

PUBLIC SERVICE COMMISSION REGULATIONS

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* PUBLIC SERVICE COMMISSION REGULATIONS

S.I. 2/1971

S.I. 79/1971

(ARTICLE 125)

[Commencement 1st February, 1971]

PART I

PRELIMINARY

Title.

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

Interpretation.

2. In these Regulations unless the context otherwise requires-

"appointment" means-

(i) the conferment of an office of emolument in the public service, whether or not subject to subsequent confirmation, upon a person not in the public service;

(ii) the grant of permanent and pensionable terms of service in a public office to a person recruited and serving on contract terms of service or in a non-established capacity in a pensionable or non-pensionable office;

(iii) the engagement in a public office of a person on contract terms of service for a further period of service on the conclusion of his previous period of engagement on contract terms in the same or other public office; and

(iv) the appointment of a public officer to act in any public office other than that to which he is substantively appointed;

"the Chairman" means the person appointed under the provisions of Article 107 of the Constitution as Chairman of the Commission and includes any temporary or acting Chairman;

"the Commission" means the Public Service Commission constituted under the provisions of Article 107 of the Constitution;

"the Committee" means a committee appointed under the provisions of these Regulations;

"court" means either the Supreme Court or a magistrate's court;

"criminal charge" means a charge in respect of an offence for which the court imposes a sentence of imprisonment without the option of a fine, or any other offence which in the opinion of the Commission involves serious moral turpitude;

"established post" means a public office, specifically mentioned as an established post in the Estimates;

"empowered officer" means a public officer to whom powers of appointment and disciplinary control have been delegated under the provisions of the Constitution;

"Head of Department" means a person holding an office specified as such, or as having equivalent status, by the Governor-General by notice in the Gazette;

"member" means any person appointed to the Commission under the provisions of Article 107 of the Constitution and includes any temporary member;

"miscellaneous officers" means public officers who-

- (i) are not Heads of Departments;
- (ii) are not members of any Ministry;
- (iii) have no Head of Department;

"non-established post" means a public office which is not an established post;

"non-pensionable officer" includes an officer serving under a contract or agreement which does not provide for the payment of a pension;

"office of emolument" in relation to the definition of public office and public officer, means any established or non-established post in the public service excluding any non-established post the remuneration in respect of which is calculated at hourly, daily or weekly rates;

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

"Permanent Secretary" means the Permanent Secretary who exercises supervision over the Department concerned or over the Department in which the officer concerned holds a post as the case may be;

"posts in respect of which the power to appoint has been delegated" means public offices in respect of which the Governor-General has delegated power to make appointments in accordance with Article 110 of the Constitution;

"promotion" means the conferment upon a person in the public service of a public office to which is attached a higher salary or higher salary scale than that attached to the public office to which he was last substantively appointed;

"public office", "public officer" and "public service" shall have the same meanings as are assigned to those expressions in the Constitution except that the definition of the expression "office of emolument" used therein shall be limited to the meaning given in these Regulations;

"public officer in respect of whom disciplinary control has been delegated" means the holder of a public office in respect of whom the Governor-General has under Article

110 of the Constitution, delegated power to remove and power to exercise disciplinary control;

"salary" means basic salary;

"seniority" means the relative seniority of officers and, except as may be otherwise provided by the Commission or in these Regulations, shall be determinable and shall be regarded as having always been determinable as follows-

(i) as between officers of the same grade-

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

(b) if any officers entered that grade on the same day, by reference to their seniority on the day immediately preceding that day;

(c) if any officers who entered the same grade on the same day did so by appointment and not by promotion (excluding promotion from a non-pensionable to a pensionable grade), their seniority relative to each other shall be determinable by reference to their respective ages;

(ii) as between officers of different grades on the same salary scale or the same flat rate of salary, by reference to the dates on which they respectively entered their grades;

(iii) as between officers of different grades on different salary scales, 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:

Provided that when assessing the seniority of a pensionable public officer, service by that officer or any other person in a non-pensionable capacity shall not be taken into account;

"transfer" 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; but the posting of an officer between duty posts in the same grade within a Department shall not be regarded for this purpose as a transfer.

PART II

PUBLIC SERVICE COMMISSION

Appointment of the secretary and other staff of the Commission.

3. The secretary to the Commission and other staff of the Commission shall be public officers.

Quorum.

4. (1) Every meeting of the Commission shall be presided over by the Chairman, and he and one member shall form a quorum for a meeting at any time when there are not more than three members of the Commission holding office and the Chairman and two members shall form a quorum for a meeting at any other time.

(2) Any question proposed for decision at any meeting of the Commission shall be determined by a majority of the votes of the members present and voting, and if on any such question the votes are equally divided the Chairman shall have and exercise a casting vote.

Record of meetings and decisions.

5. A record shall be kept of the members present and of the business transacted at every meeting of the Commission. Any member who is present at a meeting when a decision is made shall be entitled to dissent therefrom and to have his dissent and his reasons therefor set out in the record of such meeting.

Other decisions.

