delegated powers through inquiry, investigation, audits and visits.

5. (1) The public service shall be guided by the national values and principles of governance in Article 10 and the values and principles of public service in Article 232 of the Constitution.

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

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

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

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

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

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

Decisions may be made by circulation of papers.

6. (1) Where majority of members of the Commission are not in a position to attend a meeting in person and an urgent matter arises, decisions may be made by the Commission without a meeting by circulation of the relevant board paper to all the members and the expression of concurrence in writing of at least five members.

(2) Where a decision is made by the Commission without a meeting by circulation of the relevant board paper to all the members, the decision shall be recorded in the minutes of the next meeting of the Commission.

(3) Where majority of members of the Commission are not in a position to attend a meeting in person and an urgent matter arises, the Commission may hold virtual meetings through teleconference or videoconference or such other suitable means of electronic communication as circumstances shall determine and decisions made at the virtual meeting shall be recorded in the minutes of the next meeting.

Dissent by members.

7. Any member who dissents from a decision of the Commission shall be entitled to have the dissent and the reason for dissenting set out in the records of the Commission.

Record of meetings.

8. A record shall be kept of the members present and of the business transacted at every meeting of the Commission.

Implementation of Commission decisions.

9. (a) All decisions of the Commission including those made under delegated authority, once communicated, shall be implemented within thirty days from the date of the communication.

(a) Any officer who fails to implement the decisions referred to in paragraph 9(a) of these Regulations shall be guilty of misconduct and shall be subject to disciplinary proceedings in accordance with their terms of service.

(b) Penalties for failing to implement decisions of the Commission shall be as provided in Section 68 of the Act.

(c) Where the failure to implement a decision is by an authorized officer who does not fall within the disciplinary powers of the Commission, the Commission may recommend to the appointing authority to take the necessary disciplinary action in accordance with the relevant terms of service for the authorized officer.

(d) Where an authorized officer fails to implement the decisions of the Commission, the Commission may withdraw the delegated powers and functions.

Violation of Regulations.

10. (a) Any public officer who contravenes these Regulations shall be subject to disciplinary proceedings in accordance with their terms of service.

(a) Penalties for violating these Regulations shall be as provided in

Section 68 of the Act.

(b) Where the violation is by an authorized officer who does not fall within the disciplinary powers of the Commission, the Commission may recommend to the appointing authority to take the necessary disciplinary action in accordance with the relevant terms of service for the authorized officer.

Attendance and production of documents.

11.(1) The Commission may require any public officer to attend and give information before it concerning any matter which the Commission is required to consider in exercise of its functions.

(2) The Commission may require the production of any official document relevant to any exercise of its functions, and any public officer who submits any matter for consideration of the Commission shall ensure that all relevant documents and papers are made available to the Commission.

(3) Any public officer who without reasonable excuse –

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

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

Correspondence.

12. All correspondence to the Commission shall be addressed to the Secretary.

Access to Commission Services.

13. The Commission shall ensure reasonable access to its services in all parts of the Republic as the Commission shall determine and may from

time to time conduct its business in any part of the Country.

Committees.

14. (1) The Commission may constitute such committee as may be necessary for the effective discharge of its functions.

(2) Such Committees shall consist of at least three members and the quorum of the committee shall be two members.

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

(4) Subject to the Act and any other written law, each public body shall constitute a human resource committee composed of such members and with such responsibilities as may be determined by the Commission.

PART III – ESTABLISHMENT AND ABOLITION OF OFFICES IN THE PUBLIC SERVICE

Scope of establishment of offices.

15. (1) Subject to the provisions of Article 234 (2)(a) of the Constitution, the function of establishment of offices in the public service shall entail the determination of the nature, structure, number and kinds of offices in the service.

(2) The Commission shall maintain and have custody of the approved establishment of all offices in the public service.

Conditions for establishment of offices.

16. (1) The Commission shall establish offices in accordance with the provisions of Sections 27 and 29 of the Act.

(2) A request for establishment of an office shall be in writing and shall contain a report in terms of Section 27 of the Act.

(3) No office shall be established in the public service without meeting the conditions set out in Section 27 of the Act.

Conditions for abolition of office.

17. (1) The Commission shall abolish offices in accordance with the provisions of Sections 28 and 29 of the Act.

(2) A request for abolition of an office shall be in writing and shall contain a report in terms of Section 28 of the Act.

(3) No office shall be abolished in the public service without meeting the conditions set out in Section 28 of the Act.

Recommendation for establishment of office by the President.

18. (a) The Commission may recommend the establishment of an office by the President pursuant to the provision of Article 132(4)(a) of the Constitution in accordance with the provisions of Section 30 of the Act.

(b) Subject to Article 132 (4) (a) of the Constitution, the Act and these Regulations, the Commission may appoint persons to hold positions in the public service on such terms as the Commission shall determine.

PART IV – APPOINTMENTS, ACTING APPOINTMENTS, PROMOTIONS, RE-DESIGNATIONS, CONFIRMATION OF APPOINTMENTS, TRANSFERS, SECONDMENTS AND DEPLOYMENTS

Commission's authority to appoint.

19. (1) Except as provided for in the Constitution or legislation, the Commission shall have the authority to make appointments in respect

of offices in the public service.

(2) The Commission's authority under sub-paragraph (1) shall be exercised at the request of the authorized officer of the public body to which the appointment relates.

(3) The request by the authorized officer shall be in writing and shall contain the Human Resource plan of the relevant department, an indent for the position and confirmation on availability of funds.

(4) The Commission may on account of best interest of the service, efficiency, effectiveness or parity of treatment, taking into account the circumstances of each case, recommend to an authorized officer the need to appoint persons to hold established offices. The provisions of sub-paragraph 19(2) and (3) shall thereafter apply.

Delegation of
authority to
appoint.

20.(1) The Commission may delegate its authority to appoint to an authorized officer as follows;

(a) in respect to public offices at levels to be determined by the Commission from time to time -

(i) the power of appointment, including acting appointment, re-designation, promotion, transfer and initial appointment;

(ii) the power of extension of the probationary period of any such officer;

(iii) the power to terminate the probationary appointment

of any such public officer under these Regulations and any other regulations which may be in force;

- (b) in respect of all public officers, irrespective of their rank or seniority, the power of confirmation in appointment of any public officer appointed on probation;
- (c) in respect of all public officers, irrespective of their rank or seniority, the power to deploy;
- (d) in respect of public officers serving on contract, the power to terminate, otherwise than by dismissal, in accordance with the provisions of the contract:

Provided that nothing in these Regulations shall affect the power of the Commission to terminate the appointment of such public officer in accordance with the terms and conditions contained in the officer's contract or letter of temporary appointment.

