



BERMUDA

PUBLIC SERVICE COMMISSION REGULATIONS 2001

BR 81 / 2001

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FIRST SCHEDULE

SECOND SCHEDULE

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*The Governor, in exercise of the powers conferred on him by section 84(5) of the Constitution makes the following Regulations after consulting with the Premier and the Public Service Commission:—*

### PART I INTRODUCTORY

#### Citation and commencement

1 These Regulations may be cited as the Public Service Commission Regulations 2001 and come into operation on 21st November, 2001.

#### Purpose

- 1A The purpose of these Regulations is to promote and uphold a public service that—
- (a) is imbued with the spirit of service to the community;
  - (b) operates in the collective interests of government;
  - (c) maintains appropriate standards of integrity and conduct;
  - (d) maintains political neutrality;
  - (e) is supported by effective workforce and personnel arrangements;
  - (f) meets good-employer obligations;
  - (g) identifies and cultivates high-calibre leaders;
  - (h) is driven by a culture of excellence and efficiency;
  - (i) fosters a culture of stewardship.

*[Regulation 1A inserted by BR 114 / 2016 reg. 2 effective 7 December 2016]*

#### Interpretation

- 2 (1) In these Regulations, unless the context otherwise requires—
- “Bermudian status” shall have the meaning assigned to it in the Bermuda Immigration and Protection Act 1956;
  - “Chairman” means the Chairman of the Commission;
  - “Chief Employee and Organizational Development Officer” means the most senior officer in the Department of Employee and Organizational Development;
  - “Chief Officer” means the Chief Employee and Organizational Development Officer;
  - “the Code” means the Conditions of Employment and Code of Conduct made by the Governor;
  - “Commission” means the Public Service Commission for Bermuda established under section 81 of the Constitution;

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“contract officer” means an officer employed under a written agreement for a fixed period;

“Department” means a department of the Government and includes any other organ or branch of the Government;

“Director” *[Deleted by BR 85 / 2021 reg. 3]*

“disciplinary award” means a determination, by a person or body having power to adjudicate in disciplinary proceedings, disposing of one or more issues in those proceedings, whether or not that disposal is subject to affirmation or may be quashed or varied by some other person or body;

“disciplinary offence” has the meaning assigned to it in regulation 23(1);

“disciplinary penalty” means a penalty for a disciplinary offence and the respective penalties for misconduct and gross misconduct are set out in the Code;

“disciplinary proceedings” means proceedings for determining whether a disciplinary offence has been committed;

“empowered person” means a person to whom powers of the Governor under section 82 of the Constitution have been delegated under section 83 of the Constitution;

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

“Head of Department” means the Permanent Secretary or other officer who manages and supervises a Department;

“Head of the Public Service” means the officer who has overall responsibility for the public service;

“the Minister” means the Minister responsible for immigration;

“officer” means the holder of an office;

“office” means a public office within the meaning given to that expression by section 102 of the Constitution;

“promotion” means the conferment upon an officer of an office to which is attached a higher salary or a higher grade or a grade with a higher maximum salary than that which attaches to the office to which he was last substantively appointed and includes the upgrading of an office of which the officer is the holder and in which the officer continues as the substantive holder after the upgrading;

“the Secretary” means the Secretary of the Commission;

“transfer” means the substantive appointment, other than by way of promotion, of an officer holding an established office to another established office.

(2) These Regulations shall, where the context so requires or permits, be construed as one with the Code and with orders made under section 32 of the Police Act 1974, rules made under section 32 of the Prisons Act 1979 and regulations made under section 17 or

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orders made under section 18 of the Bermuda Fire and Rescue Service Act 1982 which relate to discipline.

*[Regulation 2 para 2 amended by 2007:23 s.16 effective 2 July 2007; regulation 2 para 1 amended by BR 86/2007 reg. 2 effective 28 September 2007; paragraph (1) definition "disciplinary offence" deleted and substituted by BR 114 / 2016 reg. 3 effective 7 December 2016; Regulation 2 para. (1) definition "Head of the Civil Service" amended by BR 85 / 2021 reg. 2 effective 7 June 2021; Regulation 2 para. (1) definition "Director" deleted, and definitions "Chief Employee and Organizational Development Officer" and "Chief Officer" inserted by BR 85 / 2021 reg. 3 effective 7 June 2021; Regulation 2 para. (1) definition "Head of Department" amended by BR 85 / 2021 reg. 4 effective 7 June 2021]*

### PART II

#### STAFF, PRIVILEGE, IMMUNITY AND POWERS OF THE COMMISSION

##### Secretary and staff

3 (1) There shall be a Secretary of the Commission, appointed by the Governor acting in his discretion, who shall be the senior administrative officer of the Commission.