6. A decision may be made by the Commission without a meeting by circulation of the relevant papers among the members and the expression of their views in writing, and in any such case the decision, shall be the view of the majority of members expressing a view:

Provided that if any member requires that a decision on a matter being dealt with by circulation of the relevant papers shall be deferred until the subject matter shall be considered at a meeting of the Commission, no decision shall be made on that subject except at a meeting of the Commission:

Provided further that where a member dissents from a view recorded by a majority of members on papers circulated for a decision, the decision shall not be implemented until that member records the reasons for his view.

Privilege from disclosure in legal proceedings.

7. Any report, statement or other communication or record of any meeting, inquiry or proceedings which the Commission may make in exercise of its functions or any member may make in performance of his duties, or in discharge of any duty to the Governor-General or to any public officer, shall be privileged in that its production may not be compelled in any legal proceedings if the Governor-General certifies that such production is not in the public interest.

Protection of members from legal proceedings.

8. The Chairman and any member shall have such and like protection and privilege in case of any action or suit brought against him for any act done or omitted to be done in the execution of his duties under these Regulations as is by law given to the acts done or words spoken by a judge of the Supreme Court in the exercise of his judicial office.

Consultation with persons other than members.

9. The Commission may require any public officer to attend and give evidence before it concerning any matter which it is required to consider in the exercise of its functions, and may, unless the Governor-General certifies that such production is not in the public interest, require the production of any official document relating to any such matter.

Documents to be made available.

10. Any public officer who submits any matter for the consideration of the Commission shall ensure that all relevant documents and papers are made available to the Commission.

Failure to comply with requirement of Commission. S.I. 79/1971.

11. Any public officer who without reasonable excuse fails to appear before the Commission when required by the Commission to do so or who fails to comply with any other requirement lawfully and properly made by the Commission, shall be guilty of a breach of discipline, and the Commission may advise the Director of Public Personnel that disciplinary proceedings should be instituted against him and the Director of Public Personnel shall act accordingly.

Improper influence.

12. Any person who, otherwise than in the course of his duty, directly or indirectly by himself or by any other person in any manner whatsoever influences or attempts to influence any decision of the Commission or of the Chairman or of any member, shall be guilty of an offence and upon summary conviction be liable to a fine not exceeding one hundred and fifty dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment:

Provided that nothing in this regulation shall prohibit any person who may properly give a certificate or testimonial to any applicant or candidate for any public office from giving such a certificate or testimonial or from supplying any information or assistance at the request of the Commission.

Penalty for supplying false information to Commission.

13. Any person who in connection with any application by any person for employment or promotion in the public service, or with any matter upon which it is the duty of the Commission to make a recommendation to the Governor-General or to make any decision, wilfully gives to the Commission or to any member thereof, or to any person or body of persons properly appointed to assist the Commission in the exercise of its functions or the discharge of its duties, or to any empowered officer, any information which he knows to be false or does not believe to be true, or which he knows to be false by reason of the omission of any material particular, shall be guilty of an offence and upon summary conviction be liable to a fine not exceeding three hundred dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Unauthorised disclosure of information.

14. (1) Neither the Chairman nor any member nor any other person shall without the written permission of the Governor-General, publish or disclose to any person otherwise than in exercise of his functions under these Regulations the contents of any document, communication or information whatsoever which has come to his notice in the course of his duties in respect of any matter referred to the Commission or dealt with by an empowered officer, and any person who knowingly acts in contravention of this regulation shall be guilty of an offence and upon summary conviction be liable to a fine not exceeding three hundred dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(2) If any person having possession of any information which to his knowledge has been disclosed in contravention of the provisions of paragraph (1) of this regulation, publishes or communicates to any other person any such information otherwise than for the purpose of any criminal prosecution or of disciplinary proceedings in respect of such disclosure, he shall be guilty of an offence and upon summary conviction be liable to a fine not exceeding three hundred dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

PART III

APPOINTMENTS, PROMOTIONS AND TRANSFERS

General functions of the Commission with regard to appointments, promotions and transfers.

15. (1) The Commission shall make recommendations to the Governor-General on the following-

(a) appointments, (not being appointments delegated by the Governor-General under Article 110 of the Constitution), promotions and transfers of public officers in respect of whom powers of appointment are vested by Article 108 of the Constitution in the Governor-General acting in accordance with the recommendation of the Commission;

(b) petitions by public officers to the Governor-General against decisions by him and by public officers in respect of appointments, promotions and transfers.

(2) Before recommending the appointment of a person to be a Permanent Secretary or a Head of Department (or to be the holder of any such office of similar status as the Governor-General may, after consultation with the Prime Minister, specify by notice in the Gazette) the Commission shall consult the Prime Minister, in accordance with the provisions of subsection (3) of Article 108 of the Constitution, and shall state in its recommendation to the Governor-General that the Prime Minister has been so consulted.

Supervision of recruitment.

16. In order to discharge its duties under the provisions of regulation 15 the Commission shall exercise supervision over and approve any scheme for admission to any public office by examination or for the award of any scholarship for training for the public service, and over any other method of recruitment including the appointment and procedure of any Board for the selection of candidates.

