



TURKS AND CAICOS ISLANDS

CHAPTER 1.07
PUBLIC SERVICE ORDINANCE
and Related Legislation

Revised Edition
showing the law as at 31 December 2014

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance.

This edition contains a consolidation of the following laws—

PUBLIC SERVICE ORDINANCE

Ordinance 31 of 2012 .. in force 15 October 2012
Amended by Legal Notice 46/2013 .. in force 7 October 2013
Amended by Ordinance 10 of 2014 .. in force 1 August 2014 (L.N. 33/2014)

PUBLIC SERVICE (DELEGATION OF POWERS) REGULATIONS

– Section 90(5) of the Constitution

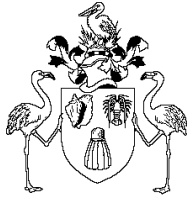
Legal Notice 52/2012 .. in force 15 October 2012

No Subsidiary Legislation has been made under this Ordinance

Page

3

45



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Page
3

45

CHAPTER 1.07
PUBLIC SERVICE ORDINANCE
ARRANGEMENT OF SECTIONS

PART I
PRELIMINARY

SECTION

1. Short title
2. Interpretation
3. General application
4. Effect of Public Service Standards

PART II
ETHICAL CONDUCT

General

5. Overriding duty of public officers and employees
6. Commission to formulate standards
7. Duty to uphold public service values
8. Principles of accountability
9. Duty not to bring public service into disrepute
10. Use of public funds
11. Gifts and corrupt practices

Reporting Requirements

12. Obligation to report unethical or improper conduct
13. Report of suspected criminal activity
14. Action on report
15. Procedure where evidence of improper conduct
16. Action on own initiative
17. Report to the Integrity Commission
18. Reports to the Commission
19. Protection for whistleblowers

Miscellaneous Provisions

20. Declining to act on lawful directions
21. Confidentiality of information
22. Duty to give honest and impartial advice
23. Abuse of position
24. Restrictions on political activities

PART III
MANAGEMENT AND ADMINISTRATION

25. Deputy Governor to manage as head of public service

26. Permanent Secretaries and Heads of Departments
27. Role and function of head of public service
28. Activities to instil confidence
29. Training
30. Performance appraisals

PART IV

RIGHTS AND DUTIES OF PUBLIC SERVANTS

31. Public officers not to discriminate
32. Freedom of speech
33. Freedom of association
34. Right to safety
35. Duty of Head of Department in relation to health

PART V

RECRUITMENT, APPOINTMENTS, PROMOTIONS AND TRANSFERS

Application and General Principles

36. Non-application of Part
37. Recruitment principles
38. Exception to recruitment principles
39. Medical examination
40. Probation

Appointments, Transfers and Promotions - Common Provisions

41. Vacancies
42. Interview process

Vacancies below the level of Head of Department

43. Consideration of application by the Commission
44. Commission to issue prompt advice
45. Where Governor accepts advice
46. When Governor may refuse advice
47. Candidates to be notified of outcome

Vacancies at the level of Head of Department and above

48. Governor to consult Consultation on recommendation
49. Decision of Governor final
50. Candidates to be informed of outcome

Temporary employment and Secondment

51. Temporary appointments
52. Acting appointments
52. Secondment
54. Time limit for secondment

PART VI

DISCIPLINE, TERMINATION AND REMOVAL

General Principles and Removal

- 55. Non-application of Part
- 56. Termination of permanent appointments
- 57. Termination of temporary or contractual appointments
- 58. Abandonment
- 59. Compulsory retirement
- 60. Minimum age for voluntary retirement
- 61. Voluntary retirement
- 62. Early retirement
- 63. Abolition of office
- 64. Termination other than for disciplinary reasons
- 65. Date of termination

Discipline and Misconduct

- 66. Conduct leading to disciplinary proceedings
- 67. Investigation and suspension
- 68. Disciplinary hearings and interdiction
- 69. Time limits
- 70. Procedure at hearing
- 71. Finding of misconduct
- 72. Degrees of misconduct
- 73. Relation with criminal proceedings
- 74. Decisions in favour of the officer
- 75. Administrative leave
- 76. Written warning
- 77. Records to be kept

Dismissal

- 78. Protection against unfair dismissal
- 79. Automatically unfair dismissal
- 80. Challenge to unfair dismissal

PART VII

APPEALS

- 81. Initiation of appeal
- 82. Procedure on appeal

PART VIII

GENERAL TERMS AND CONDITIONS OF EMPLOYMENT

- 83. Public Service Handbook
- 84. Prohibition on other employment
- 85. Conflict of interest

86. Honoraria

PART IX
THE COMMISSION

87. General duties
88. Reports to other bodies
89. Commission's duty of confidentiality
90. Protection of Commissioners and officers
91. Improper influence
92. Giving false information
93. Proceedings of the Commission

PART X
MISCELLANEOUS

94. Oaths of office
95. Power to make regulations
96. Authority to make administrative orders
SCHEDULE 1: Procedure of the Commission
SCHEDULE 2: Oaths of Office

CHAPTER 1.07

PUBLIC SERVICE ORDINANCE

(Ordinances 31 of 2012, 10 of 2014 and Legal Notice 46/2013)

AN ORDINANCE TO PROVIDE FOR THE REGULATION AND MANAGEMENT OF THE PUBLIC SERVICE, TO PRESCRIBE TERMS AND CONDITIONS FOR EMPLOYMENT, DUTIES AND OBLIGATIONS IN THE PUBLIC SERVICE, THE APPOINTMENT AND DISCIPLINE OF PUBLIC OFFICERS AND TO PROVIDE FOR THE FUNCTIONS AND DUTIES OF THE COMMISSION IN KEEPING WITH THE TURKS AND CAICOS CONSTITUTION 2011.

Commencement

[15 October 2012]

PART I

PRELIMINARY

Short title

1. This Ordinance may be cited as Public Service Ordinance.

Interpretation

2. In this Ordinance—

“acting appointment” means the temporary performance by an officer or employee of the duties of another post;

“appointment” means the conferment of an office of emolument in the public service upon a person;

“Auditor General” means the person appointed as such under section 91(1) of the Constitution;

“Chairman” means the Chairman of the Commission and includes any temporary chairman and any member presiding at meetings of the Commission;

“Code of Conduct for Persons in Public Life” means a Code adopted and published by the Integrity Commission under section 102(3)(b) of the Constitution;

“Commission” means the Public Service Commission established by section 89 of the Constitution;

“Commissioner” means a member of the Commission;

“Constitution” means the Constitution of the Turks and Caicos Islands in Schedule 2 to the Turks and Caicos Islands Constitution Order 2011 (S.I. 2011 No 1681);

- “department” means a department established within the public service and includes any other organ or branch of the public service;
- “Deputy Governor” means the person appointed as such under section 25 (1) of the Constitution;
- “Director, Human Resources” means the person appointed as such in the public service;
- “disability” means a physical or mental impairment which has a substantial and long term adverse effect on a person’s life activity and quality of life and has the potential to disadvantage that person in relation to other persons;
- “employee” means a person who is employed in the public service in any capacity but who is not a public officer, not being a person who is an independent contractor;
- “Governor” includes any person to whom the Governor’s powers under section 90 of the Constitution have been delegated pursuant to section 90(5) of the Constitution;
- “Head of Department” means the officer who manages and supervises a department;
- “incapacity” means a state whereby a person is incapable by reason of infirmity of mind or body of discharging the duties of the office and such infirmity is likely to be permanent;
- “Integrity Commission” means the Commission established by section 3 of the Integrity Commission Ordinance;
- “Minister” means a person appointed as Premier or other Minister under section 31 of the Constitution;
- “misconduct” includes—
- (a) commission of a criminal offence;
 - (b) contravention of a requirement in the Public Service Handbook;
 - (c) contravention of lawful instructions given by or on behalf of heads of departments;
 - (d) contravention of this Ordinance;
- “normal working hours” means the prescribed hours of work;
- “office of emolument” in relation to the definition of public office means any post which is shown under an established sub-head in the Estimates;
- “permanent appointment” means an appointment to an office which is not for a fixed period of time;
- “Premier” means the person appointed as such under section 31(2) of the Constitution;
- “Public Accounts Committee” means the Committee established by section 122 of the Constitution;
- “public office” or “office” has the meaning prescribed under sections 131 and 133 of the Constitution and means any office of emolument in the public

service but excludes all offices under section 133 of the Constitution, namely—

- (a) the office of Speaker, Deputy Speaker or member of the House of Assembly, Premier or other Minister, Leader of the Opposition, member of the Commission, the Judicial Service Commission, the Integrity Commission, the Human Rights Commission or the Mercy Committee, or Complaints Commissioner; or
- (b) the office of judge of the Supreme Court or the Court of Appeal or magistrate;

“public officer” or “officer” has the meaning given to it under section 131 of the Constitution and means the holder of any public office including any person appointed to act in that office and may include a person appointed on contract;

“public service” means the service of the Turks and Caicos Islands Government in a civil capacity;

“Public Service Handbook” means the Handbook for the Governance of the public service of the Turks and Caicos Islands;

“Public Service Standards” means the standards of conduct promulgated and issued by the Commission in accordance with section 92(1) of the Constitution and referred to under section 6 of this Ordinance;

“temporary appointment” means an appointment to an office for a fixed time period;

“Tribunal” means a Tribunal appointed under to section 68(1) or (4);

“Unit Manager” means a first line supervisor responsible for the work of a unit and its staff and reporting to a Permanent Secretary or Head of Department.