(2) An authorized officer exercising the powers conferred under this Part shall act in accordance with these Regulations and any other law which may be in force, as appropriate.

(3) A public officer affected by the decision of the authorized officer under this Part may, through the authorized officer with a copy to the Commission, appeal to the Commission within thirty days from the date of receiving the decision appealed against.

(4) Notwithstanding the provisions of this paragraph, the Commission may, when necessary, institute an audit, investigation, inquiry or visit to determine whether or not the powers delegated under this paragraph have been properly exercised by the authorized officer.

Advertisement of vacancies.

21. (1) The provisions of Section 37 of the Act, shall apply to all advertisements for positions in the public service.

(2) Where the Commission is required by legislation to conduct a recruitment process for a position in the public service, the advertisement by the Commission shall be guided by the Constitution, the relevant legislation, and Section 37 of the Act.

Record of applicants.

22. Pursuant to the provisions of Section 39 of the Act and subject to the relevant statutory provisions on disposal of Government records, all records of applications received in response to an advertisement inviting applications shall be kept in either hard copy or electronic format or both.

Management of rare and scarce human resource.

23. (1) In these Regulations “rare, scarce and specialized human resource” means knowledge and skills not readily available in the job market.

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

Criteria for appointment and promotion.

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

(a) merit, equity, aptitude and suitability;

(b) the prescribed qualifications for holding or acting in the office

including abilities, skills, knowledge, experience and personal qualities relevant to carrying out of the duties;

(c) the efficiency of the public service;

(d) the provable experience and demonstrable milestones attained by the candidate and potential for development;

(e) integrity of the candidate; and

(f) the standards, values and principles set out in Articles 10, 27, 54(2), 55(c), 56 (c), 232 and Chapter 6 of the Constitution. Provided that the Commission or an authorized officer shall ensure that officers at entry level and at other levels to be determined by the Commission are vetted by competent state agencies before taking up positions in the public service.

(2) The Commission may conduct aptitude or other competency tests where appropriate.

(3) The Commission may conduct suitability interviews in the following instances;

(a) Where posts have been upgraded;

(b) On re-designation;

(c) Where an officer is being considered for promotion on merit;
or

(d) On redeployment upon re-organization of government or a public body.

(4) In evaluating whether an appointment has been

undertaken in a fair and transparent manner, the overriding factors shall be –

- (a) competitiveness;
- (b) meritocracy
- (c) absence of nepotism, cronyism and political influence; and
- (d) Non-discrimination as provided in Article 27(4) of the Constitution.

(5) Applications for appointment shall be made in a prescribed form as determined by the Commission.

(6) A full time public officer shall not participate in any other full-time gainful employment in the public or private sector or hold two concurrent remunerative positions in the public service. Provided that this sub-paragraph shall not apply to an appointment by office or payment of approved allowances to a public officer in view of the officer's temporal engagement to perform duties beyond the duties of the public office held by the officer.

Effective date of appointment promotion and re-designation.

25. The effective date of appointment, acting appointment, promotion or re-designation shall be the date of the decision to appoint, promote or re-designate or such date as the Commission or authorised officer may determine. Provided that a fresh appointment into the public body shall take effect from the date the officer reports to the workstation.

Confirmation in appointment.

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

Acting
appointments.

27. (1) Where it is necessary to appoint an officer in an acting capacity, the appointment shall be made in accordance with the provisions of Section 34 of the Act and paragraph 24 of these Regulations.

(2) Where there is no person qualified to act in a position the authorized officer may appoint an officer to perform the duties of that office.

Promotions.

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

(2) The provisions of sub-paragraph (1) shall apply in all promotional decisions except where, with due diligence, the occurrence of the vacancy could not be foreseen.

(3) Where a public officer has been promoted to a State Department other than that in which the officer is serving, the officer will be released to take up the appointment on transfer within a period of sixty days from the date of the letter authorizing the promotion.

(4) The authorized officer shall furnish the receiving State Department with the relevant documentation relating to the release within the sixty days.

(5) If the officer is not so released, the officer shall stand released upon expiry of a period of sixty days from the date of

promotion.

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

Recognition of exceptional performance.

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

(2) In these Regulations, promotion on merit means promotion through evaluation based on experience, competencies, personal qualities, exceptional abilities, innovation, tangible creativity, leadership, demonstrable milestones and integrity.

(3) an officer may be considered for an award and commendation in accordance with the Commission's policy on public service excellence.

(4) An officer may be considered for promotion on merit upon recommendation by the relevant human resource committee of a public body and a request to the Commission by the Authorized officer based on policies and guidelines issued by the Commission.

(5) An officer may be considered for promotion on merit where a vacancy exists. Provided that where no vacancy exists, the commission may consider other appropriate rewards in accordance with policies and guidelines issued by the Commission.

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

Appointment of
Advisors.

30. (1) The Commission may consider appointment of advisors for the President, Deputy President and Cabinet Secretaries.

(2) The President and Deputy President will be entitled to such number of advisors as shall be determined by the Commission as being necessary for carrying out the functions of their office.

(3) Subject to these Regulations, a Cabinet Secretary, may be entitled to not more than two advisors during the tenure of office of the Cabinet Secretary as shall be determined by the Commission.

(4) A person shall be considered for appointment as an advisor where the person;

- (a) Has the relevant qualifications, experience, competencies and skills necessary for the performance of the job; and
- (b) Meets the requirement of Chapter Six of the Constitution.

(5) A request for appointment of an advisor, shall be accompanied by;

(a) A written confirmation by the requesting authority that;

- (i) The technical competencies, skills and experience being sought do not exist in the public service;
- (ii) The competencies and experience of the identified advisor match the job requirements;

(b) The functions, duties and responsibilities of the proposed

Advisor.

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

(7) An advisor will be bound by Public Service Code of Conduct and will be required to sign the oath of secrecy under the Official Secrets Act.

(8) An Advisor will be appointed on contract for a period not exceeding the tenure of office of the State Officer.

(9) The grading, terms and conditions of service of an advisor shall be determined by the Commission.

