



REPUBLIC OF KENYA

# ***KENYA GAZETTE SUPPLEMENT***

**ACTS, 2011**

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**NAIROBI, 10th October, 2011**

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## **SCHEDULE**

**FIRST SCHEDULE — OATH OF OFFICE**

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OF THE COMMISSION**

2011

**AN ACT of Parliament to make further provisions for the functions and powers of the National Police Service Commission; the qualifications and procedures for appointment, and for connected purposes**

**ENACTED by the Parliament of Kenya, as follows—**

**PART I—PRELIMINARY**

**1.** This Act may be cited as the National Police Service Commission Act, 2011.

Short title.

**2.** In this Act, unless the context otherwise requires—

Interpretation.

“Association of Professional Societies of East Africa” means the association of that name registered under the Societies Act;

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“chairperson” means the chairperson of the Commission appointed under the Constitution and section 6 of this Act;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to policing;

“Commission” means the National Police Service Commission established under Article 246 of the Constitution;

“Deputy Inspectors-General” means the Deputy Inspectors-General appointed in accordance with Article 245 of the Constitution;

“disciplinary action” means imposition of any punishment against a member of staff of the Service on account of breach of any code of conduct;

“member” means a member of the Commission appointed in accordance with section 6;

“Secretary” means the Secretary appointed under section 15;

“Service” means the National Police Service established under Article 243 of the Constitution;

“Police officer” has the same meaning assigned to it in the National Police Service Act;

“Inspector-General” means the Inspector-General appointed in accordance with article 245 of the Constitution and this Act;

“member of staff” includes civilian members of staff of the Service.

## PART II— COMPOSITION AND ADMINISTRATION

Further powers of the Commission.

3.(1) In addition to the powers of the Commission under Article 253 of the Constitution, the Commission shall have power to—

- (a) acquire, hold, charge and dispose movable and immovable property; and
- (b) do or perform all such other things or acts for the proper discharge of its functions under the Constitution, this Act or any written law, as may lawfully be done or performed by a body corporate.

(2) The headquarters of the Commission shall be in Nairobi, but the Commission may establish branches at any place in Kenya.

Membership of the Commission.

4.(1) The Commission shall consist of nine members appointed in accordance with the Constitution and the provisions of this Act.

(2) The chairperson and the members of the Commission, other than ex-officio members, shall serve on a full-time basis.

5.(1) A person shall be qualified for appointment as chairperson or a member if such person—

Qualification for appointment of chairperson and members.

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) meets the requirements of Chapter Six of the Constitution, and
- (d) is not, and has not previously been a member of the National Police Service.

(2) For purposes of Article 246 (2) (a) (ii) of the Constitution, the President shall appoint two retired senior police officers, one each from the Kenya Police Service and the Administration Police Service, and who shall be of opposite gender.

(3) A person shall not be qualified for appointment under subsection (2) unless the person held the rank of senior superintendent of police or above.

(4) A person shall be qualified for appointment as a member under Article 246 (2) (a) (iii) of the Constitution if the person possesses the following additional qualifications—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least ten years experience in any of the following disciplines—
  - (i) finance and administration;

- (ii) economics;
- (iii) human resources development and management;
- (iv) public administration;
- (v) labour laws;
- (vi) economics;
- (vii) law;
- (viii) human rights;
- (ix) ethics and governance;
- (x) mediation and consensus building; and
- (xi) change management.

- (c) meets the requirements of Chapter Six of the Constitution;
- (d) is not and has not previously been a member of the National Police Service; and
- (e) has had a distinguished career in their respective fields.

(5) A person shall not be qualified for appointment as a chairperson or member if the person—

- (a) is or has been at any time within the previous five years a member of Parliament or a county assembly;
- (b) other than the Inspector-General or Deputy Inspectors-General, is a serving State officer;
- (c) is a member of a governing body of a political party;

- (d) is an undischarged bankrupt;
- (e) has been convicted of a felony; or
- (f) has been removed from office for contravening the provisions of the Constitution or any other law.

(6) Subsection (5) (a) shall cease to apply to a person after one general election for Parliament has been held since the person ceased to hold such office.

6. (1) The President shall, within fourteen days after the commencement of this Act, constitute a selection panel comprising one person from each of the following bodies respectively —

Appointment of the chairperson and members.

