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L.N. 165 of 2023

CONSTITUTION OF MALTA

Public Service Commission Disciplinary Regulations, 2023

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Public Service Commission Disciplinary Regulations, 2023

IN EXERCISE of the powers conferred by article 121 of the Constitution of Malta, the Public Service Commission has, with the consent of the Prime Minister, made the following regulations:

Part I
Preliminary

Title and Commencement.

1. (1) The title of these regulations is Public Service Commission Disciplinary Regulations, 2023.

(2) These regulations shall come into force on the 1 October, 2023.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires:

"1977 Regulations" means the Public Service Commission (Disciplinary Procedure) Regulations, 1977;

"1999 Regulations" means the Public Service Commission (Disciplinary Procedure) Regulations, 1999;

"2017 Regulations" means the Public Service Commission Disciplinary Regulations, 2017;

"additional earnings" means income other than the basic salary;

"agency" shall have the same meaning as that assigned to it by article 2(1) of the Public Administration Act; Cap. 595.

"Attorney General" means the Attorney General appointed under article 91 of the Constitution, or a legal officer authorised by him;

"Board" means a Disciplinary Board appointed as provided for in regulation 18(2);

"Commission" means the Public Service Commission as constituted under article 109 of the Constitution;

"Constitution" means the Constitution of Malta as enacted by the Malta Independence Order, 1964 , and as subsequently amended;

"definite suspension" means suspension without pay as a penalty following disciplinary proceedings, and "suspend for a definite period" shall be understood accordingly;

Cap. 595.

"department" shall have the same meaning as that assigned to it by article 2(1) of the Public Administration Act and, for the purposes of these regulations, includes also:

(a) a ministry; and

(b) agency, government entity or another public body to which a public officer may be assigned;

"electronic mail address" means a unique identifier for an email account that is used to send and receive messages over the internet;

"Executive Secretary" means the Executive Secretary to the Public Service Commission;

"General Data Protection Regulation" means Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

Cap. 595.

"Government entity" shall have the same meaning as that assigned to it by article 2(1) of the Public Administration Act;

Cap. 595.

"Head of Department" means the head of any department of Government that is listed in the Second Schedule to the Public Administration Act, but for the purpose of these regulations also includes:

(a) Permanent Secretaries, Directors General and Directors who are not Heads of Department;

(b) any other public officer or authority, not being a Head of Department, to whom power to exercise disciplinary control has been delegated in accordance with article 110 of the Constitution;

"Head of the Public Service" means the public officer holding or acting in the office of Principal Permanent Secretary in terms of article 14 of the Public Administration Act; Cap. 595.

"ministry" shall have the same meaning as that assigned to it by article 2(1) of the Public Administration Act; Cap. 595.

"misconduct" means unacceptable conduct comprising, but not limited to, breach of discipline, conduct which brings the public service into disrepute, including failure to comply with laws, rules, regulations or codes governing the public service;

"official electronic mail address" means the unique personal email address assigned to a public officer for the purpose of his duties;

"Permanent Secretary" means a public officer appointed as Permanent Secretary in terms of article 92(3) of the Constitution;

"precautionary suspension" means suspension in the public interest in terms of regulation 12 pending the conclusion of disciplinary or criminal proceedings, and "suspend for precautionary purposes" shall be understood accordingly;

"public officer" or "officer" means a public officer as defined by article 124(1) of the Constitution;

"public service" or "service" means the public service as defined by article 124(1) of the Constitution;

"Public Service Standing Disciplinary Panel" means a panel established in terms of regulation 18(1);

"salary" means basic salary;

"statement of charges" means the written statement by means of which a public officer is accused of a disciplinary offence or offences in terms of regulation 17(1);

(2) In these regulations, unless the context otherwise requires, any reference to the holder of a particular office shall include any person performing the functions of that office during any period in which it is vacant or the holder thereof is absent.

Part II
General Provisions Governing Disciplinary Proceedings

Powers of the Commission.

3. (1) Nothing in these regulations shall prevent the Commission, with the consent of the Prime Minister, from issuing directives and guidelines to delegated authorities concerning the interpretation and operation of these regulations and the exercise of any functions assigned to them under these regulations or delegated to them under article 110 of the Constitution.

(2) An instrument of delegation issued under article 110 of the Constitution may provide for a penalty which shall not exceed fifteen (15) working days suspension without pay and a warning of dismissal valid for four (4) years.

(3) Notwithstanding anything in these regulations, the Commission shall have the power to take or to refrain from taking such action as it may deem appropriate to take or not to take in the circumstances, and any request or directive by the Commission, if it deems fit in the particular circumstances, to any public officer, board or other authority, other than the Prime Minister, performing functions under these regulations or otherwise under the authority or on behalf of the Commission, shall be complied with by any such public officer, board or authority.

(4) The Commission may, at its discretion, enquire into the exercise of disciplinary control by any Head of Department.

(5) Where the Commission considers that a Head of Department has abused or misused his delegated authority or has failed to exercise proper disciplinary control within his area of jurisdiction, it may recommend to the Prime Minister that the instrument of delegation in respect of that Head of Department be, partly or fully withdrawn and, where appropriate, that disciplinary action be taken in terms of these regulations.

(6) Where the Commission is satisfied that a public officer, board or other authority, other than the Prime Minister, performing functions under these regulations has:

(a) failed to comply with any direction or ruling given by the Commission under these regulations, or

(b) failed to observe any of these regulations, or has failed to perform satisfactorily any functions required under these regulations,

it may report the case to the Prime Minister with the

recommendation that action in terms of these regulations be taken in respect of the defaulting officer, board or other authority and the Commission may also take action directly in terms of regulation 18(1) to remove any member of the Public Service Standing Disciplinary Panel.

Official conduct and liability to disciplinary proceedings.

4. (1) An officer shall become liable to disciplinary proceedings under these regulations for misconduct, which includes:

(a) unprofessional or unethical behaviour;

(b) behaviour disrespectful to colleagues, superior officers or members of the public; and

(c) neglect or dereliction of duty.

(2) Without prejudice to the generality of the foregoing, an officer shall become liable to disciplinary proceedings under these regulations for any of the offences listed in the Schedule of Penalties and Offences.

Cap. 164.
Cap. 260.

(3) These regulations shall not impede the application of Title IV of Part II of the Police Act and of the Prisons Act, with respect to disciplinary action taken by the Commissioner of Police, acting under delegated authority, against police officers.

Offences to be reported without delay.

5. (1) An officer shall report to the Head of Department, by any appropriate means, any misconduct committed by an officer under his responsibility by not later than five (5) working days after he becomes aware of the offence.

(2) A failure on the part of any officer to act in accordance with sub-regulation (1) shall not invalidate disciplinary proceedings for the said misconduct taken by higher authorities.

(3) An officer against whom an offence under these regulations has been committed (the victim) shall be entitled to file a formal complaint in writing with the Head of Department of the officer allegedly committing the offence (the perpetrator) by not later than six (6) months from the date when the alleged offence is committed.

Rights of an officer answering disciplinary charges.

6. (1) An officer charged with a disciplinary offence under these regulations shall:

(a) be provided with a copy of all the evidence to be used against him, and shall be given ten (10) working days within which to consider that evidence and to reply thereto; and

(b) have an adequate opportunity to make his defence.

(2) Any evidence produced after the commencement of the hearing of the case shall not be used against the officer unless the officer has been supplied with a copy thereof and given ten (10) working days to consider the additional evidence and reply thereto.

(3) An officer answering disciplinary charges shall be entitled to representation of his choice in the preparation and presentation of his case and at every stage of any hearing before a Disciplinary Board or before the Commission, including any hearing on appeal:

Provided that such representation shall be without prejudice to the expeditious conclusion of the proceedings in terms of these regulations.

(4) An officer answering disciplinary charges shall be entitled, as soon as possible, to know the decision on any report or charge and the penalty, if any, imposed upon him by the Head of Department or the Commission. Such information shall be communicated in writing by the Head of Department or the Executive Secretary to the Commission, as the case may be.

(5) Where an officer answering disciplinary charges is entitled to be notified of any matter or given any information under these regulations, such service shall, unless these regulations prescribe otherwise, be held to have been completed if the notification is delivered to the address most recently reported by the officer to his department as his home address, or to his official electronic mail address, and if proof of delivery is retained. In the absence of an official electronic mail address, such service may also, unless these regulations prescribe otherwise, be held to have been completed if the notification is delivered to the personal electronic mail address provided by the officer to his department, and if proof of delivery is retained.

