

SUBSIDIARY LEGISLATION CONST.01**PUBLIC SERVICE COMMISSION REGULATIONS**

17th August, 1960

LEGAL NOTICE 32 of 1960, as adapted by the Malta Independence Order, 1964, and Act LVIII of 1974; and as amended by Legal Notices 121 of 1977, 299 of 2009 and 246 of 2012.

1. The title of these regulations is Public Service Commission Regulations. Title.

2. In these regulations, unless the context otherwise requires - Definitions.
Amended by:
L.N. 299 of 2009.
Substituted by:
L.N. 246 of 2012.

"Chairperson" means the Chairperson of the Commission, and includes the Deputy Chairperson or any other person appointed to act temporarily as Chairperson;

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

"head of department" means the head of any department of Government that is listed in the Second Schedule to the Public Administration Act, but for the purpose of these regulations also includes: Cap. 497.

(a) Permanent Secretaries; and

(b) any other public officer or authority, not being a head of department, to whom power to appoint staff has been delegated in accordance with article 110 of the Constitution;

and "department of Government" or "department" shall be understood accordingly:

Provided that the Director or Director General with responsibility for human resource management across a ministry may, if the Permanent Secretary of the ministry so directs, act under these regulations on behalf of the Permanent Secretary or on behalf of the head of any department under the supervision of that Permanent Secretary;

"member" means any member of the Commission including the Chairperson, the Deputy Chairperson, and a temporary member;

"merit principle" shall be understood in accordance with article 21 of the Public Administration Act; Cap. 497.

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

"Principal Permanent Secretary" means the person appointed in terms of article 14 of the Public Administration Act; Cap. 497.

"Standing Selection Panel" means a panel established in terms of regulation 14(1).

Executive Secretary and staff.
Substituted by:
L.N. 299 of 2009.
Amended by:
L.N. 246 of 2012.

3. (1) The Prime Minister shall appoint an Executive Secretary to the Commission, and such other staff as he may from time to time think necessary.

(2) The Executive Secretary and other members of the staff of the Commission shall be employed on such terms of service as the Prime Minister shall direct.

Delegation of certain powers or duties.
Substituted by:
L.N. 246 of 2012.

4. The Commission may by resolution delegate to the Chairperson or other member or members any of the powers or duties of the Commission other than the tendering of advice to the Prime Minister in the following matters affecting a public officer:

- (1) termination of appointment;
- (2) disciplinary action;
- (3) retirement on or after reaching the age of fifty years;
- (4) extension of probationary service.

Meetings and minutes.
Amended by:
L.N. 246 of 2012.

5. (1) Every meeting of the Commission shall be presided over by the Chairperson or in his absence by the Deputy Chairperson.

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

Circulation of papers.

6. Decisions 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, but any member shall be entitled to require that any such decision shall be deferred until the subject matter shall be considered at a meeting of the Commission.

Quorum, voting, and dissent.
Amended by:
L.N. 246 of 2012.

7. (1) The Chairperson and one member shall be a quorum for a meeting of the Commission and a like number of members shall be required for a decision of the Commission arrived at as the result of the circulation of papers.

(2) All decisions of the Commission, other than decisions the taking of which has been delegated to the Chairperson or another member under the provisions of regulation 4, whether arrived at a meeting or by means of the circulation of papers, shall be by a majority of votes of the members present and voting or by a majority of members expressing their views on the circulated papers, as the case may be:

Provided that a Chairperson shall have a second or casting vote whenever the voting or expression of views shall be equal.

(3) Any member shall be entitled to dissent from a decision of the Commission and to have his dissent and his reasons therefor set out in the records of the Commission.

Privileged documents.
Amended by:
L.N. 246 of 2012.

8. Any report, statement or other communication or record of any meeting, inquiry or proceedings which the Commission may make in the exercise of its functions or any member may make in the performance of his duties, shall be privileged in that its production may not be compelled in any legal proceedings unless the Chairperson, acting in his discretion after consultation with the

members, certifies that such production is not against the public interest.

9. Every member of the Commission shall have such and the 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 *bona fide* execution of his duties as is by law given to the acts done or words spoken by one of the judges in Malta in the exercise of his judicial office.

Members' privilege.

