

THE SERVICE COMMISSIONS (PUBLIC SERVICE)  
REGULATIONS, 1978

ARRANGEMENT OF REGULATIONS

PART I

*Preliminary*

REGULATION

1. Short title.
2. Interpretation.

PART II

*Functions and duties of the Commission*

3. Functions of the Commission.
4. Time and place of meetings.
5. Record of meetings and decisions.
6. Decisions otherwise than at a meeting.
7. Consultation with other persons.
8. Failure to comply with request of Commission.
9. Duties of Chief Personnel Officer.

PART III

*Appointments and Promotions*

10. Recommendations to Governor-General.
11. Advertisement of vacancies.
12. Principles of selection for promotion.
13. Principles of selection for acting appointments.
14. Procedure and principles of selection for appointments.
15. Selection Board.
16. Annual staff reports to assist Commission.

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## PART IV

*Probationary Service, Termination of Appoint-  
ments and Retirement*

## REGULATION

17. Probationary service.
18. Termination of appointment in certain circumstances.
19. Premature retirement.
20. Retirement for inefficiency.
21. Date of termination of service and of pension eligibility.

## PART V

*Discipline*

22. Interpretation.
23. Functions with respect to discipline.
24. Report of misconduct.
25. Question of criminal proceedings.
26. No disciplinary proceedings while criminal proceedings pending.
27. Interdiction.
28. Copies of evidence of investigations.
29. Disciplinary action after acquittal of criminal charge.
30. Action after conviction of a criminal charge.
31. Non-payment of emoluments on conviction of a criminal charge.
32. Forms of disciplinary action.
33. Suspension, deferment and withholding of increments.
34. Reference to Privy Council.
35. Payment of salary to suspended officer.
36. Proceedings in respect of misconduct.
37. Investigation by Head of Department.
38. Procedure to be followed in investigation.
39. Consideration by Commission of report of investigation.
40. Oral enquiry.
- 40A. Disobedience to process.
41. Representation of officers at oral enquiry.
42. Payment of members of committee.

## PART VI

*Special provisions relating to the exercise by authorised officers of powers of appointment and discipline*

## REGULATION

43. Application of this Part.
44. Appointments by authorised officers.
45. Interdiction.
46. Disciplinary penalties.
47. Proceedings in respect of misconduct.
48. Holding of oral enquiry.
49. Imposition of greater penalty.
50. Reference to Privy Council.



## Service Commissions

SERVICE COMMISSIONS (PUBLIC SERVICE)  
REGULATIONS, 1978

Cap. 34.

S.I.

1978/183.

S.I.

1979/147.

S.I.

1983/165.

**Authority:** These regulations were made on 20th September, 1978 by the Governor-General with the advice of the Public Service Commission under section 7 of the *Service Commissions Act*.

**Commencement:** 20th September, 1978.

## PART I

*Preliminary*

1. These Regulations may be cited as the *Service Commissions (Public Service) Regulations, 1978*. Short title.

2. (1) For the purposes of these regulations Interpretation.
- “authorised officer” means a member of the Commission, or a public officer, to whom a power to appoint or a power to exercise disciplinary control over public officers has been delegated pursuant to section 95 of the *Constitution*;
- “emoluments” includes an officer’s salary and all receipts from public funds;
- “functions” includes powers and duties;
- “misconduct” includes
- (a) contravention of the *General Orders for the Public Service of Barbados, 1970*, made by the Minister responsible for Establishments, and any amendments thereto;
  - (b) contravention of lawful instructions in writing given by or on behalf of Permanent Secretaries or Heads of Department; or
  - (c) contravention of these regulations;
- “officer” means a public officer other than a person holding or acting in any of the offices specified in section 94(3) or 100A of the *Constitution*;

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“Selection Board” means a board appointed under regulation 15.

(2) In these regulations a reference to the salary of an officer in respect of whom disciplinary action has been taken shall be construed as a reference to the salary of that officer at the date of the letter informing him that disciplinary action is contemplated against him.

## PART II

### *Functions and duties of the Commission*

Functions  
of the Com-  
mission.

3. Where the *Constitution* or the Act requires the Governor-General in the performance of any function to act on the recommendation of, or in accordance with the advice of, the Commission, the Governor-General

(a) may, where the function has been delegated pursuant to the provisions of section 95 of the *Constitution*; and

(b) shall, in every other case,

request the Commission to make its recommendations or give its advice, and the Commission shall make its recommendations or give its advice accordingly.