General application

3. (1) Except where otherwise provided, this Ordinance shall apply to both public officers and employees and the term “officer” shall include both public officers and employees unless the context otherwise requires, but shall not include the offices mentioned under section 91(2) of the Constitution.

(2) A reference in any provision of this Ordinance to a period of employment shall, unless the context otherwise requires, be construed as including employment before, on or after the date of commencement of this Ordinance.

Effect of Public Service Standards

4. In deciding any question arising under this Ordinance, the Public Service Standards and the Public Service Handbook shall be taken into account, but neither the Public Service Standards nor the Public Service Handbook shall be construed as permitting any departure from the provisions of this Ordinance.

PART II
ETHICAL CONDUCT
General

Overriding duty of public officers and employees

5. (1) The role of the public service includes—

- (a) providing efficient services to the public on behalf of the Government with integrity, honesty and impartiality;
- (b) administering the services to the public for which the Government is responsible with integrity, honesty and impartiality;
- (c) assisting with the formulation of the policies of Government by providing frank, honest, comprehensive, accurate and timely advice;
- (d) implementing the policy, programmes and decisions of Government.

(2) The public service shall, and shall be seen to—

- (a) be apolitical, impartial and professional;
- (b) maintain the highest ethical standards;
- (c) be responsive to the Government in implementing the Government's legitimate policies and programmes.

(3) Officers must act in accordance with the best interests of the Islands and not in their own private interests.

Commission to formulate standards

6. The Commission shall in accordance with the Constitution formulate and issue written standards in relation to the matters mentioned in section 5 and under this Part.

Duty to uphold public service values

7. All officers shall uphold and promote the principles referred to in section 5 and any standards formulated pursuant to section 6.

Principles of accountability

8. All officers shall serve the Government in accordance with the principles set out in this Part and any standards formulated under section 6, and shall acknowledge—

- (a) the accountability of officers, through their superiors, to the officer in charge of their Department;
- (b) the duty of all officers to discharge their functions reasonably and in accordance with the law;
- (c) the duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice; and

(d) the ethical standards governing particular professions and the public service.

Duty not to bring public service into disrepute

9. An officer, whether on duty or off duty, shall not indulge in activities that would bring himself or the public service into disrepute and at all times shall discharge his duties and generally conduct himself with integrity, impartiality and honesty.

Use of public funds

10. (1) Every officer shall endeavour to ensure the proper, effective and efficient use of public funds entrusted to his care and is strictly accountable in respect of the use of those funds in accordance with the provisions of this Ordinance, the Public Financial Management Ordinance, the Integrity Commission Ordinance and any other law.

(2) An officer shall not appropriate or use public funds for personal gain or for any purpose that contravenes this Ordinance or any other law.

(3) An officer shall account for and make prompt and true return of any money or property received by him in his official capacity.

Gifts and corrupt practices

11. (1) Except for compensation authorised by law, an officer shall not, directly or indirectly, solicit, accept or receive a fee, gift or private benefit for himself or for another person, if the fee, gift or private benefit is connected directly or indirectly with the performance of the duties of his office.

(2) An officer shall not place himself under pecuniary obligation to any person who requires permission, approval or a license with respect to the granting or renewal of that permission, approval or license.

(3) Subsection (1) does not apply to a gift or private benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(4) An officer who is offered any private benefit or bribe in order to secure or influence the future performance of his services in the public service shall immediately inform his Permanent Secretary or Head of Department in writing, who shall cause the matter to be immediately reported to the Integrity Commission and a police officer.

Reporting Requirements

Obligation to report unethical or improper conduct

12. (1) For the purposes of this Ordinance, an individual required to report allegations of unethical or otherwise improper conduct shall, unless subsection (2) applies or it is otherwise specifically provided, report to the Head of Department or the Permanent Secretary of the ministry in which the individual is employed.

(2) Where a report concerns alleged unethical or otherwise improper conduct on the part of a Head of Department or Permanent Secretary it shall be made to both the Deputy Governor and the Integrity Commission.

(3) Nothing in this section prevents the making of a report of alleged criminal conduct directly to a police officer.

Report of suspected criminal activity

13. (1) An officer shall report to the Permanent Secretary or Head of Department any evidence or reasonable suspicion of criminal activity by another public officer of which he is or becomes aware.

(2) An officer who believes that he is being required to act in a way that—

- (a) is illegal, improper, or unethical;
- (b) is in breach of an accepted convention or a professional code;
- (c) may involve possible maladministration; or
- (d) is otherwise inconsistent with this Part or with the obligations established under the Integrity Commission Ordinance,

shall report the matter to the Permanent Secretary or Head of Department.

(3) An officer who becomes aware of any contravention of the obligations laid down under this Part shall report the matter to the Permanent Secretary or Head of Department.

Action of report

14. Where the Deputy Governor, Permanent Secretary or Head of Department receives a report pursuant to section 13, he shall investigate the matter and—

- (a) if satisfied that there is evidence of criminal activity, report the matter to a police officer and may additionally report to any other authority he considers appropriate; or
- (b) in any other case, take such action as he considers appropriate and may notify the officer who made the report of the outcome of his investigations.

Procedure where evidence of improper conduct

15. (1) If, pursuant to a report made under section 13, the Deputy Governor, Permanent Secretary or Head of Department is satisfied that there is evidence of unethical or improper conduct, or breach of a provision of this Part, he shall—

- (a) if the alleged improper conduct involves an officer, proceed in accordance with Part VI;
- (b) if the alleged improper conduct involves a person in public life other than an officer, report the matter to the Integrity Commission.

(2) Nothing in this Part shall prevent an officer from reporting any matter that he believes involves a contravention of the Integrity Commission Ordinance or the Code of Conduct for Persons in Public Life to the Integrity Commission.

Action on own initiative

16. The Deputy Governor, Permanent Secretary or Head of Department may investigate where he has good reason to believe that an officer has conducted himself in an unethical or improper manner in contravention of this Part or make a report to the Integrity Commission if he believes that the officer has breached a provision of the Integrity Commission Ordinance.

Report to the Integrity Commission

17. (1) Notwithstanding sections 13, 15 and 16, the Deputy Governor shall report all instances of unethical conduct in the public service or contravention of this Part to the Integrity Commission.

(2) Every Permanent Secretary and Head of Department must report to the Deputy Governor all instances of unethical conduct or contraventions of this Part in his ministry or department.

Reports to Commission

18. (1) Where an officer has made a report under section 13 and has reason to believe that there has been no adequate or reasonable response to the grounds of his concern, the officer may report the matter in writing to the Chairman who shall deal with the matter in accordance with Part IX.

(2) If, after 28 days, an officer who made a report under section 13 does not receive a response to his report, or has reason to believe that the matter is not being dealt with in a reasonable or ethical manner, the employee or public officer may report the matter directly to the Integrity Commission.

Protection for whistleblowers

19. (1) An officer shall not be dismissed, suspended, placed on administrative leave, demoted, disciplined, harassed, denied a benefit or otherwise negatively affected because—

- (a) he, acting in good faith and on the basis of a reasonable belief, has—
 - (i) made a report or otherwise notified a Permanent Secretary, Head of Department, the Deputy Governor, the Commission, the Integrity Commission, the Auditor General or a police officer that any other person has contravened or is about to contravene this Ordinance;
 - (ii) done or stated the intention of doing anything that is required to be done in order to avoid having any person contravene this Ordinance; or
 - (iii) refused to do or stated the intention of refusing to do anything that is in contravention of this Ordinance; or
- (b) any other person believes that he will do something described in paragraph (a).

(2) If an officer has reason to believe that he has been negatively affected in any of the ways set out in subsection (1), the officer may report the matter directly to the Commission.

*Miscellaneous Provisions***Declining to act on lawful directions**

20. (1) Subject to this Part, public officers shall not frustrate the policies, directions or actions of the Government by declining to act on lawful decisions of the Premier, Ministers of Government or the Cabinet.

(2) Notwithstanding subsection (1), where a Permanent Secretary disagrees with a Minister on a matter involving a direction by a Minister or by the Cabinet, the Permanent Secretary shall—

(a) place on record by writing to the Deputy Governor, his disagreement with any such direction or proposed course of action which the Permanent Secretary finds difficult to defend or which he regards as inconsistent with his obligation to administer his department with due regard to the propriety of proposed course of action; and

(b) set out the reasons for his disagreement.

(3) If the Permanent Secretary receives a communication from the Minister informing him that the Minister wishes to adhere to his own course of action, the Permanent Secretary shall carry the Minister's direction into effect.