10. No member of the Commission, nor the Executive Secretary, nor any member of the staff of the Commission, nor any other person shall without the written permission of the Prime Minister, publish or disclose to any person otherwise than in the exercise of his official functions the contents of any document, communication or information whatsoever which has come to his notice in the course of his duties. Failure to comply with the provisions of this regulation will constitute a breach of discipline.

Restriction on disclosure of information.
Amended by:
L.N. 299 of 2009;
L.N. 246 of 2012.

11. The Commission shall, when so requested by or on behalf of the Prime Minister, tender to the Prime Minister advice on -

Advice by Commission.
Amended by:
L.N. 246 of 2012.

- (a) the appointment and promotion of public officers which are required to be made or approved by the Prime Minister; other than to posts which are excluded from reference to the Commission by the terms of the Constitution of Malta;
- (b) the confirmation in their appointment of public officers serving on probation and the extension or termination of such appointments;
- (c) the retirement of public officers on or after reaching the age of fifty years;
- (d) the appointment of public officers to discharge temporarily the duties of posts other than those to which they have been appointed substantively.

12. In making recommendations for the appointment or promotion of officers in the public service, the Commission shall have regard to the maintenance of the high standard of efficiency necessary in the public service. Vacancies shall be advertised through the publication of calls for applications which shall, subject to regulation 13 -

Criteria to be observed.
Amended by:
L.N. 121 of 1977.
Substituted by:
L.N. 246 of 2012.

- (a) give due consideration to qualified officers serving in the public service; and
- (b) in the case of officers in the public service, take into account merit, experience and qualifications before seniority in the service:

Provided that if the Commission is satisfied that, in the circumstances, a call for applications is inappropriate, it may make its recommendations without such call for applications or other advertisement.

13. The Commission shall determine the form of advertisement issued in accordance with regulation 12. The qualifications

Advertisements.
Amended by:
L.N. 246 of 2011.

specified in such advertisements shall be those approved by the Prime Minister for the vacancy under consideration.

Standing Selection
Panels and
selection boards.
Substituted by:
L.N. 246 of 2012.

14. (1) The Permanent Secretary of each ministry shall, subject to the approval of the Commission, establish a Standing Selection Panel consisting of suitable and competent former public officers and, or non-public officers.

(2) Members of the Standing Selection Panel shall serve thereon for a period of twenty-four months with the possibility of renewal, subject to the Commission's approval, for further terms of twelve months:

Provided that a member of the Panel may be removed by the Commission, at its discretion, at any time.

(3) In considering the making of recommendations for the appointment or promotion of an officer in the public service, the Commission may:

- (a) consult with any other person or persons; and
- (b) seek the advice of a selection board constituted by the head of department, who may appoint to it suitable and competent serving public officers and, or persons listed in the Standing Selection Panel of the relevant ministry:

Provided that the selection board shall include at least one serving public officer.

(4) Except in so far as the Commission may direct otherwise, no selection board shall include:

- (a) members of staff of the secretariat of the Prime Minister, or of a minister, or of a parliamentary secretary; or
- (b) holders of posts in the administrative structure of a political party; or
- (c) any official of a trade union which represents applicants for the vacancy to be filled; or
- (d) any other person who would be placed in a conflict or an apparent conflict of interest if he sat on the selection board.

(5) If a person is appointed to a selection board notwithstanding sub-regulation (4), or sub-regulation (4) becomes applicable to that person following his appointment to the selection board, that person shall so inform the head of department, who shall substitute that person as chairperson or member of the selection board, unless any candidates have already been interviewed or otherwise assessed by the selection board, in which case the head of department shall seek directions from the Commission.

Procedure.
Substituted by:
L.N. 246 of 2012.

15. In order to discharge its duties under these regulations, the Commission may determine, or cause to be determined through directives and guidelines issued with its approval by the Principal Permanent Secretary, the procedure to be followed in dealing with

applications, including the proceedings of any selection board appointed by the head of department to interview candidates.

16. In order that it may better make recommendations to the Prime Minister for the appointment and promotion of officers in the public service, the Commission, subject to the instructions of the Prime Minister, may -

Training and
examinations.
Amended by:
L.N. 246 of 2012.

- (a) advise the Prime Minister on training courses, awards and the holding of examinations;
- (b) advise the Prime Minister on the co-ordination and on the content of such examinations and training courses in the various departments of the public service and in respect of such matters exercise on behalf of the Prime Minister such general supervision as it may deem advisable.