- (a) the Office of the President;
- (b) the Office of the Prime Minister;
- (c) the Judicial Service Commission;
- (d) the Commission for the time being responsible for matters relating to anti-corruption;
- (e) the Kenya National Commission on Human Rights;
- (f) the Commission for the time being responsible for matters relating to gender; and
- (g) the Association of Professional Societies in East Africa

(2) The Public Service Commission shall —



- (a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among their number, and
- (b) provide the selection panel with such facilities and other support as it may require for the discharge of its functions.

(3) The selection panel shall, within seven days of its convening, by advertisement in at least two daily newspapers of national circulation, invite applications from persons who qualify for nomination and appointment for the position of the chairperson and members of the Commission under Article 246(2) (a) of the Constitution and this Act.

(4) The selection panel shall —

- (a) consider the applications received under subsection (3) to determine their compliance with the provisions of the Constitution and this Act;
- (b) short list the applicants;
- (c) publish the names of the shortlisted applicants and the qualified applicants in at least two daily newspapers of national circulation; and
- (d) conduct public interviews of the shortlisted persons;
- (e) shortlist three qualified applicants for the position of chairperson;
- (f) shortlist eight qualified applicants for the position of the members of the Commission; and

- (g) forward the names of the qualified persons under paragraph (e) and (f) to the President

(5) The President shall, if he approves, within fourteen days of receipt of the names of successful applicants forwarded under subsection (4) (g), select the chairperson and members of the Commission and forward the names of the persons so selected to the National Assembly for approval.

(6) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the applicants under subsection (5), vet and consider all the applicants, and may approve or reject any or all of them.

(7) Where the National Assembly approves of the applicants, the Speaker of the National Assembly shall forward the names of the approved applicants to the President for appointment.

(8) The President shall, within seven days of receipt of the approved applicants from the National Assembly, by notice in the Gazette, appoint the chairperson and members approved by the National Assembly.

(9) Where the National Assembly rejects any nomination, the Speaker shall within three days communicate its decision to the President and request the President to submit fresh nominations.

(10) Where a nominee is rejected by the National Assembly under subsection (9), the President shall within seven days, submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under subsection (5).

(11) If the National Assembly rejects any or all of the subsequent nominees submitted by the President for approval under subsection (10), the provisions of

subsections (1) to (6) shall apply.

(12) In shortlisting, nominating or appointing persons as chairperson and members of the Commission, the selection panel, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender.

(13) The selection panel may, subject to this section, determine its own procedure.

(14) After the first general elections under the Constitution, the member of the selection panel under subsection (1)(b) shall be replaced by a representative of the Public Service Commission.

(15) The selection panel shall stand dissolved upon the appointment of the chairperson and members under subsection (9).

(16) Where the provisions of subsection (11) apply, the selection panel shall continue to exist but shall stand dissolved upon the requisite appointments being made under subsection (12).

Oath of office.

7. (1) The Chairperson, the members and the Secretary shall each make and subscribe to the oath or affirmation set out in the First Schedule before the Chief Justice.

(2) The members of the Commission shall at their first meeting elect a vice-chairperson from among the members referred to in section 5 (4).

Vacancy.

8. (1) The office of the chairperson or a member shall become vacant if the holder —

(a) dies;

(b) resigns from office by notice in writing addressed to the President; or

(c) is removed from office —

- (i) for failure to meet the requirements of Chapter Six of the Constitution, or
- (ii) under any of the circumstances specified in Article 251 of the Constitution.

9. (1) Where a vacancy occurs in the membership of the Commission, the President shall appoint a replacement in accordance with section 6.

Filling of a vacancy.

(2) A member appointed under subsection (1) shall serve the Commission for a term of six years.

10.(1) In addition to the functions of the Commission under Article 246(3) of the Constitution, the Commission shall—

Functions of the Commission.

- (a) keep under review all matters relating to standards or qualifications required of members of the Service;
- (b) with the advice of the Salaries and Remuneration Commission, determine the appropriate remuneration and benefits for the Service and staff of the Commission;
- (c) approve applications for engagement by police officers in trade and other businesses, in accordance with the law relating to matters of leadership and integrity under Article 80 of the Constitution;
- (d) co-operate with other State agencies, departments or commissions on any matter that the Commission considers necessary;