(6) Nothing in this regulation shall be taken as precluding the discharge of the said entitlement through the delivery of the notification or information directly to the officer answering charges or by other means, including electronic means, provided that proof of such delivery is retained.

Rights of the Head of Department

7. (1) A Head of Department issuing charges of misconduct against an officer under these regulations may be present and may be assisted through representation of his choice, at every stage of any hearing before a Disciplinary Board or before the Commission, including any hearing on appeal. The absence of the Head of Department or his representative during any stage of the proceedings, shall not preclude the Disciplinary Board or the

Commission, as the case may be, from proceeding with any hearing if it is shown that the Head of Department or his representative were sufficiently notified.

(2) The Head of Department shall be notified of any evidence produced by the officer charged after the commencement of the hearing and shall be given ten (10) working days to consider the evidence and present any written submissions to the Board:

Provided that the Disciplinary Board or the Commission as the case may be, shall decide whether the evidence is relevant to the charges brought against the officer or otherwise and shall, in its discretion, decide whether the evidence is to be presented during the disciplinary proceedings.

Rights of the victim.

8. The alleged victim of a disciplinary offence shall, upon submitting a request in writing to the Permanent Secretary, be entitled to be present at every stage of any disciplinary proceedings which may be instituted to investigate the alleged offence, and may choose to be accompanied in accordance with his choice, subject to the following conditions:

(a) the alleged victim or his representative shall not be considered to be a party to the proceedings, and thus shall not be entitled to bring evidence, cross-examine witnesses or otherwise intervene in the proceedings:

Provided that the alleged victim may be called as a witness by either party or may submit a written request to the Disciplinary Board to be called as witness during the proceedings; and

(b) the alleged victim shall have the same right as the officer charged to access the evidence, to the findings of the Disciplinary Board, including the guilt or otherwise of the officer charged and the penalty, if any and to the final decision taken by the Head of Department or the Commission.

Proceedings by Head of the Public Service and Permanent Secretaries.

9. (1) Where a Head of Department considers that there exist justifiable reasons or circumstances which make it inadvisable for him to involve himself in disciplinary action against a particular officer under his charge, he shall consult the Permanent Secretary of the respective Ministry, who may in turn, take such action as a Head of Department is empowered to take under these regulations:

Provided that where the Head of Department happens to be a Permanent Secretary, he shall consult the Head of the Public Service, who may, in turn, take such action as a Head of Department is

empowered to take, or delegate this power to another Permanent Secretary.

Proceedings against a public officer not serving in a department of gevernment.

10. Whenever the public officer against whom disciplinary proceedings are to be taken happens to be serving in an office or establishment which does not form part of any department of Government, the Permanent Secretary supervising that establishment shall take such action as a Head of Department is empowered to take under these regulations:

Provided that the Prime Minister, acting on the recommendation of the Public Service Commission, may delegate such power to a senior officer of such office or establishment under such conditions as may be specified in the instrument of delegation.

Part III
Interim Measures pending Disciplinary or Criminal Proceedings

Forced leave.

11. (1) When it comes to the notice of a Head of Department that an officer under his responsibility:

(a) is being investigated or has been arrested by the police in connection with a criminal investigation; or

(b) is being investigated in connection with a disciplinary offence; or

(c) may have committed an alleged misconduct, or disobeyed lawful orders, whether written or verbal,

and the Head of Department considers it necessary that the officer under his responsibility should be immediately withdrawn from his place of work, he may direct the officer to avail himself of forced leave for a period not exceeding eighty (80) hours and the officer shall comply:

Provided that the period of forced leave shall be resorted to only as an interim measure and shall not be prolonged without due reason. The Head of Department shall without delay determine whether action in terms of regulations 12 or 13 should be initiated:

Provided further that an officer so directed under this regulation, shall have the right to report back to work immediately upon the lapse of the eighty (80) hours forced leave period, unless action has been taken by the Head of Department in terms of regulations 12 and 13, prior to the expiry of the indicated period of forced leave.

(2) The officer's vacation leave entitlement for that year shall be augmented by the equivalent of the leave taken in accordance with sub-regulation (1) if:

(a) the police investigation does not result in the arraignment of the public officer concerned; or

(b) the investigation carried out by the Head of Department does not result in the taking of any disciplinary action; or

(c) the public officer is acquitted from all the charges against him, being criminal or disciplinary.

Precautionary suspension.

12. (1) When it comes to the notice of a Head of Department that an officer under his responsibility:

(a) may have committed a serious disciplinary offence; or

(b) further investigation is necessary to establish whether disciplinary or criminal proceedings are warranted; or

(c) is to be arraigned in court or is being investigated or has been arrested by the police in connection with a criminal offence, which is of a nature likely to warrant disciplinary action,

and the Head of Department considers it necessary and in the public interest that the officer should be withdrawn from the place of work for an interim period, he may suspend the officer from the exercise of the powers and functions of his office, for precautionary purposes.

(2) If the officer considers that the decision of the Head of Department is unjust in his regard, he may appeal to the Commission within five (5) working days, setting out the reasons why he considers that the decision in his respect was unjust. The officer may also appeal, by presenting justified reasons, regarding the proportion of salary to be withheld in terms of sub-regulation (5).

(3) In treating an appeal under sub-regulation (2), the Commission shall seek the views of the Head of Department. If the Commission considers an appeal under sub-regulation (2) to be justified, it shall seek to annul the decision of the Head of Department by means of a recommendation to the Prime Minister or the Head of the Public Service, as the case may be, and upon approval of such recommendation, inform the officer and the Head of Department that

the precautionary suspension is revoked.

(4) In the event that the suspension is revoked, the officer under suspension shall be immediately recalled for duty and shall be refunded any salary withheld during the period of precautionary suspension.

(5) A public officer who is suspended for precautionary purposes shall receive eighty per cent (80%) of the salary or the equivalent to the rate of the minimum wage, as determined in terms of the National Minimum Wage National Standing Order, whichever is the higher.

(6) If the disciplinary or criminal proceedings do not result in the dismissal of the officer or another penalty, the officer shall be entitled to the full amount of salary which he would have received if he had not been suspended for precautionary purposes. The officer shall also be entitled to a *pro rata* payment in lieu of any additional earnings withheld over and above his salary, which payment shall be computed on the mean average of the additional earnings of the previous three (3) years prior to the precautionary suspension. If the penalty is other than dismissal, he may be refunded such proportion of the salary withheld as a result of his precautionary suspension as recommended by the Commission. If the penalty is dismissal, the officer shall forfeit the salary withheld as a result of his precautionary suspension.

(7) Where an officer against whom disciplinary or criminal action has been taken and is pending, ceases to be a public officer before the conclusion of such action, any salary withheld as a result of his precautionary suspension shall not be refunded unless he is acquitted of all the charges brought against him. If the officer dies when proceedings are still pending, any salary withheld as a result of his precautionary suspension is refunded to his heirs:

Provided that when an officer who has had his salary withheld as a result of his precautionary suspension ceases to be a public officer before any disciplinary or criminal charges are issued, then the officer shall be refunded the salary which had been withheld from him during the period of his precautionary suspension.

(8) An officer who is under precautionary suspension shall not have access to any official premises identified by the Head of Department, and shall not remove, destroy or add to, or cause to be removed, destroyed or added to, any official document, instrument or matter.

(9) The Head of Department may review the precautionary suspension of the officer at any time, without prejudice to any action in terms of these regulations, should disciplinary or criminal proceedings be instituted against the officer concerned:

Provided that the review procedure shall be subject to any directions and guidelines issued by the Commission from time to time in terms of regulation 3(1).

(10) Without prejudice to sub-regulation (9) an officer suspended for precautionary purposes in accordance with this regulation and in relation to whom a written statement of the charge or charges is not issued in accordance with regulation 17(1)(b), after the expiration of sixty (60) working days from the date of such suspension, may present written submissions with justified reasons asking the Head of Department to lift the precautionary suspension:

Provided that the review procedure shall be subject to any direction and guidelines issued by the Commission from time to time in accordance with regulation 3(1).

(11) When the Head of Department does not lift the precautionary suspension, after a request by an officer in accordance with sub-regulation (10) and the officer considers that the decision of the Head of Department in his regard was unjust, the officer may appeal in writing to the Commission within five (5) working days, where he gives the reasons why he considers that the decision regarding him was unjust and requests the Commission to revoke or amend the decision.

