

Government Notice No. 177 of 2010

THE CONSTITUTION

Regulations made by the Public Service Commission under section 118(1) of the Constitution

1. These regulations may be cited as the Public Service Commission (Amendment) Regulations 2010.
2. In these regulations –
“principal regulations” means the Public Service Commission Regulations.
3. Regulation 2 of the principal regulations is amended, in paragraph (1) –
 - (a) in the definition of “appointment”, by inserting, after paragraph (a), the following new paragraph –
 - (aa) the conferment upon a public officer, following a selection exercise, of a public office other than the office to which the public officer is substantively appointed;
 - (b) in the definition of “responsible officer” –
 - (i) in paragraph (c), by deleting the words “Island Secretary Commissioner” and replacing them by the words “Island Chief Executive”;
 - (ii) in paragraph (d), by inserting, after the words “under which he is serving”, the words “or as may be otherwise designated by the Secretary to Cabinet and Head of the Civil Service”;
 - (c) by inserting, after the definition of “salary”, the following new definition –

“scheme of service”, in relation to an office in the public service, means the scheme of service prescribed under regulation 15;

- (d) by deleting the definition of “seniority” and replacing it by the following definition –

“seniority” means the relative seniority of officers and, except as may be otherwise provided by the Commission or in these regulations, shall be determined and shall be regarded as having always been determined as follows –

- (a) as between officers of the same grade –

(i) by reference to the dates on which they respectively entered the grade;

(ii) in cases of appointment (including appointment on completion of training) or promotion, following a selection exercise, by reference to the order of merit determined by the Commission following that exercise, irrespective of the dates of their assumption of duty –

provided that –

- (A) where any officer had been allowed by the Commission to assume duty more than 2 months after the date on which he was initially requested to do so, his seniority shall be determined by reference to the date of his assumption of duty, and where 2 or more such officers assumed duty on the same date, by

reference to their respective rank in the order of merit;

- (B) in the case of a trainee, where the trainee assumed duty after the period referred to in sub-subparagraph (A) or, during his traineeship, had taken leave for a period exceeding the period referred to in sub-subparagraph (A) or where the aggregate of the period approved by the Commission and any leave taken during the traineeship exceeded 2 months, his seniority shall be determined by reference to the date of his appointment on completion of training, and where 2 or more such officers were appointed on the same date, their seniority shall be determined by their respective rank in the order of merit;

(b) as between officers promoted from one grade to another –

- (i) by reference to the effective date of promotion and where 2 or more officers were promoted on the same date, their seniority shall be determined by reference to their relative seniority in the next lower grade;

- (ii) where the promotion of 2 or more officers took effect from date of assumption of duty, by reference to their relative seniority in the next lower grade, irrespective of the dates of their assumption of duty –

provided that where any officer had been allowed by the Commission to assume duty more than 2 months after the date on which he was initially requested to do so, his seniority shall be determined by reference to the date of his assumption of duty;

- (c) as between officers of different classes –

- (i) by reference to the maximum point on their salary scales, a flat rate of salary being regarded for this purpose as a salary scale with a maximum point equivalent to the flat rate;

- (ii) on the same salary scale or on the same maximum point on their salary scales or the same flat rate of salary, by reference to the effective dates of their appointment –

provided that –

- (A) where any such officers in different classes were appointed or promoted in their respective grade or in their respective class on the same date, their seniority shall be determined by reference to their relative seniority in the next lower grade or class;

- (B) in case the seniority remains the same after consideration of the matter specified in sub-subparagraph (A), by reference to their respective seniority in the second lower grade in their class or in different classes, and if need be, by reference to their seniority in further lower grades in their class or in different classes; and
- (C) where the seniority remains the same, their relative seniority to each other shall be determined by reference to their respective ages:

Provided that when assessing the seniority of a pensionable public officer, unbroken service by himself or any other person in a non-pensionable capacity shall only be taken into account in so far as during such service the officer or other person concerned was fully qualified to serve in the grade or class in question on pensionable terms;

- (e) by deleting the definition of “transfer” and replacing it by the following definition –
“transfer” –
 - (a) means the conferment, upon a public officer, whether permanently or otherwise, of some public office other than that to which the officer was last substantively appointed, not being a promotion or an appointment following a selection exercise;

- (b) includes a transfer, which has been approved by the Commission under regulation 25(2), of a public officer to an approved service;
- (c) does not include the posting of an officer between posts in the same grade, except where the posting is made to another Ministry or department where he falls under the responsibility of a different responsible officer.

