

LEGAL NOTICE NO 218

**THE NATIONAL POLICE SERVICE (VETTING)
REGULATIONS, 2013**

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the Service; and

- (b) ensure that the Service complies with Chapter Six of the Constitution and the principles of public service as set out in Article 232 of the Constitution and in the Public Officer Ethics Act.

No.4 of 2003.

Principles of vetting.

4. In conducting the vetting process, the Commission shall be guided by the following principles—

- (a) subject to regulation 8, all officers of the Service shall undergo vetting, individually;
- (b) the vetting process shall be implemented consistently and the same procedural principles shall be applied in all cases;
- (c) vetting shall be done in accordance with the values and principles set out in Articles 10, 27, 47, 50 and 232 of the Constitution;
- (d) vetting shall take into account the need to protect national security as defined in Article 238 of the Constitution of Kenya;
- (e) the Commission shall be guided by the principles and standards

of impartiality, natural justice and international best practice;

(f) the vetting process shall not be bound by strict rules of evidence and the proof applicable shall be that of a balance of probabilities;

(g) vetting shall be done in a transparent manner allowing for the person undergoing vetting to know and assess the information that has been used by the Commission to reach its decision.

Public proceedings.

5. (1) The vetting process shall be open to the public provided that the Commission may decide to hold in camera proceedings in order to protect the right of privacy of any person in the vetting process or if it is in the interest of justice or national security.

(2) An officer subject to vetting may apply for the proceedings to be held in camera on any of the grounds listed in sub-regulation (1), and the Commission shall determine whether to grant such application or not.

Conflict of interest.

6. (1) A panel member shall declare any interest the member has with respect to any officer in whose vetting the member is involved.

(2) Where—

(a) a panel member discloses that the member is subject to a conflict of interest in relation to any officer to

be vetted; or

- (b) it is disclosed by any person that there exists conflict of interest with respect to any panel member,

the Commission shall determine whether such interest may interfere with its deliberations as to the suitability and competence of the officer in question and where the Commission determines conflict of interest thereof, the panel member shall withdraw from the deliberations of the Commission in respect of that officer.

Determination of suitability and competence.

7. The Commission shall, while determining the competence and suitability of an officer, consider the officer's record, conduct and performance in the present position and in any other previous position.

Officers may retire voluntarily.

8. (1) An officer may decide to voluntarily retire from the Service before being vetted and shall inform the Commission of the decision to retire, in writing.

(2) An officer who has voluntarily retired under paragraph (1) shall not be vetted.

(3) Where an officer has voluntarily retired in the manner set out in paragraph (1), the Commission shall make retirement arrangements for such officer.

**PART III—THE VETTING
PROCESS**

Powers of the
Commission and
panels.

9. (1) The Commission and every panel established under regulation 10 shall have all the powers necessary for the execution of its functions under the Act and these Regulations.

(2) Without prejudice to the generality of paragraph (1), the Commission and the panel shall have the power to—

- (a) gather relevant information, including requisition of reports, records, documents or any information from any source, including governmental authorities, and to compel the production of such information as and when necessary;
- (b) interview any individual, group or members of organizations or institutions;
- (c) hold inquiries for the purposes of performing its functions under the Act or these Regulations; and
- (d) conduct investigations to establish the veracity of information received.

(3) In the performance of its functions, the Commission and the panel—

- (a) may inquire on any issue in such manner as it thinks fit; and
- (b) may receive on oath, written or

oral statements.

(4) The Commission may make any orders for the purpose of preserving, inspecting, staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of any property or evidence relating to any proceedings before it.

Vetting panels. **10.** (1) The Commission may, in order to ensure expeditious disposal of matters, constitute such number of panels and comprising such persons as the Commission shall determine.

(2) The Commission may establish panels comprising such number of its members and co-opted persons as it may deem necessary for the purpose of determining applications for review under regulation 33.

Sequence of vetting. **11.** The Commission shall determine the sequence of the vetting process.

Sittings of the Commission. **12.** The Commission and a panel may sit at such times and place as the Commission or the panel, as the case may be, shall determine.