(12) In treating an appeal under sub-regulation (11), the Commission shall seek the views of the Head of Department. If the Commission considers an appeal under sub-regulation (11) to be justified, it shall seek to annul the decision of the Head of Department by means of a recommendation to the Prime Minister or the Head of the Public Service, as the case may be, and upon approval of the recommendation, inform the officer and the Head of Department of such decision.

(13) The lifting of a precautionary suspension following submissions in terms of sub-regulation (10) or an appeal in terms of sub-regulation (11) shall be without prejudice to any action in terms of these regulations, should criminal proceedings be instituted against the officer concerned.

(14) Notwithstanding the provisions of sub-regulations (5), (6) and (7), if an officer is in prison under preventive custody or serving a

court sentence, no salary shall be due to the officer during the period of imprisonment. The salary withheld shall be forfeited if the officer is subsequently found guilty of the offence with which he is charged.

Part IV
Criminal Offences

Head of Department to consult Attorney General whether prosecution or disciplinary action should be taken.

13. (1) When it comes to the notice of a Head of Department that an offence in terms of these regulations, allegedly committed by a public officer under his responsibility may be of a criminal nature, he shall consult the Attorney General as to whether a prosecution should be instituted or, if the latter does not advise a prosecution, as to whether disciplinary action should be taken under these regulations. In the latter case, the charges brought against the officer shall be approved by the Attorney General before they are issued by the Head of Department in terms of regulation 17(1)(b).

(2) If criminal proceedings are instituted against a public officer in any court, the officer shall so inform his Head of Department within three (3) working days from the day after the commencement of such proceedings. The Commissioner of Police shall also report to the Head of Department that criminal proceedings are being instituted against the said public officer:

Provided that neither the officer nor the Commissioner of Police shall be obliged to inform the Head of Department about criminal proceedings instituted solely in connection with a contravention, unless that contravention is alleged to have occurred at the officer's place of work or is related to his duties.

(3) Whenever it comes to the notice of the Head of Department that a public officer under his responsibility is to be arraigned in court or is being investigated or has been arrested by the police in connection with a criminal offence which is of a nature likely to warrant disciplinary action, and the Head of Department considers that the officer should be withdrawn from the place of work for an interim period, he may suspend the officer for precautionary purposes from the exercise of his powers and functions. In so doing the Head of Department shall act in terms of regulation 12. No disciplinary proceedings against such an officer upon any grounds involved in the criminal charge shall be taken until the conclusion of the criminal proceedings and the determination of any appeal, as the case may be.

(4) Without prejudice to regulation 12(9), an officer suspended for precautionary purposes in terms of this regulation, and in respect of whom no criminal charges are instituted after the lapse of six (6) months from the date of such suspension, may submit written

representations with justified reasons requesting the Head of Department to consider the lifting of such suspension:

Provided that the review procedure shall be subject to any directions and guidelines issued by the Commission from time to time in accordance with regulation 3(1).

(5) When the Head of Department does not lift a precautionary suspension, after a request by an officer in accordance with sub-regulation (4) and the officer considers that the decision of the Head of Department in his regard was unjust, the officer may appeal to the Commission within five (5) working days starting from the day after he receives the notification from the Head of Department, where he gives the reasons why he considers that the decision regarding him was unjust.

(6) In treating an appeal under sub-regulation (5), the Commission shall seek the views of the Head of Department. If the Commission considers an appeal under sub-regulation (5) to be justified, it shall seek to annul the decision of the Head of Department by means of a recommendation to the Prime Minister or the Head of the Public Service, as the case may be, and upon approval of the recommendation, inform the officer and the Head of Department of such decision.

(7) The lifting of a precautionary suspension following representations in terms of sub-regulation (4) shall be without prejudice to any action in terms of these regulations, should criminal proceedings be instituted against the officer concerned.

Disciplinary action after acquittal of criminal charge.

14. (1) A public officer acquitted of a criminal charge in any Court shall not be dismissed or otherwise punished on any charge upon which he has been acquitted, but nothing in this regulation shall prevent his being dismissed or otherwise punished on any other charge arising out of his conduct in the matter, unless the charge raises substantially the same issues as those on which he has been acquitted.

(2) Whenever a Head of Department, or his delegated representative, decides to take disciplinary action against an officer in terms of regulation 17 and in accordance with sub-regulation (1), he shall submit, within five (5) working days from when he becomes aware of the court judgement that has become final and definite, the proposed statement of the charges to the Attorney General for his approval. The Head of Department shall await the Attorney General's approval before initiating any disciplinary proceedings.

(3) Where a public officer has been acquitted of a criminal

charge, the Head of Department shall lift the precautionary suspension in connection with the case without undue delay. The officer shall be entitled, in terms of regulation 12(6), to be refunded the proportion of salary withheld during the period of such suspension.

Disciplinary action after conviction on criminal charge.

15. (1) If a public officer has been found guilty of a criminal charge, the findings of the Court on such charge shall be referred by the Head of Department to the Commission:

Provided that, the Head of Department may refrain from referring the findings of the Court to the Commission if after considering such findings and the effect of the misconduct on the reputation of the Public Service, he determines that:

(a) the misconduct has no direct or indirect relation to the duties of the officer concerned, and

(b) the penalty imposed by the Court does not include a sentence of imprisonment, whether it be effective or suspended, or interdiction in terms of Article 10 of the Criminal Code.

Cap. 9.

(2) The Commission, after considering the findings of the Court, and of the Court of Appeal, if any, the nature of the misconduct and whether such misconduct has a direct or indirect relation to the duties of the officer concerned, shall make a recommendation to the Prime Minister or the Head of the Public Service, as the case may be, as to the penalty, if any, to be imposed:

Provided that if the Commission considers that the appropriate penalty following conviction on a criminal charge shall be dismissal or a warning of dismissal or the forfeiture of any salary withheld, it shall inform the officer of his right to make written representations to the Commission within a period of ten (10) working days from such notification and the Commission shall consider such representations and may give the officer the opportunity of an oral hearing before making a recommendation to the Prime Minister or the Head of the Public Service, as the case may be.

(3) If an officer who has been suspended for precautionary purposes as a result of criminal proceedings is found guilty and the Head of Department, refrains from referring the case to the Commission in terms of sub-regulation (1), he shall lift the precautionary suspension without undue delay:

Provided that the officer shall be entitled to the part salary withheld during the period of precautionary suspension:

Provided further that where the case is referred to the

Commission by the Head of Department and the proposed penalty following conviction is other than dismissal, the Commission may recommend the lifting of the precautionary suspension without prejudice to the possibility of the forfeiture of the salary withheld or the imposition of disciplinary penalties.

Part V
Disciplinary Procedure under Delegated Authority

Application where disciplinary powers have been delegated.

16. The provisions of this Part shall only apply where the exercise of disciplinary powers and control have been delegated to a Head of Department or other officer or authority by the Prime Minister in accordance with article 110 of the Constitution and shall only so apply to the extent specified.

Commencement of disciplinary proceedings.

17. (1) Whenever it comes to the notice of a Head of Department that an alleged misconduct or breach of discipline may have been committed under his charge the following provisions shall apply:

(a) unless an investigation is made in terms of the Inquiries Act, the Head of Department shall conclude the gathering of any necessary information and evidence within twenty (20) working days from the date when the alleged misconduct or breach of discipline comes to his notice: Cap. 273.

Provided that where the Head of Department considers that more than twenty (20) working days are required to conclude the gathering of information and evidence, he shall seek approval from the Permanent Secretary responsible for the department concerned for an extension of not more than ten (10) working days;

(b) the Head of Department shall, in no case later than ten (10) working days from the date when he concluded the gathering of information and evidence, or not later than ninety (90) working days from the date of the signing of a report made in terms of the Inquiries Act, prepare a written statement of charges against the officer concerned and he shall also inform the officer whether in his opinion the charge or charges constitute a minor or a serious offence and whether the offence could lead to dismissal; Cap.273.