Advertisement of vacancies.

17. Where any vacancy is not to be filled by promotion the existence of such vacancy shall, unless the Commission otherwise directs, be notified to the public by advertisement in time to enable candidates to make application in accordance with such advertisement.

Principles and procedures applicable to selection for promotion.

18. (1) In considering the claim of any officer in the public service for promotion, merit and ability shall be taken into account as well as seniority, experience and formal qualifications.

(2) Any recommendation made to the Commission for promotion shall state whether the person recommended is the senior officer in the department or grade eligible for promotion and, where this is not the case, detailed reasons shall be given in respect of each person in that department or grade over whom it is proposed that the person recommended should be promoted.

Maintenance of a confidential report system.

19. In order to discharge its duties under regulation 18 the Commission may issue such directions as it may see fit for the maintenance of a system of confidential reports on public officers and for their safe custody.

Principles and procedures applicable to selection for acting appointments.

20. The procedure for making acting appointments shall be the same as that prescribed in these Regulations for making a promotion. Any recommendation to the Commission for the making of an acting appointment except one under subsection (2) of section 16 of the Ch. 39. Public Service Act, shall contain a statement whether or not the officer recommended for acting appointment is in every way qualified to perform all the duties of the office in which he is to act.

Selection for scholarships and courses.

21. The procedure for making appointments shall be followed where it is desired to select an officer for a scholarship or a course of training which is designed to fit him for a higher post or which may enhance his qualifications for promotion.

Procedure for transfers.

22. The procedure for transfers shall, where any increase in emoluments is involved, be that prescribed in these Regulations for promotions, and, in any other case, be that so prescribed for appointments.

Procedure in cases of urgency.

23. When it is necessary to make an appointment, promotion or transfer of a public officer, the procedure in the subsequent regulations in this Part of these Regulations shall be followed, except that, where any delay involved in carrying out such procedure is likely to cause serious inconvenience, the Head of Department shall report the matter to the Permanent Secretary S.I. 79/1971. who shall forward the report to the Director of Public Personnel who shall in turn forward it to the Chairman, and the Commission may, as a matter of urgency, recommend an acting appointment without regard to that procedure.

Detailed procedure for appointments, promotion and transfers.

24. The appointment (not being an appointment delegated by the Governor-General under Article 110 of the Constitution), promotion and transfer of public officers shall be made by the Governor-General acting in accordance with the recommendation of the Commission and, subject to the provisions of regulation 23 of these Regulations, the following procedure shall be followed-

(a) as soon as it is known that a vacancy will occur in the post of "Head of Department" the holder of that post shall without delay report the matter to the Permanent Secretary and make recommendations. If for any reason the Head of Department is unable to report the vacancy, the officer acting for such Head of Department or the next senior officer in the department shall make the required report and recommendations;

(b) upon receipt of a report referred, to in paragraph (a) of this regulation the S.I. 79/1971. Permanent Secretary shall forward the report together with his observations thereon to the Director of Public Personnel, who shall communicate to the Chairman in writing his recommendations regarding the filling of the vacancy;

(c) the Head of Department shall report to the Permanent Secretary without delay the creation of any new post or any impending vacancy in an existing post in his department. The report shall include a recommendation as to how the post should be filled and whether or not the post should be advertised. If it is recommended that the post should be advertised the Head of Department shall forward a draft advertisement with the report;

(d) upon receipt of a report referred to in paragraph (c) of this regulation, the Permanent S.I. 79/1971. Secretary shall forward it to the Director of Public Personnel, who shall verify that there is no Establishment or financial objection to the filling of the post and that the terms of the advertisement, if any, are correct, and shall forward the report to the Chairman, together with his own recommendation in the matter;

(e) in the case of vacancies among miscellaneous officers to which this regulation applies, the necessary report shall be made to the Chairman by S.I 79/1971. the Director of Public Personnel;

(f) if the Commission decides that a post should be advertised, the Commission shall arrange the publication of the advertisement and shall receive the replies to the advertisement;

(g) the Commission may interview the candidates for any post or it may appoint a Selection Board for this purpose and the Selection Board shall report to the Commission in such manner as the Commission directs. The Commission shall take into consideration the recommendations by the Head of Department and the Permanent Secretary on the candidates;

(h) if the Commission is unable to recommend any candidate for appointment to the post, the Commission may propose such arrangements as may be necessary for recruitment to the post from outside The Bahamas.

Procedure for the exercise of delegated powers.

25. (1) Subject to any general or special directions of the Commission, empowered officers shall have power to make appointments to any established or unestablished post the power to appoint to which has been delegated to them.

(2) In the exercise of any such power empowered officers shall as far as possible follow the general principles set out in the preceding regulations in this Part of these Regulations.

(3) Empowered officers may establish, in accordance with such directions as may be issued by the Commission from time to time, Advisory Boards on appointments and promotions and may consult such Boards in the exercise of any such power as aforesaid, but shall not be bound to act upon or in accordance with the advice of any such Board.