Time and  
place of  
meetings.

4. The Commission shall meet as often as is necessary or expedient for the purpose of performing its functions, and such meetings shall be held at such places and at such times as the Commission decides.

Record of  
meetings  
and deci-  
sions.

5. (1) Minutes of all meetings of the Commission shall be duly recorded and confirmed at a subsequent meeting of the Commission or by the individual members.

(2) Any member of the Commission present when any decision is made who dissents from that decision may require that his dissent and his reasons for dissenting be recorded in the minutes.

Decisions  
otherwise  
than at a  
meeting.

6. The Commission may, on circulation of the relevant papers among its members, make decisions without a meeting being held, but if on circulation of the papers relating to any matter a difference of opinion arises among the members, or

if any member so requires, the matter shall be reserved for discussion at a meeting.

7. The Commission in considering any matter or question may consult with such public officer, trade union or staff association, or other person, as the Commissioner considers proper and desirable, and may require any public officer to attend and give evidence before it and produce any official documents relating to such matter or question.

Consultation with other persons.

8. (1) Any officer who, without reasonable cause, fails
- (a) to appear before the Commission when required to do so; or
  - (b) to comply with any request properly made by the Commission,

Failure to comply with request of Commission.

is guilty of a breach of discipline, and the Commission may recommend that disciplinary proceedings be instituted against him.

(2) In this regulation, "officer" includes a person holding or acting in an office to which the provisions of section 93 or 96 of the *Constitution* applies.

9. The Chief Personnel Officer shall

- (a) submit matters for decision of the Commission;
- (b) attend meetings of the Commission when required to do so by the Commission;
- (c) give effect to the decisions of the Commission;
- (d) ensure that all documents and papers relating to any matter being or to be considered by the Commission are made available to the Commission.

Duties of Chief Personnel Officer.

### PART III

#### *Appointments and Promotions*

10. (1) The Commission shall advise the Governor-General with respect to
- (a) appointments, promotions and transfers of suitable officers;

Recommendations to Governor-General.

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(b) appointments or promotions of officers where the Commission is of the opinion that a candidate should be given direct entry into a salary scale, (whether on first appointment to the public service or on promotion) at an incremental point higher than the minimum of the salary scale attaching to the office to which he is being appointed or promoted;

(c) confirmation of individual officers in their appointments and the passing of qualification or efficiency bars.

(2) Except at the request of the Governor-General, the Commission shall not tender any advice in relation to a function which has been delegated to an authorised officer.

Advertise-  
ment of  
vacancies.

11. Where the Commission is satisfied that there is no suitable candidate already in the public service available to fill a vacancy, or, that having regard to the qualifications, experience and merit required, it would be advantageous and in the best interests of the public service that the services of a person not already in the public service be obtained, the Commission shall take such steps, including the advertisement of the vacancy, as it thinks necessary to fill such vacancy.

Principles  
of selection  
for promo-  
tion.

12. (1) Where a vacancy occurs in the public service, the Commission shall consider the eligibility of all officers for promotion, and in respect of each officer shall take into account not only his seniority, experience and educational qualifications but also his merit and ability.

(2) For the purposes of promotion to a post involving work of a routine nature, more weight may be given to seniority than where the work involves greater responsibility and initiative; but merit and ability shall be given more weight progressively as the work involves a higher degree of responsibility and initiative.

(3) In the performance of its functions under paragraphs (1) and (2), the Commission shall take into account as respects each officer



- (a) his general fitness;
- (b) his seniority;
- (c) his basic educational qualifications and any special qualifications;
- (d) any special course of training which he may have undergone (whether at the expense of the Government or otherwise);
- (e) marking and comments made in confidential reports by any Permanent Secretary, Head of Department, or other senior officer under whom the officer has worked during his service;
- (f) any letters of commendation in respect of any special work done by the officer;
- (g) the duties of which he has knowledge;
- (h) the duties of the post for which he is a candidate;
- (i) any specific recommendation of the Permanent Secretary or Head of Department for filling the particular post;
- (j) the officer's previous employment, whether in the public service or otherwise;
- (k) any special report which the Commission may require.

13. (1) The procedure for making a recommendation in relation to an acting appointment as a prelude to a substantive appointment shall be the same as that prescribed by regulation 12.

Principles of selection for acting appointments.