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

(11) All persons appointed as advisors shall undergo an induction by the Commission before taking up the appointment.

(12) Persons appointed as advisors shall not have a supervisory role over public officers in a public body.

Appointment of
Personal Staff.

31.(1) Subject to the provisions of Article 234(4) of the Constitution, the Presidential Retirements Benefits Act and the Retirement Benefits (Deputy President and Designated State Officers) Act, the Commission shall appoint personal staff for the President, Deputy President and retired Presidents based on an establishment approved by the Commission.

(2) Personal staff of the President, Deputy President and retired President may include the following;

- (a) Personal assistants,
- (b) Health fitness instructors,
- (c) Support Staff
- (d) Cooks,
- (e) Housekeepers, and
- (f) Gardeners.

(4) Personal staff shall serve at the pleasure of the President, Deputy President or retired President as the case may be and for such period as shall be determined by the Commission but not exceeding the tenure of office of the person assigned personal staff.

Appointment of
Personal
Assistants.

32. (1) The Commission may, upon request, appoint a personal assistant for a Cabinet Secretary.

(2) The Commission may, upon request, assign to a Principal Secretary a personal assistant from amongst public officers within the public service.

(3) A Chief Executive Officer of a public body may identify an officer within the public body to serve as a personal assistant.

(4) The terms and conditions of service for personal assistants shall be determined by the Commission.

Appointment of expatriates.

33. (1) Subject to these Regulations, a public body may employ non-citizens with the approval of the Commission.

(2) A public body shall not employ non-citizens where there are citizens with appropriate qualifications, skills and experience.

(3) A request for authority to recruit non-citizens shall be made by an authorized officer and be accompanied by confirmation that no citizen with the required qualification is available for appointment.

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

(5) Non-citizens will only be appointed on contract terms not exceeding three years, renewable once subject to satisfactory performance and subject to paragraph 33(3) of these Regulations. Provided that the Commission shall have discretion to approve the renewal of contract for a further period as circumstances shall determine.

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

Service on term contract.

34. (1) Employment in a public body on contract terms shall be as provided in Section 45 of the Act.

(2) Subject to the provisions of Article 234(2)(a), the power

to appoint persons on contract in a public body shall vest in the Commission.

(3) Subject to the provisions of Article 234(2)(a), authorized officers shall report to the Commission or relevant appointing authority, as the case may be, all cases of appointment which require renewal, at least six months before the expiry of the contract.

Appointment of
Principal
Secretaries.

35. (1) Within twenty-one days of a Presidential election, the Commission shall commence a competitive recruitment process for the purpose of identifying persons to be recommended for nomination by the President for appointment as a Principal Secretary. Provided that the Commission may on request, and if circumstances warrant, carry out a recruitment and selection process at any other time.

(2) In recommending persons for nomination by the President for appointment as Principal Secretary in accordance with the provisions of Section 47 of the Act, the Commission shall –

(a) publish in the Kenya Gazette, Commission's website and a newspaper with national circulation, the criteria including the qualifications, disqualifications, experience and other requirements for recommending persons to be appointed as Principal Secretaries; and

(b) abide by the provisions of Article 10 on national values and principles of governance, Article 232 on values and principles of public service and Chapter six of the Constitution on leadership and integrity in making the recommendation.

(2) Where the Commission alters the qualifications, disqualifications, experience and other requirements for the office of a Principal Secretary, the Commission shall publish the alteration in the gazette.

(3) In making the recommendations, the Commission shall have regard to the provisions of Article 249(2) of the Constitution.

Nomination and recommendation for appointment.

36. (1) Where the Commission is required by the Constitution or legislation to make a nomination or recommendation of a person for appointment, the provisions of Section 46 of the Act shall apply.

(2) The Commission shall, subject to provisions of the Constitution or any legislation, set the qualifications and disqualifications attached to the public office for which it is required to make a nomination or recommendation for appointment.

(3) The Commission shall publish the qualifications determined in sub-paragraph (2) and any alteration thereto.

(4) The appointments and recommendations made under this paragraph shall abide by the provisions of Section 37 of the Act.

(5) In making recommendations, the Commission shall act independently and shall have regard to the provisions of Article 249(2) of the Constitution.

Appointments to interim bodies.

37. (1) The provisions of Part Six (VI) of the Act shall apply to the appointment of any staff of an interim body established under the Constitution or any legislation.

(2) Unless an interim body in the public service is specifically conferred with the constitutional or statutory power to establish offices or appoint its staff -

- (a) the authority to appoint persons to hold office in an interim body shall vest in the Commission;
- (b) no person shall be appointed in the interim body unless the Commission is satisfied that in the circumstances of the case, there is no available public officer for secondment, deployment or appointment to that interim body; and
- (c) no person shall be appointed to an office in an interim body unless the Commission has established a public office in the establishment of that body for that purpose.

Affirmative
Action.

38. A public institution shall—

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

Staff of
partnerships and
joint ventures

39. (1) Any public body which enters into a partnership or joint venture with any other body outside the public service in which public officers will be deployed, or staff of such partnership or joint venture

shall in any way utilise any public resource, the public body shall seek approval of the Commission before executing the partnership or joint venture agreement as the case may be.

(2) For purposes of these Regulations, the Commission may consider any undertaking, a joint venture or partnership between a public body and any other body outside the public service to be a public body within the meaning of these Regulations, if it is established by the Commission that –

- (a) at least thirty percent of the staff are public officers;
- (b) the undertaking involved is substantially provision of a service or function on behalf of the government, the government being the sole traditional provider;
- (c) at least thirty percent of the funding is drawn out of public funds;
- (d) at least thirty percent of the assets are public; or
- (e) at least thirty percent of the liabilities are public.

(3) Subject to the provisions of Section 49 of the Act, the authority to appoint and exercise disciplinary control of staff on behalf of the government in joint ventures between any public body and any other body outside the public service shall vest in the Commission.

Promotional
examinations.

40. (1) Subject to the provisions of Section 51 of the Act, where vacancies are to be filled according to the results of examinations held under the authority of the Commission, the Commission shall in that

regard -

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

(2) The examinations administered by the Commission shall be designed to achieve fair competition and merit as the basis of appointments and promotions in the public service and officers who pass the exams shall be promoted with effect from the date of gazettelement of the results.

(3) Nothing in this paragraph shall preclude the Commission from administering other competitive and objective methods of recruitment and selection in addition to or in isolation from the examinations.