PART IV

DETERMINATION OF APPOINTMENTS AND EXTENTION OF PROBATIONARY SERVICE

Termination of appointment on abolition of office.

26. Where a post, being one of a number of such posts, is abolished, but one or more of such posts remain-

(a) if such posts are posts in respect of which the power to appoint has been delegated under Article 110 of the Constitution, the empowered officer shall determine which of the appointments of the substantive holders thereof shall be terminated in consequence of such abolition; and

S.I. 79/1971. (b) in any other case the Head of Department shall make a report thereon to the Permanent Secretary who shall refer the report to the Director of

Public Personnel making his recommendations with reasons therefor as to which of the substantive holders of such posts shall have his appointment terminated; the Director of Public Personnel shall forward such report with his observations thereon to the Chairman and the Commission shall make its recommendations thereon to the Governor-General.

Termination of non-pensionable appointments.

27. If an empowered officer is of the opinion that the appointment of a non-pensionable public officer should be terminated (otherwise than as provided in regulation 29 and 46 of these Regulations), the empowered officer shall, in writing, set out, his reasons and require the officer to show cause, in writing, why his service should not be terminated; if no reply is received by the empowered officer within two weeks of the receipt thereof or if the empowered officer considers that no adequate cause has been shown-

(a) in the case of an officer in respect of whom disciplinary control has been delegated, the empowered officer may terminate the appointment;

S.I. 79/1971. (b) in the case of any other officer, the Head of Department shall report the case, giving his reasons and forwarding any representations made by the officer to the Permanent Secretary who shall refer the report to the Director of Public Personnel and the Director of Public Personnel shall forward the report together with his recommendation to the Chairman; and the Commission shall recommend to the Governor-General whether the appointment should be terminated.

Probationary appointments.

28. (1) Where a public officer holds an appointment subject to a period on probation, which period shall in no case be less than twelve months, six weeks before the expiration of the probationary period the empowered officer shall consider whether such officer should, on such expiration, be confirmed in an established post or should serve a further period on probation or should not remain in the public service. If the officer concerned is one whom he is empowered to dismiss and he considers that the officer should serve a further period on probation or should not remain in the public service, he shall act according to his opinion in the matter. In any other case in which he considers that the officer should serve a further period on probation or should not remain in the public service and in every case in which he considers that the officer should be confirmed in an established post, he shall report the S.I. 79/1971. matter together with his reasons therefor to the Director of Public Personnel, who shall forward the report to the Chairman with his own recommendations; and the Commission shall make its recommendation to the Governor-General upon the matter.

(2) Where a public officer holds a probationary appointment and the empowered officer at any time during the period of such probationary appointment is of opinion that such appointment should be terminated, the empowered officer shall follow the procedure provided in paragraph (1) of this regulation in respect of an officer whom he considers should not remain in the public service, as the circumstances require.

(3) Before either reaching a final conclusion or deciding to make a report, as the case may be, under the provisions of paragraph (1) or (2) of this regulation, that a further period of probationary service by an officer is necessary, or that an officer should not remain in the public service, or that the probationary appointment of an officer should be terminated, the empowered officer shall, if it appears prima facie that such a conclusion may be reached or that such a report may be required, call upon the officer concerned to submit his representations on the matter.

PART V

DISCIPLINE

A. General

Premature termination of contract and withholding of gratuities.

29. (1) Where a public officer is serving under a contract which provides for the termination of that contract by notice before the expiration of the period of service stipulated in the contract-

(a) in any case where to dismiss such officer under these Regulations the Commission is required to make recommendations to the Governor-General and the Head of Department of that officer is of the opinion that such contract should be so terminated, he shall report the matter to the Permanent Secretary together with the reasons for such course; and the Permanent Secretary shall S.I. 79/1971. refer the report to the Director of Public Personnel who shall forward the report to the Chairman with his recommendations; and the Commission shall recommend to the Governor-General whether such course should be taken;

(b) in any other case the officer empowered to S.I. 79/1971. dismiss such officer may terminate the contract:

Provided that where it appears to the Director of Public Personnel or any other officer empowered to dismiss that there is any doubt whether under the terms of the contract such termination can be lawfully effected, the Director of Public Personnel, or the officer empowered to dismiss, as the case may be, shall refer the case to the Attorney-General for advice-

(2) Where a public officer is serving under a contract which provides for the payment of a gratuity on completion of satisfactory service-

S.I. 79/1971. (a) in any case where to dismiss such officer under these Regulations the Commission is required to make recommendations to the Governor-General and the Head of Department of that officer is of the opinion that no gratuity or part only of such gratuity should be paid, he shall report the matter to the Permanent Secretary, together with the reasons for such course and the Permanent Secretary shall refer the report to the Director of Public Personnel with observations thereon. The Director of Public Personnel if it appears to him that such an opinion can prima facie be justified, shall call upon the officer concerned to submit his representations on the matter

and shall forward the report and any representations received from the officer to the Chairman with his recommendations, and the Commission shall recommend to the Governor-General whether such gratuity should be paid in whole or in part;

(b) in any other case, the officer empowered to dismiss such officer may refuse to authorise the payment of such gratuity or part thereof.