(2) Where an acting appointment is to be made otherwise than as a prelude to a substantive appointment, the officer appointed shall as a general rule be the senior officer in the Ministry or Department eligible for such acting appointment.

14. (1) The Commission shall be responsible for the form and manner in which applications are to be made for appointment to public offices within its purview and for the conduct of any examinations for recruitment to such offices, and shall determine whether any candidate has the necessary qualifications for appointment to such offices.

Procedure and principles of selection for appointments.

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(2) The Commission may interview candidates for appointment and shall consider in respect of each candidate

- (a) his educational qualifications;
- (b) his general fitness;
- (c) his previous employment, whether in the public service or otherwise; and
- (d) any reports which the Commission may require from persons such as the principal, headmaster or headmistress of a candidate's university, college or school, as the case may be, or any referees named by the candidate.

Selection  
Board.

**15. The Commission**

- (a) may appoint a Selection Board to assist in the selection of candidates for appointment to the public service;
- (b) shall determine the composition of any such Board and the form in which its reports are to be submitted; and
- (c) may summon for interview any of the candidates recommended by such Board.

Annual  
staff re-  
ports to  
assist Com-  
mission.

**16. (1)** In order to assist the Commission in performing its functions, Permanent Secretaries and Heads of Department shall, not later than the 31st March in each year, furnish to the Chief Personnel Officer staff reports for the preceding year in respect of all officers.

( 2) Permanent Secretaries or Heads of Department shall show each officer his report, and the officer shall indicate by signature that he has seen the report

**PART IV**

*Probationary Service, Termination of Appointments  
and Retirement*

Probation-  
ary service.

**17. (1 )** On the first appointment to the public service, or on promotion in the service from a non-pensionable office, an officer shall normally be required to serve a probationary period of 1 year unless a shorter term is specified in his letter of appointment; but in determining the length of an officer's

probationary period account shall be taken of any temporary service performed by that officer prior to his appointment.

(2) At the end of the sixth and tenth months of the probationary period, Permanent Secretaries and Heads of Department shall submit to the Chief Personnel Officer a report on every officer promoted or appointed on probation in their Ministries or Departments.

(3) The report submitted at the end of the tenth month shall include a recommendation that

- (a) the officer be confirmed in the appointment;
- (b) the probationary period be extended;
- (c) the officer's services be terminated; or
- (d) the officer revert to his former post,

and a decision shall be taken thereon by the Commission as soon as possible thereafter.

(4) Where the final report has not been received by the prescribed time, the Commission may, on the basis of the former report, extend the probationary period.

(5) Notwithstanding paragraphs (2) and (3), the appointment on probation of an officer may only be confirmed pursuant to a decision of the Commission to that effect.

(6) Subject to these regulations, the appointment on probation of an officer may, at any time before the appointment is confirmed and without any reason being given, be terminated by the Governor-General acting in accordance with the advice of the Commission upon 1 month's notice in writing or payment of 1 month's salary in lieu thereof.

18. (1) Where an office (being one of a number of like offices) has been abolished but 1 or more than 1 of such offices remain, the Permanent Secretary or the Head of Department shall submit to the Chief Personnel Officer for consideration by the Commission a report thereon containing his recommendations, with reasons therefor, as to which substantive holder of such post ought to have his appointment terminated, and the Commission shall make such recommendation thereon to the Governor-General as it thinks proper,

Termination  
of appoint-  
ment in cer-  
tain circum-  
stances.

including a recommendation that the officer concerned be transferred to another office not lower in status nor carrying a smaller salary than that which has been abolished.

(2) Paragraph (1) applies in relation to the termination of appointments for the purpose of facilitating improvement in the organisation of a Ministry or Department in order to effect greater efficiency or economy.

Premature  
retirement.  
Cap. 25.

19. (1) Where it appears to a Permanent Secretary or Head of Department that, pursuant to paragraph (b) of section 11(1) of the *Pensions Act* an officer in his Ministry or Department who has attained the age of 50 years but not 55 years ought to be required to retire from the public service, that Permanent Secretary or Head of Department shall advise the officer accordingly and report the matter, together with his reasons therefor, to the Chief Personnel Officer for the consideration of the Commission, and the Commission shall recommend to the Governor-General whether or not the officer ought to be required to retire.

(2) An officer referred to in paragraph (1) shall be afforded an opportunity of submitting in writing to the Commission any representations he wishes to make regarding any advice given to him by the Permanent Secretary or Head of Department pursuant to paragraph (1).