Re-designation.

41. (1) The Commission may delegate to an Authorized officer powers to re-designate officers up to a level to be determined by the Commission.

(2) Re-designation may be considered at levels in any cadre subject to an officer meeting the requisite qualifications, experience, skills and competencies and shall take effect from the date the decision is made.

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

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

Deployment.

42. (1) Deployment within a public body shall be undertaken by the authorized officer.

(2) In making a deployment decision, the concerned authorized officer shall take into account the –

- (a) efficiency and effectiveness of public service delivery;
- (b) promotion of national integration and cohesion; and
- (c) promotion of representation of Kenya's diverse communities, men and women, the members of all ethnic groups and persons with disabilities.

Secondment.

43. (1) Subject to Section 42 of the Act, where a public officer is appointed on contract to a public service organization or an international public body to which Kenya is a State party or has an existing bilateral agreement, the officer may make a request to the Commission, through the authorized officer, for approval for

secondment.

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

(3) Secondment shall be restricted to job levels determined by the Commission.

(4) Secondment shall be for a period not exceeding three years renewable once for a further period not exceeding three years after which the provisions of Section 42(6) of the Act shall apply. Provided that upon expiry of the secondment period an officer on secondment to a public body may opt to transfer service, resign or retire in accordance with the Act and these Regulations.

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

(b) Where the organization pays the pension contribution for the officer, such amount shall be recovered from the officer's service gratuity.

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

(7) Termination of secondment arrangement prior to the expiry of the secondment period will be subject to a notice of not less than one month by the parent public body or the public officer as the

case may be.

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

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

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

(11) Subject to relevant transitional statutory provisions, where a new public body is established from an existing public body, public officers who will have been retained in the new public body shall be deemed to be on secondment pending the establishment of a pension scheme.

(12) A public officer shall not proceed on secondment before receipt of a written approval by the Commission.

Leave of absence.

44. (1)(a) Leave of absence may be granted by the Commission to public officers on recommendation of the Authorized Officer through the respective Human Resource Management Advisory Committee for a period not exceeding three years renewable once.

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

(2) Leave of absence may be granted to a public officer for purposes of taking up contractual appointments within a public body, private corporation or international organisation to which the officer cannot be seconded or transfer service. Provided that an officer may only be granted leave of absence to a private corporation where the Commission determines that the experience and expertise that the officer shall gain from the private organisation shall be of benefit to the public body releasing the officer.

(3) Leave of absence may be granted to spouses of foreign service officers during the tour of service.

(4) Leave of absence will not be increment-earning.

(5) During the period of leave of absence, the public body will not make a contribution of its portion towards an officer's pension under contributory pension scheme. The officer will however, be at liberty to contribute towards the Scheme.

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

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

Unpaid leave.

45.(1) Unpaid leave may be granted by the Authorized Officer on recommendation of the respective Human Resource Management Advisory Committee for a period not exceeding six months renewable once for a further period of six months for purposes of attending to urgent private affairs of exceptional nature.

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

(3) During the period of unpaid leave, the public body will not make a contribution of its portion towards an officer's pension under contributory pension scheme. The officer will however, be at liberty to contribute towards the Scheme.

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

Transfer.

46. (1) Transfers shall be in accordance with Section 43 of the Act.

(2) For purposes of Section 43(4)(b) of the Act, where -

(a) there is re-organization of Government; or

(b) there is a change in Government policy; or

(c) a transfer affects officers at levels to be determined by the Commission, an authorized officer shall seek approval from the Commission.

(3) A transfer shall not be a promotion unless expressly stated.

(4) Subject to these Regulations, in making a decision to

transfer a public officer, the Commission or the authorized officer referred to in Section 43(4)(b) of the Act, shall take into account the –

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

Transfer of service.

47. (1) Where a public officer has been appointed into the service of another public body with a separate retirement benefits scheme, the public officer may make a request to the Commission, through the authorized officer, for transfer of service.

(2) Requests for transfer of service shall be considered by the Commission for approval subject to statutory provisions relating to retirement benefits.

Protection of accrued rights and benefits.

48. (1) For purposes of Section 50 of the Act, benefits shall include-

- (a) accrued pension in accordance with relevant statutory provision;
- (b) retirement benefits;
- (c) accrued leave; or
- (d) any other benefits that may be determined by the Commission.

Volunteer service

49. (1) The power to appoint a person to serve on voluntary basis shall vest in the authorized officer with the approval of the Commission.

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

- (a) a revenue collector;
- (b) an officer involved in any aspect of procurement;
- (c) a cashier;
- (d) a caretaker of any premises belonging to a public body;
- (e) a security officer;
- (f) a holder of any strategic public office including any office established in the Constitution or an Act of Parliament; or
- (g) such other position as shall be determined by the Commission.

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

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

(5) a person engaged as a volunteer shall be deployed to perform duties relevant to their area of qualification, experience or expertise

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

Casual service.

50. (1) In these Regulations, “casual service” refers to employment of a person on terms of engagement where payment is at the end of each day and the person is engaged for a period not exceeding twenty-four hours.

(2) Where a service is required for more than twenty-four hours but not exceeding twenty-one days, the concerned authorized officer shall engage the person on a contract not exceeding twenty-one days.

(3) Where there is need for temporary services, not envisaged in this paragraph the concerned authorized officer shall procure services of independent service providers in accordance with the procurement laws and regulations.

Internship.

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

(2) The Commission shall provide an internship policy for the public service.

(3) The power to engage any person as an intern shall vest in the relevant authorised officer with the approval of the Commission.

(4) A public body shall declare to the Commission the available opportunities for internship.

(5) Subject to the provisions of relevant Acts of Parliament,

all opportunities for internship shall be advertised in accordance with provisions of Section 37 of the Act.

(6) The engagement of interns in the public service shall be through a competitive process and shall be transparent and accountable so as to accord equal opportunity for all in accordance with Article 232(2)(g),(h) and (i) of the Constitution.

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

(8) Interns may be considered for payment of such stipend as the Commission may approve or prescribe.

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

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

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

**PART V – REVIEWING AND MAKING OF RECOMMENDATIONS TO THE NATIONAL
GOVERNMENT ON CONDITIONS OF SERVICE, CODE OF CONDUCT AND
QUALIFICATIONS.**

Conditions of
service.