(4) Where under subsection (2), a Permanent Secretary disagrees with a Minister on a matter that relates to the Permanent Secretary's responsibilities as Accounting Officer as set out in the Public Finance Management Ordinance, the Permanent Secretary shall set out his or her objections in writing to the Minister, and his or her duty to place these objections on record if the Minister wishes to go ahead.

(5) If the Minister wishes to go ahead, he or she must instruct the Permanent Secretary to do so in writing; and copies of both the Permanent Secretary's letter and the Minister's letter shall be sent to the Governor, Deputy Governor, Auditor General, Integrity Commission, and the Public Accounts Committee.

Confidentiality of information

21. (1) Public officers and employees shall not, without authority, disclose official information that has been communicated in confidence within the ministry or department to them, or received in confidence from others.

(2) Notwithstanding subsection (1), officers shall maintain official records—

(a) where a failure to do so would amount to a grave injustice; or

(b) as required by this Ordinance or Regulations made under section 95 or by any other law.

(3) Nothing in this Part overrides existing legal obligations to maintain the confidentiality of particular information.

(4) Public officers and employees shall not seek to frustrate or influence the policies, decisions or actions of Ministers or of the Government by the

unauthorised, improper or premature disclosure outside the public service of any information to which they have had access in the course of their official duties.

(5) This section continues to apply to former public officers and employees notwithstanding that they are no longer employed in the public service.

(6) A person who contravenes subsection (1), (3) or (4) shall be guilty of an offence and liable on conviction on indictment to imprisonment for ten years or to a fine or to both or on summary conviction to imprisonment for two years or a fine of \$50,000 or to both.

Duty to give honest and impartial advice

22. Public officers and employees shall—

- (a) conscientiously perform their duties and obligations and assist in carrying out the lawful policies of the Government.
- (b) give honest and impartial advice to the Minister, Permanent Secretaries or Heads of Department or to the office holder in charge of their department as the case may be, and make all information that is relevant to a decision, available to them; and
- (c) not deceive or knowingly mislead any person.

Abuse of position

23. (1) An officer shall not—

- (a) misuse his official position or information acquired in the course of his official duties to further his private interests or those of others; or
- (b) receive benefits of any kind from a third party that might reasonably be seen to compromise his personal judgment or integrity.

(2) An officer shall not solicit the intervention or influence of the Governor, members of the House of Assembly, Ministers, members of a commission or prominent members of the community to support or advance his individual claims in the public service.

Restrictions on political activities

24. (1) An officer shall not engage in campaigning on behalf of a political party.

(2) An officer shall neither represent a political party nor be a candidate for political office.

(3) The Deputy Governor may, by notice, specify such additional restrictions on political activity by officers as may seem to him proportionate and appropriate for the preservation of the political neutrality of the public service.

PART III

MANAGEMENT AND ADMINISTRATION

Deputy Governor to manage as head of public service

25. (1) The Deputy Governor shall be the Head of the public service and have overall responsibility to the Governor for the management of the public service.

(2) No Minister shall have authority to give instructions to any officer who is not a Permanent Secretary or Acting Permanent Secretary.

(3) No instruction given by a Minister shall require a Permanent Secretary or Acting Permanent Secretary to alter any allocation of resources within a particular ministry.

(4) No person employed by a Minister or by a political party shall have authority to give instructions to any officer.

Permanent Secretaries and Heads of Departments

26. (1) Notwithstanding section 25, a Permanent Secretary or Head of Department has primary responsibility for the general management of the ministry or department to which that Permanent Secretary or Head of Department is assigned, including for the appointment, discipline and removal of public officers and employees where that power has been delegated to Permanent Secretaries or Heads of Department pursuant to section 90 of the Constitution and the Public Service (Delegation of Powers) Regulations 2012.

(2) In the application of this Ordinance to officers subordinate to them, but not otherwise, the holders of the offices mentioned in section 91(2) (a) to (e) of the Constitution are deemed to be Permanent Secretaries.

(3) Not more than one individual employed by a Minister, or by a political party, to give political advice may be accommodated within a ministry or department at any time, and no such individuals may be employed in relation to any part of Government whose functions include the provision of legal advice, the investigation or prosecution of offences or the protection of good governance.

Role and functions of Deputy Governor

27. (1) In carrying out his managerial functions, the Deputy Governor—

- (a) shall give directions of a general nature and provide guidance to officers or employees in relation to the performance of their duties in order to promote the development of the public service; and
- (b) may appoint committees, panels or other bodies for the purpose of—
 - (i) recruitment to or promotion in the public service;
 - (ii) the investigation or hearing of disciplinary matters; or
 - (iii) any other matter the Deputy Governor deems appropriate.

(2) The Deputy Governor shall, in carrying out his functions ensure transparency, fairness and justice; and shall regard the proper management of the public service including the development of the human resources of the public service, as his primary goal.

(3) The Deputy Governor may—

- (a) request information from ministries concerning their activities;
- (b) in carrying out functions in respect of the public service, conduct such inspections or investigations and make or receive such reports as he considers necessary or the Governor may direct.

Actions to instil confidence

28. (1) An officer shall conduct himself in a manner that will ensure the efficient and effective discharge of his duties, taking cognizance of the principles of management developed in accordance with this Part and the need to instil confidence on the part of the public.

Training

29. (1) The Deputy Governor shall ensure that training is given high priority in the public service and in writing state the policy of Government with respect to—

- (a) the goals and objectives of training; and
- (b) the management of training and human resource development in the public service.

(2) In stating the policy under subsection (1), the Deputy Governor shall give due regard to ensuring that training at all levels of the public service is—

- (a) structured, having regard to specific skills and organisational needs;
- (b) mandatory;
- (c) non-discriminatory pursuant to Part IV;
- (d) continuous, within the limits of financial resources; and
- (e) aimed at enhancing the skills of persons in the public service.

(3) The Director, Human Resources shall have primary responsibility for implementing the training policy of the Government and shall liaise with the Deputy Governor as required to formulate and execute a training plan, consulting with public officers and employees as necessary.

(4) The training policy and its implementation must have regard to the changing requirements of the public service and of the Islands as a whole particularly in developing managerial and technical skills to meet national and international standards and to ensure that the public service is capable of meeting its resource requirements so as to give effect to the national goals of Government.

(5) The Governor may make Regulations under section 95 to give effect to the policy referred to in subsection (2) or require that like provision be included in the Public Service Handbook.

Performance appraisals

30. (1) The Permanent Secretary or Head of Department shall cause, on an annual basis, a fair, unbiased and objective assessment of the performance and career potential of each officer to be made in accordance with the Public Service Handbook.

(2) The performance appraisal report shall include the means, if any, through which the officer's performance may be improved.

(3) The officer being appraised shall have the opportunity to make written comments about the performance appraisal and shall sign the report.

(4) The report shall be countersigned by the reporting officer's immediate superior who may add any comments he considers appropriate.

(5) Where shortcomings have been reported in the performance appraisal report, the reporting officer and the officer being reported upon shall agree and record in the report a course of action designed to restore the officer's performance to acceptable levels, which may include appraisals at intervals of less than one year, but the officer reported upon shall not be entitled to any increment in salary until his performance in two consecutive annual appraisals has been satisfactory.

(6) Where any shortcomings identified in a performance appraisal report are sufficiently serious to cast doubt upon the officer's competence and capability, the reporting officer shall provide a copy of the report to the Permanent Secretary or Head of Department who shall consider whether the officer's employment should be terminated in the public interest.

(7) A person who is aggrieved by the decision of the reporting officer in relation to the performance appraisal report may seek a review by the Permanent Secretary or in the case where the Permanent Secretary is the reporting officer to the Deputy Governor, who shall review the decision and make a determination.

PART IV

RIGHTS AND DUTIES OF PUBLIC SERVANTS

Public officers not to discriminate

31. No officer shall discriminate against another officer or against a member of the public in the performance of his duties.

Freedom of speech

32. Officers shall not—

- (a) be editors of any newspaper or directly or indirectly take part in the management of newspapers;
- (b) contribute to any newspapers or media on questions that can properly be called political or administrative, but may furnish articles upon subjects of general interest;

- (c) make a statement to the media or allow themselves to be interviewed on questions of public policy or on matters affecting the security, defence, military resources or diplomatic relations of the Islands without the prior approval of the Governor;
- (d) make public or communicate to the media or cause to be made public or to be communicated to the media or to unauthorised persons, any documents, papers or information which may come into their possession in their official capacity or make private copies of those documents or papers;
- (e) give broadcast talks or engage in any discussion that is being broadcast on any subject that may properly be regarded as of a political or administrative nature, without the prior permission of the Permanent Secretary of the ministry concerned; or
- (f) disclose or produce in evidence any official document of a confidential character in any court of law without obtaining the prior permission of the Permanent Secretary of the ministry concerned or the Governor except in criminal proceedings where compelled to do so.