(2) The Secretary may be assisted in the discharge of his duties by such other public officers as he may designate.

*[Regulation 3 para. (2) revoked and replaced by BR 85 / 2021 reg. 4 effective 7 June 2021]*

##### Privileged communications

4 (1) Any report, statement, record or other document which is prepared by, or on behalf of, or for the purposes of, the Commission or which is a communication to or from the Commission, or any member thereof acting in the course of his duties as such, shall be privileged in that in the event of legal proceedings no person shall be required to make discovery of such document or to produce it for inspection if the Governor, acting in his discretion, certifies that such discovery or production is not in the public interest.

(2) No person in any proceedings may be required to answer any interrogatory if the Governor, acting in his discretion, certifies—

- (a) that the answer relates to the performance of the functions of the Commission or of a member of the Commission or the performance of functions by an officer acting on behalf of, or for the purposes of, the Commission; and
- (b) that it is not in the public interest that such interrogatory should be answered.

##### Immunity from legal action

5 The Chairman and any member of the Commission shall have the like protection, privileges and immunities from legal action for anything done or omitted to be done by him in the performance of his functions as a judge of the Supreme Court in the performance of his functions as such.

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### General powers of Commission

5A The Commission shall have all such powers as are reasonably necessary or expedient to enable the Commission to carry out the functions and duties imposed upon the Commission under the Constitution.

*[Regulation 5A inserted by BR 114 / 2016 reg. 4 effective 7 December 2016]*

### Further powers of the Commission

- 6 (1) Without prejudice to the generality of regulation 5A, the Commission may—
- (a) require any officer to appear before it and give evidence on any matter before the Commission, and the Commission may require such evidence to be given on oath; and
  - (b) require the production of any document within the custody or control of any officer which, in the opinion of the Commission, relates or is likely to relate to any matter before the Commission.

(2) Without prejudice to the generality of paragraph (1)(b) any officer who is concerned with any submission for the consideration of the Commission shall forward to the Commission any document in his custody or control which is relevant to such submission.

(3) *[revoked]*

*[Regulation 6 heading and paragraph (1) amended and paragraph (3) revoked by BR 114 / 2016 reg. 5 effective 7 December 2016]*

### Failure to comply with Regulations or request a disciplinary offence

6A (1) Any officer who, without reasonable cause, fails to comply with a requirement imposed upon him under these Regulations or with any request lawfully and properly made by the Commission shall be guilty of a disciplinary offence and subject to proceedings accordingly if the Commission so recommends.

(2) Paragraph (1) is without prejudice to any disciplinary proceedings under any Orders, Rules or other Regulations to which an officer may be subject.

*[Regulation 6A inserted by BR 114 / 2016 reg. 6 effective 7 December 2016]*

## PART III

### PROCEDURE ON VACANCY

#### Filling of any office

7 (1) The following provisions of this Part shall apply to the filling of any office which the Commission is informed should be filled.

(2) For the purposes of this Part, the expression “fill an office” shall be read and construed as referring to the appointment to an office including the renewal of the agreement of a contract officer and the award of any scholarship, bursary or other financial

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assistance towards any academic or training course, where it is a condition that the person to whom the scholarship, bursary, or financial assistance is awarded shall serve in an office.

### Vacant offices

8 Upon an office becoming vacant, or where it becomes apparent that any office will become vacant, then the Head of Department shall so advise the Chief Officer in writing and, if it is an office which should be filled, the Chief Officer shall inform the Commission accordingly.

*[Regulation 8 amended by BR 85 / 2021 reg. 3 effective 7 June 2021]*

### Delegated appointments

9 (1) Where the office to be filled is one in relation to which powers to make the appointment have been delegated to some other person, that person, having satisfied himself that the office is one which should be filled and having informed the Chief Officer accordingly, shall proceed to fill the office acting in accordance with the principles and formalities set out in this Part and Part IV in so far as they are applicable.

(2) All advertisements referring to offices to be filled shall be approved and placed by the Secretary.

(3) The Commission may authorize the person to whom such powers have been delegated to dispense with the compliance with any formalities in relation to any particular office or any class of office.

*[Regulation 9 amended by BR 85 / 2021 reg. 3 effective 7 June 2021]*

### Procedure

10 (1) The Commission shall cause all vacancies to be advertised in accordance with regulation 11.