17. In the appointment and promotion of public officers to posts or positions in respect of which the power to appoint or promote has not been delegated by virtue of an Instrument of Delegation under article 110(1) of the Constitution by the Prime Minister, the following procedure shall be followed:

Appointments and
promotions.
Amended by:
L.N. 299 of 2009.
Substituted by:
L.N. 246 of 2012.

- (a) When a vacancy occurs in a department and the head of department deems that applications to fill the vacancy should be invited, he shall take action as appropriate to invite such applications from serving public officers, or from serving public officers and others, as the case may be.
- (b) If, in the opinion of the head of department, it is unlikely that a suitably qualified candidate will be available to fill the vacancy, he shall make arrangements for training leading to the acquisition of the necessary expertise.
- (c) The head of department shall ensure that any call for applications issued by his department conforms to any applicable laws, and to any other applicable provisions governing eligibility for the vacant post; and in issuing such calls for applications, the head of department shall act in accordance with any directives and guidelines issued by the Commission and any relevant directives and guidelines issued by the Principal Permanent Secretary with the agreement of the Commission in terms of the Public Administration Act.
- (d) The Commission may, on its own initiative, or following petitions or representations by applicants, or following formal submissions by the Principal Permanent Secretary reporting that the relevant directives and guidelines are not being adhered to, inquire into and investigate any selection process.
- (e) Where the Commission finds that there is a breach of the provisions of these regulations or any applicable directives and guidelines, or where the Commission finds that a selection process was not conducted in

accordance with the merit principle, it may take such action as it deems fit by way of remedy, including:

- (i) the suspension or termination of a selection process;
 - (ii) the cancellation of a call for applications, and the subsequent publication of a revised call with such amendments as the Commission may decide upon;
 - (iii) the annulment of a selection result;
 - (iv) the making of a recommendation to the Prime Minister for the revocation of an appointment, subject to regulation 23(2); and
 - (v) the making of recommendations to the Prime Minister or to other authorities as appropriate, to take such disciplinary or criminal action as it may consider appropriate in the circumstances.
- (f) Vacancies in, and pertaining to, the general service shall be advertised by:
- (i) the Principal Permanent Secretary; or
 - (ii) another Permanent Secretary within the Office of the Prime Minister who may be designated for this purpose by the Principal Permanent Secretary;
 - (iii) where a Minister has been assigned responsibility for the Public Administration, the Permanent Secretary of that Ministry;

and the Principal Permanent Secretary or Permanent Secretary, as the case may be, shall be regarded as the head of department for the purpose of the procedure prescribed in this regulation.

Vacancies dependent on examinations, etc.

18. Where vacancies are to be filled -

- (a) according to the results of examinations which are held in accordance with the provisions of regulation 16; or
- (b) on the successful completion of a scholarship award designed to qualify a candidate for an academic or professional status,

the procedure set out in regulation 17 shall not apply and the Commission shall make such arrangements as may be appropriate.

Confirmation in and extension or determination of probationary appointments.
Amended by:
L.N. 299 of 2009;
L.N. 246 of 2012.

19. (1) Where a public officer holds a probationary appointment, three months before the expiration of the period of such probationary appointment the head of department shall consider -

- (a) whether such officer should on such expiration be confirmed in a pensionable post;
- (b) whether a further period of probationary service is necessary to determine whether such officer should be so confirmed; or
- (c) whether such officer should not remain in the public

service.

(2) If after consideration of the matters referred to in sub-regulation (1), the head of department is of the opinion that a public officer in a probationary appointment should be confirmed in a pensionable appointment, the head of department, not later than three months before the expiration of the period of probationary appointment, shall forward to the Executive Secretary his recommendations that the officer should be so confirmed. The head of department shall at the same time forward a copy of his recommendation to the Principal Permanent Secretary who shall verify the correctness of the details. The Commission shall advise the Prime Minister whether the officer should be so confirmed.

(3) If, after consideration of the matters referred to in sub-regulation (1), the head of department is of the opinion that the work or conduct of a public officer in a probationary appointment has not been in all respects satisfactory, he shall so inform the officer in writing and add whether he proposes to recommend -

- (a) an extension of the officer's probationary service to show whether he can overcome the defects noted; or
- (b) that the officer's probationary appointment should be terminated.