Freedom of association

33. Every public officer and every employee has the right to freedom of association, including the right to form and join a trade union of his choice save that, in the public interest, an officer who is employed in services essential to the safety, health, national security or public order of the Islands shall not be permitted to engage in industrial action.

Right to safety

34. Every person employed in the public service has a right to safe and healthy conditions at work and may take reasonable steps to safeguard that right, including the refusal to work in conditions which present imminent danger to their person, health, safety or life or to the health, safety or life of other persons.

Duty of Head of Department in relation to health

35. (1) It shall be the duty of every Permanent Secretary or Head of Department to seek to prevent practices that are detrimental to good health, welfare and safety in the workplace and to ensure that the provisions of any enactment in respect of the health, safety and welfare of persons at work are observed in relation to the ministry or department to which the Permanent Secretary is assigned.

(2) A Permanent Secretary or Head of Department shall be regarded as having discharged their duties under subsection (1) where the Permanent Secretary or Head of Department has taken all actions that are necessary or appropriate in the circumstances or made reasonable attempts to do so.

PART V

RECRUITMENT, APPOINTMENTS, PROMOTIONS AND TRANSFERS

*Application and General Principles***Non-application of Part**

36. This Part shall not apply to—

- (a) any office referred to in section 87(1) of the Constitution;
- (b) any office referred to in section 91(2) of the Constitution; and
- (c) any office in the police force.

Recruitment principles

37. (1) Recruitment, appointments and promotions in the public service are to be made on the basis of merit, performance, impartiality and the highest standards of integrity and where appropriate, consideration may be given to seniority and experience.

(2) For the purposes of subsection (1), a decision relating to engagement or promotion is based on merit where an assessment for that purpose—

- (a) is made of the relative suitability of the candidates for the duties, using a competitive selection process;
- (b) is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties;
- (c) focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and
- (d) is the primary consideration in making the decision.

(3) No person shall be appointed to a position in the public service at the direction or request of a Member of the House of Assembly, a Minister, or the Premier.

(4) No person shall be appointed to the public service for the purpose of providing any member of the House of Assembly, Minister or the Premier with political advice.

(5) No person convicted of an offence punishable with not less than 12 months' imprisonment, or the commission of which involves an element of dishonesty, shall be employed in the public service unless not less than 10 years have elapsed since the last such conviction recorded against that person.

(6) Notwithstanding subsection (5), a person who has been rehabilitated under the Rehabilitation of Offenders Ordinance may be employed in the public service after the expiry of the person's rehabilitation period. (*Inserted by Ord. 10 of 2014*)

Exception to recruitment principles

38. (1) An exception may be made to the recruitment principles established under section 37 (1) and (2), in the interest of the public—

- (a) where an appointment is necessary for the effective functioning of the relevant department or ministry to fill a short term vacancy for a period of not more than 12 months;
- (b) to employ a person with a disability who can meet the minimum requirements of the job; and
- (c) to fulfil the necessity of offering a suitable alternative position to a public officer whose substantive post has been abolished pursuant to section 63.

Medical examination

39. (1) Before his recruitment may be confirmed, a person entering the public service for the first time is required to provide evidence as to his medical fitness for appointment, which may include the provision of satisfactory answers to such medical questionnaire as the Director, Human Resources may require.

(2) A person being recruited from outside the Islands shall comply with the medical standards prescribed pursuant to the Immigration Ordinance.

Probation

40. (1) Unless otherwise provided in the contract of employment or any law, the appointment of an officer in the public service shall be on a probationary basis for a period of 6 months, which may be extended for not more than a further 6 months pursuant to subsection (3).

(2) The unit manager of the officer on probation shall submit to the Director, Human Resources through the Head of Department or Permanent Secretary, the following reports on an officer who is on probation—

- (a) a report one month before the probationary period is completed; and
- (b) where a further period of probation has been granted, a final report one month before the period of probation expires.

(3) The Head of Department or Permanent Secretary of the officer on probation shall endorse a report submitted under subsection (2) with a recommendation that—

- (a) the officer be confirmed in his post;
- (b) the officer continue on probation for a further period not exceeding 6 months; or
- (c) the employment of the officer be terminated.

(4) Notwithstanding subsections (2) and (3), the Governor may terminate the period of probation at any time where the probationer is not performing satisfactorily.

*Appointments, Transfers and Promotions-Common Provisions***Vacancies**

41. Where a vacancy arises or is expected to arise in the public service, whether on appointment, promotion or transfer, the Director, Human Resources shall notify the Governor and the Commission accordingly by delivering to them a copy of the advertisement of the vacancy.

Interview process

42. (1) For the purpose of selecting a suitable candidate to fill a vacant public office, the Director, Human Resources, shall constitute a selection panel comprising persons—

- (a) trained in or experienced in the process of selection assessment and interviewing;
- (b) knowledgeable in the area for which the candidate is being considered;
- (c) who are able to make objective assessments.

(2) The Governor shall select suitable candidates for assessment by the selection panel named under subsection (1).

(3) The selection panel shall assess the candidates and make recommendations in writing as to their suitability for the public office advertised, and shall submit a recommendation for a proposed candidate to the Governor and the Commission, through the office of the Director, Human Resources.

(4) A recommendation under subsection (3), together with a copy of the application of the candidate and such other information regarding the selection process as may be appropriate shall be submitted—

- (a) to the Commission; and
- (b) in the case of a recommendation in respect of a vacancy at the level of Head of Department or Permanent Secretary, to the Governor.

*Vacancies below the level of Head of Department***Consideration of application by the Commission**

43. (1) The Commission shall consider the application and information submitted under section 42(4).

(2) Where the Commission is satisfied that the principles of merit, neutrality and integrity were met in the selection of the candidate recommended, it shall inform the Governor in writing and the Governor shall, acting in accordance with the advice of the Commission, appoint, promote or transfer the candidate.

(3) Where the Commission is not satisfied in accordance with subsection (2) or has some other reason for not recommending the appointment, promotion or transfer, the Commission shall inform the Governor accordingly in writing,

giving its reasons, and shall submit a copy of any documents on which it relies to the Governor.

Commission to issue prompt advice

44. In tendering advice to the Governor or to the Director, Human Resources pursuant to this Part, the Commission shall ensure that the giving of the advice is prompt and timely and in any case shall render its advice no later than 14 days after receiving the recommendation referred to in section 42(4).

Where Governor accepts advice

45. (1) Subject to section 46, the Governor shall accept the advice of the Commission pursuant to section 44.

(2) In a case where the Commission advises the Governor against the appointment, the Governor shall, in his discretion, direct the Director, Human Resources to constitute another selection panel or to reopen the application process to identify another candidate to fill the vacancy and section 42 shall apply with such changes as the context may require.

When Governor may refuse advice

46. The Governor may refuse the advice of the Commission on the appointment, transfer or promotion of an officer below the level of Head of Department—

- (a) where the advice is in conflict with the Statement of Governance Principles authorised under the Constitution;
- (b) if he receives instructions from Her Majesty through the Secretary of State to refuse the advice.

Candidates to be notified of outcome

47. The Director, Human Resources shall inform in writing candidates who were interviewed of the outcome of their applications.

Vacancies at the level of Head of Department and above

Governor to consult Commission on recommendation

48. (1) The Governor shall consult the Commission within 14 days of the receipt of the recommendation of a candidate under section 42(4).

(2) The consultation shall include consideration of whether the principles of merit, neutrality and integrity were met in the selection of the proposed candidate.

(3) The Governor shall, following consultation under subsection (1), decide whether to make the appointment, promotion or transfer and communicate his decision to the Director, Human Resources for implementation.

Decision of Governor final

49. The decision of the Governor in relation to the appointment, transfer or promotion of a Permanent Secretary or Head of Department shall be final.

Candidates to be informed of outcome

50. The Director, Human Resources shall inform candidates who were interviewed of the outcome of their applications.

*Temporary employment and Secondment***Temporary appointments**

51. A public officer shall not, on a continual basis, be employed temporarily in a permanent post in the public service and shall be so employed only in exceptional circumstances and then only for a period not exceeding 6 months, unless the Governor otherwise directs.

Acting appointments

52. (1) Where, on 15 October 2012 a vacancy exists in an established office and the person who occupies the office has been acting for a period not less than 12 months immediately before that date and is qualified by virtue of any law in force to be appointed to the office and there is no other person whose qualifications render that person more suitable for appointment, the person who occupies the office shall be entitled to be appointed.

(2) Where as a consequence of an appointment referred to in subsection (1) any other office that is established becomes vacant, each person who has acted in such an office and who satisfies the criteria set out in subsection (1) shall be entitled to be appointed to the office in which he has acted or an office of a similar grade.

Secondment

53. (1) Where a public officer who holds an established office is seconded to service under an approved employer, that person shall, during the period of the secondment, cease to receive the emoluments attached to that office but shall nevertheless, if the approved employer agrees to pay to the Government of the Islands a contribution in respect of his pension during the period of the secondment at the rate prescribed by the Governor, be deemed to continue to hold that office for the purposes of the legal requirements for pension.