(3) An officer to whom section 8(2) and (3) of the *Pensions Act* do not apply may at any time after attaining the age of 50 years and before attaining the age of 55 years apply to the Governor-General for permission to retire pursuant to subsection (1) of that section of the Act and shall in his application state the grounds on which the application is based.

(4) The Commission shall recommend to the Governor-General whether or not an application under paragraph (3) ought to be granted.

Retirement  
for  
inefficiency.  
S.I.  
1979/147.

20. (1) Notwithstanding regulations 36 to 41, where

(a) a report has been received by the Commission pursuant to regulation 19(1);

(b) the Commission considers it desirable that an officer ought to be removed from office

- (i) on the ground of his inability to discharge efficiently the duties thereof, or
- (ii) in the interest of the public service,

the Commission shall request a report from the Permanent Secretary of every Ministry or Head of every Department in which the officer has served during the preceding 10 years, or for the period of the officer's service if shorter than 10 years.

(2) If, after considering the reports for the preceding 10 years and giving the officer an opportunity of submitting a reply in writing to the ground on which his removal from office is contemplated, and having regard to the conditions of the public service, the usefulness of the officer thereto, and all other circumstances of the case, the Commission is satisfied that it is desirable that the officer be removed from office, it shall recommend to the Governor-General that the officer be so removed on such date as the Commission determines.

21. Where the appointment of an officer is terminated under regulation 18, 19 or 20, his service shall terminate on such date as the Commission determines, and the question of his pension, gratuity or other allowance shall be dealt with in accordance with the provisions of the *Pensions Act*.

Date of termination of service and of pension eligibility.

Cap. 25.

#### PART V

#### *Discipline*

#### A. General

22. For the purposes of this Part "prison officer" has the meaning assigned to it by section 2 of the *Prisons Act*.

Interpretation.

Cap. 168.

23. (1) The power vested in the Commission by section 94 of the *Constitution* with respect to the removal of officers and the exercise of disciplinary control over them shall be exercised by the Commission.

Functions with respect to discipline.

(2) Reports of misconduct by officers shall be investigated in such manner as the Commission determines.

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(3) Subject to paragraph (4), where the Commission is of the opinion, after the investigation of a report of misconduct by an officer, that disciplinary action ought to be taken against the officer, the Commission shall recommend to the Governor-General the form of disciplinary action to be taken against the officer.

(4) Where upon an investigation of a report of misconduct by an officer, an offence against any law appears to have been committed by the officer, the Commission, before making a recommendation under paragraph (3), shall obtain the advice of the Director of Public Prosecutions as to whether criminal proceedings ought to be instituted against the officer; and if the Director of Public Prosecutions advises that criminal proceedings ought to be so instituted the Commission shall not recommend the taking of disciplinary action against the officer before the determination of the criminal proceedings so instituted.

Report of  
misconduct.

24. (1) The Permanent Secretary or Head of Department shall, within 7 days of becoming aware of misconduct on the part of an officer, make a report of the misconduct to the Chief Personnel Officer and such report shall be dealt with as soon as possible thereafter.

(2) Any case of misconduct for which no provision is otherwise made by these regulations shall be reported to the Chief Personnel Officer.

(3) The Commission may issue instructions setting out the manner in which any case of misconduct is to be dealt with, and the case shall be dealt with accordingly.

Question of  
criminal pro-  
ceedings.

25. Where, upon a preliminary investigation of a report of misconduct by an officer, it appears that the officer has committed an offence, the Permanent Secretary of the Ministry or Head of Department to which the officer is attached shall, unless action by the Police has been or is about to be taken, obtain the advice of the Director of Public Prosecutions as to whether criminal proceedings ought to be instituted.

No disciplin-  
ary proceed-  
ings while  
criminal pro-  
ceedings  
pending.

26. (1) Subject to regulation 27, where criminal proceedings have been instituted in any court against an officer,

disciplinary action upon any grounds arising out of the criminal charge shall not be taken against the officer until after the court has given judgment and the time allowed for an appeal from the judgment has expired; and where an officer after conviction has appealed, disciplinary action shall not be taken until after the withdrawal or determination of the appeal.

(2) Nothing in this regulation shall prevent the interdiction Interdiction.  
from duty of an officer pursuant to regulation 27.

27. (1) Where a report against a public officer for misconduct is being investigated, or criminal proceedings have been or are about to be instituted against that officer, and the Commission is of the opinion that the public interest requires that the officer should forthwith cease to perform the functions of his office, the Commission may recommend his interdiction.