(c) the officer shall be allowed ten (10) working days from the date on which the statement of charges, including a copy of all the evidence to be used against him, is delivered to him in accordance with regulation 6(5) and (6), to reply in writing to the charge or charges made against him, stating any grounds on which he relies to exculpate himself;

(d) a correction to the statement of charges may be made by the Head of Department, by means of a note in writing to the officer charged and to the Disciplinary Board, as the case may be, at any time during the proceedings, provided that the correction does not alter the substance of the charges;

(e) if, after considering the officer's reply, the Head of Department is satisfied that the officer has exculpated himself, he shall so inform the officer. All the documents related to the case shall be destroyed after two (2) months from the date the officer is so informed;

(f) if, the officer admits the charge or charges, the Head of Department shall communicate to the officer charged his decision on the charge or charges and the penalty, if any;

(g) if the officer does not furnish a reply within the period specified, or does not in the opinion of the Head of Department exculpate himself, the Head of Department shall, within ten (10) working days from the receipt of a reply or from the date on which such a reply was due, refer the case to a Disciplinary Board appointed under regulation 18. The letter to the Disciplinary Board shall be copied to the officer charged:

Provided that where the Head of Department considers that it would be in the best interest of the officer if he is offered the opportunity to rehabilitate himself, and the officer agrees, within ten (10) working days, to seek professional support preferably through an entity set up by Government to assist public officers experiencing personal, emotional or behavioural problems, the Head of Department may refrain from:

(i) communicating his decision on the charge or charges and the penalty, to the officer charged, in terms of paragraph (f), or

(ii) referring the case to a Disciplinary Board appointed under regulation 18, in terms of this sub-regulation:

Provided further that where the officer accepts referral to such professional support, within ten (10) working days, such action shall be kept in abeyance and the prescriptive period indicated in this regulation shall be temporarily suspended. The Head of Department shall keep a record accordingly:

Provided further that if the officer refuses to seek professional support or does not successfully complete a support programme, the Head of Department shall communicate the penalty, in terms of paragraph (f). The prescriptive period stipulated in paragraph (g) shall be immediately re-activated, and the Head of Department shall issue the statement of charges in terms of this regulation.

(2) Notwithstanding the provisions of sub-regulation (1):

(a) no action shall be taken in respect of a minor offence which has occurred earlier than twelve (12) months from the date when the alleged minor offence comes to the notice of the Head of Department;

(b) where the officer charged had been given notice that the charges are of a minor nature and concern a first or second minor case of misconduct by the officer charged, the Head of Department shall, together with the statement of charges, inform the officer charged of his right to request an early resolution meeting and of his right to be accompanied by a representative of his choice at such meeting. The officer charged shall be given three (3) working days to register his request to convene the early resolution meeting:

Provided that:

(i) if the officer charged does not register a request in writing to convene an early resolution meeting, the provisions in terms of sub-regulation (1)(b) shall apply;

(ii) if, within three (3) working days, the officer charged registers a request in writing to convene an early resolution meeting, the meeting shall be convened by the Head of Department without delay and not later than five (5) working days from the date on which the Head of Department was notified by the officer. The prescriptive period indicated in sub-regulation (1)(c) shall be temporarily suspended and the Head of Department shall keep a record accordingly;

(iii) where the early resolution meeting results in mutual agreement by the parties on the guilt or otherwise of the officer charged and the penalty, if any, to be imposed, or any other action deemed opportune, the Head of Department shall conclude the early resolution meeting by communicating to the officer charged the agreed decision

in writing. The officer charged is to indicate his agreement in writing within two (2) working days:

Provided further that any penalty imposed by the Head of Department upon mutual agreement reached during the early resolution meeting shall not be subject to an appeal before the Commission, in terms of these regulations;

(iv) where no mutual agreement is reached pursuant to the early resolution meeting, or the officer does not indicate in writing his agreement in terms of paragraph (b), the prescriptive period in terms of sub-regulation (1)(c) shall be immediately reactivated and the provisions in terms of the same sub-regulation (1)(c) shall apply;

(c) where the officer charged had been given notice that the charges are serious, the Head of Department may, at any stage of the proceedings and for sufficient and justifiable reasons, decrease the categorisation of the charges.

In such cases, the Head of Department shall enter a note in the records of the case specifying the reasons why he had decreased the categorisation of the disciplinary charge.

Public Service Standing Disciplinary Panel and Disciplinary Board.

18. (1) There shall be a Public Service Standing Disciplinary Panel, consisting of suitable and competent former public officers, as approved by the Head of the Public Service or his delegate. A member of the Panel may be removed by the Commission, at its discretion, at any time.

(2) A Disciplinary Board for the purpose of regulation 17(1)(g) shall consist of at least three (3) persons, who shall be appointed by the Permanent Secretary of the ministry responsible for the officer charged, from among suitable and competent public officers, and, or persons listed in the Public Service Standing Disciplinary Panel:

Provided that where the offence is categorised as being of a minor nature, the Disciplinary Board may be composed entirely of members of the Public Service Standing Disciplinary Panel:

Provided further that in all other cases the Disciplinary Board appointed shall be chaired by a public officer who shall not be an officer performing duties within the same ministry, and shall be:

(a) not less than two (2) salary scales above that of the officer charged and not below salary scale 7;

(b) in salary scale 5 or higher if it is specified in the statement of charges that if proved, the charges may lead to dismissal;

(c) in a salary scale not below that of the officer charged whenever the officer charged is in salary scale 3 or higher.

(3) If a public officer is appointed as a member of a Disciplinary Board, he shall:

(a) not be an officer performing duties within the same ministry of the Head of Department issuing the statement of the charges; and

(b) be at least one salary scale above that of the officer charged:

Provided that where the officer charged is in salary scale 3 or higher, the member shall be in a salary scale not below that of the officer charged.

(4) The chairperson and members serving on the Board shall not be connected with the case of discipline or have any apparent interest in the disciplinary case, and they shall not be related up to the fourth civil degree to any party involved in the case. Where any member of the Board would be placed in a conflict or an apparent conflict of interest if he sat on the Disciplinary Board, he shall immediately as soon as he becomes aware of such conflict inform the Permanent Secretary, who shall nominate a substitute in accordance with sub-regulations (2) and (3), within ten (10) working days from the date he was notified of such conflict of interest.

(5) Where serious objections are raised by the officer charged or by his representative that the Chairperson and, or any of the members of the Board are in some way prejudiced against him, the officer charged may accordingly petition the Permanent Secretary before the start of the hearing. Pending the decision of the Permanent Secretary, the disciplinary proceedings shall be suspended.

(6) If the Permanent Secretary accepts a petition under sub-regulation (5), he shall appoint a fresh Board or make appropriate changes to the Board in accordance with sub-regulations (2) and (3). The petitioning officer shall be informed accordingly.

(7) If the Permanent Secretary does not accept the petition under sub-regulation (5), he shall inform the petitioner accordingly,

who shall have the right to refer his petition, within five (5) working days from the date he is so informed, to the Public Service Commission for its consideration. The decision of the Public Service Commission shall be final.

Functions and Powers of Disciplinary Boards.

19. (1) Chairpersons and members of Disciplinary Boards shall take an oath or make a solemn declaration before a Commissioner for Oaths prior to the commencement of the proceedings of the Disciplinary Board.

(2) Every Disciplinary Board appointed under regulation 18 to investigate the case shall establish the facts and communicate its findings to the Head of Department and to the officer charged by not later than forty (40) working days from the date of the first sitting:

Provided that where the charges were categorised as being of a minor nature the Disciplinary Board shall establish the facts and communicate its findings to the parties by not later than twenty (20) working days from the date of the first sitting.

(3) The Disciplinary Board shall have the power to:

(a) seek expert advice whenever it considers such advice to be necessary or expedient;

(b) summon persons as witnesses to give evidence and to produce documents in their possession; and

(c) administer oaths.

(4) Where serious and justifiable reasons exist that may preclude the Disciplinary Board from communicating its findings within the period specified in sub-regulation (2), the Board shall refer the matter to the Permanent Secretary by whom it was appointed, seeking approval for an extension to the period indicated in sub-regulation (2):

Provided that where the charges were categorised as being of a minor nature the Permanent Secretary may only authorise one extension of a further twenty (20) working days to the period indicated in sub-regulation (2):

Provided further that in all other cases, where justified reasons exist, the Permanent Secretary may approve to extend the timeline stipulated in sub-regulation (2) by a further forty (40) working days. Notwithstanding, the proceedings before the Disciplinary Board may not, as far as possible, be extended beyond six (6) months from the date of the first sitting. Where extenuating

circumstances exist that preclude the Disciplinary Board from concluding the proceedings within this timeframe, the Permanent Secretary shall seek direction from the Head of the Public Service or his delegate, who, after considering the extenuating circumstances, may approve a further extension for the Disciplinary Board to conclude the proceedings before it.

Procedure at disciplinary hearings.