4. Regulation 13 of the principal regulations is revoked and replaced by the following regulation –

13. In order to discharge its duties under this Part, the Commission shall exercise supervision over and approve –

- (a) all schemes for admission to any public office by examination, whether specified or not in the relevant schemes of service, and all schemes for the award of scholarships for special training for the public service; and
- (b) all methods of recruitment, including the appointment and procedure of boards for the selection of candidates.

5. Regulation 14 of the principal regulations is revoked and replaced by the following regulation –

14. (1) In exercising its powers of appointment and promotion, including, subject to paragraph (5), promotion by selection, the Commission shall –

- (a) have regard to the maintenance of the high standard of efficiency necessary in the public service;

- (b) give due consideration to qualified officers serving in the public service and to other Mauritian citizens provided they hold the required qualifications; and
 - (c) in the case of officers serving in the public service, take into account qualifications, experience, merit and suitability for the office in question before seniority.
- (2) Where a public office cannot be filled –
- (a) either by the appointment or promotion of a suitable public officer in the same Ministry, department or general service; or
 - (b) by the appointment of a suitable public officer specially trained for the office in question, whether wholly or partly at public expense,

the Commission shall, subject to paragraph (3), call for applications, by public advertisement, from –

- (i) all public officers; or
- (ii) the general public, including all public officers.

(3) Notwithstanding paragraphs (1) and (2), the Commission may, where it is satisfied that no suitable candidates with the requisite qualifications are available in Mauritius or for any other special reason, decide that –

- (a) no applications by public advertisement shall be called;

(b) recruitment shall be undertaken by some agency outside Mauritius and arrangements for such recruitment shall be carried out.

(4) Recommendations made to the Commission for promotion, in cases other than those covered under paragraph (5), shall state whether the person recommended is the senior public officer in the particular class or grade eligible for promotion and, where this is not the case, detailed reasons shall be given in respect of each person in that same class or grade over whom it is proposed that the person recommended should be promoted.

(5) Where the scheme of service of a post specifically provides for promotion of public officers to that post through a selection exercise, the Commission may require the responsible officer to make a report on each of the candidates on any matter related to the scheme of service.

(6) Subject to the provisions pertaining to seniority in regulation 2, a candidate shall be available to assume the functions of the office to which he has been appointed or promoted, within such reasonable period of time as may be specified or approved by the Commission.

6. Regulation 15 of the principal regulations is revoked and replaced by the following regulation –

15. (1) The Commission shall, where a scheme of service is to be prescribed for a public office, consider and agree to the statement of qualifications and duties for, and, where appropriate, the mode of appointment to, the public office before the scheme of service is prescribed.

(2) Any scheme of service under paragraph (1) shall be prescribed by the supervising officer of the Ministry responsible for the civil service.

(3) The scheme of service shall specify the salary attached to, the qualifications required for and duties of, and, where appropriate, the mode of appointment to, the office to which it relates.

7. The principal regulations are amended by inserting, after regulation 15, the following new regulation –

15A. (1) The Commission shall determine the form of advertisement to be issued in accordance with regulation 14.

(2) The advertisement shall include the qualifications specified in the scheme of service for the public office in respect of which the vacancy has occurred.

(3) Paragraphs (1) and (2) shall be without prejudice to the powers of the Commission under regulation 13.

8. Regulation 16 of the principal regulations is amended –

(a) by numbering the existing provision as paragraph (1);

(b) by adding, after paragraph (1), as newly numbered, the following new paragraph –

(2) The Chairman shall, where he is satisfied that a Commissioner, or any other person, on a selection board is unable to take part in an ongoing interviewing exercise, in respect of one or more candidates, on account of a direct interest or for any other reason, appoint another Commissioner or any other person to replace that Commissioner or person on the selection board in respect of the said candidate or candidates.

9. Regulation 18 of the principal regulations is amended by deleting the words “a system of annual confidential reports” and replacing them by the words “a reporting system”.

10. Regulation 19 of the principal regulations is revoked and replaced by the following regulation –

19. (1) (a) Where a vacancy occurs, or it is known that a vacancy will occur in any public office in any Ministry or department or general service, the responsible officer shall, if he desires that the vacancy be filled immediately and after ascertaining that the details of the vacancy have been verified and that there is no establishment or financial or other objection to the vacancy being filled, report the fact to the Secretary as soon as possible.