Functions of the Commission with regard to discipline.

30. (1) The Commission shall make recommendations to the Governor-General on any such question involving disciplinary control over public officers as is required to be submitted to the Governor-General by virtue of Article 108 of the Constitution.

(2) The Commission shall make recommendations to the Governor-General on appeals against the orders of empowered officers in disciplinary matters.

(3) The Commission may review the powers of disciplinary controls of empowered officers and the procedure relating to the exercise of such powers and make recommendations to the Governor-General on such matters.

(4) Where in any case the Commission is of the opinion that disciplinary proceedings should be instituted against a public officer, the Commission may, notwithstanding the provisions of these Regulations, S.I. 79/1971. direct the Director of Public Personnel to initiate such proceedings:

Provided that in any case where it appears to the Commission that the conduct of the officer in question may constitute a criminal offence, the case shall be referred to the Attorney-General; and where the Attorney-General advises that it is intended to institute criminal proceedings in respect thereof, the Commission shall postpone consideration of the giving of such a direction until the conclusion of such proceedings and any appeal.

Regulations to govern disciplinary procedure.

31. Any act of misconduct by any public officer shall be dealt with under this part of these Regulations as soon as possible after the time of its occurrence.

Grounds for criminal prosecution.

32. When a preliminary investigation or a disciplinary inquiry discloses that an offence against any law may have been committed by a public officer, the empowered officer, unless action by the police has been or is about to be taken, shall consult the Attorney-General as to whether a prosecution should be instituted and, if he does not advise a prosecution, as to whether disciplinary action should be taken or continued under the appropriate regulation. In the latter case the charges framed against the officer shall be approved by the Attorney-General before the officer is required to answer them or before the inquiry proceeds.

No dismissal while criminal proceedings pending.

33. Where criminal proceedings are instituted against a public officer in any court, proceedings for his dismissal upon any grounds involved in the criminal charge shall not be taken until the conclusion of the criminal proceedings and the determination of any appeal therefrom.

Disciplinary action after acquittal on a criminal charge.

34. No disciplinary action of any kind shall be taken against any public officer in respect of any conduct, or any conduct raising, in the opinion of the Attorney-General, substantially the same issues as conduct in respect of which he has been acquitted in a criminal court.

Copies of evidence of inquiries.

35. (1) Subject to paragraph (3) of this regulation, any public officer, in respect of whom a disciplinary inquiry is to be held, shall be entitled at or before the commencement of the inquiry to receive, free of charge, a copy of every document that is to be relied on for the purpose of, or in connection with, establishing his guilt, or in default thereof, to be allowed access thereto.

(2) Subject as aforesaid, any public officer, in respect of whom a disciplinary inquiry has been held, shall be entitled after the conclusion of such inquiry to receive a copy of every document tendered in evidence at such inquiry on the payment of twenty-five cents therefore, and a copy of the record of evidence on payment of five cents for every hundred words after the first hundred words of that record.

(3) Nothing in this regulation shall entitle any person to receive any copy of any official document (not being a document given in evidence at any inquiry) or any recorded reason for any decision reached at any inquiry.

Appeals.

36. (1) Subject to the provisions of this regulation, a public officer may, within one month, (or such longer period as the Commission may in any particular case allow) after the decision taken in relation to him by an empowered officer in any disciplinary proceedings is communicated to him, appeal against such decision to the Governor-General through the Commission, and the Commission shall make a recommendation on any such appeal to the Governor-General.

(2) Where the Commission is satisfied that, having regard to-

(a) any new and material facts communicated to the Commission within one year after the date on which a decision of an empowered officer was communicated to a public officer; and

(b) the reasons for the non-disclosure of the said facts in the previous appeal, a further appeal should be allowed, then in such a case one further appeal and one only may be made by such officer to the Governor-General, through the Commission, and the Commission shall make a recommendation on the appeal to the Governor-General.

(3) On communicating to an officer any such decision as aforesaid, there shall also be communicated to him the fact that an appeal may be made as mentioned in paragraph (1) of this regulation:

Provided that failure to communicate such fact shall not invalidate the decision.
Interdiction.

37. (1) Where the authority empowered to dismiss any public officer considers that the interests of the public service require that such public officer should cease forthwith to exercise the powers and functions of his office, the authority may interdict him from the exercise of those powers and functions, if disciplinary proceedings for his dismissal are being taken or are about to be taken or if criminal proceedings are being instituted against him.

(2) An officer who is interdicted shall, subject to the provisions of regulation 38, receive such emoluments, not being less than one half, as the authority empowered to dismiss him thinks fit.

(3) Where any disciplinary proceedings mentioned in paragraph (1) do not result in the dismissal of the officer or in the award against him of any punishment, the whole of any emoluments withheld from him shall be restored to him when the final decision is made; but where any punishment, not amounting to dismissal, is awarded against him, there shall be restored to him such proportion, if any, of any emoluments withheld from him as in the opinion of the authority is justified in the circumstances of the case.