52. (1) In exercising the power to review conditions of service the Commission shall be guided by the Constitution and the provisions of Section 53 of the Act.

(2) In these Regulations, “conditions of service” referred to in Section 53 of the Act include any right or obligation relating to a public officer including any right or obligation relating to –

- (a) appointment;
- (b) standards of conduct;
- (c) removal and exit from service;
- (d) salaries and allowances;
- (e) working hours;
- (f) leave;
- (g) grievances;
- (h) disciplinary control;
- (i) medical care;
- (j) transport;
- (k) water;
- (l) food;
- (m) welfare;
- (n) working environment;
- (o) training and development;
- (p) membership to trade unions;
- (q) housing;
- (r) pensions benefits; and
- (s) Staff performance management.

(3) In addition to the provisions of Section 53(2), the Commission may, upon request by any public officer or the officer's representative, review and make recommendations on conditions of service with respect to the public officer, category of public officers the officer belongs to or all public officers in the public body the officer belongs to.

(4) Where the Commission has undertaken a review and made recommendation under this paragraph, the concerned public body or authorized officer shall implement the recommendation –

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

Code of conduct. **53.** (1) In exercising the power to review codes of conduct the Commission shall be guided by the provisions of Section 54 of the Act.

(2) Subject to any Act of Parliament, an authorized officer or any other lawful authority shall not implement or impose any code of conduct unless the Commission has reviewed and made recommendations on the code.

Qualifications for positions in the public service. **54.** (1) In these Regulations, "qualifications" means any prescribed requirement of eligibility or ineligibility attached to holding or acting in a public office.

(2) The Commission shall determine the qualifications for all positions to be held in the public service.

(3) Except where the Constitution has vested in another authority the function of determining qualifications attached to a public office, the function of determining qualifications shall vest in the Commission.

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

(5) In exercising the power to review qualifications, the Commission shall be guided by the provisions of Section 55 of the Act.

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

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

(8) Every public body or authorized officer shall, unless a waiver has been obtained from the Commission based on a justifiable reason, comply with the qualifications prescribed in accordance with this paragraph.

Grading structure and career progression.

55. (1) In these Regulations, “career progression guidelines” means a tool that facilitates recruitment, retention, training and development in

the public service.

(2) The Commission shall review and issue a grading structure in the public service.

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

- a) provide norms and standards for the specific cadres to inform on qualifications and progression;
- b) Prescribe the relevant competencies for all cadres;
- c) Advise on relevant technical and professional training for all cadres;

(4) The Commission shall –

- a) Initiate review of career progression guidelines in accordance with provisions of Section 55(7) of the Act;
- b) Partner with professional bodies to ensure compliance with the standards of each profession and require facilitation for Continuous Professional Development of public officers by a public body;
- c) Require facilitation, by a public body, for registration and annual subscription of officers as members of relevant professional bodies;
- d) Cluster the cadres in the service into job families; and
- e) Ensure institutionalization of human resource

planning, career and succession management.

(5) Except where any written law provides otherwise, career progression guidelines shall be administered by the respective authorized officer in the public body.

PART VI – DEVELOPMENT OF HUMAN RESOURCE IN THE PUBLIC SERVICE

Human resource development.

56. (1) In developing human resource in the public service, the Commission shall be guided by the provisions of Section 56 of the Act.

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

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

(4) Training shall be approved only for relevant capacity building, career development and growth.

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

(6) The procedures and instruments governing the development of human resource, the measures for prudent utilization of training funds in public bodies and for ensuring merit in the selection and award of training opportunities for public officers shall

be as provided in policies and guidelines issued by the Commission.

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

(b) In seeking approval of the Commission for award of the scholarship the authorized officer shall present to the Commission a report containing the following information-

- (i) the nature and scope of the scholarship;
- (ii) the date of receipt of information on the scholarship;
- (iii) the date and particulars of advertisement of the scholarship;
- (iv) list of all applicants;
- (v) the shortlisted applicants;
- (vi) the criteria for shortlisting; and
- (vii) criteria for award.

(c) All available scholarships for public officers shall be advertised for a period of at least 21 days in at least two daily newspapers of nationwide circulation, the public body's website and in such other form as the human resource committee of the public body shall determine.

(d) No public officer shall proceed to study on scholarship without the approval of the Commission.

(8) Authorized officers shall present a training projection for public officers in the public body for guidance and monitoring by the Commission.

(9) (a) All opportunities for training shall be considered and

awarded by the relevant human resource committee of the public body.

- (b) Subject to availability of funds, an officer may be eligible to at least one short term training, in a financial year, sponsored by the public body and not exceeding a period of three months.
- (c) No officer shall be eligible for training that exceeds a period of six months until after the lapse of a period of two years from the date of the last training that exceeded a period of six months.
- (d) All public officers proceeding on training shall be bonded in accordance with guidelines issued by the Commission.

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

- b) The Commission shall monitor and evaluate the effectiveness of the learning and training programs that lead to qualifications attached to holding a public office and recommend any relevant improvement to concerned learning and training institutions.

(8) (a) All authorized officers shall submit a report to the Commission on the trainings undertaken by public officers within a financial year.

- b) The report referred to in paragraph 8(a) shall be submitted

by 31st July of each year and shall contain the following information;

- (i) personal number;
- (ii) name;
- (iii) gender;
- (iv) ethnicity;
- (v) disability;
- (vi) age;
- (vii) designation;
- (viii) duty station
- (ix) training undertaken
- (x) cost of training;
- (xi) duration and location of training;
- (xii) status of the training or certification issued; and
- (xiii) training impact assessment report.

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

b) Newly appointed public officers shall undergo an induction within three months of taking up the appointment.

PART –VII INVESTIGATION, MONITORING AND EVALUATION OF THE ORGANIZATION, ADMINISTRATION AND PERSONNEL PRACTICES OF THE PUBLIC SERVICE

Organization of public service.

57. (1) Pursuant to the provisions of Section 57(3) of the Act, the Commission shall investigate, monitor and evaluate the organization, administration and personnel practices of the public service in accordance with policies, guidelines and manuals issued by the

Commission.

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

(3) The factors the Commission shall consider in investigating, monitoring and evaluating the organization of the public service shall include -

- a) the functions of the National Government as set out in the Constitution;
- b) the functions of the public body;
- c) the priorities of national sustainable development; and
- d) the policies of the government of the day.

Commission's duties in administration of public service.