(b) The report shall include a recommendation as to the manner in which the vacancy should be filled and whether or not the vacancy should be advertised, and a copy of the report of the vacancy shall be forwarded to the supervising officer of the Ministry responsible for the civil service.

(2) Where the responsible officer is unable to recommend that the vacancy should be filled immediately, he shall so inform the Secretary and state the reasons therefor and the temporary arrangements he is making for the performance of the duties of the vacant office.

(3) (a) Where the responsible officer recommends, in accordance with the mode of appointment provided for in the scheme of service, that such vacancy should be filled by the promotion of a public officer serving in the Ministry or department or general service in which the vacancy has occurred or will occur, he shall forward the particulars of service of that officer and state whether the officer satisfies the requirements of that office.

(b) Where a recommendation made under paragraph (a) involves the supersession of any officer, the responsible officer shall forward a list of all eligible officers who are senior to the recommended officer, together with their particulars of service and give his reasons for recommending their supersession.

(4) The responsible officer shall, when so required by the special or general directions of the Commission, constitute a promotion board to advise him on any matter relating to the filling of vacancies.

(5) Where the responsible officer recommends, in accordance with the mode of appointment provided for in the scheme of service, that the vacancy should be filled by selection from –

- (a) public officers serving in the Ministry or department or general service in which the vacancy has occurred or will occur;
- (b) all public officers; or
- (c) the general public, including all public officers,

he shall, when reporting the vacancy to the Secretary, submit a draft advertisement setting out the details of the vacant office and the duties and qualifications attached to it and recommend the manner in which the vacancy should be filled.

(6) No appointment or promotion to a vacancy in the public service may be made before the Commission has determined the suitability of the person concerned.

(7) Where the Commission has decided that a person should be appointed or promoted to a vacancy in the public service, the responsible officer shall be informed of the appointment or promotion authorised in his Ministry or department or general service and he shall issue the letter of appointment or promotion to the person concerned and shall make such further arrangements as may be necessary to complete the procedure for the appointment or promotion.

(8) Where the Commission has taken a decision following an appointment exercise from among public officers, it shall arrange for the public notification of the decision.

11. The principal regulations are amended by inserting, after regulation 19, the following new regulation –

19A. The procedure for filling vacancies shall be followed where it is desired to nominate or select an officer for a scholarship, or a special course of training, which is designed to prepare him for a higher office or which may enhance his qualifications for appointment to a higher office or for promotion.

12. Regulation 25 of the principal regulations is amended –

- (a) in paragraph (1) –
 - (i) by deleting the words "apart from casual manual workers,";
 - (ii) by deleting the words "transfer of an officer" and replacing them by the words "posting of an officer";
- (b) in paragraph (2), by inserting, after the words "approve the", the word "permanent";
- (c) by revoking paragraph (3);

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- (d) in paragraph (4)(a), by deleting the words "to the institution or";
 - (e) by adding, after paragraph (4), the following new paragraphs –

(5) The Commission may take disciplinary action under Part IV of these regulations against a public officer on temporary transfer to any body, organisation or institution referred to in paragraph (4), where –

- (a) he is dismissed from the service of the institution for any reason involving fraud, dishonesty, wilful mismanagement or misbehaviour;
- (b) he is convicted of an offence involving fraud or dishonesty.

(6) No public officer who is on temporary transfer to any body, organisation or institution referred to in paragraph (4) may resume duty in the public service where –

- (a) proceedings are being taken for his dismissal; or
- (b) criminal proceedings are being taken which are likely to result in his dismissal,

from the service of the body, organisation or institution to which he has been transferred.

13. Regulation 28 of the principal regulations is amended by deleting the words "public interest" and replacing them by the words "interest of the public service".

14. Regulation 32 of the principal regulations is amended by adding, after paragraph (2), the following new paragraphs –

(3) Where the Director of Public Prosecutions advises no further action against the public officer following a criminal investigation, the responsible officer shall, where the officer was under interdiction in connection with the criminal investigation, reinstate the public officer and inform the Secretary accordingly.

(4) Where the Director of Public Prosecutions decides to discontinue criminal proceedings against a public officer, the responsible officer shall reinstate the public officer and inform the Secretary accordingly.