Non-payment of salary on conviction on a criminal charge.

38. Where any public officer is convicted by any criminal court of an offence, and is dismissed from the service on account of such conviction, he shall, with effect from the date of such conviction, be entitled to receive such emoluments, if any, as the Commission may think fit:

Provided that any emoluments withheld from an officer pursuant to this regulation shall be restored to the officer in any case where any such conviction as aforesaid is quashed pursuant to the decision of any higher court.

Interdicted officers not to leave The Bahamas.

39. (1) An officer who is under interdiction shall not leave The Bahamas without the permission of the officer who interdicted him or of any superior officer having authority over the interdicted officer.

(2) It shall be the duty of an officer under interdiction to leave with a superior officer referred to in paragraph (1) an address, within or outside The Bahamas, as the case may be, where he may at any time be contacted.

Punishments.

40. (1) The following punishments may be ordered as a result of proceedings under these Regulations-

- (a) dismissal;
- (b) reduction in rank;
- (c) reduction in salary;
- (d) deferment of increment;
- (e) withholding of increment;
- (f) reprimand;
- (g) forfeiture of any part of any emoluments,

withheld during any period of interdiction under the provisions of regulations 37:

Provided that nothing in this paragraph shall limit any power conferred under regulation 27, 28, 29 and 46 to terminate the appointment of a public officer or any power conferred in these Regulations to require a public officer to retire from the public service in the public interest.

(2) Notwithstanding the provisions of paragraph (1) of this regulation, on completion of proceedings instituted for dismissal of a public officer-

(a) in the case of a public officer in respect of whom disciplinary powers have not been delegated, the Governor-General acting on the recommendation of the Commission may, if of the opinion that the officer does not deserve to be dismissed but that the proceedings disclose grounds for requiring him to retire in the public interest, require him to do so; and

(b) in the case of a public officer in respect of whom disciplinary powers have been delegated, the empowered officer, if of the opinion that the officer does not deserve to be dismissed but that the proceedings disclose grounds for requiring him to retire in the public interest, shall submit the record of the proceedings and his recommendation to S.I. 79/1971. the Director of Public Personnel, who shall forward the same, with his opinion thereon, to the Chairman, and the Commission, after causing such further inquiry to be made as appears necessary, shall recommend to the Governor-General whether the officer should be required to retire in the public interest.

(3) Where an empowered officer is of opinion that paragraph (2) of this regulation should be applied to a public officer not being a public officer in respect of whom disciplinary control has been delegated, he shall S.I. 79/1971. make a report to the Director of Public Personnel who shall forward the case, giving his opinion thereon to the Chairman. The Commission shall, after causing such further inquiry to be made as appears necessary, recommend to the Governor-General whether the officer should be required to retire in the public interest.

B. Proceedings against Public Officers

Proceedings for dismissal of a public officer in respect of whom disciplinary control has not been delegated.

41. (1) Where an empowered officer considers it necessary to institute proceedings against the public officer in respect of whom disciplinary control has not been delegated and who is serving in a department under his supervision, on grounds of misconduct which, if proved, would justify his dismissal from the public service, he shall cause such preliminary investigation to be made as he considers necessary and shall report the S.I. 79/1971. facts to the Director of Public Personnel. The Director of Public Personnel shall, after considering the report-

(a) and, if he considers that a charge should be made against the officer, after consulting the Attorney-General as to the terms of the charge, forward to the officer a statement of the charge preferred against him together with a brief statement of the particulars of the allegation upon which the charge is based, in so far as they are not clear from the charge itself; and shall call upon the accused officer to state in writing, within such reasonable time as shall be specified, any grounds upon which he relies to exculpate himself; or

(b) if he considers that, if the offence is proved, some penalty other than dismissal is likely to be appropriate, shall arrange for the procedure set out in regulation 43 or 45, as the case may be, of these Regulations to be followed.

(2) If the officer does not furnish a reply to any charge forwarded under subparagraph (a) of paragraph (1) of this regulation within the period specified, or if, in the opinion of the Director of Public Personnel he fails to exculpate himself, the Governor-General may cause a committee to be appointed to inquire into the matter. One member of the committee shall be a judge, magistrate or a public officer with legal qualifications who shall be chairman. The Head of Department under whom the officer is serving shall not be a member of the committee.

(3) The committee shall inform the accused officer that on a specified day the charge against him will be investigated by them and that he will be allowed or, if the committee shall so determine, will be required, to appear before the committee.

(4) If witnesses are examined by the committee, the accused officer shall be given an opportunity of being present and of putting questions on his own behalf to the witnesses, and no documentary evidence shall be used against him unless he has been previously supplied with a copy thereof or given access thereto.

(5) The committee may permit the Head of Department or the Permanent Secretary or the accused officer to be represented by a public officer or a legal practitioner, provided that where the committee permit the one party to be so represented, they shall permit the other party to be represented in the same manner.