20. (1) Without prejudice to the provisions of regulations 6(3) and 7(1), in exercising its functions under these regulations, a Disciplinary Board shall afford a fair opportunity to both sides to present their case, but shall dispense with all undue formalities and ensure that justice is done expeditiously and according to the substantive merits of the case.

(2) Notice of not less than ten (10) working days shall be given of the time and place of the first hearing to the Head of Department and to the officer charged. Every notice shall be signed by the Chairperson and delivered in accordance with regulation 6(5) and (6). The date and time of any subsequent hearing shall be determined by the Disciplinary Board in consultation with both parties to the case:

Provided that the first sitting shall not be held later than fifteen (15) working days from the date on which the Disciplinary Board was appointed.

(3) If either party fails to appear at a hearing of the Disciplinary Board, and the Board is satisfied that notice of the hearing was given in accordance with this regulation, it may proceed with the case notwithstanding the absence of that party if, taking all circumstances into account, including the requirement to conclude proceedings expeditiously, the Board is of the opinion that it ought so to proceed with the case.

(4) The following procedure shall apply to the hearing by a Board:

(a) the hearing shall be held in private;

(b) the officer charged shall be given the full opportunity to defend himself and to produce witnesses whose evidence is relevant and material to the case;

(c) each party to the case may cross-examine the witnesses called by the other party or by the Disciplinary Board, and the Board may also put questions to the witnesses.

(5) The Disciplinary Board may regulate its own procedure at the hearing without prejudice to any directives and guidelines issued

by the Commission in terms of regulation 3(1).

Provided that, during the course of the disciplinary proceedings before the Disciplinary Board, either party may request a ruling from the Commission on issues regarding the interpretation of these regulations. The ruling shall be binding on both parties and on the Disciplinary Board and shall be communicated in writing.

Disclosure of *prima facie* grounds for additional charges.

21. (1) Where, in the opinion of the Disciplinary Board, the evidence it has before it discloses other *prima facie* related misconduct on the part of the officer charged, the hearing shall be suspended and the following procedure shall apply:

(a) the Disciplinary Board shall report the matter to the Head of Department and to the officer charged;

(b) if the Head of Department thinks fit to proceed against the officer he shall furnish the officer with a statement of charges for the additional misconduct disclosed, and the procedure described in regulation 17 shall apply;

(c) in drawing up the statement of charges under paragraph (b), the Head of Department may, if applicable and if he deems it necessary in the light of the additional charges, increase the level of seriousness ascribed to the original case or designate the charges as potentially leading to the officer's dismissal in which case the provisions of regulation 18(2) and (3) shall apply as to the composition of the Disciplinary Board;

(d) unless recomposed, the Disciplinary Board shall continue to hear the case on the basis of both statements of charges received and shall grant both parties to the case the opportunity to present additional witnesses in connection with the additional charges.

(2) Where, in the opinion of the Disciplinary Board, the evidence produced discloses other misconduct not related to the original charge, it shall refer such evidence to the Head of Department and the procedure laid down in regulation 17 shall apply.

(3) The provisions of sub-regulation (2) shall not be invoked when the additional grounds constitute a minor offence that would have lapsed after twelve (12) months.

Communication of findings.

22. (1) At the conclusion of its investigation, and before it submits the report to the Head of Department and to the officer charged, the Board shall ensure that its conclusions are verbally communicated to the parties at a final session held for the purpose.

(2) The Disciplinary Board report shall comprise:

(a) a summary of such parts of the evidence as the Board considers relevant;

(b) the findings of the investigation on material questions of fact;

(c) a statement whether in the Board's opinion the officer charged has or has not committed the offence or offences charged and a brief statement of the reasons for that opinion;

(d) details of any matters which alleviate or aggravate the gravity of the case;

(e) any recommendation for the officer charged to be referred to support programmes; and

(f) a recommendation on the penalty to be imposed by the Head of Department, giving reasons:

Provided that where the Head of Department had given notice to the officer charged that the charges, if proven, could lead to dismissal, the report of the Board shall only include an opinion on the penalty to be imposed and not a recommendation.

Decisions and appeals pursuant to the Disciplinary Board report.

23. (1) After the findings of the Board are communicated to the Head of Department and to the officer charged, the following procedure shall apply in all cases, except where the Head of Department had given notice to the officer charged that the charges, if proved, could lead to dismissal:

(a) the officer charged may make written representations or ask for an appointment to make oral representations to the Head of Department, within ten (10) working days from the date on which the findings of the Board are communicated to him, and such representations shall clearly state the grounds on which they are based;

(b) the Head of Department shall consider the recommendation of the Disciplinary Board with regard to the penalty to be imposed, if any, and any representations made to him by the officer charged and shall, by not later than ten (10) working days from the date on which he received such representations, communicate to the officer his decision on the charge or charges, whether he accepts the Board's findings, and on the penalty, if any, that he has imposed;

(c) whenever an officer admits a charge during the course of the proceedings or fails to make any representations to the Head of Department within the period specified in paragraph (a), the Head of Department shall consider the recommendation of the Board with regard to the penalty, and communicate to the officer charged, by not later than ten (10) working days, his decision on the findings of the Board and the penalty imposed, if any:

Provided that whenever the Head of Department is not in agreement with the recommendation of the Board with regard to the penalty, the Head of Department shall enter a note in the records of the case specifying the reasons for such disagreement;

(d) whenever it results from the findings of the Board that the offence, contrary to what was originally stated by the Head of Department, was not of a serious nature, the Disciplinary Board may recommend a lesser penalty than that applicable for serious offences, provided that in such cases the Head of Department shall enter a note in the records of the case specifying the reasons why he accepted the findings of the Board and consequently awarded a lesser penalty.

(2) In the case of an offence where the Head of Department had given notice to the officer charged that the charges, if proved, could lead to dismissal, the following procedure shall apply:

(a) the Head of Department shall, within five (5) working days from receipt of the Board's report send a copy to the Commission, along with a statement as to whether or not he agrees with the report and including the reasons which led him to agree or disagree with the report;

(b) if after considering the report of the Board and the circumstances of the case, the Head of Department is of the view that it warrants a lesser penalty than dismissal, he shall enclose with the report his recommendation to the Commission in terms of paragraph (a);

(c) in giving consideration to the Board's findings and opinion, and to any submissions made by the Head of Department in terms of the foregoing, the Commission shall give the officer charged the opportunity to submit written representations. The Commission may give an opportunity to the officer charged and to the Head of Department to make oral representations;

(d) after considering the findings of the Board and the representations made to it, the Commission shall make its recommendation to the Prime Minister or the Head of the Public Service, as the case may be, both as to the guilt or otherwise of the officer charged and as to the penalty imposed, if any.

(3) (a) Without prejudice to sub-regulations (1) and (2), whenever an officer is found guilty of an offence that is not considered of a serious nature that may lead to dismissal, and the Head of Department considers that it would be in the best interest of the officer if he is offered the opportunity to rehabilitate himself, preferably through an entity set up by Government to assist public officers experiencing personal, emotional or behavioural problems, he shall decide on the penalty, if any, to be imposed, in terms of sub-regulation (1), but shall refrain from informing the officer accordingly. If the officer agrees to seek professional support within ten (10) working days, the penalty shall be held in abeyance until successful completion of the programme. The Head of Department shall be informed of the progress being made by the officer, and for such purposes, a report shall be provided by the entity concerned. The Head of Department shall then decide as to whether the penalty shall be put in effect or otherwise;

(b) where the officer had been informed that the charges, if proved, could lead to his dismissal, the Commission shall proceed in accordance with sub-regulation (2)(c). If the Commission, considers that it would be in the best interest of the officer if he is offered the opportunity to rehabilitate himself, preferably through an entity set up by Government to assist public officers experiencing personal, emotional or behavioural problems, and the officer agrees to seek such professional support within ten (10) working days, the Commission shall decide on the penalty, if any, to be recommended to be imposed but shall refrain from making its recommendation to the Prime Minister or the Head of the Public service, as the case may be, in terms of sub-regulation (2)(d).The recommendation shall be held in abeyance until the successful completion of the rehabilitation programme. The Head of Department shall keep the Commission informed of the progress being made by the officer, and for such purposes, a report shall be provided by the entity concerned. The Commission shall then decide as to whether the penalty shall be put in effect or otherwise.

(4) In any case, if an officer refuses to seek professional assistance, or does not successfully complete a rehabilitation programme, the penalty originally decided upon by the Head of Department or the Commission, as applicable, shall be imposed.