(2) Where it is considered essential that an officer should be interdicted before a decision by the Commission can be obtained, the power exercisable by the Commission under paragraph (1) may be exercised by a Permanent Secretary or Head of Department, and in any such case the interdiction shall be immediately reported to the Commission through the Chief Personnel Officer, and the Commission may confirm or set aside such interdiction.

(3) Subject to regulation 31, an officer interdicted pursuant to this regulation shall be paid such portion of the salary of his office, not being less than one-half, as the Commission may recommend to the Governor-General, but the officer shall not be entitled to any other emoluments.

(4) If the investigation results in the officer's exculpation, he shall be entitled to the full amount of the emoluments which he would have received had he not been interdicted, but if the investigation results in any disciplinary action other than removal from office the officer shall be allowed such emoluments as the Commission may in the circumstances recommend to the Governor-General.

(5) An officer who is under interdiction from duty may not leave Barbados without the permission of the Governor-General granted on the recommendation of the Commission.

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Copies of evidence of investigations.

28. (1) An officer in respect of whom a report of misconduct is being investigated shall be entitled to receive free copies of, or access to, any documentary evidence (including statements of witnesses) used for the purposes of the investigation, and shall be given at his request a copy of the evidence (including copies of documents tendered in evidence) after the enquiry is closed.

(2) An officer shall not publish the contents of any documents used in evidence at an investigation.

(3) Paragraph (2) does not prevent an officer from disclosing to his representative the contents of any documents used in evidence at the investigation.

Disciplinary action after acquittal of criminal charge.

29. Where an officer is acquitted in any court of a criminal charge, disciplinary action shall not be taken against him in respect of any charge of which he has been acquitted, but nothing in this regulation shall prevent disciplinary action being taken against him as a result of his conduct in the matter, unless the grounds on which such action is taken are substantially the same as those on which the criminal charge of which he has been acquitted was based.

Action after conviction of a criminal charge.

30. If an officer is convicted in any court of a criminal charge, the Commission may consider the relevant proceedings of that court, and if the Commission is of the opinion that disciplinary action ought to be taken against the officer in respect of the offence of which he has been convicted, the Commission may recommend to the Governor-General what form of disciplinary action ought to be taken against the officer without an investigation being held under these regulations.

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

31. An officer convicted of a criminal charge involving dishonesty, fraud or moral turpitude, or convicted of a criminal charge and sentenced to imprisonment shall not receive any of his emoluments after the date of such conviction, pending consideration of his case by the Commission.

Forms of disciplinary action.

32. (1) The forms of disciplinary action which may be taken against an officer are



- (a) removal from office;
- (b) compulsory resignation;
- (c) reduction in rank;
- (d) suspension of increment;
- (e) deferment of increment;
- (f) withholding of increment.

(2) An officer who without reasonable excuse is absent from Barbados without the permission of the Chief Personnel Officer, the Chief Establishments Officer, or the Head of his Department, is liable to be removed from office.

(3) A prison officer against whom a disciplinary charge has been established may, instead of any penalty which may be imposed on him under paragraph (1), be liable to a fine not exceeding \$25 which may be deducted from his salary by the Accountant-General.

33. (1) Subject to this regulation, an increment shall not be suspended, deferred or withheld except by the Governor-General acting on the advice of the Commission.

Suspension,  
deferment  
and with-  
holding of  
increments.

(2) The grant of an increment may be prejudiced by

- (a) lack of efficiency;
- (b) unsatisfactory service or misconduct; or
- (c) failure to pass an examination the passing of which is conditional to the grant of the officer's increment.

(3) Where a Permanent Secretary or Head of Department considers that for either of the reasons specified in paragraph (2)(a) or (b) an officer's increment should be suspended, deferred or withheld he shall

- (a) notify the officer in writing, at least 1 month before the date on which the increment is due, of the reason for which he considers that the increment ought not to be paid; and
- (b) submit a report of the matter (including the reason for which he considers that the increment ought not to be paid) to the Chief Personnel Officer for the Commission's recommendation to the Governor-General as to whether the increment ought to be paid.

(4) Where pursuant to a report made under paragraph (3)(b) the payment to an officer of an increment is suspended for a period not exceeding 3 months, then, at the end of the period of suspension, the Commission may, after considering any further report on the matter from the Permanent Secretary or Head of Department, recommend to the Governor-General

(a) that the increment be paid from the date on which it became due; or

(b) that the increment be suspended, deferred or withheld.