(6) If during the course of the inquiry grounds for the framing of an additional charge against the accused officer are disclosed, the committee shall so inform the

Director of Public Personnel and if the S.I. 79/1971. Director of Public Personnel thinks fit to recommend proceedings against the accused officer upon such grounds, the same procedure shall be followed in respect of the additional charge as was adopted in respect of the original charge.

(7) The committee, having inquired into the matter, shall forward their report thereon to the Chairman, accompanied by the record of the charges made, the evidence taken and any other proceedings relevant to the inquiry.

(8) The Commission, after consideration of the report of the committee may, if 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 committee for further investigation and report. The Commission shall forward the written proceedings of the inquiry to the Governor-General together with its recommendation as to the punishment, if any, which should be inflicted on the accused officer. The decision on each charge preferred against the accused officer shall be communicated to him (but not the reasons for the decision).

Proceedings for dismissal of a public officer in respect of whom disciplinary control has been delegated.

42. Where an empowered officer considers it necessary to institute disciplinary proceedings against a public officer serving in a department under his supervision, in respect of whom disciplinary control has been delegated upon grounds of misconduct, which, if proved, would warrant his dismissal from the public service, he shall cause such preliminary investigation as he may deem necessary to be made and shall forward to the officer concerned a written statement of the charge made against him and shall call upon the officer to state in writing, within such reasonable time as shall be specified, any grounds upon which he relies to exculpate himself. If the accused officer does not avail himself of this opportunity or if in the opinion of the empowered officer he fails to exculpate himself, then the empowered officer may dismiss the accused officer or impose such penalty as he considers appropriate.

Proceedings for misconduct not warranting dismissal against a public officer in respect of whom disciplinary control has not been delegated. S.I. 79/1971.

43. (1) Where an empowered officer considers it necessary to institute disciplinary proceedings against a public officer in respect of whom disciplinary control has not been delegated and is of the opinion that the misconduct alleged is not serious enough to warrant dismissal, he shall investigate the matter in such manner as he thinks proper or he may request the Director of Public Personnel to cause an investigation to be made; in either case the officer shall be entitled to know the whole case against him and shall be given adequate opportunity of making his defence.

(2) If, as a result of an investigation referred to in paragraph (1) of this regulation, the empowered officer is of the opinion that the allegation is proved, he shall make a report to the Director of Public Personnel who shall forward the report, with his recommendation as to penalty to the Chairman.

(3) The Commission shall make recommendations to the Governor-General as to what penalty, if any, should be inflicted on the officer.

(4) The decision on each charge preferred against the officer shall be communicated to him (but not the reasons for the decision) by the Director of Public Personnel.

(5) Notwithstanding the provisions of this regulation, if at any stage during proceedings taken, it appears to the Director of Public Personnel that-

(a) the offence, if proved, would justify dismissal; or

(b) if the offence is proved, proceedings for the retirement of the officer from the public service in the public interest would be more appropriate,

such proceedings shall be discontinued and the procedure in regulation 41 or 45, as the case may be, shall be followed.

Proceedings for misconduct not warranting dismissal against a public officer in respect of whom disciplinary control has been delegated.

44. (1) Where an empowered officer considers it necessary to institute disciplinary proceedings against a public officer in respect of whom disciplinary control has been delegated and is of the opinion that the misconduct alleged is not serious enough to warrant dismissal, he shall investigate the matter in such manner as he thinks proper; but so that the accused officer shall be entitled to know the whole case against him and shall be given an adequate opportunity of making his defence.

(2) If, as a result of an investigation referred to in paragraph (1) of this regulation, the empowered officer is of the opinion that the allegation is proved he shall inflict such punishment authorised by these Regulations other than dismissal, as he thinks in the circumstances to be proper.

(3) The decision on each charge preferred against the officer shall be communicated to him (but not the reasons for the decision) by the empowered officer.

(4) Notwithstanding the provisions of this regulation, if, at any stage during proceedings taken, it appears to the empowered officer that-

(a) the offence, if proved, would justify dismissal; or

(b) if the offence is proved, proceedings for the retirement of the officer from the service in the public interest would be more appropriate.

such proceedings shall be discontinued and the procedure in regulation 42 or 45, as the case may be, shall be followed.

Proceedings against a public officer for retirement in the public interest. S.I. 79/1971.

45. (1) If a Permanent Secretary or Head of Department considers that it is desirable in the public interest that a public officer serving in his department should be

required to retire from the public service on grounds which cannot suitably be dealt with under any other regulation, he shall report the matter to the Director of Public Personnel.

(2) The Director of Public Personnel may obtain from any public officer under whom such public officer has served a report as to his work and conduct, and may allow any such officer to consider such reports and shall allow such officer to show cause why he should not be retired from the public service and to make a written statement, if he so desires.

(3) If the Director of Public Personnel after considering the officer's statement and having regard to all the circumstances of the case, is of the opinion that such officer should be retired from the public service in the public interest, he shall forward to the Chairman any report obtained under the preceding paragraph and the statement of the officer together with his own recommendation. The Commission shall recommend to the Governor-General whether or not the officer should be retired.