(2) In this section, “approved employer” means another Government or an authority, body or agency approved by the Governor for the purposes of this section.

Time limit for secondment

54. (1) Subject to subsection (2), where the holder of an established office is seconded to service in accordance with section 53(1), the period of secondment shall be for a period not exceeding 2 years.

(2) Where the Governor is satisfied as to the matters set out in subsection (3), or where the holder of a public office is being seconded to an office in the service of an international or regional body, the period of secondment may be extended for such period not exceeding a further 2 years, as the Governor determines.

(3) The Governor may determine that the period of secondment be extended under subsection (2) where—

- (a) the approved employer makes a written request for the retention of the person on secondment; and
- (b) the Governor is of the opinion that the Islands are receiving substantial benefits from the secondment.

(4) Where a public officer remains on secondment pursuant to subsection (2) for a period in excess of 3 years, that officer shall be required to exercise the option of remaining in the service of the organisation or body to which he is seconded or of returning to his substantive position in the public service.

PART VI

DISCIPLINE, TERMINATION AND REMOVAL

General Principles and Removal

Non-application of Part

55. (1) This Part does not apply to—

- (a) an office referred to in section 87(1) or 91(2) of the Constitution;
- (b) an office that is part of an institution protecting good governance referred to in section 97(1) of the Constitution;
- (c) an office in the Police Force.

Termination of permanent appointments

56. The Governor may terminate the appointment of a public officer who holds a permanent appointment for the following reasons only—

- (a) abandonment of the office;
- (b) compulsory retirement;
- (c) voluntary or early retirement;
- (d) retirement for medical reasons or incapacity;
- (e) the officer is on probation and confirmation of his appointment has not been recommended;
- (f) resignation of a public officer who has given the required period of notice or payment in lieu of notice;
- (g) dismissal in consequence of disciplinary proceedings;
- (h) termination in the public interest.

Termination of temporary or contractual appointments

57. The Governor may terminate the appointment of a public officer who holds a temporary appointment or is appointed pursuant to a contract for a fixed period, or an employee, for the following reasons only—

- (a) abandonment of the office;
- (b) expiry or other termination of an appointment or contract for a specific period;
- (c) except in the case of an officer or employee appointed on contract, the public office or employment is of a temporary nature and is no longer necessary;
- (d) the officer is on probation and confirmation of his appointment has not been recommended;
- (e) resignation of an officer who has given the required period of notice or payment in lieu of notice;
- (f) termination in the public interest;
- (h) retirement or frustration of contract for medical reasons or incapacity;
- (g) dismissal in consequence of disciplinary proceedings.

Abandonment

58. An officer who is absent from duty without leave for a continuous period of seven days may be deemed to have abandoned his office or employment and thereupon the office shall become vacant and the officer shall cease to be an officer.

Compulsory retirement

59. (1) Subject to subsection (2), a public officer shall retire on attaining the age of 60 years.

(2) In exceptional circumstances and in the public interest, the Governor may permit a public officer to remain in the public service after he has attained the age of 60 years.

(3) Subject to subsection (4), an employee shall retire on attaining the age of 65 years.

(4) In exceptional circumstances and in the public interest, the Governor may permit an employee to remain in the public service after he has attained the age of 65 years.

Minimum age for voluntary retirement

60. The minimum age for voluntary retirement in the public service shall be such age as may be specified in Regulations made under section 95.

Voluntary retirement

61. (1) A public officer may at any time after he has attained the minimum age for voluntary retirement specified in section 60 apply to the Governor for

permission to retire and shall in the application state the grounds on which the application is based.

(2) The Governor may, in his discretion, grant or refuse an application under subsection (1).

Early retirement

62. (1) Where a public officer may lawfully be dismissed for any of the reasons specified under this Part and that public officer has attained the minimum age for voluntary retirement specified in any law, the Governor may choose instead to call upon the public officer to retire from the public service, stating the original basis for dismissal and the choice given.

(2) A public officer who receives a notice under subsection (1) may make representations to the Governor regarding the proposed retirement.

(3) If, despite the representations of the public officer, the Governor remains of the view that the public officer should be retired, the Governor shall issue a notice of termination to the public officer, giving a minimum period of notice of one month.

Abolition of office

63. (1) Any post in the public service may be abolished on grounds of necessity, or in the public interest, including for the purpose of facilitating improvement in the organisation of a ministry or department in order to give effect to greater efficiency or economy.

(2) Where a post has been abolished pursuant to subsection (1), the employment of an officer who holds the substantive post that has been abolished shall, subject to subsection (3), cease, but the cessation of employment shall not be considered a removal, dismissal or disciplinary measure for the purposes of this Part.

(3) Where a post, being one of a number of like posts, has been abolished but one or more than one of such posts remain, the Governor shall determine which substantive holder of the post should have his appointment terminated.

(4) Where an office held by a public officer is abolished and a suitable alternative position in the public service is available, the Governor may offer such a position to the substantive holder of the post that was abolished subject to compliance with Part V.

(5) For the purposes of this section, the service of a public officer, being a substantive holder of a post whose post was abolished and is awaiting a decision as to an alternative position pursuant to subsection (4) shall not be broken unless the outcome of the appointment process under Part V results in him being denied the alternative post, provided that the selection process takes place within a period of 28 days.

Termination other than for disciplinary reasons

64. (1) Where the Governor concludes that the appointment of an officer should be terminated for any reason specified in section 56 or section 57 (other than resignation, compulsory or voluntary retirement or dismissal in consequence of disciplinary proceedings), or where the Governor is of the

opinion that there are grounds for termination other than pursuant to disciplinary proceedings, he shall notify the officer of his conclusion in writing, stating the grounds on which the conclusion is based.

(2) An officer may make written representations to the Governor in support of his case, either in person or through a representative of his choice, within 14 days after receiving a notice of termination under subsection (1).

(3) After considering any representations made by an officer in accordance with subsection (2), the Governor shall decide whether his appointment should be terminated and shall inform the officer in writing of the decision and the reasons for it.

(4) Where it is proposed to retire an officer in the public interest, the Governor shall call for a full report on the officer from relevant departments in which he has served, giving the officer an opportunity to respond to the proposal in writing within 14 days.

(5) After receiving the response of the officer pursuant to subsection (4) the Governor shall consider all of the circumstances, including the public interest and may retire the officer in the interest of the public if he deems it appropriate to do so.

Date of termination

65. Where the appointment of an officer is terminated or where a penalty of dismissal has been imposed under this Part, the appointment shall terminate on such date as the Governor may determine.

Discipline and Misconduct

Conduct leading to disciplinary proceedings

66. The Governor may take disciplinary action against an officer where the Governor is of the opinion that the officer has engaged in misconduct.

Investigation and suspension

67. (1) Where the Governor suspects that an officer has engaged in misconduct, he may cause the matter to be investigated by a senior officer and, if he considers it appropriate, may suspend the officer suspected of misconduct from the public service for the duration of the investigation.

(2) An officer suspended under subsection (1) shall be entitled to receive all the salary and allowances that would be payable to him if he were not suspended.

(3) If the Governor decides not to cause the matter to be investigated under subsection (1), he may conduct an informal disciplinary hearing at which the officer shall have the right to make such representations as he wishes, but the Governor, if satisfied that the officer has engaged in misconduct, may not impose a disciplinary penalty other than an informal warning or a written warning.

(4) The Governor may, after hearing any representation an officer may wish to make, summarily dismiss that officer if he is satisfied that the officer has

committed gross misconduct of a kind specified in section 72(1)(b), (d), (f), (g), (i), (j), (l), (m), (n) or (o).

(5) The senior officer conducting an investigation under subsection (1) shall interview any person, other than the officer suspected of misconduct, whom he believes to have relevant information concerning the matter under investigation and make a written record of each such interview.

(6) When the senior officer conducting the investigation is satisfied that he has obtained sufficient information to enable a judgement to be made about the conduct of the officer suspected of misconduct, he shall prepare a written report including the records of interviews and any other document he considers relevant and forward the report to the Governor.

(7) In the event that the senior officer is of the view that an offence against any law in force in the Islands appears to have been committed by the officer suspected of misconduct, he shall report the matter to the Governor forthwith and the Governor shall bring the matter to the attention of the Integrity Commission and may report the matter to a police officer.

(8) For the purposes of this Part, "senior officer" means an officer senior to the officer suspected of misconduct.

Disciplinary hearings and interdiction

68. (1) Where the Governor receives a report under section 67(6) he shall appoint a Tribunal to conduct a disciplinary hearing.

(2) When appointing a Tribunal under subsection (1), the Governor shall consider whether to interdict the accused officer from the public service pending the determination of the hearing and, if he does so, the officer shall during the period of interdiction receive one half of the salary otherwise payable to him, shall not be paid any allowances and shall not engage in any other employment, trade or occupation.

(3) Subject to subsection (4), a Tribunal appointed under subsection (1) shall consist of a Permanent Secretary or Head of Department as President and two other officers, at least one of whom shall be of similar seniority to the accused officer.