(5) Whenever the officer has been suspended for precautionary purposes, the Commission may make its recommendation to the Prime Minister or the Head of the Public Service, as the case may be, for the precautionary suspension to be lifted, without prejudice to the forfeiture of the salary withheld during the period under suspension.

Records of proceedings.

24. (1) The records of any disciplinary proceedings shall include the following:

(a) any written report made against an officer, or a written record of any verbal report;

(b) any statement of charge or charges;

(c) any written representations made by the officer charged by way of reply to the charge or charges or otherwise in the course of proceedings;

(d) copies of all documents, papers and files received by the Disciplinary Board from any party in connection with the proceedings;

(e) notes of evidence taken by the Disciplinary Board shall include a statement of all persons present during the hearing and a transcript of the evidence of all sessions held;

(f) any decision taken or any recommendation made by a Head of Department regarding the guilt or otherwise of an officer, and the penalty or penalties, if any, awarded;

(g) any written representations made by the officer charged in regard to the findings of a Disciplinary Board, or in regard to any penalty awarded;

(h) in a case leading to dismissal, a transcript or audio recording of the oral hearing held before the Commission, if any, in accordance with the Commission's data retention policy.

(2) Any attempt to tamper with or to destroy the record of proceedings shall be considered as a serious offence.

(3) A Head of Department shall comply with any instructions that may be issued by the Head of the Public Service, from time to time, with the concurrence of the Commission, with regard to the holding of records relating to disciplinary proceedings.

Part VI
Disciplinary Procedure when Disciplinary Powers have not been delegated

Disciplinary proceedings when disciplinary powers have not been delegated.

25. Where disciplinary control has not been delegated to a Head of Department or another officer or authority in accordance with article 110 of the Constitution, or where delegated powers have been withdrawn, the following provisions and procedures shall apply:

(a) whenever it comes to the knowledge of a Head of Department that an officer in his department may be guilty of misconduct, the provisions of regulation 17(1)(a), (b) and (c) shall apply;

(b) if the officer charged admits to the charge or charges before the Disciplinary Board begins to hear the case, the Head of Department shall, as early as possible and in any case not later than ten (10) working days therefrom, refer the case to the Commission, which shall make its recommendation to the Prime Minister as to the penalty, if any, to be imposed;

(c) if the officer charged does not admit to the charge or charges or does not furnish a reply within ten (10) working days, the Head of Department shall, within twenty (20) working days from the receipt of the reply or from the date on which such a reply was due, refer the case to a Disciplinary Board appointed in terms of regulation 18;

(d) before the Disciplinary Board communicates its findings to the Head of Department, to the officer charged and to the Commission, it shall ensure that its conclusions are verbally communicated to the parties at a final session held for the purpose;

(e) the Head of Department and the officer charged may, within ten (10) working days starting from the day after the findings of the Board are communicated to them, make an appeal to the Commission with respect to such findings, or ask for an opportunity to make oral representations:

Provided that, if the officer charged is liable to dismissal as a result of the charges, and the Disciplinary Board has found him guilty of any of the charges, the Commission shall appoint a date for a hearing during which the officer charged and the Head of Department and their representatives, may make oral representations;

(f) after considering the findings of the Board and any

representations made to it, the Commission shall make its recommendation to the Prime Minister both as to the guilt or otherwise of the officer charged and as to the penalty, if any.

Part VII
Offences and Penalties

Categorisation of offences and penalties.

26. A broad categorisation of offences and of corresponding penalties that may be imposed under these regulations on the recommendation of the Commission, or by a Head of Department to whom disciplinary control has been delegated in accordance with article 110 of the Constitution, is listed in the Schedule of Offences and Penalties:

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Cap. 164.

Provided that the penalties applicable to police officers shall be those set out in articles 31 and 32 of the Police Act.

Part VIII
Appeals from Disciplinary Decisions and Review of past Recommendations of the Commission

Appeals from disciplinary decisions.

27. (1) A public officer shall have a right of appeal to the Commission in accordance with this regulation against a finding of guilt and any corresponding penalty imposed by the Head of Department under regulation 17, or where the officer can prove that there has been a gross disregard of the procedures laid down in these regulations and such disregard had prejudiced his interests.

(2) Notice of appeal under sub-regulation (1), setting out the grounds of the appeal, shall be communicated, in writing, to the Executive Secretary of the Commission by not later than ten (10) working days from the date on which the decision was notified to the officer concerned. A copy of the notice of appeal shall concurrently be sent by the officer to the Head of Department.

(3) On receiving a copy of a notice of appeal, the Head of Department shall, by not later than five (5) working days, transmit to the Commission the relevant documentation relating to the case, including the report of the Disciplinary Board.

(4) The Executive Secretary of the Commission shall acknowledge receipt of the notice of appeal made under this regulation and any appeal received after the time period of ten (10) working days established in sub-regulation (2) shall not be considered by the Commission.

(5) If the Commission is of the opinion that the appeal merits consideration in terms of sub-regulation (1), it shall give an

opportunity to the officer charged and to the Head of Department to make oral representations; but the Commission shall otherwise regulate its own procedure in dealing with the appeal, subject to the applicable provisions of these regulations.

(6) The Commission, after considering the grounds for appeal, the record of the proceedings, and any oral representations, shall proceed to recommend to the Prime Minister or the Head of the Public Service, as the case may be, either that he should confirm or revoke the decision of guilt of the appellant and the penalty imposed, or that, he should amend the penalty imposed.

(7) Upon approval of its recommendation, the Commission shall inform the appellant of the outcome of the appeal.

(8) Nothing in this regulation shall prevent the Commission, either before the hearing or at any time during the hearing of an appeal, from summarily dismissing or disallowing an appeal without hearing it or without hearing it any further, as the case may be, on the grounds that an appeal is frivolous or vexatious or one that should not otherwise have been brought or made.

Suspension of penalty pending appeal.

28. A penalty imposed by a Head of Department acting under a delegated authority shall not be put into effect before the lapse of at least ten (10) working days from the date on which the officer was notified of the penalty by the Head of Department and, if an appeal has been lodged, the penalty shall not be put into effect pending a decision by the Prime Minister or the Head of the Public Service, as the case may be, acting on the recommendation of the Commission.

Appeal by Head of Department.

29. (1) A Head of Department who is either dissatisfied with the proceedings or findings of a Disciplinary Board appointed under regulation 18 or has proof that there has been a gross disregard of the procedures laid down in these regulations and such disregard had prejudiced the case, may appeal to the Commission.

(2) An appeal under sub-regulation (1) shall be made to the Executive Secretary of the Commission not later than ten (10) working days form the date on which the findings of the Board were notified to the Head of Department. A copy of such an appeal shall concurrently be sent to the officer by the Head of Department.

(3) If the Commission is of the opinion that the appeal merits consideration in terms of sub-regulation (1), it shall give an opportunity to the officer charged and to the Head of Department to make oral representations, but the Commission shall otherwise regulate its own procedure in dealing with the appeal subject to the applicable provisions of these regulations.

(4) The Commission, after considering the appeal by the Head of Department, any documentation related to the proceedings, and any oral representations, shall make a recommendation to the Prime Minister or the Head of the Public Service, as the case may be, as to the guilt or otherwise of the officer charged, with respect to each of the charges, and the penalty to be imposed, if any.

Review of past recommen-dations.

30. (1) Any person who is or has been a public officer and who had been penalized under these regulations or under the 1977 Regulations or the 1999 Regulations, or the 2017 Regulations, following a recommendation by the Commission, may petition the Commission to review his case for the purpose of revoking or amending the recommendation which the Commission had tendered against him.

(2) The petition shall be made in writing and addressed to the Executive Secretary of the Commission who shall acknowledge receipt of the petition.

(3) The Commission shall thereupon send a copy of the petition to the Prime Minister for any comments he may wish to make within one (1) month from the receipt of that copy. On the expiration of that time, the Commission shall thereupon proceed to examine the petition.

(4) The Commission may allow a review of the case if:

(a) in its discretion, it is satisfied that there was a *prima facie* case of gross disregard of the disciplinary regulations or a serious miscarriage of justice resulting in a violation of natural justice or fundamental rights; or

(b) the case arose from a criminal conviction which was subsequently annulled or discontinued by a decision of a higher court.