(1A) Notwithstanding paragraph (1), the Commission need not cause a vacancy to be advertised if—

- (a) it is of the opinion that there is a good and sufficient reason in the particular case why the vacancy should not be advertised; or
- (b) the vacancy is in respect of an office at the grade or falling within the salary scales referred to in paragraph 11 of the Schedule to the Public Service (Delegation of Powers) Regulations 2001, and upon the recommendation of the Head of Department, the Commission is satisfied that the vacancy should not be advertised.

(2) The Head of the Department in which the vacancy occurs shall review the applications resulting from the advertisement and shall make a report to the Commission stating whether or not he is recommending an applicant for appointment, and if so, identifying the recommended applicant.

*[Regulation 10 para. (1) revoked and replaced, and para. (1A) inserted by BR 85 / 2021 reg. 4 effective 7 June 2021]*

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### Extent of advertising

11 (1) Where an office is advertised—

- (a) it shall be advertised in such manner in Bermuda as, in the opinion of the Commission, is likely to be sufficient to bring to the attention of persons possessing Bermudian status who may be qualified to fill the office; and
- (b) it may be advertised in such manner as, in the opinion of the Commission, is likely to be sufficient to bring it to the attention of other persons who may be qualified to fill the office.

(2) No office shall be advertised under paragraph (1)(b) before such time as it has been advertised under paragraph (1)(a).

### Reasonable time

12 The Commission shall not make a recommendation to the Governor until such reasonable time has elapsed for such persons who have seen the advertisement referred to in regulation 11 to make application for appointment to the office.

### Special exception to regulations 10 to 12 in certain cases

13 Where the Commission considers that a candidate for an office is fit for appointment to another office which is vacant, the Commission may recommend him for appointment to that other office even if the vacancy has not been advertised under regulations 10 to 12.

### Commission may require information

14 The Commission may require any applicant to—

- (a) submit to it such information and documents; and
- (b) attend for such interview, examination and tests,

as, in the opinion of the Commission, are necessary to establish that the applicant is qualified for, and capable of performing the functions of, the office to which his application relates.

### Immigration comment

15 *[Revoked by BR 85 / 2021 reg. 4]*

*[Regulation 15 revoked by BR 85 / 2021 reg. 4 effective 7 June 2021]*

### Commission to consider all applications

16 The Commission shall consider all applications received within the reasonable time referred to in regulation 12 and, acting in accordance with Part IV and any other law, shall, if there is a candidate of sufficient merit to enable it to do so, make a recommendation to the Governor.

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### Information to Minister

17 The Commission shall make available to the Minister such information relating to persons recommended by the Commission for appointment to an office as may reasonably be required by the Minister in the discharge of his functions in relation to immigration to Bermuda.

## PART IV

### PROCEDURE FOR MAKING APPOINTMENTS

#### Cabinet specification of qualifications and emoluments

18 (1) Subject to these Regulations, the qualifications or relevant experience, or both, for any office shall be those for the time being specified by the Head of the Public Service for that office or for the class or grade to which that office belongs and the Commission shall recommend for appointment thereto a person who possesses such qualifications or relevant experience, or both.

(1A) Notwithstanding paragraph (1), the Commission may recommend for appointment a person who does not possess the qualifications or relevant experience, or both, as specified by the Head of the Public Service, if the Commission is satisfied that the person is of sufficient merit to enable it to make the recommendation.

(2) The emoluments attaching to any office shall be such as may be approved by the Cabinet, and no person shall be recommended by the Commission for appointment to an office except at the salary so approved for that office or at a salary in a scale so approved for the class or grade to which that office belongs.

*[Regulation 18 amended by BR 51/2003 effective 29 August 2003; regulation 18 para 1 amended by BR 86/2007 reg. 2 effective 28 September 2007; para (1) amended and para (1A) inserted by BR 34 / 2017 reg. 2 effective 10 April 2017; Regulation 18 amended by BR 85 / 2021 reg. 2 effective 7 June 2021]*

#### Principles governing recommendations

19 (1) This regulation states the principles that apply where under section 82 of the Constitution the Commission is to make a recommendation to the Governor about an appointment to an office.

(2) Subject to this regulation, the person who in the Commission's opinion is the best candidate shall be preferred.

(3) The Commission shall not recommend a person for appointment to an office if he is not fit to be appointed.