(4) Where the Governor decides that the alleged misconduct, if proved, would justify a written warning or lesser penalty, the Tribunal shall either be the Governor himself or a senior officer appointed by him.

(5) Notice of the intention to hold a disciplinary hearing, together with particulars of the misconduct alleged shall be given to an accused officer within two days of the Governor's decision under subsection (1).

(6) No senior officer who has conducted an investigation under section 67(1) shall be a member of, or be, a Tribunal in relation to the matter he has investigated.

Time limits

69. (1) A disciplinary hearing convened under section 68 shall take place within 35 days of the day on which the Governor appoints the Tribunal and the accused officer shall receive not less than 28 days' notice of the date of the hearing.

(2) The hearing shall take place in private away from the officer's usual place of work and a record shall be kept of the hearing.

(3) Not less than 21 days before the hearing, the accused officer shall be provided with copies of any report provided to the Governor pursuant to section 67(6), and, unless the accused officer notifies the Tribunal within 7 days that he requires one or more of the witnesses to attend the hearing and give oral evidence, the Tribunal shall accept the written record of the interview of the witness as evidence.

(4) An accused officer who wishes the Tribunal to consider the written evidence of witnesses on his behalf shall, not less than 7 days before the hearing, provide the Tribunal with 3 copies of each statement that he wishes to adduce in evidence.

Procedure at hearing

70. (1) The procedure at a disciplinary hearing other than an informal hearing under section 67(3) shall be as provided in this section.

(2) An accused officer may be represented at the hearing by a person of his choice other than an attorney.

(3) The accused officer shall be entitled to be present throughout the proceedings when evidence is being given or submissions made.

(4) At the commencement of the hearing, the allegation of misconduct shall be put to the accused officer by the Tribunal and he shall be asked whether he admits it, and if he does, the Tribunal shall proceed to consider any evidence the accused officer may wish to put before it, together with any submissions the accused officer may wish to make, before proceeding under subsection (10).

(5) Where the accused officer does not admit the allegation against him, the Tribunal shall proceed to consider the evidence obtained under section 67(6) and where the accused officer has required a witness to attend and give oral evidence, the witness shall be questioned by the Tribunal, and may be cross-examined by the accused officer and re-examined by the Tribunal.

(6) When all the evidence obtained under section 67(6) has been adduced, the accused officer may give evidence himself and, if he does, he must do so before he calls any witnesses to give oral evidence on his behalf or adduces any written evidence.

(7) The accused officer and any witness on his behalf may be cross examined by the Tribunal and may be re-examined.

(8) If, in the course of hearing evidence, the Tribunal is of the view that the evidence heard discloses an allegation of misconduct other than the allegation of misconduct the Tribunal is considering, it shall draw this to the attention of the accused officer and may adjourn the hearing.

(9) When all the evidence on which the accused officer wishes to rely has been adduced, he may make any written or oral submission he chooses to the Tribunal.

(10) At the conclusion of submissions under subsection (9), if any, the Tribunal shall consider the whole of the evidence and submissions, in private if it

thinks fit, and decide whether the accused officer is guilty of the misconduct alleged, or any misconduct, and announce the Tribunal's decision.

(11) Where the Tribunal has found the accused officer guilty of any misconduct, it shall be informed of the officer's disciplinary record and shall hear such further submissions as the officer may wish to make.

(12) Save as provided in this section, a disciplinary hearing may only be adjourned if failing to do so would give rise to serious injustice to the officer accused.

Finding of misconduct

71. (1) Following a finding that an officer is guilty of misconduct pursuant to section 70(10) and having regard to the matters referred to in section 70(11) the Tribunal shall determine whether to recommend that the officer be dismissed or whether some other penalty should be imposed on the officer save that a Tribunal constituted under section 68(4) may only recommend a written warning or an informal warning. (*Amended in Revised Edition, 2014*)

(2) The Tribunal shall inform the officer of its decision under subsection (1) and shall make a full report to the Governor of its findings under section 70(10) and its recommendation under subsection (1). (*Amended in Revised Edition, 2014*)

(3) The Governor shall, subject to subsections (4) and (5) decide on the appropriate measures to be taken with regard to the accused officer, taking into consideration the matters referred to in subsection (2).

(4) Where the officer is found guilty of minor misconduct, he shall be liable to a penalty at level 3 on the standard scale.

(5) Where an officer is found guilty of gross misconduct, he shall be dismissed or be liable to any penalty on the standard scale.

(6) For the purposes of this section, the standard scale shall be, in increasing degrees of severity—

- (a) Level 1 Informal warning;
- (b) Level 2 Written warning;
- (c) Level 3 Suspension without pay or allowances for such period not exceeding 6 months as the Governor may determine;
- (d) Level 4 Prohibition on receiving any increase in emoluments for up to 5 years;
- (e) Level 5 Demotion. (*Amended in Revised Edition, 2014*)

(7) Where it is possible to quantify a loss to the Government occasioned by the officer's misconduct or negligence, the officer may be subject to a surcharge in addition to any penalty imposed under subsection (4) or subsection (5).

Degrees of misconduct

72. (1) Gross misconduct shall include but is not limited to—

- (a) absence from duty without leave or approval;
- (b) conviction of a criminal offence punishable by a term of imprisonment;
- (c) failure to report or disclose any information that ought reasonably to be reported or disclosed where the consequence of that failure amounts to a grave injustice;
- (d) unauthorised disclosure of information pertaining to the Government;
- (e) insubordination;
- (f) intoxication or possession, use or distribution of illegal drugs while on duty;
- (g) reporting for duty or performing duties while under the influence of alcohol or illegal drugs;
- (h) failure to observe any laws, orders, rules or regulations governing the public service;
- (i) falsification of accounts or records, either manual or electronic;
- (j) wilful mutilation, alteration or destruction of property including official documents or records, either manual or electronic;
- (k) threatening of a fellow officer or any person or threatening the destruction of any property while on duty;
- (l) causing of grievous bodily harm;
- (m) unauthorised possession of a firearm or offensive weapon;
- (n) accepting bribes or other inducements;
- (o) misappropriation of public funds;
- (p) causing major loss of or damage to Government property;
- (q) failure to perform the duties assigned to his office;
- (r) negligence in the performance of his duty;
- (s) failure to maintain official records where the consequence amounts to a grave injustice to any other person or to the Government;
- (t) misconduct involving 3 or more of the matters listed in subsection (2) within a period of 2 years;
- (u) a breach of any provision of Part II;
- (v) an act of discrimination or sexual harassment;
- (w) abuse of sick leave; and

(Amended in Revised Edition, 2014)

- (x) commission of an act of misconduct during the period for which a written warning is in effect.
- (2) Minor misconduct includes but is not limited to—
 - (a) use of obscene, abusive or insulting language while on duty;
 - (b) malingering on duty;
 - (c) failure to maintain official records as required;
 - (d) causing loss of or damage to Government property other than that considered as misconduct of a serious nature;
 - (e) misuse of the intranet, Internet and any other information or cellular technology or network;
 - (f) disorderly conduct;
 - (g) persistent unauthorised lateness.

Relation with criminal proceedings

73. (1) Where an officer is under investigation with a view to prosecution for an offence punishable with imprisonment, the Governor may exercise his powers under section 67(1) and section 67(2) shall have effect.

(2) Where section 67(1) applies by virtue of subsection (1) the senior officer shall make such inquiries of the authority conducting the investigation first referred to in subsection (1) as he may consider necessary, and may pursue his investigation notwithstanding any steps being taken by that authority.

(3) Where an officer has been charged with an offence punishable with imprisonment, the Governor shall consider whether to interdict the accused officer from the public service pending the determination of the proceedings and, if he does so, the officer shall during the period of interdiction receive one half of the salary otherwise payable to him, shall not be paid any allowances and shall not engage in any other employment, trade or occupation.

(4) An officer acquitted of a criminal charge may nevertheless be proceeded against and dealt with under this Part for any misconduct revealed in the course of the criminal proceedings or otherwise arising therefrom.

(5) An appeal in criminal proceedings shall not affect the operation of this Ordinance.

Decisions in favour of the officer

74. (1) Where the Governor determines all the allegations before him in favour of the accused officer, the officer shall be entitled to receive the amount of salary and allowances which he would have received had he not been suspended.

(2) Where disciplinary proceedings under this Part result in any penalty other than dismissal, the officer shall be allowed such salary and allowances, if any, as the Governor determines.

(3) An officer who is under suspension from duty or subject to interdiction shall not leave the Islands without the leave of the Governor.

Administrative leave

75. (1) The Governor may place an officer on administrative leave if the Governor determines that the public interest or good administration of the public service requires that the officer should immediately cease to perform the functions of his office.

(2) Where an officer is placed on administrative leave, the officer shall receive full pay.

(3) An officer who is under administrative leave from duty shall not leave the Islands without the leave of the Governor.

(4) For the purposes of this Ordinance administrative leave shall not be regarded as any form of disciplinary penalty.