- (e) provide for the terms and conditions of service and the procedure for recruitment and disciplinary measures for civilian members of the Service;
- (f) develop fair and clear disciplinary procedures in accordance with Article 47 of the Constitution;
- (g) investigate and summon witnesses to assist for the purposes of its investigations;
- (h) exercise disciplinary control over persons holding or acting in office in the Service;
- (i) promote the values and principles referred to in Articles 10 and 232 of the Constitution throughout the Service;
- (j) ensure that the Service is efficient and effective;
- (k) hear and determine appeals from members of the Service;
- (l) develop policies and provide oversight over training in the Service;
- (m) approve training curricula and oversee their implementation;
- (n) investigate, monitor and evaluate the organization, administration and personnel practices of the Service;
- (o) receive and refer civilian complaints to the Independent Policing Oversight Authority, the Kenya National Human

Rights and Equality Commission, the Director of Public Prosecutions or the Ethics and Anti-Corruption Commission, as the case may be, where necessary;

- (p) review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the Service;
- (q) evaluate and report to the President and the National Assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the Service;
- (r) monitor and evaluate the performance of the Service;
- (s) receive complaints and recommendations from police associations registered in accordance with the applicable law;
- (t) perform such other functions as are provided for by the Constitution, this Act or any written law.

(2) Subject to the provisions of the Constitution or any written law, the Commission may delegate to the concerned Inspector-General the recruitment, appointment and promotion of police officers under the rank of sergeant:

Provided that the Inspector-General shall, during such recruitment, appointment or promotion, take into account gender, county and ethnic balancing.

(3) Notwithstanding subsection (2), the Commission shall not delegate any of the following functions—

- (a) the making of any regulations, rules, code of conduct or subsidiary legislation under this Act or any other written law;
- (b) the making and submitting of any report to the President and the National Assembly; and
- (c) the performance of any function the delegation of which would amount to unjustified delegation of the Commission's discretion.

(4) The Commission shall monitor the operations of the Service to ensure efficiency and effectiveness of the Service and the quality and standards of services rendered.

(5) A delegation under this Act shall—

- (a) be in writing;
- (c) be subject to any conditions the Commission may impose; and
- (d) not divest the Commission of the responsibility concerning the exercise of its powers or the performance of the duty delegated.

Powers of the  
Commission.

11.(1) The Commission shall have all the powers necessary for the execution of its functions under the Constitution and this Act, and, without prejudice to the generality of the foregoing, the powers to—

- (a) gather, by any means it considers appropriate, any information and compel the production of such information as and when necessary;
- (b) interview persons for purposes of filling vacancies in the Service taking into consideration gender, county and ethnic balancing;

- (c) manage and safeguard the assets of the Commission;
- (d) hold disciplinary hearing proceedings for the purposes of performing its functions under this Act;
- (e) require the Inspector-General to report on the implementation of the policies and procedures within the mandate on the Commission;
- (f) conduct investigations on any matters within its mandate;
- (g) make recommendations to the Government on any matter relating to the Service and report on the action taken by the Government on the recommendation;
- (h) conduct public inquiries and publish the outcome of such inquiries;
- (i) issue summons to witnesses; and
- (j) take lawful disciplinary action on any officer under its control.

(2) In the performance of its functions, the Commission shall—

- (a) inform itself in such manner as it thinks fit;
- (b) receive written or oral statements; and
- (c) not be bound by the strict rules of evidence.

12. In the exercise of the powers or the performance of the functions conferred by this Act, the Commission shall—

Standard of service.



- (a) strive for the highest standards of professionalism and discipline among the members of the Service;
- (b) prevent corruption, and promote and practise transparency and accountability;
- (c) comply with the constitutional standards of human rights and fundamental freedoms;
- (d) observe the constitutional principles set out under Chapter Thirteen of the Constitution; and
- (e) foster and promote relationships with the broader society.

Committees of the Commission.

**13.** (1) The Commission may establish committees for the better carrying out of its functions.

(2) The Commission may co-opt into the membership of committees established under subsection (1) other persons whose knowledge and skills are found necessary for the functions of the Commission.

(3) Any person co-opted into the Commission under subsection (2) may attend the meetings of the Commission and participate in its deliberation, but shall have no power to vote.

Procedures of the Commission.

**14.** (1) The business and affairs of the Commission shall be conducted in accordance with the Second Schedule.

(2) Except as provided in the Second Schedule, the Commission may regulate its own procedure.

Appointment of Secretary.

**15.** (1) The Commission shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the Secretary to the

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Commission and to serve on such terms and conditions as the Commission may determine.