Officers to submit documents. **13.** An officer shall within such period as the Commission determines submit documents as required by the Commission including—

- (a) a self-assessment form as prescribed by the Commission;
- (b) the officer's national identity card;
- (c) the officer's certificate of appointment;

- (d) academic certificates;
- (e) a duly completed declaration of income, assets and liabilities;
- (f) bank statements for the last two years of all bank accounts ,personal and business, that the officer, his spouse and dependents under the age of eighteen have maintained;
- (g) a certificate of tax compliance; and
- (h) any other or such document that the Commission may deem fit and necessary for the furtherance of the vetting process.

Vetting standards

14. (1) In vetting an officer, the Commission shall consider, assess and determine the suitability and competence of the officer.

(2) The Commission shall, in determining the suitability and competence of an officer, consider—

- (a) whether the officer meets the constitutional or other criteria required by law for recruitment and appointment of an officer;
- (b) the past record of an officer including conduct, discipline and diligence;
- (c) the integrity and financial probity

of the officer; and

- (d) the human rights record of the officer.

Sources of information.

15.(1) The Commission shall request for, and may use information received from the public and any other source, including—

- (a) individual citizens;
- (b) the Law Society of Kenya;
- (c) the Ethics and Anti-Corruption Commission;
- (d) the office of the Attorney-General;
- (e) the office of the Director of Public Prosecutions;
- (f) the Public Complaints Standing Committee;
- (g) the Kenya National Human Rights Commission;
- (h) the Commission on Administrative Justice;
- (i) the Independent Policing Oversight Authority;
- (j) the National Gender and Equality Commission;
- (k) the National Intelligence Service;
- (l) the National Police Service;
- (m) a Commission of Inquiry appointed under the Commissions of Inquiry Act, or a report thereof;
- (n) civil society organisations;
- (o) Parliament; or

(p) any other source, body or organisation.

(2) The Commission shall specify the period within which every person or body referred to in paragraph (1) shall confirm the existence of any complaint or other relevant information filed with such person or body against an officer.

Information from the general public. **16.**(1) Information from members of the public may be—

- (a) oral or written;
- (b) received by the Commission in public, in camera or delivered anonymously.

(2) The Commission shall determine the usefulness of the information towards assessing the suitability and competence of an officer.

Service of notice. **17.**(1) Any notices issued by the Commission under these Regulations shall be served upon an officer through—

- (a) personal service; or
- (b) any other manner which the Commission considers appropriate.

(2) A copy of the notice and record of its service shall be placed in the file of the officer concerned.

Supply of information and response to complaints. **18.** (1) An officer shall fully and truthfully supply all information required regarding the officer's suitability and competence.

(2) Where a complaint or any adverse information has been received by the Commission against an officer, a summary of the complaint including any relevant documentation pertaining to that complaint as received by the Commission, and on which the Commission intends to rely in the process shall be served upon the officer.

(3) Where a summary of the complaint has been served upon an officer, the officer shall lodge a response to the complaint within the period specified by the Commission in the notice.

(4) The response shall contain a summary of the material facts and any relevant documents and information, on which the officer wishes to rely on, in response to the complaint.

Default.

19. An officer is in default, if the officer fails to—

- (a) comply with a notice of the Commission or a panel of the Commission;
- (b) file or serve a document as directed by the Commission or as required by these Regulations; or
- (c) do any act required to be done by these Regulations.

Failure to participate in vetting.

20. Where an officer willfully refuses to attend the vetting process by—

- (a) failing to appear before the Commission; or

(b) failing to obey an order of the Commission in respect to the vetting process,
and as the result the vetting process becomes compromised or impaired, the Commission shall treat such officer as having failed the vetting process and shall remove the officer from the Service.

Provision of information by complainant.

21. A person who has lodged a complaint against an officer may be required to furnish additional information to the Commission.

Inherent powers of the Commission.

22. Nothing in these Regulations shall limit or otherwise affect the inherent powers of the Commission either to make such orders as may be necessary for the fair and expeditious disposal of a case or to do justice to the parties or to prevent an abuse of its process.

Extension of time.

23. A time fixed by these Regulations or by any decision of the Commission may be extended with the leave of the Commission.

Powers of Commission in relation to service of documents.

24. Nothing in these Regulations affects the power of the Commission, if the interest of justice requires, to—

- (a) authorize service of a document in a manner not expressly provided for in these Regulations; or
- (b) find that a document served in a manner not expressly provided in these Regulations has been duly served.