(4) If the Commission recommends that the officer shall be retired from the public service, the Commission shall further recommend whether the officer should be granted the full pension or gratuity for which he is eligible or a reduced pension or reduced gratuity, or no pension or no gratuity, as the case may be.

Criminal conviction of a public officer. S.I. 79/1971.

46. Where any public officer is convicted by any criminal court of an offence, the Head of Department shall bring the matter to the notice of the Permanent Secretary, who shall report the matter to the Director of Public Personnel. The Director of Public Personnel, after inviting the officer concerned to make any representations he desires concerning the offence, shall forward the report with his recommendations as to punishment and a copy of the charge and of the conviction (and the proceedings of the court if available) to the Chairman. The Commission shall consider the conviction (and the proceedings if available) and if, after considering any representations made by the officer, it is of the opinion that the officer should be dismissed or subjected to some other disciplinary penalty on account of the conviction for the offence, the Commission shall recommend to the Governor-General that such penalty should be inflicted without following the procedure prescribed in regulation 41, 42, 43 or 44 of these Regulations.

C. Procedure on Admission of Offences

Admission of offence.

47. Where the facts giving rise to any charge made against an officer under regulation 41 or 43 are admitted by that officer in writing, a record of the case, together with the comments of the Permanent Secretary S.I. 79/1971. or Head of Department and the Director of Public Personnel, shall be forwarded to the Chairman and the Commission shall, after causing such further inquiry to be made as appears necessary, recommend to the Governor-General what punishment should be inflicted on the officer.

D. Miscellaneous

Commission to be kept informed of proceedings and to have power to intervene. S.I. 79/1971.

48. Where, under the preceding regulations, a Head of Department authorises or recommends to the Permanent Secretary or the Director of Public Personnel proceedings against a public officer, the Director of Public Personnel shall inform the Chairman of the action authorised by the recommendation made and shall ensure that at each stage of the proceedings the Chairman is kept informed. Despite any general delegation of powers, it shall be open to the Commission, if it thinks fit, to provide for or discontinue disciplinary proceedings against any public officer.

Absence from duty without leave.

49. Where any public officer is absent from duty without leave or reasonable cause for a period exceeding seven days and the officer cannot be found within a period of fourteen days of commencement of such absence, or, if found, no reply to a charge of absence without leave is received from him within ten days after the despatch of the charge to him-

(a) in the case of a public officer in respect of whom disciplinary control has been delegated, the empowered officer may summarily dismiss him;

S.I. 79/1971. (b) in any other case, the Head of Department shall report the matter to the Permanent Secretary, who shall refer the matter to the Director of Public Personnel and the Director of Public Personnel shall inform the Chairman; and the Commission shall make its recommendation to the Governor-General thereon.

Withholding and restoration of increments. S.I. 79/1971.

50. (1) If a Head of Department is of the opinion that an annual increment in salary of a public officer holding a post in his department should be deferred or withheld on the ground of unsatisfactory service during the previous year, or for failure to pass a prescribed examination, he shall make a confidential report to the Permanent Secretary giving the reasons therefor and-

(a) if the officer is one in respect of whom disciplinary control has not been delegated, the Permanent Secretary shall forward the report to the Director of Public Personnel with his own recommendation thereon and the Director of Public Personnel shall forward the same together with his recommendation to the Chairman and the Commission shall make a recommendation to the Governor-General on the matter;

(b) if the officer is one in respect of whom disciplinary control has been delegated, the empowered officer shall act as he thinks fit.

(2) If a Head of Department is of the opinion that an annual increment in salary of a public officer which has been deferred or withheld should be granted, he shall make a confidential report to the Permanent Secretary giving the reasons therefor and-

(a) if the officer is one in respect of whom disciplinary control has not been delegated, the Permanent Secretary shall forward the report to the Director of Public Personnel with his own recommendation thereon and the Director of Public Personnel shall forward the same together with his recommendation to the Chairman and the Commission shall make a recommendation to the Governor-General on the matter;

(b) if the officer is one in respect of whom disciplinary control has been delegated, the empowered officer shall act as he thinks fit.

(3) Where the award of the increment has been deferred, the increment may be granted as from the incremental date in which case the arrears of salary due may be paid to the officer concerned.

(4) Where the increment has been withheld for a period of less than one year, the officer concerned shall be entitled to draw the increased salary as from the day following the close of the period for which the increment has been withheld and shall be eligible for a further increment on the next incremental date.

(5) Where the increment has been withheld for a year, the officer concerned shall be eligible for one increment and no more on the next incremental date.

Procedure when Department not supervised by Permanent Secretary.

51. Where, in these Regulations, a Head of Department is required to report to, or bring a matter to the notice of, the Permanent Secretary for transmission to another person or authority, then in the case of a Department which is not supervised by a Permanent Secretary, the Head of Department shall report to, refer or bring the matter direct to the notice of the person of authority to whom the Permanent Secretary is required by the particular regulation to report, refer or give notice.