(2) A person is qualified for appointment as the Secretary of the Commission if the person—

- (a) is a citizen of Kenya;
- (b) holds a postgraduate degree from a University recognized in Kenya;
- (c) has had at least ten years' proven experience at management level;
- (d) has proven relevant experience in any of the following fields—
  - (i) management;
  - (ii) law;
  - (iii) economics;
  - (iv) change management;
  - (v) finance;
  - (vi) governance; or
  - (vii) public administration; and
- (e) meets the requirements of Chapter Six of the Constitution.

(2) The Secretary shall be a State officer for the purposes of Article 260 of the Constitution.

(3) Before assuming office, the Secretary shall take and subscribe to the oath of office prescribed under the First Schedule.

(4) The Secretary shall hold office for a term of five years and shall be eligible for re-appointment for one further term.

(5) Where the Commission does not intend to re-appoint the Secretary, the Commission shall cause the vacancy to be advertised at least three months before the expiry of the incumbent's term.

(6) The Secretary shall, in the performance of the functions and duties of office, be responsible to the Commission.

(7) The Secretary shall be—

(a) the chief executive officer of the Commission;

(b) the accounting officer of the Commission;

(c) responsible for-

(i) acting on the decisions of the Commission;

(ii) the implementation of the functions of the Commission;

(iii) the formulation and development of an efficient administration;

(iv) the organization, control and management of the members of staff of the Commission;

(v) day-to-day administration and management of the affairs of the Commission;

- (vi) the performance of such other duties as may be assigned by the Commission.

16.(1) The Secretary may be removed from office by the Commission for—

Removal of Secretary.

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehavior;
- (c) incompetence; or
- (d) violation of the Constitution.

(2) Before removal under subsection (1), the Secretary shall be—

- (a) informed in writing of the reasons for the intended removal;
- (b) given an opportunity to put in a defence against any such allegations either in person or through an advocate.

17. (1) The Commission may appoint such officers and staff as may be necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine, taking into account gender, county and ethnic balancing.

Appointment of Staff.

(2) The Public Service Commission may, upon request by the Commission, second to the Commission such number of public officers as may be necessary for the purposes of the Commission.

(3) A public officer seconded to the Commission shall, during the period of secondment, be deemed to be an

officer of the Commission and shall be subject only to the direction and control of the Commission.

### PART III — FINANCIAL PROVISIONS

Funds of the  
Commission.

18. (1) The funds of the Commission shall consist of—

- (a) monies appropriated by Parliament for the purposes of the Commission;
- (b) such monies or assets as may accrue to the Commission in the course of the exercise of its powers or the performance of its functions under this Act; and
- (c) all monies from any other source provided or donated or lent to the Commission.

(2) Any funds donated or lent to, or gift made to the Commission shall be disclosed and made public.

Financial year.

19. The financial year of the Commission shall be the period of twelve months commencing on the first of July and ending on the thirtieth of June of the subsequent year.

Annual estimates.

20. (1) Before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Commission for the financial year concerned and in particular, shall provide for the —

- (a) payment of remuneration in respect of the members and staff of the Commission;

- (b) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Commission;
- (c) maintenance of the buildings and grounds of the Commission;
- (d) funding of training, research and development activities of the Commission; and
- (e) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Commission may think fit.

(3) The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for tabling in Parliament.

21.(1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Commission.

Accounts and audit.

(2) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the Public Audit Act.

Act 12 of 2003.

#### PART IV — MISCELLANEOUS PROVISIONS

22. (1) The common seal of the Commission shall be kept in such custody as the Commission shall direct and shall not be used except on the order of the Commission.

The common seal of the Commission.

(2) The common seal of the Commission when

affixed to a document and duly authenticated shall be judicially and officially noticed and unless the contrary is proved, any necessary order or authorization of the Commission under this section shall be presumed to have been duly given.

Protection from  
personal Liability.

**23.** No matter or thing done by the chairperson, a member of the Commission or any officer, employee or agent of the Commission shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Commission, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

Privileged  
communication.

**24. (1)** The chairperson, a member of the Commission or any officer, employee or agent of the Commission or any person retained by the Commission in an advisory capacity, shall not be competent or compellable to appear as a witness in any legal proceedings in respect of any information obtained in the discharge of any function of the Commission.

**(2)** A person shall not, in any proceedings, be permitted or compelled to produce or disclose any communication, written or oral, which has taken place in the Commission, or between the Commission and any member of the Commission or staff of the Commission or between the members of the Commission and staff of the Commission, in the performance of the functions or exercise of the powers of the Commission under the Constitution, this Act or any written law.