15. Regulation 35 of the principal regulations is amended –

(a) in paragraph (1) –

(i) by inserting, after the words “in any Court”, the words “or in relation to whom proceedings have been discontinued under regulation 32(4)”;

(ii) by inserting, after the word “acquitted”, wherever it appears, the words “or dealt with as specified in regulation 32(4)”;

(b) by revoking paragraph (4).

16. The principal regulations are amended by inserting, after regulation 35, the following new regulation –

35A. Where further proceedings are instituted against the public officer under regulation 35(1), interdiction, if that course

is decided upon, shall not have effect from any earlier date than that on which the new proceedings are instituted.

17. Regulation 37 of the principal regulations is amended, in paragraph (11), by deleting the words “(including retirement from the public service under regulation 39)”.

18. The principal regulations are amended by inserting, after Part IV, the following new Part –

PART IVA – DISCIPLINARY CONTROL THROUGH STATUTORY DISCIPLINARY BODY

46A. (1) Where the Commission, in pursuance of section 89(2)(b)(i) of the Constitution, delegates its powers to enquire and report, in the case of any professional misconduct or negligence committed by a public officer in the performance of his duties, to any appropriate statutory disciplinary body, such delegation shall be subject to the conditions set out in this Part.

(2) The statutory disciplinary body, to which the Commission has delegated its powers, shall forthwith inform the Commission and, where the relevant responsible officer has not himself so informed the statutory disciplinary body, the relevant responsible officer, of any *prima facie* act of professional misconduct, malpractice, fraud, dishonesty, negligence or act constituting a breach of any applicable code of practice or ethics.

(3) (a) The responsible officer may, whether on being informed under paragraph (2), or after becoming aware of a report from any source that such an act or breach may have been committed –

- (i) require a public officer to instantly cease to exercise the powers and functions of his office where he considers that it is in the interest of the public service to do so and shall forthwith apply for the covering approval of the Commission; and
- (ii) decide to refer the act or breach under paragraph (2) to the statutory disciplinary body.

(b) Where the responsible officer makes a referral under subparagraph (a), he shall, having regard to the nature of the act or breach, specify in the referral whether disciplinary proceedings should be envisaged with a view to the officer being –

- (i) dismissed;
- (ii) retired in the interest of the public service; or
- (iii) subjected to any other form of punishment as specified in regulation 46E(5)(b).

(4) A public officer under interdiction may not leave Mauritius without the permission of the responsible officer.

(5) Where a preliminary investigation or a disciplinary inquiry into any such act or breach discloses that an offence against any law may have been committed by the public officer, the statutory disciplinary body shall forthwith –

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- (a) refer the case to the Commissioner of Police who shall, promptly, take necessary action; and
 - (b) inform the Commission and the relevant responsible officer of the referral.

(6) Where the Director of Public Prosecutions does not advise prosecution but advises that disciplinary action should be taken against the public officer, the responsible officer shall seek the approval of the Commission thereon and refer the matter to the statutory disciplinary body which shall –

- (a) proceed with disciplinary proceedings against the public officer in accordance with this Part; and
- (b) inform the Commission and the relevant responsible officer of any action taken under subparagraph (a).

(7) Where the Director of Public Prosecutions advises disciplinary action for an act or other wrong which does not fall under the ambit of the delegated power, the responsible officer shall institute proceedings in accordance with regulation 32 (2).

46B.(1) No disciplinary proceedings against a public officer under this Part upon any grounds involved in a criminal charge shall be instituted until the conclusion of the criminal proceedings and the determination of the appeal, if any.

(2) Nothing in this regulation shall be construed as prohibiting or restricting the power of the responsible officer to interdict such public officer.

46C. (1) Where after such preliminary investigation as may be necessary, a statutory disciplinary body considers it necessary to prefer charges against a public officer, it shall, after seeking legal advice, where appropriate, on the charges to be preferred, forward to the officer a statement of the charges to be preferred against him together with a brief statement of the allegations, in so far as they are not clear from the charges themselves, and call upon such officer to state in writing, before a date to be specified by the statutory disciplinary body, any grounds on which he relies to exculpate himself.

(2) The officer shall also be informed by the statutory disciplinary body of the punishment envisaged, being a punishment referred to in the referral under regulation 46A (3)(b).

46D. A statutory disciplinary body shall follow such procedures as may be established by or under its enabling Act, or related regulations, for the conduct of disciplinary proceedings.

46E. (1) The statutory disciplinary body, having inquired into the charges, shall forward its report to the Commission together with the record of the charges preferred, the evidence led, the defence and other proceedings relevant to the inquiry.