(5) The Commission shall not consider a petition under this regulation if:

(a) the petitioner had already made a similar request which was rejected on the merits of the case; or

(b) the recommendation which is subject of the petition was made by the Commission following an appeal in a case decided under the authority of a Head of Department; or

(c) the past recommendation is dated over ten (10) years before the date of the petition for review.

(6) In its consideration of a petition under this regulation the Commission may, at its sole discretion, give the petitioner the opportunity to make oral representations, and may also seek the views of the respective Head of Department in writing or orally.

(7) The Commission shall not allow any new evidence to be produced in connection with a petition under this regulation unless it is satisfied that such evidence was unknown or could not be produced when the petitioner's case was first heard.

(8) Having considered a petition under this regulation, the Commission shall decide whether its original recommendation should be confirmed, amended or revoked, and it shall make a recommendation to the Prime Minister accordingly.

(9) Upon approval of its recommendation the Commission shall inform the petitioner of the outcome of the petition.

Part IX
Removal from Office

Grounds for removal from office.

31. The appointment of a public officer may be terminated for the following reasons:

(a) for absence without leave; or

(b) on dismissal or removal in consequence of criminal or disciplinary proceedings.

Absence without leave.

32. (1) A public officer who absents himself without leave for ten (10) consecutive working days shall be considered as having resigned from the public service with effect from the eleventh working day of unauthorised absence.

(2) A Head of Department shall, immediately after the expiration of the time-limit referred to in sub-regulation (1), notify the officer concerned that:

(a) he considers the officer as having resigned from the public service with effect from the eleventh day of his unauthorised absence;

(b) the officer shall be liable to pay Government, as stipulated in the Public Service Agreement in force from time to time, half the salary that he would have earned during the applicable notice period.

(3) If an officer who has absented himself without leave as

stated in sub-regulation (1) reports for duty before the date of notification by the Head of Department, or before the expiration of the ten (10) working days referred to in sub-regulation (1), he is to be allowed to resume duties without prejudice to any disciplinary action which the Head of Department may take in accordance with these regulations.

(4) If the officer considers that the decision of the Head of Department is unjust in his regard, he may appeal to the Public Service Commission within ten (10) working days, setting out the reasons why he considers that the decision in his respect was unjust.

(5) An appeal under sub-regulation (4) shall be treated with urgency by the Commission. The Commission shall seek the views of the Head of Department thereon and may, at its discretion, give the officer concerned and the Head of Department the opportunity to make oral representations.

(6) If the Commission considers an appeal under sub-regulation (4) to be justified, it shall annul the decision of the Head of Department by means of a recommendation to the Prime Minister or the Head of the Public Service, as the case may be, and upon approval, inform the officer and the Head of Department that the officer is, as a result, considered to be still in employment in the public service.

(7) An officer who has been considered as having resigned due to unauthorised absence shall not resume his duties unless and until the Commission upholds his appeal.

(8) An officer whose appeal under sub-regulation (4) is upheld by the Commission shall not be entitled to payment for any period of unauthorised absence, or for the time taken by the Commission to hear the appeal.

Part X
Miscellaneous

Procedure followed when officer leaves the service while disciplinary proceedings are still pending.

33. (1) When an officer who is undergoing disciplinary proceedings ceases to be a public officer before such proceedings are concluded, the Head of Department shall ask the officer charged to state, in writing, within ten (10) working days, whether he wishes that the disciplinary proceedings be continued in order that he may have the opportunity to exculpate himself, or whether he wishes that the disciplinary proceedings be suspended.

(2) If the officer opts to continue with the proceedings and he is eventually found guilty, no penalty shall be imposed, but a record of the findings of the Disciplinary Board shall be entered in the officer's

record of service.

(3) If the officer opts to have the case suspended, he shall confirm this in writing and a record shall be entered in his record of service stating that at the time of his leaving the service, the officer had a pending disciplinary case.

(4) If the officer does not, within the stipulated time, state what his preferred option is, the case shall be suspended and a note entered in his record of service stating that at the time of his leaving the service, the officer had a pending disciplinary case.

(5) Should a person who had been found guilty in accordance with sub-regulation (2) rejoin the public service, whether in the same or in a different capacity, the Head of Department now responsible for the officer shall, within three (3) months of the officer rejoining the service, decide as to whether or not disciplinary proceedings should be resumed with a view to the imposition of the appropriate disciplinary penalty; and if the Head of Department decides that proceedings should be resumed, he shall proceed in accordance with regulation 23 or such other provision of these regulations as may apply.

(6) Should a person who has a suspended disciplinary case in terms of sub-regulations (3) or (4) subsequently rejoin the service, whether in the same or a different capacity, the Head of Department now responsible for the officer shall, within three (3) months of the officer rejoining the service, decide as to whether or not disciplinary proceedings should be resumed; and if the Head of Department decides to resume proceedings such proceedings shall resume from the stage they had reached prior to their being discontinued, save that:

(a) any applicable timeframes shall be deemed to start from the date that the Head of Department informs the officer in writing of his decision that the proceedings should be resumed; and

(b) unless the Disciplinary Board had presented its report in the original proceedings, a Disciplinary Board to hear the case according to the charges laid against the officer in the original proceedings shall be appointed in terms of regulation 18.

Procedure followed when officer leaves the service while criminal proceedings are still pending.

34. When an officer, against whom criminal proceedings are pending, ceases to be a public officer before such proceedings are concluded, or have been concluded but the Commission has not yet taken action under these regulations, no related disciplinary action in terms of these regulations may be taken or penalty imposed. However, the Head of Department shall follow the case so that a record of the

court decision is entered in the officer's record of service.

Forfeiture of pension, etc., after dismissal.

Cap. 93.

35. Subject to the provisions of article 114 of the Constitution and of any other law, a public officer who is dismissed from the service shall forfeit all rights and claims to a pension, gratuity or other retirement award under the Pensions Ordinance. A public officer who is dismissed shall also forfeit any rights or claims he enjoys in regard to statutory leave at the public expense.

Secrecy.

36. No member of the Commission, nor the Executive Secretary, nor any member of the staff of the Commission, or any public officer, Board or Authority, charged with powers and functions under these regulations, nor any other person shall, without the written permission of the Prime Minister, publish or disclose to any person, otherwise than in exercise of his official function, the contents of any document, communication or information whatsoever relating to any action taken under these regulations which has come to his notice or knowledge.

Failure to comply with the provisions of this regulation shall, in the case of a public officer, constitute misconduct and, or a breach of discipline.

Time limits.

37. The periods specified in these regulations may, on good cause being shown, be extended by the Commission provided the request is made before the expiration of the period in question.

Retention of disciplinary penalties in personal records.

38. Disciplinary penalties shall remain recorded in the officer's records up to the periods identified in Section 6 of the Schedule of Offences and Penalties, entitled 'Timeframe for the retention of disciplinary penalties in personal records'.

Annual reports and other reports.

39. (1) The Head of the Public Service, Heads of Department to whom disciplinary control is delegated, or any other delegated authority shall submit reports on disciplinary matters to the Commission with such frequency, and in such form and covering such matters as the Commission may from time to time direct.

(2) The Commission may, at its discretion, publish annual reports on disciplinary matters, as well as reports of inquiries into the exercise of disciplinary control and other special reports, together with its remarks on any matter connected therewith or incidental thereto.

Data Protection. Cap.586.

40. (1) Nothing in these regulations shall prejudice the applicability of the General Data Protection Regulation and the Data Protection Act, including the regulations made thereunder, and the fundamental rights and freedoms of the data subjects.

(2) The Public Service Commission may restrict the rights and obligations provided for in articles 14 to 20 and article 34 of the General Data Protection Regulation, as the case may be, in accordance with article 23 of the General Data Protection Regulation.

(3) The restriction under sub-regulation (2) shall only apply in the event that the restriction is considered as a necessary and proportionate measure to safeguard the exercise of the investigative and regulatory functions of the Public Service Commission made in relation to its deliberations.

(4) The Data Protection Officer of the Public Service Commission designated pursuant to article 37 of the General Data Protection Regulation shall:

(a) be consulted as appropriate in a timely manner in the entire process of applying the restriction; and

(b) keep a register to record the restriction applied in relation to the request made by the data subject, which register shall include the details of the data subject, the right requested to be exercised that was restricted and the purpose of such restriction.

(5) Where the ground for the restriction as set forth in sub-regulation (3) shall no longer apply, the Public Service Commission shall lift the restriction and inform the data subject concerned and comply with the rights and obligations provided for in articles 14 to 20 and article 34 of the General Data Protection Regulation.