Penalty for giving  
false information to  
the Commission.

**25.** Any person who—

- (a) in connection with an application, by himself or herself for employment, nomination or recommendation for appointment, confirmation in appointment, promotion, deployment or transfer in the Service; or

- (b) in connection with any matter upon which it is the duty of the Commission to require information or evidence, or into which it is the duty of the Commission to inquire,

willfully gives to the Commission any information which is false or misleading in any material particular, commits an offence and shall on conviction be liable to a fine not exceeding two hundred thousand or to imprisonment for a term not exceeding two years or to both.

**26.** (1) The Commission shall cause an annual report to be prepared for each financial year.

Annual report.

(2) The Commission shall submit the annual report to the President and the National Assembly three months after the end of the year to which it relates.

(3) The annual report shall contain, in respect of the year to which it relates—

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) such other statistical information as the Commission may consider appropriate relating to the Commission's functions;
- (d) any recommendations made to the Inspector-General, State department or any person and the action taken;
- (e) the impact of the exercise of any of its mandate or function;
- (f) the progress and the welfare of the members of the Service, including matters relating to housing, insurance, safety, equipments and the conditions of service;



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- (g) any impediments to the achievements of the objects and functions under the Constitution, this Act or any written law;
- (h) the evaluation of the administration of the National Police Service;
- (i) the gender, county regional and ethnic diversity in the Service; and
- (j) any other information relating to its functions that the Commission considers necessary.

(4) The Commission shall cause the annual report to be published and the report shall be publicized in a manner as the Commission may determine.

Offences.

27. (1) A person shall not —

- (a) obstruct, hinder, or threaten a member or staff of the Commission acting under this Act;
- (b) submit false or misleading information to the Commission, or
- (c) knowingly misrepresent anything to mislead, a person acting under the Authority of the Commission under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

Regulations.

28. The Commission may make regulations generally for the better carrying into effect of any provisions of this Act, and in particular to provide for—

- (a) appointments, confirmation of appointments, promotions and termination of appointments;
- (b) discipline;
- (c) appeals;
- (d) code of conduct for the Service;
- (e) training of members of the Service;
- (f) recruitment and transfers;
- (g) anti-discrimination;
- (h) affirmative action;
- (i) safety equipment;
- (j) ethics and anti - corruption;
- (k) dealing with conflict of interest;
- (l) information to be provided by the applicants;
- (m) tests to be undertaken by the applicants, and
- (n) vetting of applicants by the Commission.

**29.** The Commission shall, within one year of its establishment develop a code of conduct for its members of staff.

Code of conduct.

**30.** Before the first general elections after the promulgation of the Constitution, the appointments of the chairperson and members of the Commission shall be made in consultation with the Prime Minister.

Transitional.

**FIRST SCHEDULE**

(s. 7)

**OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/  
MEMBER/SECRETARY**

I ..... having been appointed (the Chairperson/ Vice Chairperson/member of /Secretary to) the National Police Service Commission do swear/ solemnly affirm that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge the trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said .....

Before me this ..... Day of .....

.....  
Chief Justice.

**SECOND SCHEDULE**

(s. 14)

**CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMISSION**

Meetings.

1.(1) The Commission shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.

(2) Meetings shall be convened by the Secretary in consultation with the chairperson.

(3) Unless three quarters of the members otherwise agree, at least seven days' notice of a meeting shall be given to every member.

(4) The chairperson shall preside at all meetings of the Commission and in the absence of the chairperson, the vice-chairperson shall preside.

(5) In the absence of both the chairperson and the vice-chairperson, the members present and forming a quorum shall elect one of their numbers to preside over the meeting of the Commission.

2. (1) If a person is directly or indirectly interested in any contract, proposed contract or other matter before the Commission and is present at a meeting of the Commission at which the contract, proposed contract or other matter is the subject of consideration, the member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter or be counted in the quorum of the meeting during consideration of the matter.

Conflict of  
interest.

(2) A member or staff of the Commission whose personal interest conflicts with their official duties shall—

- (a) in writing, declare the personal interest to their supervisor or other appropriate person or body and comply with any directions given to avoid the conflict; and
- (b) refrain from participating in any deliberations with respect to the matter.

(3) A member or staff of the Commission shall not award a contract or influence the award of a contract to—

- (a) themselves;
- (b) a spouse or relative;
- (c) a business associate; or
- (d) a corporation, partnership or body in which the member has an interest.

(4) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.