58. In addition to the provisions of Section 57(2) of the Act, the Commission shall, with respect to any public body investigate, monitor, evaluate and report on a public body's –

- a) prevailing systems, processes and instruments for delivery of the public body's functions;
- b) co-ordination of measures towards delivery of the core functions;
- c) reporting systems including supervisory, accountability and appraisal functions; and
- d) financial implications in the delivery of the functions and

powers of the Commission in the public body.

Reports to complainants.

59. Pursuant to the provision of Section 60 and 61 of the Act, the Commission shall as far as possible communicate its findings on the investigations to a complainant.

PART VIII – PUBLIC SERVICE EFFICIENCY AND EFFECTIVENESS

Promotion of public service efficiency and effectiveness.

60. (1) The Commission shall ensure efficiency and effectiveness of the public service in accordance with the provisions of Section 62 of the Act.

(2) The Commission shall provide a performance management framework for the public service which shall spell out the structures and responsibilities for managing performance in the public service.

(3) The Commission shall set standards in service delivery which shall include:-

- a) Establishment of service delivery baseline information;
- b) Setting of service delivery benchmarks;
- c) Issuance of citizen service delivery charter;
- d) Establishment of the citizen service delivery satisfaction levels;
- e) Annual evaluation of citizens' satisfaction levels; and
- f) Grievance management procedure.

(4) The Commission shall in evaluating the organization and core functions of a public body assess the efficiency and effectiveness

of standards, norms and practices of the public body as listed in Section 59 of the Act.

(5) The Commission shall in evaluating the organization and core functions of a public body assess the efficiency and effectiveness of internal processes including;

- a) Governance structures;
- b) Documentation and Automation of business processes;
- c) Knowledge management practices;
- d) E-government presence;
- e) Decentralization of services;
- f) Economic use of resources;
- g) Transparency and accuracy; and
- h) Timeliness.

(6) The Commission shall in evaluating the organization and core functions of a public body assess the efficiency and effectiveness of citizens satisfaction by;

- a) Setting citizen satisfaction indicators;
- b) Undertaking citizen satisfaction surveys; and
- c) Establishment of citizen satisfaction index.

(7) The Commission shall set performance management guidelines which shall include;

- a) Commitments of the Government;
- b) Commitments of the public body;
- c) Commitments of the public officer;
- d) Commitments of the citizen;

- e) Period of contract;
- f) Expected outcomes;
- g) Cost of delivery of service;
- h) Evaluation criteria;
- i) Mitigation measures;
- j) Monitoring, evaluation and reporting; and
- k) Rewards and sanctions.

(8) The Commission shall provide performance appraisal guidelines for public bodies and individual public officers which shall include;

- a) Development of strategic objectives;
- b) Preparation of work plans;
- c) Setting of performance targets;
- d) Determination of evaluation criteria;
- e) Determination of evaluation benchmarks;
- f) Issuance of assessment tools and instruments;
- g) Prescription of performance improvement plans;
- h) Development of productivity assessment tools;
- i) Prescription of applicable rewards and sanctions; and
- j) Mechanisms for monitoring, evaluation and reporting.

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

(2) In evaluating performance and performance agreements between the government and public bodies or individual public officers, the

Commission shall in addition to other mechanisms;

- a) Set methodologies for evaluation;
- b) Set criteria for evaluation; and
- c) Prescribe rewards and sanctions.

(10) Pursuant to the provisions of Section 62(1)(f) of the Act, where the Commission has made recommendations, the Authorized Officer shall be bound to implement the recommendations.

(11) Pursuant to the provisions of Section 62(2) of the Act, where an authorized officer fails to ensure efficiency and effectiveness of a public body, the Commission shall recommend to the President the imposition of one or more of the following sanctions;

- a) Reprimand;
- b) Surcharge;
- c) Removal from office; or
- d) Any other sanction as the Commission may determine.

PART IX – PROMOTION OF AND REPORTING ON VALUES AND PRINCIPLES OF GOVERNANCE AND VALUES AND PRINCIPLES OF PUBLIC SERVICE

Promotion of values and principles.

61. (1) The Commission's duties in the discharge of its Constitutional function under Article 234 (2)(c) to promote national values and principles of governance in Article 10 and values and principles of public service in Article 232 (1) of the Constitution and Section 63 of the Act shall include –

- a) to visit, investigate, monitor and evaluate any public office

or body with a view to determining the status of compliance with the values and principles;

- b) to investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of any of the values and principles;
- c) to take or recommend to the relevant lawful authority any necessary action in view of the violation of the values and principles by any person or public body;
- d) to inform and educate public officers and the public about the values and principles for the purpose of enhancing respect for the values and principles by means of-
 - (i) a continuing program of research
 - (ii) publication including in braille and Kenya Sign Language
 - (iii) conferences
 - (iv) lectures and symposia
 - (v) exhibitions
 - (vi) print and electronic media
 - (vii) radio and television and
 - (viii) such other means as the Commission may deem appropriate.
- e) to investigate and undertake conciliation, mediation or negotiation upon a complaint or on its own initiative if, the nature of the alleged violation of the values and principles makes conciliation, mediation or negotiation both possible and appropriate in the circumstances of the case;

(2) The factors the Commission shall consider in promoting the values and principles include –

- a) financial requirements for the successful promotion of the values and principles;
- b) training and capacity building requirements for the Commission, public bodies and officers;
- c) meaning and application of the values and principles with respect to the various public bodies;
- d) channels for effective dissemination of values and principles;
- e) relevant partners for cooperation towards successful promotion of the values and principles;
- f) protection of human rights;
- g) relevant legislation, regulations, procedures, instruments and standards;
- h) relevant ratified conventions and treaties; and
- i) prevailing value systems that may undermine the values and principles.

(3) The Commission shall develop and issue to the service a framework for implementation of the values and principles in Articles 10 and 232 of the Constitution.

(4) Subject to the Constitution, the Commission shall, in accordance with Article 234 (2) (c) of the Constitution, discharge its duties under this paragraph throughout the public service.

Report on values and principles.

62. (1) The record of evaluation and report by the Commission to the President and Parliament on the extent to which the values and principles in Articles 10 and 232 of the Constitution are complied with

in the public service shall be submitted annually and in respect of every preceding financial year.