(5) In making a recommendation for the suspension, deferment or withholding of an increment the Permanent Secretary or Head of Department shall take into account the gravity of the original misconduct or lack of efficiency by the officer, his subsequent behaviour, and his present degree of efficiency, and the Permanent Secretary or Head of Department shall bear in mind that

(a) "suspension" is to be applied when for any reason it is thought desirable to reserve judgment and allow for reformation or otherwise;

(b) "deferment" is a substantial fine; and

(c) "withholding" is a very serious penalty which deprives the officer of the amount of that increment during each subsequent year of his service until the officer reaches the maximum of his scale.

(6) An increment may be deferred for a period not exceeding 6 months including any period for which it has been suspended, and is payable from the date on which it is restored.

(7) Where an increment has been withheld, the Governor-General, acting on the advice of the Commission, may at any subsequent incremental date grant to the officer concerned a special increment in addition to his ordinary increment.

34. (1) Where the Commission has advised that an officer ought to be removed from office or that any penalty ought to be imposed on him by way of disciplinary control and the officer desires to apply by virtue of section 98 of the *Constitution* for a reference of the case to the Privy Council,

the application shall be made in writing to the Governor-General within 14 days of the date on which the officer is informed of that advice, and the case shall be referred accordingly.

(2) Notwithstanding paragraph (1), an officer suspended pursuant to section 98 of the *Constitution* shall not be paid any of his emoluments during such suspension.

35. Where an officer has been suspended from duty and reference of his case to the Privy Council pursuant to section 98 of the *Constitution* results in his exculpation, he is entitled to receive the full amount of any salary which he would have received but for his suspension, but if reference of his case results in any punishment other than dismissal the officer shall be allowed such emoluments as the Commission may, in the circumstances, recommend.

Payment of salary to suspended officers.

#### *B – Procedure for Conduct of Investigations*

36. (1) Where it is represented to the Commission that an officer has been guilty of misconduct, the Commission shall cause an investigation to be made into the matter in such manner as it thinks proper.

Proceedings in respect of misconduct.

(2) An investigation carried out pursuant to paragraph (1) may take the form of an oral enquiry or such other form as the Commission determines, and regulation 40 shall apply where the investigation takes the form of an oral enquiry.

37. (1) Where a report of misconduct on the part of an officer is made to the Commission, the Commission may request the officer's Head of Department to investigate the matter, and the Head of Department shall investigate the matter, and, not later than 2 months after the date of such request, submit to the Commission a written report of his investigation containing his findings and recommendations, and a copy of all evidence and material documents relating to the matter.

Investigation by Head of Department.

S.I.  
1979/147.

(2) Where the Head of a Department is directly involved in any incident or matter which gave rise to the report referred to in paragraph (1), any investigation requested by the Commission pursuant to that paragraph shall be carried out

by his Deputy or any other officer appointed by the Commission.

Procedure  
to be fol-  
lowed in in-  
vestigation.

**38. (1)** An officer in respect of whom an investigation is being carried out under regulation 37

- (a)** shall be informed in writing of the charges against him;
- (b)** shall be informed in writing
  - (i)** that he is entitled to be represented by an attorney-at-law, a friend, or a representative of an accredited Trade Union.
  - (ii)** that a written reply to the charges, and any observations he may wish to make thereon must be received by the investigating officer within such period, being not less than 21 days, as may be permitted by the investigating officer,
  - (iii)** that he may attach to his written reply statements from witnesses;
- (c)** shall, if he so requests, be supplied with copies of the statements of all witnesses and other evidence given during the course of the investigation.

Considera-  
tion by  
Commission  
of report of  
investigation.

**39. (1)** The Commission shall consider every report submitted to it pursuant to regulation 37(1), and if it is of the opinion that

- (a)** the report should be amplified in any respect or that further investigation is desirable, it may refer the matter back to the investigating officer for amplification or further investigation, as the case may be;
- (b)** disciplinary action ought to be taken against the officer, it shall advise the Governor-General what form of disciplinary action ought to be taken;
- (c)** disciplinary action ought not to be taken against the officer, it shall so inform the officer in writing;
- (d)** disciplinary action ought not to be taken against the officer but that the investigation discloses grounds for his removal from office as set out in regulation 20, it may recommend to the Governor-General that an order be made accordingly, without recourse to the procedure prescribed by that regulation;

- (e) having regard to all the circumstances of the case, an oral enquiry ought to be held into the matter, it shall recommend to the Governor-General that such an enquiry be held.