The head of department shall at the same time inform the officer that he is entitled to make representations, within a period to be appointed by the head of department, on the recommendation proposed. On the expiration of the period allowed to the officer to make representations, the head of department shall forward to the Executive Secretary a report on the officer, together with a copy of the letter to the officer and of the latter's representations, if any, with a recommendation whether the period of probationary service should be extended or that the officer should not remain in the public service. The head of department shall at the same time send a copy of his report and recommendations to the Principal Permanent Secretary. The Commission shall advise the Prime Minister whether the probationary appointment should be extended, and if so for what period, or should be terminated.

(4) Where a public officer holds a probationary appointment and the head of department at any time during the period of such probationary appointment is of the opinion that such appointment should be terminated forthwith, the procedure in sub-regulation (3) shall be followed.

20. In considering the advice it shall give to the Prime Minister in regard to the dismissal, disciplinary punishment, or the termination of appointment other than by way of dismissal of any officer in the public service, the Commission shall act in accordance with such disciplinary regulations as may from time to time be in force in Malta in respect of such officer.

Disciplinary
regulations.
Amended by:
L.N. 246 of 2012.

Termination of appointment other than on disciplinary grounds.

Amended by:
L.N. 299 of 2009;
L.N. 246 of 2012.

21. If it appears to a head of department that there is reason why a public officer in his department, who has attained the age of fifty years and who holds a pensionable office, should be called upon to retire from the public service, the head of department shall report the matter together with a full statement of his reasons to the Principal Permanent Secretary. If he considers that a *prima facie* case for such retirement exists, the Principal Permanent Secretary shall advise the officer that his compulsory retirement from the public service is under consideration and ask if he wishes to make any representations of a personal nature on such a step. The head of department shall forward such representations, if any, to the Principal Permanent Secretary who shall transmit the report and any representations together with his own observations to the Executive Secretary, and the Commission shall advise the Prime Minister whether such officer should be called upon to retire.

Acting appointments.
Amended by:
L.N. 299 of 2009;
L.N. 246 of 2012.
Cap. 497.

22. (1) If the head of one of the departments listed in the Second Schedule to the Public Administration Act recommends that another public officer should act in his stead or instead of one of the other officers in his department who are listed in the third column of the said Second Schedule, the head of department shall forward a draft Gazette notice to the Executive Secretary who shall transmit it to the Prime Minister with the advice of the Commission. Concurrently, the head of department shall send a copy of his recommendation to the Principal Permanent Secretary.

(2) If any such recommendation involves the supersession of any more senior officers in the department, detailed reasons for the supersession of each such officer shall be forwarded with the draft Gazette notice.

(3) Where a public officer who has been designated as deputy to a head of department is to act in the latter post, no reference to the Commission shall be made, but the draft Gazette notice shall be forwarded by the head of department to the Principal Permanent Secretary.

(4) In considering recommendations for acting appointments, the Commission shall apply the same standards as in regulation 12, except that consideration may also be given to the interests of departmental efficiency.

Disqualification of candidates and revocation of appointments.

Amended by:
L.N. 299 of 2009.
Substituted by:
L.N. 246 of 2012.

23. (1) The Commission may disqualify, or direct the selection board to disqualify, an applicant for a public office to which article 110 of the Constitution applies if -

- (a) the appointment of that applicant would be contrary to the law, or the applicant would not, if appointed, be permitted by law to carry out the duties of the office; or
- (b) the applicant no longer meets the eligibility requirements for the office; or
- (c) the applicant is unable to carry out the duties of the office due to physical or mental infirmity, and it is not possible to provide reasonable accommodation to enable him to perform his duties in spite of his

infirmity; or

- (d) the applicant would, on appointment, be beyond the established retirement age; or
- (e) the applicant has a criminal record which, in the Commission's opinion, makes him unfit for the office; or
- (f) the applicant was previously dismissed from the Public Service, or has a disciplinary record which, in the Commission's opinion, makes him unfit for the office; or
- (g) the applicant presents incorrect information on his qualifications, experience or other matters of direct relevance to the selection process; or
- (h) the applicant attempts to influence the selection process through representations with selection board members, members or staff of the Commission, or other persons, in a manner otherwise than as permitted by these regulations or the Public Service Management Code; or
- (i) the Commission considers the applicant to be unfit for the office for any other reason:

Provided that before it decides on the disqualification of an applicant for any of the reasons given in paragraphs (c), (e), (f), (g), (h) and (i), the Commission shall give the applicant the opportunity to submit representations in writing.