(6) The Public Service Commission shall review the application of the restriction referred to in this regulation every year and depending on the outcome of such review inform the data subject accordingly.

(7) The Public Service Commission shall inform the data subject of the application of the restriction in reply to the request to exercise any of the rights which are restricted in terms of these regulations, unless this may be prejudicial to the purpose of the restriction:

Provided that the Public Service Commission shall justify the prejudice claimed to be suffered to the Information and Data Protection Commissioner as requested.

41. (1) The Public Service Commission Disciplinary Regulations are hereby revoked, without prejudice to anything done or omitted to be done thereunder.

Repeal and saving. S.L. Const.03.

(2) Where disciplinary proceedings or petitions for a review of a past recommendation of the Commission have been commenced under and in accordance with the 2017 Regulations and, or the 1999 Regulations (revoked under the 2017 Regulations, and, or the 1977 Regulations (revoked under the 1999 Regulations), such proceedings or review shall be continued and completed under and in accordance with the respective regulations as if the said regulations had not been revoked:

Provided that the provisions on disciplinary penalties which shall apply in the case of such proceedings or review shall be whichever are most favourable to the officer charged.

Schedule of Offences and Penalties

1. Disciplinary Offences

The offences specified in this Schedule shall be considered as only illustrative and indicative and are not exhaustive.

Unprofessional or unethical behaviour

1.1 A public officer shall be subject to disciplinary proceedings for unprofessional or unethical behaviour and, without prejudice to the generality of the foregoing, such behaviour shall include:

(a) failure to comply with any laws, rules, regulations or codes governing specific professions and the Public Service or the conduct of the public officers, or the transaction of government business;

(b) being under the influence of drink or drugs while on duty;

(c) immoral, indecent or disgraceful conduct at the place of work;

(d) causing damage to government property;

(e) giving wrong information;

(f) misuse of government funds, property or equipment;

(g) theft or embezzlement of government funds, property or equipment;

(h) theft, appropriation or misuse of items belonging to other public officers or members of the public at the place of

work;

(i) tampering with or misuse of attendance sheets and records, or any equipment used to record attendance;

(j) falsification, misuse of or tampering with official documents or information;

(k) divulging of secret or confidential information;

(l) conduct which is liable to discredit the department or bring the public service into disrepute;

(m) any criminal offence committed by the officer at his place of work or in the course of his duties, subject to the provisions of Part IV of these regulations.

Disrespectful behaviour

1.2 A public officer shall be subject to disciplinary proceedings for behaviour disrespectful to colleagues, superior officers or the public and, without prejudice to the generality of the foregoing, such behaviour shall include:

(a) arrogance or insolence towards colleagues, superiors, other public officers or the public;

(b) violent, threatening or intimidating behaviour towards colleagues, superior officers or the public;

(c) fighting or causing a disturbance at the place of work;

(d) use of foul or offensive language;

(e) sexual harassment; or

(f) victimisation of a witness or an officer or other person lodging a report or doing his duty under these regulations or any other regulations issued in terms of article 121 of the Constitution.

Neglect or dereliction of duty

1.3 A public officer shall be subject to disciplinary proceedings for neglect or dereliction of duty and, without prejudice to the generality of the foregoing, such behaviour shall include:

(a) habitual late attendance;

(b) unauthorised absence from the place of work;

(c) idling at the place of work;

(d) feigning incapacity or illness in order to avoid work;

(e) negligence in the performance of one's duties or shoddy or defective work or work output below standard;

(f) concealing one's defective work;

(g) failure to comply with any lawful and reasonable order, direction or instruction, whether written or verbal, that is given by a superior officer or authority;

(h) failure to exercise proper supervisory functions;

(i) failure to comply with any provision of any law, rule, regulation, directive, code or other instrument governing the public service, the officer's department, the conduct of officers of the department, or the transaction of government business; or

(j) any other act or omission which is deemed by any provision of any law, rule, regulation, directive, code, or other instrument as aforesaid, to be misconduct, misbehaviour, a breach of or offence against discipline, or another term having a like meaning.

2. Categorisation of Offences

2.1 Subject to paragraph 3.1 of this Schedule, it shall be at the discretion of the Head of Department to decide, when taking disciplinary action against a public officer under these regulations, whether the charge or charges constitute a minor or a serious offence or one leading to dismissal taking into account the specific circumstances surrounding the alleged offence and the actual or potential consequences thereof.

2.2 Where a provision of any law, rule, regulation, directive, code, or instrument governing the public service, the officer's department, the conduct of officers of the department, or the transaction of government business states that any act or omission specified therein is to be regarded as a serious disciplinary offence, that act or omission shall be so regarded by the Head of Department for the purposes of paragraph 2.1 of this Schedule.

3. Penalties for Minor Cases

3.1 The penalties that may be imposed following disciplinary action taken in accordance with these regulations shall be as follows:

(a) First Disciplinary Case - Written Warning

(b) Second Disciplinary Case - Suspension without pay for a definite period up to five (5) working days

(c) Third Disciplinary Case - suspension without pay for a definite period up to ten (10) working days and a "Warning of Dismissal" which shall be valid for two (2) years

(d) Fourth Disciplinary Case - Dismissal.

3.2 In determining whether the disciplinary charge is a first, second, third or fourth minor case, no account shall be taken of minor cases which occurred prior to twenty-four (24) months from the date of the offence under investigation.

3.3 An officer who commits a minor disciplinary offence may only be dismissed if the offence is committed while he is under a warning of dismissal arising from a previous minor case, even if this is not the fourth minor case:

Provided that a written warning shall lapse after twelve (12) months from the date it is issued if no other offence is committed within that period.

3.4 The application of penalties under this paragraph shall be subject to the discretion of the Head of Department or the Commission under regulations 23(1) and (2) and 25, as applicable.

4. Penalties for Serious Cases (including criminal conviction)

4.1 (a) Suspension without pay for a definite period not exceeding ten (10) working days, or

(b) Withholding of increment for a period of not less than one (1) year and not exceeding three (3) years, or

(c) Suspension without pay for a definite period not exceeding fifteen (15) working days and a "Warning of Dismissal" valid for four (4) years, or

(d) Dismissal.

4.2 The penalties in paragraph 4.1(a) and (c) may not be awarded in respect of more than two (2) serious disciplinary cases.

4.3 An officer who is charged with a serious disciplinary offence while he is under a warning of dismissal shall, as a result, have such offence categorized by a higher degree, and the officer should be informed that the case may lead to dismissal, regardless of whether the warning was imposed following a minor or a serious case or following proceedings under regulation 15.

4.4 The application of penalties under this paragraph shall be subject to the discretion of the Head of Department or the Commission under regulations 23(1) and (2) and 25, as applicable.

4.5 In the case of an officer who had been suspended for precautionary purposes, the provisions of regulation 12(6) shall also apply.

5. Penalties imposed on the recommendation of the Commission

5.1 As an alternative to dismissal, the Commission may recommend the demotion of the officer charged to a lower grade or position.

5.2 In the case of a public officer found guilty of a criminal charge in any court, the Commission may, where appropriate, at its discretion recommend other penalties in addition to, or instead of those set out in this Schedule.

6. Timeframe for the retention of disciplinary penalties in personal records

6.1 Penalties imposed following a recommendation by the Commission shall remain recorded in an officer’s Personal Records for ten (10) years from the date a penalty is completed. Penalties imposed by the Head of Department shall remain recorded in an officer’s Personal Records for not more than twelve (12) months from the date that the penalty expires. Any penalty considered as a break in service shall remain recorded as a break in service after the lapse of the indicated retention periods.

6.2 A record of penalties in an officer’s Service and Leave Record Sheet, however, shall be kept for the periods indicated in the

table below:

Penalties	**Retention period in Service and Leave Record Sheet**
Written Warning	Six (6) months from the date of penalty
Suspension without pay for a number of days	The duration of the active period of suspension, following which the period shall be recorded as a 'break in service'
Warning of dismissal for a number of years	The duration of the period of the warning of dismissal.

The period for recording a penalty imposed by the Commission in cases potentially leading to dismissal or criminal cases, on an officer's Service and Leave Record Sheet, shall be determined by the Commission depending on the nature and gravity of the offence. The period shall not exceed ten (10) years, unless the officer charged was placed under an indefinite warning of dismissal, in which case the penalty would be recorded until the officer concerned reaches 75 years of age.

VERŻJONI ELETTRONIKA

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