40. Where an investigation is held in accordance with regulations 37 and 38 and the Commission, after considering the report, recommends to the Governor-General that an oral enquiry into the matter ought to be held, the following provisions shall apply

Oral enquiry.

- (a) the Commission shall cause the officer to be notified in writing of the charges against him and call upon him to state in writing, before a specified day (which day shall allow a reasonable interval for the purpose) any grounds on which he relies to clear himself;
- (b) if the officer does not furnish such a statement within the time so specified, or if he fails to clear himself, the Governor-General shall, on the advice of the Commission, appoint, to enquire into the matter, a committee consisting of not less than 3 persons of whom the Chairman shall be a Judge, magistrate, law officer or some other person possessing a legal qualification, and the members of any such committee shall be selected with due regard to the standing of the officer concerned and to the nature of the charges made against him;
- (c) the committee shall inform the officer in respect of whom the enquiry is being held that on a day specified the committee will enquire into the charges against him, and that he will be permitted to appear before it and answer those charges;
- (d) if witnesses are examined by the committee, the officer shall be given an opportunity of attending and of putting questions to the witnesses on his own behalf, and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto;
- (e) if, having heard the evidence in support of the charges against the officer, the committee is of the opinion that there is insufficient evidence to support the

charges, it may report accordingly to the Commission without calling upon the officer to answer the charges;

- (f) the committee having enquired into the matter shall furnish a written report to the Commission together with a copy of the proceedings, and if the Commission is of the opinion that the report should be amplified in any respect or that further enquiry is desirable, it may refer any matter back to the committee for further enquiry or report accordingly;
- (g) if upon consideration of the report of the committee and the proceedings, the Commission is of the opinion that disciplinary action ought to be taken against the officer, the Commission shall advise the Governor-General what form of disciplinary action ought to be taken;
- (h) if upon consideration of the report of the committee and the proceedings, the Commission is of the opinion that the officer should not be removed from office by reason of the charges made against him, but that the proceedings disclose other grounds for removing him from his office as set out in regulation 19, it may recommend to the Governor-General that an order be made accordingly, and the officer may be dealt with under regulation 19 without any further enquiry being held under that regulation.

Dis-  
obedience  
to process.  
S.I.  
1979/147.

**40A.** (1) Any officer who, without reasonable excuse, fails to attend as a witness

(a) before a departmental inquiry conducted in accordance with regulations 37 and 38, or

(b) before a committee appointed under regulation 40(b),

when required to do so is guilty of misconduct.

(2) Where the Commission is satisfied that an officer is guilty of misconduct under paragraph (1), it shall recommend to the Governor-General the form of disciplinary action to be taken against the officer in accordance with regulation 32(1) without an investigation being held under these regulations.

41. An officer against whom any charge is made is entitled to be represented by an attorney-at-law, friend or the representative of an accredited Trade Union at any enquiry held pursuant to regulation 40.

Representa-  
tion of  
officers at  
oral enquiry.

42. A member of a committee appointed under regulation 40(b) who is not a public officer, may be paid such fee for his services as the Governor-General, acting in his discretion after consultation with the Commission and the Minister of Finance, determines.

Payment of  
members of  
committee.

## PART VI

### *Special provisions relating to the exercise by authorised officers of powers of appointment and discipline*

43. This Part applies to all officers holding or acting in an office in respect of which the power to make appointments and the power to exercise disciplinary control has been delegated to an authorised officer pursuant to section 95 of the *Constitution*.

Application  
of this Part.

44. Where a power of appointment to an office is delegated to an authorised officer, that power shall be exercised in accordance with the procedure set out in regulation 13 and subject to any conditions in respect of candidates for the particular office.

Appoint-  
ments by  
authorised  
officers.

### *Discipline*

45. (1) Regulations 26, 29, 30, 35 and 41 apply *mutatis mutandis* in relation to all officers to whom this Part applies.

Interdiction.

(2) Where

(a) disciplinary proceedings or criminal proceedings have been or are about to be instituted against an officer to whom this Part applies; and

(b) an authorised officer considers it desirable in the public interest that an officer referred to in sub-paragraph (a) should cease to perform the functions of his office,

the authorised officer may interdict that officer from the performance of his duties.