Decisions of the Commission.

25. (1) At the conclusion of the vetting the Commission shall make a decision whether the officer vetted was found suitable and competent for continued service or was found to be unsuitable or incompetent.

(2) Decisions of the Commission shall be made by consensus or a majority vote.

(3) In the event of equality of votes, the Chairperson shall have a second casting vote.

(4) Decisions shall be recorded in writing, signed by all Commissioners who decided the matter and sealed with the common seal of the Commission.

(5) Where a Commissioner is unable to sign the decision, the reason shall be recorded, and the decision signed by the other Commissioners.

(6) Decisions of the Commission shall first be communicated to the concerned officer and then made public.

(7) An officer who has been determined as unsuitable or incompetent shall be provided upon the announcement with the written decision including the reasons for the decision.

Absence of an officer.

26. Where an officer is for any justifiable cause unable to continue participating in the vetting process, the Commission shall make note of that fact and allow the officer to participate in the process as soon as the officer is able to do so.

Confirmation of appointment after vetting.

27. The Commission shall in accordance with Article 246 (3) (a) of the Constitution issue a certificate of confirmation of appointment to an officer who is found suitable and competent to work in the Service.

Commission may utilize services of public officers, etc.

28. (1) The Commission may, for purposes of conducting an investigation on any matter alleged or otherwise brought to its attention, utilize the services of any officer, investigation agency of the Government or any expert as it considers necessary.

(2) For the purpose of investigating into any matter, an officer, agency or other person whose services are utilized under paragraph (1) may, subject to the direction and control of the Commission—

(a) require the attendance of the person and interview that person;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The provisions with respect to exemption from liability shall apply in relation to any statement made by a person before any officer or agency whose services are utilized under paragraph (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilized under paragraph (1) shall submit a report to the Commission within such period as may be specified by the Commission.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the

conclusion, if any, arrived at in the report submitted to it under paragraph (4) and for this purpose the Commission may make such inquiry ,including the examination of the person or persons who conducted or assisted in the investigation ,as it considers fit.

Statement made by persons to a panel, etc.

29. (1) A statement made by a person in the course of giving evidence before the Commission in the vetting process shall not subject that person to, or be used against that person in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

(2) The statement under paragraph (1) shall be—

- (a) made in reply to the question which the person is required by the Commission to answer; or
- (b) relevant to the subject matter of the inquiry.

Persons likely to be prejudicially affected to be heard.

30. If at any stage of the vetting process, the Commission—

- (a) considers the conduct of any person is relevant and that it is necessary to inquire into the conduct of that person; or
- (b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the proceedings of the panel,

the panel shall give that person reasonable opportunity to be heard before

the Commission.

Protection from
personal liability.

31. (1) An employee or any person acting or discharging duties or functions of a panel shall not be personally liable to any civil action or other proceedings for damages on account, or in respect, of any act committed or omitted to be done in good faith.

(2) This regulation shall not relieve the Commission from any liability to any person for any wrongful act or omission of the Commission or a panel.

Removal from the
Service.

32. (1) An officer who failed the vetting shall be removed from the Service.

(2) An officer removed from the Service under paragraph (1) shall be entitled to benefits as if the officer had retired from the Service and in accordance with the relevant labour laws.

Review of decision.

33. (1) An officer who has been found unsuitable or incompetent may, within seven days after being informed of the decision, request for a review of the decision by the Commission.

(2) The Commission shall not grant a request for review unless the request is based—

- (a) on the discovery of a new and important matter which was not within the knowledge of, or could not be produced by the officer at the time the determination or finding sought to be reviewed was made,

Provided that the lack of knowledge on the part of the officer was not due to lack of due diligence;

- (b) on some mistake or error apparent on the face of the record; or
- (c) on any reason the Commission considers just and proper.

(3) A request for review shall act as a stay of the decision of the Commission, but the officer in question shall proceed on leave for the duration of the review.

(4) The Commission may, upon review, confirm or reverse its earlier decision.

Record of proceedings.

34. The Commission shall cause to be made and kept an accurate record of its proceedings.

Made on the 16th December 2013.

Johnston Kavuludi,
Chairperson, National Police Service Commission.