(2) The report by the Commission under this paragraph shall

- a) be delivered by the Commission, every December, to the President and the Speakers of both the National Assembly and the Senate;
- b) include all the steps taken and decisions made by the Commission under this Part;
- c) include specific recommendations that require to be implemented in the promotion and reporting of the values and principles;
- d) include specific decisions and particulars of public bodies who have violated the values and principles including the nature of violation and action taken or recommended against them;
- e) include the constraints the Commission has encountered in the promotion and reporting on the values and principles; and
- f) include the programmes the Commission is undertaking or has planned to undertake in the medium term towards the promotion of the values and principles.

(3) The Commission's report to the President and Parliament

shall be published by the Commission in the gazette by 31st December of every year.

(4) The Commission shall publicize the report.

(5) The Commission, in the performance of its duties under this Part may require any public or state officers to produce any document or information relevant in the circumstances of the case.

PART X – EXERCISE OF DISCIPLINARY CONTROL IN THE PUBLIC SERVICE

Disciplinary
Control.

63. (1) Disciplinary control in the public service shall be in accordance with the provisions of Article 47 of the Constitution, the Fair Administrative Actions Act, Part XII of the Act and any other written law and guidelines issued by the Commission.

(2) Subject to Section 65(2) (b) and applicable pension legislation, the Commission may delegate the power of dismissal or reduction in rank or seniority of officers as may be determined by the Commission.

Types of
penalties.

64. (1) Subject to the Act and these Regulations, the Commission and authorized officers as the case may be, may impose penalties as provided in Section 68 of the Act.

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

(3) Pursuant to the provisions of Section 68(2)(3) of the Act

where an officer is found guilty of misconduct the Commission or other lawful authority shall communicate to the officer the options available in accordance with provisions of Section 68(2) and the officer shall be required to select one of the options within a period of fourteen days from the date of communication failure to which any of the penalties in Section 68 (1), as appropriate, shall be imposed.

Compulsory
leave.

65. (1) Where an investigation is being undertaken within a public body and it is suspected that an officer may influence or interfere with investigations, the Authorized Officer shall seek the approval of the Commission to require the public officer to proceed on compulsory leave to enable investigations for a period not exceeding thirty working days.

(2) The letter addressed to the officer to proceed on compulsory leave, shall state the reasons for the decision.

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

(4) Compulsory leave shall not count as annual leave.

Interdiction and
Suspension.

66. (1) Where disciplinary proceedings, which may lead to dismissal, have been commenced against an officer the authorized officer may interdict or suspend the officer in accordance with the provision of Section 70 and 71 of the Act.

(2) Subject to Sections 70 and 71 of the Act, a serious criminal offence means an offence under Penal Code, the Anti- Corruption and Economic Crimes Act or any other legislation where a prison sentence may be imposed. Provided that proceedings for minor offences may

be disregarded.

Provision of information on interdictions and suspensions.

67. Pursuant to the provisions of Section 72 of the Act, an authorized officer shall provide to the Commission a quarterly report on the status of the cases of interdicted and suspended officers. The report shall include the following information;-

- (i) Personal number, name, age and gender;
- (ii) Designation and job group of the officer;
- (iii) Date of interdiction or suspension;
- (iv) Nature of disciplinary proceedings;
- (v) Status of the proceedings;
- (vi) Status of court matter if any; and
- (vii) Where the interdiction or suspension has exceeded six months, the reasons for the delay in concluding the proceedings.

Administrative disciplinary process.

68.(1) Pending criminal proceedings shall not be a bar to a public body undertaking an administrative disciplinary process against a public officer and imposing any of the penalties provided for in Section 68 of the Act.

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

Information on suits arising from disciplinary proceedings.

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

Protection of public officer.

70. Pursuant to the provisions of Article 236 of the Constitution, no public officer shall be disciplined for having performed the functions of office in accordance with the Constitution or any other law.

Pending disciplinary process.

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

Appeals and reviews.

72. (1) A public officer who is dissatisfied with a disciplinary process, may appeal in accordance with the provisions of Section 74 of the Act.

(2) A public officer who is dissatisfied with a decision on appeal may apply for review in accordance with the provisions of Section 75 of the Act.

PART XI –RESIGNATION, RETIREMENT AND RELATED MATTERS

Resignation.

73. (1) Resignations in the public service shall be handled in accordance with the provisions of Section 78 of the Act.

(2) In this paragraph, resignation means exit from the public service at the instance of a public officer subject to the provisions of this paragraph.

(3) In this paragraph “salary” referred to in section 78(2) of the Act means gross salary.

(4) Subject to the provisions of Section 78(2) of the Act, a resignation letter may be sent by electronic mail, registered post or hand delivery

addressed to the authorized officer and relevant evidence of such postage shall be produced as evidence of delivery where necessary.

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

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

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

(7) Upon issuance of a resignation letter, an officer shall be required to settle any outstanding liabilities to the government and obtain a clearance certificate.

(8) Subject to the applicable legislation, where a public officer resigns after completing a period of not less than five years

pensionable service, the officer shall be eligible to pension benefits.

(9) An officer who had resigned shall not, if subsequently re-employed after a break of service, count his previous service for pension.

(10) An officer who had resigned may only re-join the service on new appointment in accordance with Section 78(4) of the Act and shall be required to produce a clearance certificate obtained after resignation.

Retirement on age grounds.

74. (1) Subject to provisions of the Constitution, Section 80 of the Act or provisions of any Act of Parliament or specific government policy, the mandatory retirement age in the public service shall be –

- (a) sixty years;
- (b) Sixty-five years for persons with disability; and
- (c) Such age as determined by the Commission for lecturers and research scientists serving in public universities, research institutions and equivalent institutions as determined by Commission in Consultation with the relevant public bodies.

(2) In these Regulations, disability means a permanent physical or other impairment or condition that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day to day activities.

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

- a) has a disability of a permanent nature that can be perceived by significant sectors of the community and the disability has a substantial impact on the ability of the officer to carry out ordinary day to day activities;
- b) Is registered in the public body's human resource data base as a person with disability at least three years before the date of retirement. Provided that the Commission may consider cases of disability that occur less than three years before the date of retirement; and
- c) is registered by the National Council for Persons with Disabilities and has a tax exemption certificate from the Kenya Revenue Authority as a person with disability. Provided that registration by the Council shall not be considered as automatic evidence of disability.

(4) Where there is doubt as to the disability of a public officer the Commission shall seek a second medical assessment from the Director of Medical Services and the second medical assessment shall supersede any other assessment.