(3) An officer interdicted pursuant to this regulation shall, during the period of his interdiction, be permitted to receive such portion of his salary (not being less than one-half) as the authorised officer decides, but shall not be entitled to any other emoluments.

(4) If disciplinary proceedings against an officer interdicted pursuant to this regulation result in his exculpation, he is entitled to the full amount of the emoluments which he would have received had he not been interdicted; but if the proceedings result in any punishment other than dismissal, the officer shall be allowed such emoluments as the authorised officer in the circumstances thinks appropriate.

Disciplinary  
penalties.

**46.** (1) The penalties which may be imposed by an authorised officer where a disciplinary charge has been established are

- (a) reduction in rank;
- (b) deferment of increment;
- (c) withholding of increment;
- (d) suspension of increment.

(2) A prison officer against whom a disciplinary charge has been established may, instead of any penalty which may be imposed on him under paragraph (1), be liable to a fine not exceeding \$25 which may be deducted by the Accountant-General from the prison officer's salary.

Proceedings  
in respect  
of miscon-  
duct.

**47.** Where it is represented to the appropriate authorised officer that an officer has been guilty of misconduct, the authorised officer may cause an investigation to be made into the representation in such manner as he thinks proper, and the officer is entitled to know the whole case made against him and shall be given adequate opportunity of making his defence.

Holding of  
oral enquiry.

**48.** (1) An oral enquiry shall be held by the authorised officer (not being an officer personally involved in the circumstances leading to the charges) or by another senior



officer in his Ministry or Department appointed by the authorised officer for the purpose.

(2) The time and place of the oral enquiry shall be communicated to the officer in writing by the person holding the enquiry, and it shall be the responsibility of the officer to see that his witnesses (if any) attend the enquiry, but if any such witness is in the public service, the officer shall make application through the person holding the enquiry to the Permanent Secretary of the Ministry or Head of the Department to which the witness is attached, and the witness shall be allowed time to attend the enquiry.

(3) Where it is decided to hold an oral enquiry, the officer is entitled to receive copies free of charge of the statements of witnesses to be called in support of the charges and shall also be given copies of, or given permission to inspect, any documents to be used in support of the charges.

(4) The person holding an oral enquiry shall

(a) hear the evidence in support of the charges;

(b) permit the officer charged or his representative to cross-examine the witnesses;

(c) where the officer wishes to give evidence on his own behalf or call witnesses, hear the evidence of the officer and his witnesses, and the officer and his witnesses may be cross-examined; and

(d) record in writing the evidence of the proceedings.

(5) If the charges against the officer are not established, the person holding the enquiry shall so inform the officer in writing.

(6) If any charge is established, the person holding the enquiry shall so inform the officer in writing and shall also inform the officer of the penalty it is proposed to impose upon him.

(7) Where an oral enquiry is held by a person other than the authorised officer, such person shall consider the charges, the written reply, the statements and the evidence given at the oral enquiry, and report his findings of fact as to whether or not any charge is established, to the authorised officer.

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(8) In the case of an oral enquiry the authorised officer shall consider the findings of the person who held the enquiry and proceed in accordance with paragraph (5) or (6), as the case may be.

Imposition  
of greater  
penalty.

49. (1) Where the authorised officer is of the opinion, or where it is represented to him, that an officer against whom a disciplinary charge is established ought to be subjected to a penalty greater than any which may be imposed under this Part, the authorised officer shall submit to the Commission for its consideration a record of the proceedings including a copy of the evidence, all documents material to the case and a covering report.

(2) Subject to paragraph (3) if, after considering a case submitted under paragraph (1), the Commission is of the opinion that the officer ought to be removed from office, the Commission shall recommend to the Governor-General that an order be made accordingly.

(3) The Commission may, if it considers it expedient to do so after considering any case submitted under paragraph (1), recommend to the Governor-General that an oral enquiry be held in accordance with regulation 40.

Reference  
to Privy  
Council.

50. (1) Where an officer to whom this Part applies desires to apply by virtue of section 98 of the *Constitution*, for a reference to the Privy Council, of a decision that a penalty should be imposed on him by way of disciplinary control, the application shall be made in writing to the Governor-General within 14 days of the date on which the officer is informed of that advice, and the case shall be referred accordingly.

(2) Notwithstanding paragraph (1), an officer suspended pursuant to section 98 of the *Constitution* shall not be paid any of his emoluments during such suspension.