Written warnings

76. (1) A written warning is an expression in writing of—

- (a) the misconduct for which the warning has been imposed;
- (b) the steps required of the officer to whom it is directed to prevent any repetition of the misconduct; and
- (c) the period during which the warning has effect and whether, if there is any further misconduct during that period, the officer is deemed guilty of gross misconduct and liable to dismissal.

(2) A written warning shall be given to the officer affected and a copy given to the Director, Human Resources.

Records to be kept

77. A written record shall be kept of any decision of the Governor under section 71 or 74 and a copy given to the Director, Human Resources.

Dismissal

Protection against unfair dismissal

78. (1) An officer shall only be dismissed for a valid reason.

(2) Where an officer is employed on a contract of fixed duration and the contracted period of employment comes to an end, it shall be deemed to be a valid reason in accordance with subsection (1).

Automatically unfair dismissal

79. (1) The following reasons shall not constitute valid reasons for dismissal or for the taking of disciplinary action under this Part—

- (a) an officer's race, sex, religion, colour, ethnic origin, national extraction, indigenous population, social origin, sexual orientation, political opinion, disability, family responsibilities, or marital status;

- (b) an officer's age, subject to any enactment in force in the Islands with respect to retirement;
- (c) a female employee's pregnancy or a reason connected with her pregnancy;
- (d) an officer's exercise of any of the rights specified in this Ordinance or any enactment relating to employment in force in the Islands;
- (e) an officer's temporary absence from work because of sickness or injury unless it occurs frequently and exceeds allocated leave entitlement;
- (f) the HIV status or presumed HIV status of an officer, unless, in the opinion of a registered medical practitioner, the officer presents a real risk to others;
- (g) an officer's absence from work due to civic obligations in accordance with any enactment in force in the Islands;
- (h) an officer's exercise or proposed exercise of the right to remove himself from a work situation which he reasonably believes presents an imminent or serious danger to his person, safety, health or life or to the safety, health or life of another person;
- (i) an officer's participation, in industrial action, including a strike in conformity with this Ordinance or any Ordinance relating to employment in force in the Islands;
- (j) the filing of a complaint or the participation in proceedings against the Government involving alleged violations of this Ordinance or of any enactment relating to employment in force in the Islands;
- (k) membership, previous membership or proposed membership of a trade union of an officer;
- (l) the fact that an officer has taken, or proposes to take part at any appropriate time in the activities of an independent trade union;
- (m) an officer's non-membership of a trade union, or of a particular trade union, or of one of a number of particular trade unions, or his refusal to become or remain a member of a trade union.

(2) In this section "appropriate time", in relation to an officer participating in the activities of a trade union, means time which either—

- (a) is outside his normal working hours; or
- (b) is a time within his normal working hours in accordance with arrangements agreed by the Governor.

Challenge to unfair dismissal

80. An officer who has been dismissed otherwise than in accordance with this Part may appeal against that dismissal to the Commission under Part VII on any of the grounds set out in section 79(1).

PART VII

APPEALS

Initiation of appeal

81. (1) An officer the subject of a decision relating to removal, dismissal or discipline may appeal against the decision to the Commission within 14 days of the date on which the decision was communicated to him.

(2) An appeal shall be made by notice in writing to the Director, Human Resources, and shall set out the grounds of review or appeal.

(3) The Director, Human Resources shall, within 7 days of the receipt of a notice under subsection (2), forward to the Commission copies of the notice, the report made under section 71(2) and the records made under section 77.

(4) An appeal shall not have the effect of suspending the decision appealed against pending the outcome of the appeal.

(5) No appeal shall lie to the Commission where the employment of an officer has ceased as a result of the abolition of a public office save for where an allegation is made that an action to abolish an office is not a genuine abolition of such office but is a discriminatory or disciplinary action in the disguise of an abolition of a post.

Procedure on appeal

82. (1) Where the Commission receives a notice of appeal under section 81(2) it shall—

(a) hear the appeal at the next meeting appointed under Schedule 1 which is not less than 14 days after the day on which it receives the documents referred to in section 81(3); and

(b) give not less than 10 days' notice of that date to the applicant.

(2) The appellant, not less than 5 days before the day set for the hearing of the appeal, shall make such written submissions to the Commission as he thinks fit and may seek the Commission's permission to make oral submissions by himself or by a person of his choice other than an attorney and the Commission's decision to grant or withhold such permission shall be final.

(3) The Commission shall hear the appeal by reference only to the written material placed before it together with any oral representations by or on behalf of the applicant as may be permitted and shall decide whether to recommend to the Governor that he uphold the decision, modify the decision or refer the decision back to the Permanent Secretary or Head of Department for further consideration.

(4) The Commission's decision and the reasons for it shall be reduced into writing and given to the Director, Human Resources, who shall provide copies to the Governor and the applicant.

(5) The Director, Human Resources, shall also provide the Governor with copies of the documents received by him under section 81(2).

(6) Where the Governor receives a recommendation on an appeal from the Commission pursuant to subsections (4) and (5), he shall consider all of the material submitted to him and make a determination.

(7) If the Governor, after considering the evidence under subsection (6) agrees with the recommendation, he shall notify the Commission and the Deputy Governor accordingly in writing.

(8) Where the Governor does not agree with the recommendation, he shall decide the matter in his discretion and notify the Commission and the Deputy Governor accordingly.

(9) The Governor's decision on an appeal shall be final.

(10) The Deputy Governor shall inform the appellant of the Governor's determination in writing.

PART VIII

GENERAL TERMS AND CONDITIONS OF EMPLOYMENT

Public Service Handbook

83. The Public Service Handbook may contain provisions governing the general terms and conditions of employment of public officers and employees.

Prohibition on other employment

84. (1) Subject to subsection (2) no officer shall undertake paid employment or pursue any other trade or occupation outside the public service without the permission of the Deputy Governor.

(2) The Public Service Handbook may make provision for the grant or withdrawal of the permission referred to in subsection (1) and may also specify any conditions to which the grant of permission may be subject.

Conflict of interest

85. (1) An officer shall not, directly or indirectly, be involved in any financial or other interest or undertaking which could or could appear to conflict with the duties or the performance of the duties of his office.

(2) Where an actual or potential conflict arises, the officer shall inform his Permanent Secretary or Head of Department.

(3) The Permanent Secretary or Head of Department shall assess the nature and degree of conflict and take such action as he considers appropriate to eliminate it, which may include assigning the officer to other duties, and inform the officer accordingly.

(4) An officer who is aggrieved by a decision made under subsection (3) may appeal to the Deputy Governor, who shall consider the issues and give such directions as he thinks fit and the Deputy Governor's decision under this section shall be final.

Honoraria

86. (1) No officer shall be paid nor accept an honorarium or any form of additional payment for performing work or services which are part of, or reasonably incidental to his normal duties.

(2) In exceptional circumstances and only with the permission of the Governor, an officer may be paid an honorarium for performing extraordinary services or work in the public service unrelated to his normal work duties.

PART IX

THE COMMISSION

General duties

87. (1) The Commission shall—

- (a) uphold the principles of merit, neutrality and integrity in the public service, and to that end shall from time to time issue and keep under review standards of conduct and ethics in the public service, monitor the implementation of such standards and provide advice on them;
- (b) ensure that standards of conduct and ethics issued under subsection (1)(a) are consistent with the Statement of Governance Principles and the Code of Conduct for Persons in Public Life for the time being in effect;
- (c) from time to time publish and keep under review a disciplinary policy for the public service, monitor its implementation and provide advice on it;
- (d) supervise and provide advice on the policies and programmes of the Government for the training of public officers and employees at all levels;
- (e) provide advice of a general nature on questions related to the pay and conditions of service of public officers and employees;
- (f) perform other such functions as may be conferred upon it by law or by Regulations made by the Governor under section 95, acting after consultation with the Commission.

(2) The Commission, in carrying out its functions under this Ordinance—

- (a) must be impartial, free of fear, favour or prejudice, ensuring transparency, fairness and justice;
- (b) shall regard the proper management of the public service including the development of the human resources of the public service, as its primary goal; and
- (c) shall have regard to the interest of effective and efficient public administration and a high standard of professional ethics in the public service.

Reports to other bodies

88. (1) Where any member of the Commission receives a complaint, report or information from or about an officer relating to unethical conduct as prescribed under Part II, he shall forthwith forward the report to the Integrity Commission, together with any observation he wishes to make.

(2) Where the Commission receives a report pursuant to section 18, it shall take such action as may seem to it to be appropriate and, if it considers that the information in its possession discloses criminal activity, may report that activity to a police officer.

(3) Subject to subsections (1) and (2), every member of the Commission shall keep all reports and other information received pursuant to Part II confidential.

Commission's duty of confidentiality

89. (1) Commissioners, officers of the Commission and any person who is lawfully connected with any business of the Commission shall regard and deal with any information relating to the business of any other person which he has obtained by virtue of being a Commissioner or by virtue of such connection as confidential and shall not, without authority, disclose such information or any official information that has been communicated in confidence within the Commission to them, or received in confidence from others.