(2) Notwithstanding any other provision of these regulations or of any other regulations made under article 121 of the Constitution, the Commission may recommend the revocation of an appointment made under article 110 of the Constitution if -

- (a) that appointment was manifestly not in accordance with the principle of merit; or
- (b) the appointee manifestly did not satisfy the eligibility requirements applying to the office to which he was appointed; or
- (c) the appointee obtained his appointment on the basis of fraud or misrepresentation; or
- (d) the appointee is not, or is no longer, permitted by law to carry out the duties of his office, or no longer holds the qualifications which constituted eligibility requirements for the office; or
- (e) the appointee has become unable to carry out the duties of his office due to physical or mental infirmity, and it is not possible to provide reasonable accommodation to enable him to perform his duties in spite of such infirmities; or
- (f) very serious reasons emerge which would have led the Commission to disqualify him from consideration for the office, had the selection process not been concluded:

Provided that before it recommends the revocation of an appointment under this sub-regulation, the Commission shall notify the appointee and give him the opportunity to submit representations either personally and, or through his representative:

Provided further that an appointment shall not be subject to revocation in terms of paragraphs (a) or (b) unless the Commission notifies the appointee as aforesaid by the end of the probationary period applying to that appointment, or, in the case of an appointment that is not subject to probation, by not later than one year from the effective date thereof.

Officers on contract or in temporary employment.
Amended by:
L.N. 246 of 2012.

24. If a public officer is serving on a contract or agreement providing for a minimum residential tour of twenty-four months, the head of department shall forward to the Commission, six months before the expiration of such contract or agreement, a notification of the date of the expiration of the contract or agreement and his recommendation whether it should be renewed or not. A copy of such notification and recommendation shall be sent to the Principal Permanent Secretary. In the case of a public officer serving on a contract or agreement providing for a residential tour of less than twenty-four months, the notification and recommendation shall be sent three months before the officer is due to proceed on leave. The Commission shall advise the Prime Minister whether the officer on agreement or contract should be engaged for a further tour of service.

Power to order attendance before Commission.

25. The Commission may require any person to attend and give evidence before it concerning any matter which it is required to consider in the exercise of its functions under these regulations and may require the production of any documents or other thing relating to any such matter by any person attending before it.

Failure to comply with request of Commission.

26. Any public officer who, without reasonable excuse, being required to attend as a witness or to produce an official document or other thing in his possession, refuses or neglects to do so or to answer any question put to him by the Commission shall be guilty of a breach of discipline.

Documents and information.

27. Any public officer who is required to submit any matter for the consideration of the Commission shall ensure that all relevant documents and papers are made available to the Commission, and the Commission may require the production of any further documents or information relevant to the matter under consideration.

Submission by heads of department.
Amended by:
L.N. 246 of 2012.

28. The Commission, at the request of a head of department, shall -

- (a) hear him personally in connection with any matter he has recommended to the Commission; and
- (b) forward to the Prime Minister any recommendations that he has made or any correspondence that he has had with the Commission.

Representations to Commission.

29. In carrying out its duties under the provisions of the Constitution of Malta and these regulations, the Commission shall

not take into account any representations made to it otherwise than in accordance with the Constitution of Malta or with these regulations:

Provided that nothing in this regulation shall be deemed to prohibit the Commission taking into account a proper reference or testimonial of service.

30. *(Deleted by Legal Notice 246 of 2011).*

Addressing of
correspondence.
Amended by:
L.N. 299 of 2009.

31. *(Deleted by Legal Notice 246 of 2011).*

Matters to be
submitted in
quadruplicate.

32. (1) Any request or directive by the Commission to any public officer, board or authority, other than the Prime Minister, performing functions under these regulations or otherwise under the authority or on behalf of the Commission shall be complied with by any such public officer, board or authority.

Directives by the
Commission and
instruments of
delegation.
Amended by:
L.N. 299 of 2009.
Substituted by:
L.N. 246 of 2012.

(2) An instrument of delegation issued under article 110 of the Constitution may derogate from these regulations or make alternative provision thereto, and the instrument of delegation shall accordingly have precedence over these regulations.

33. The Commission shall make an annual report to the Prime Minister.

Annual report.
Amended by:
L.N. 246 of 2012.