(5) No person shall be retained in the service on account of disability beyond the mandatory retirement age without the approval of the Commission.

(6) (a) Subject to provisions of the Constitution, the Retirement Benefit Act or provisions of the rules of a retirement benefits scheme, or specific government policy, where an officer

attains the mandatory retirement age while undergoing disciplinary proceedings, the officer shall retire with the applicable pension benefits.

(7)(a) Subject to Section 80 (2) of the Act, in determining whether to engage an officer for services after attainment of retirement age the Commission shall determine and document the rare knowledge, skill and competencies that the officer possesses.

b) In these Regulations “rare knowledge, skills and competencies” means knowledge, skills and competencies that are scarce, unique and not readily available in the job market.

Retirement on attainment of 50 years.

75. (1) (a) Subject to the provisions of Section 81 of the Act, a public officer who elects to retire on attainment of 50 years, shall submit an application for retirement to the authorized officer.

b) An application for retirement may be sent by electronic mail, registered post or hand delivery addressed to the authorized officer and relevant evidence of such postage shall be produced as evidence of delivery where necessary.

(2) Retirement shall take effect at the expiry of the three months' notice from the date of the delivery or registration of the retirement letter at the post office.

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

- a) fraud or conspiracy where the concerned public officer is innocent;
- b) Subject to the provisions of Section 68(2) and (3) of the Act and paragraph 64(3) of these Regulations, duress where the concerned public officer has proved that the retirement was occasioned by threats or coercion by a person in authority over the officer.
- c) involuntary decision by the concerned public officer by reason of infirmity of mind arising from ill health or involuntary intoxication; or
- d) retirement aimed at avoiding anticipated or on-going disciplinary case.

(4) The power to approve application for retirement upon attainment of fifty years shall vest in the Commission.

(5) Applications for retirement upon attainment of fifty years shall be processed in accordance with guidelines issued by the Commission.

Retirement on grounds of ill health.

76. (1) Retirement on grounds of ill health shall be considered in accordance with the provisions of Section 82 of the Act and such guidelines as may be issued by the Commission.

(2) Subject to the provisions of Section 82(2) of the Act, where by reason of infirmity of mind arising from ill health, the concerned public officer is incapable of consciously following the procedural steps under Section 82 of the Act, the authorized officer shall forward the case to the Commission together with relevant observations and the Commission shall make appropriate decision which may include retiring the officer on grounds of ill health.

(3) (a) Before exercising the powers referred to in Section 82(5) of the Act and sub-paragraph (2) of this paragraph the Commission shall first conduct an investigation to confirm the illness and the impact of the illness on the officers' ability to perform his duties.

b) In addition to the provisions of sub-paragraph (3)(a) of this paragraph, the Commission may require the next of kin of the officer to present the officer for a medical examination.

(4) A public officer who retires on ill health will be eligible for applicable retirement benefits.

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

Retirement on grounds of abolition of office.

77. (1) Subject to the provisions of Section 28(3) of the Act, where a public officer is to be retired on grounds of abolition of office, the authorized officer shall inform the public officer that the officer's retirement is under consideration and invite the officer within

reasonable time, being not less than thirty days, to make representation thereon, if any.

(2) Upon receipt of the representation in sub-paragraph (1) or failure to receive any representation within the prescribed time, the authorized officer shall forward the case to the Commission together with the officer's representation, if any, with recommendations justifying the retirement of the officer.

(3) Unless the Commission considers that further justification is necessary, in which case it shall issue directions to the authorized officer accordingly, it shall decide forthwith whether the public officer should be called upon to retire on grounds of abolition of office.

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

Voluntary retirement.

78. (1) Pursuant to Section 79 (1)(f) of the Act a public officer may voluntarily retire from service upon serving for a period of five years in a public body and shall be entitled to pension benefits in accordance with the applicable pension legislation.

(2) A public officer who opts to voluntarily retire from service shall give the authorized officer three months' notice in writing.

Retirement decisions reviewable.

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

PART XII – COMMISSION’S REPORT TO THE PRESIDENT AND PARLIAMENT

Commission’s Report to the President and Parliament.

80. The annual report by the Commission to the President and Parliament as prescribed under Article 254 of the Constitution shall be in accordance with the provisions of Section 90 of the Act.

Procedure relating to reporting.

81. The report by the Commission under this Part shall –

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

PART XIII – MISCELLANEOUS

Complaints and grievances.

82. (1) The Commission may on its own initiative or on complaint made by any person investigate any issue relating to its Constitutional and statutory functions and powers and, make such decision as it considers just in the circumstances of the case.

(2) The Commission in carrying out investigation under this paragraph shall accord every party involved an opportunity to make a representation of their case.

Conciliation.

83. (1) The Commission may on its own initiative or on request made

mediation and negotiation.

by any person undertake or facilitate conciliation, mediation and negotiation of any issue relating to its Constitutional and statutory functions and encourage the parties to arrive at an amicable decision that may be just in the circumstances of the case.

(2) The Commission in carrying out conciliation, mediation and negotiation under this paragraph shall accord every party involved an opportunity to make a representation of their case.

(3) The Commission shall issue guidelines for conciliation, mediation and negotiation.

Communication of Commission's decisions.

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

(2) Subject to the provisions of Section 93 of the Act, an officer affected by a decision of the Commission or the officer's representative shall be entitled to receive information about the decision or the reasons for the decision from the Commission if, a request is made by the officer or such representative.

(3) Notwithstanding the provisions of this paragraph, any decision of the Commission may be communicated by the Chairperson if circumstances warrant it.

Cases not covered by Regulations.

85. Any case not covered by these Regulations shall be dealt with in accordance with such instructions as the Commission may issue from time to time.

Record keeping.

86. Records shall be kept in accordance with applicable legislation, policies and guidelines issued by the Commission.

Commission may

87. The Commission may prescribe forms for the better carrying out of

prescribe forms. the provisions of these Regulations.

Saving clause. **88.** Subject to the Constitution and any written law, nothing in these Regulations shall preclude the Commission from considering and determining a matter that is within its mandate but is not envisaged in the Act or these Regulations.

Revocation of Regulations. **89.** The Public Service Commission Regulations, 2005 are revoked.

Made on the day of, 2018.

**STEPHEN KIROGO,
CHAIRPERSON,
PUBLIC SERVICE COMMISSION**

Draft as at October, 2018