(2) No person shall disclose or cause or require to be disclosed in any legal proceedings any information held in confidence by the Commission unless he has first obtained the written consent of the Governor to do so.

(3) A person who contravenes subsection (1) or (2) of this section shall be guilty of an offence and liable on conviction—

(a) on indictment to imprisonment for ten years or to a fine or to both; or

(b) on summary conviction to imprisonment for two years or a fine of \$50,000 or to both.

Protection of Commissioners and officers

90. (1) Subject to section 89, a Commissioner has, in the performance of his functions as a Commissioner, the same protection and immunity as a Judge of the Supreme Court has in the performance of his functions as a Judge.

(2) In this section, "Commissioner" includes any servant or agent of the Commission.

Improper influence

91. (1) No person shall directly or indirectly influence, cause to be influenced or seek to influence—

(a) any Commissioner;

(b) the Commission; or

(c) the Governor,

so as to impede the free and proper performance of any function conferred upon any of those persons by Part VI of the Constitution or the free and proper exercise of any discretion conferred upon any of those persons by that Part.

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable—

- (a) on conviction on indictment to imprisonment for ten years or to a fine or to both; or
- (b) on summary conviction to imprisonment for two years or a fine of \$50,000 or to both.

Giving false information

92. Any person who knowingly gives to the Commission or to a Commissioner or to any other person or authority with whom the Commission may lawfully consult, any false information in relation to any matter concerning or arising out of the duties of the Commission shall be guilty of an offence and liable on conviction—

- (a) on indictment to imprisonment for five years or to a fine or to both; or
- (b) on summary conviction to imprisonment for two years or a fine of \$25,000 or to both.

Proceedings of the Commission

93. Schedule 1 shall have effect with regard to the proceedings of the Commission.

PART X

MICELLANEOUS

Oaths of office

94. (1) The Chairman and other Commissioners shall as soon as possible after appointment, take the oath or make the affirmation set out in Schedule 2, and such oath or affirmation shall be administered by the Governor.

(2) Every person appointed a member of the staff of the Commission shall, as soon as possible after appointment, take the oath or make the affirmation set out in Schedule 2, and such oath or affirmation shall be administered by a Commissioner.

Power to make Regulations

95. (1) The Governor may make Regulations—

- (a) prescribing—
 - (i) increments; and
 - (ii) awards based on merit, ability and integrity;

(b) prescribing anything that is required to be prescribed under this Ordinance; and

(c) generally for giving effect to the provisions of this Ordinance.

(2) The Governor may make Regulations in respect of the training of officers.

Authority to make administrative orders

96. The Governor may make administrative orders to give effect to any provision of this Ordinance or to amend any Schedule of this Ordinance.

SCHEDULE 1

(Section 93)

Proceedings of the Commission

1. The Commission shall meet on not more than eighteen occasions in any calendar year for the purpose of performing its functions and such meetings shall be held on such days and at such time and place as the Commission shall determine. (*Amended by L.N. 46/2013*)

2. (1) At a meeting of the Commission three Commissioners shall constitute a quorum.

(2) All questions for discussion at a meeting of the Commission shall be decided by a majority of the votes of the Commissioners present and voting.

(3) The Chairman shall have an original vote, and in the event of an equality of votes, he shall have a second or casting vote.

3. (1) Notwithstanding section 5 but subject to paragraph (2), questions may also be decided by the Commission without a meeting by circulation of the relevant papers among Commissioners and the expression of their views in writing and in such case the decision shall be the view of the majority of Commissioners expressing a view.

(2) If any Commissioner requires that a matter or question being dealt with by circulation of the relevant papers shall be reserved for consideration at the next following meeting of the Commission, no decision shall be made on that matter or question except at a meeting of the Commission.

4. (1) The Secretary shall ensure that minutes of all meetings of the Commission and all decisions taken under section 6 are recorded and that copies of such minutes are presented for confirmation by the Commission as soon as practicable, to allow adequate time for consideration at the then next following meeting of the Commission.

(2) Any Commissioner who dissents from a decision may require that his dissent and reasons for dissenting be recorded in the minutes.

(3) When the form of the minutes is agreed, the Chairman shall sign one copy, and minutes purporting to be so signed shall be received in evidence without further proof and the meeting to which the minutes relate shall be deemed for all purposes to have been properly convened and held.

5. The Commission may require any officer to attend for the purpose of assisting the Commission in its deliberations and producing any official documents relating to such matter or question.

6. Failure without reasonable cause or excuse to appear before the Commission when required to do so, or to comply with any request made by the Commission, shall be misconduct for the purposes of Part VI.

SCHEDULE 2

(Section 94)

Form of Oaths and Affirmations of Office

1. Oath of allegiance

Ido swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. Affirmation of allegiance

Ido solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

3. Oath of office for member of Commission

Oath for the due execution of office of a member of the Commission

Ido swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in the office of member of the Commission. So help me God.

4. Affirmation of office for member of Commission

Affirmation for the due execution of office of a member of the Commission.

I.....do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in the office of member of the Commission.

5. Oath of office for member of staff of Commission

Oath for the due execution of office of a member of staff of the Commission

I.....do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in the office of member of staff of the Commission. So help me God.

6. Affirmation of office for member of staff of Commission

Affirmation for the due execution of office of a member of staff of the Commission

I.....do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in the office of member of staff of the Commission.

PUBLIC SERVICE (DELEGATION OF POWERS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Short title
2. Interpretation
3. Delegation of powers
4. Delegated powers to be exercised in accordance with Public Service Regulations
5. Reference to Deputy Governor
6. Appeals
7. Transitional provision
8. Revocation

SCHEDULE

PUBLIC SERVICE (DELEGATION OF POWERS) REGULATIONS – SECTION 90(5) OF THE CONSTITUTION

(Legal Notice 52/2012)

Commencement

[15 October 2012]

Short title

1. These Regulations may be cited as the Public Service (Delegation of Powers) Regulations.

Interpretation

2. In these Regulations—

“Commission” means the Public Service for the Turks and Caicos Islands established under section 89 of the Constitution;

“Constitution” means the Construction set out in Schedule 2 to the Turks and Caicos Constitution Order 2011 (S.I. 2011 No. 1681);

“Department” means a department established within the public service and includes any other organ or branch of the public service;

“disciplinary offence” means misconduct or gross misconduct by a public officer as set out in the Public Service Ordinance or the Disciplinary Policy;

“disciplinary penalty” means a penalty for a disciplinary offence and “misconduct penalty” and “gross misconduct penalty” have the meanings assigned to those expressions in the Public Service Ordinance;

“Disciplinary Policy” means the policy published by the Commission under section 92(3) of the Constitution;

“established office” means an office determined by the Governor acting on the advice of the Commission to be permanent;

“Handbook” means the Handbook for the Governance of the public service of the Turks and Caicos Islands;

“Head of Department” means the officer who manages and supervises a Department;

“non-established office” means an office that is not an established office;

“office” means a public office within the meaning given to that expression by section 131(1) of the Constitution; and

“officer” means the holder of an office.

Delegation of powers

3. The powers vested in the Governor by sections 90(1) and (2) of the Constitution to make appointments to the public offices specified in Column 1 of the Schedule and to remove or exercise disciplinary control over persons holding or acting in such offices are hereby delegated to the officer specified in Column 2 to the extent set out in Column 3 and subject to the conditions set out in Column 4.

Delegation of powers to be exercised in accordance with the Public Service Ordinance

4. The officer to whom powers are delegated under these Regulations shall, in exercising those powers, act in accordance with the Public Service Ordinance, the Handbook and the Disciplinary Policy as if references therein to the Governor were references to the officer.

Reference to the Deputy Governor

5. Where any power is by these Regulations delegated to any officers acting jointly, if those officers fail to agree on the exercise of the power the matter shall be referred to the Deputy Governor and the Deputy Governor shall exercise the power.

Appeals

6. The holder of an established office who is aggrieved by any disciplinary penalty imposed on him or her by an officer to whom powers are delegated under these Regulations may appeal to the Commission in accordance with the Public Service Ordinance:

Provided that where provision is made for an appeal in any statutory instrument specified in Column 4 of the Schedule relating to the exercise of disciplinary control, that provision shall apply.

SCHEDULE*(Regulations 3 and 6)***DELEGATION OF POWERS**

Column 1 Office	Column 2 Delegated Officer	Column 3 Extent of Delegation	Column 4 Conditions of Delegation
Any office except the office of permanent secretary, deputy secretary or head of department	Deputy Governor and permanent secretary	All of the powers of the Governor to appoint to public offices under section 90(1) of the Constitution	
Any office except the office of permanent secretary, deputy secretary or head of department	permanent secretary (gross misconduct) and head of department (misconduct)	All of the powers of the Governor to remove or exercise disciplinary control under section 90(2) of the Constitution	
Deputy secretary	Deputy Governor	All of the powers of the Governor to— (a) appoint to public offices under section 90(1) of the Constitution ; and (b) remove or exercise disciplinary control under section 90(2) of the Constitution.	