(2) The report of the statutory disciplinary body shall include –

- (a) a statement, as to whether, in the opinion of the statutory disciplinary body, the accused officer has or has not committed the offence or offences and a brief statement of the reasons for its opinion;

- (b) details of any matter which, in the opinion of the statutory disciplinary body, aggravates or alleviates the gravity of the case; and
- (c) a summing up and such comments as will indicate clearly the opinion of the statutory disciplinary body on the matter under inquiry.

(3) The statutory disciplinary body shall not make any recommendations regarding the form of punishment.

(4) The Commission, on considering the report of the statutory disciplinary body, may, where it is of the opinion that the report should be amplified in any way or that further investigation is desirable, refer the matter back to the statutory disciplinary body for further investigation and report within a period to be determined by the Commission.

(5) (a) The Commission, after consideration of the report of the statutory disciplinary body or of any further report called for under paragraph (4), shall determine the punishment, if any, which should be inflicted on the accused officer.

(b) The following punishments may be inflicted on any public officer as a result of proceedings under this Part –

- (i) dismissal;
- (ii) retirement in the interest of the public service;
- (iii) reduction in rank or seniority;
- (iv) stoppage of increment;
- (v) deferment of increment;

- (vi) suspension from work without pay for a period of not less than one day and not more than 14 days;
- (vii) severe reprimand;
- (viii) reprimand.

46F. Nothing in this Part shall preclude a responsible officer and the Commission from exercising disciplinary control in conformity with this Part on a public officer over whom the statutory disciplinary body may exercise disciplinary control where the act or breach in question –

- (a) was not done by the officer in the performance of his duties; or
- (b) is not covered by the delegation of powers to the statutory disciplinary body.

19. The First Schedule to the principal regulations is revoked and replaced by the Schedule to these regulations.

Made by the Public Service Commission on 2 September 2010.

SCHEDULE

[Regulations 19]

FIRST SCHEDULE

[Regulation 2]

PART I

Attorney-General's Office	Solicitor-General
Central Statistics Office	Director of Statistics
Civil Aviation Department	Director of Civil Aviation
Electoral Commissioner's Office	Electoral Commissioner
Employment Relations Tribunal	President, Employment Relations Tribunal
Fire Services	Chief Fire Officer
The Judiciary	Judge in Bankruptcy and Master and Registrar
Local Government Service Commission	Secretary, Local Government Service Commission
Mauritius Prisons Service	Commissioner of Prisons
Meteorological Services	Director
National Archives	Director
National Assembly	Clerk of the National Assembly
National Audit Office	Director of Audit
National Transport Authority	Road Transport Commissioner
Office of the Director of Public Prosecutions	Director of Public Prosecutions
Office of the President	Secretary to the President
Office of the Vice-President	Secretary for Home Affairs
Ombudsman's Office	Senior Investigations Officer, Ombudsman's Office

Ombudsperson for Children's Office	Secretary, Ombudsperson for Children's Office
Pay Research Bureau	Director
Police	Commissioner of Police
Printing Department	Government Printer
Public Service Commission and Disciplined Forces Service Commission	Secretary, Public and Disciplined Forces Service Commissions
Registrar-General's Department	Registrar-General
Treasury	Accountant-General
Valuation Department	Director, Valuation and Real Estate Consultancy Services

PART II

Administrative Cadre	Secretary to Cabinet and Head of the Civil Service
Financial Operations Cadre	Financial Secretary
Procurement and Supply Cadre	Financial Secretary
Internal Control Cadre	Financial Secretary
Library Cadre	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of education
Human Resource Management Cadre	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Office Superintendent	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service

Higher Executive Officer	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Executive Officer	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Office Supervisor	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Special Clerical Officer	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Clerical Officer/Higher Clerical Officer	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Confidential Secretary	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Senior Word Processing Operator	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Word Processing Operator	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service

Clerical Assistant/Senior Clerical Assistant	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Office Management Executive	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Senior Officer	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Officer	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Office Care Attendant Cadre	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Senior Receptionist/Telephone Operator	Permanent Secretary or other supervising officer, Ministry responsible for the subject of information technology
Receptionist/Telephone Operator	Permanent Secretary or other supervising officer, Ministry responsible for the subject of information technology
Machine Minder/Senior Machine Minder (Bindery)	Government Printer