(4) For the purpose of appointment to an office, a person with Bermudian status ("a Bermudian") who is not already an officer shall, other things being equal, rank equally with a Bermudian who is already an officer unless the Commission for special reasons decides otherwise in the particular case.

(5) The Commission shall not recommend a person who is not a Bermudian for permanent appointment to an established office unless the person is the spouse of a Bermudian.

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(6) A Bermudian shall be preferred to a person who is not a Bermudian (“a non-Bermudian”).

(7) A non-Bermudian who is the spouse of a Bermudian shall be preferred to any other non-Bermudian, except another non-Bermudian who is the spouse of a Bermudian.

(8) Where in a competition for an office—

(a) one of the candidates is in a higher category of preference under this regulation than another candidate; and

(b) the candidate in the higher category of preference is fit to be appointed,

the Commission shall recommend the candidate in the higher category of preference even if the other candidate is more fit or no less fit.

(9) The Commission shall not recommend a non-Bermudian for appointment to an office for a term exceeding three years unless the non-Bermudian is the spouse of a Bermudian or the recommendation is allowed by paragraph (10) or (11).

(10) The Commission may recommend a non-Bermudian for appointment to an office for a term exceeding three years but not exceeding five years if either—

(a) the Commission for special reasons sees fit in the particular case; or

(b) the office in question is an office in the Police Force.

(11) Notwithstanding paragraphs (5), (9) and (10), where a non-Bermudian has been employed for a period of not less than five consecutive years as an officer in the Police Service, the Commission may recommend him for permanent appointment to an established office in that Service.

(12) For the purposes of paragraphs (5), (7) and (9) of this regulation, a person is the spouse of a Bermudian if the person has spouse’s employment rights under section 60(3) of the Bermuda Immigration and Protection Act 1956.

*[Regulation 19 paras (5), (7) and (9) substituted, and (12) inserted, by BR 53/2006 effective 16 June 2006]*

### Disqualification

20 Any person who—

(a) canvasses any member of the Commission or any member of either House of the Legislature, either directly or indirectly in connection with the appointment of any person to any office;

(b) fails to provide such information or documents as are reasonably required by the Commission;

(c) fails to attend for such interview, examination or tests as are reasonably required by the Commission; or

(d) knowingly misleads the Commission, or causes or conspires with any other person to mislead the Commission, in connection with the application to any office,

shall be disqualified for an appointment to an office.

PART V

PROBATIONARY REPORTS AND PERFORMANCE REVIEWS

Probationary period

21 (1) Subject to paragraph (2), every appointment to an established office or to a temporary post in the public service exceeding one year from the date of appointment shall be made in accordance with the recommendation of the Commission subject to a probation period of six months.

(2) Paragraph (1) does not apply to an appointment to an office in the police service, fire service or prison service and every appointment, promotion or transfer in such service (other than an appointment to a temporary post or temporary transfer to effect operational requirements) shall be subject to such probationary period as may be specified in the statutory instruments governing that service.

(3) Subject to paragraph (4), the Head of Department, or some other senior officer of his department designated by him, shall submit in writing to the Commission at two-monthly intervals throughout the probationary period a report upon any officer in his department who is subject to probation as to his aptitude, suitability and performance of his duties.

(4) Paragraph (3) does not apply to an appointment to an office—

- (a) in the police service of the rank of Sergeant and below;
- (aa) in the fire service of the rank of Lieutenant and below;
- (b) in the prison service of the rank of Divisional Officer and below.

and in respect of an appointment to an office in those services other than those referred to in subparagraphs (a) and (b) reports shall be made to the Commission every six months.

(5) Where any appointment to an office is subject to probation, the Commission may at any time before the period of probation has expired, either of their own motion or at the instance of the Head of Department, recommend to the Governor that the appointment be terminated forthwith.

(6) After considering all the reports submitted under paragraph (3) or (4) and such other reports or representations as it regards as necessary, the Commission shall either—

- (a) record that the appointment of the officer is confirmed at the expiry of his period of probation;
- (aa) order that the dates of the probationary period be changed where the Commission is satisfied that, due to circumstances beyond the officer's control, the officer is unable to complete the period of probation within six months;

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- (b) order that the period of probation be extended for such further period as the Commission may specify; or
- (c) recommend to the Governor that the appointment of the officer be terminated at the expiry of the period of probation.

(7) Where the appointment of an officer is to be terminated in accordance with paragraph (5) or (6) and the officer concerned was, prior to his appointment, the substantive holder of another established office, the Commission may further recommend to the Governor that he be offered appointment to some further office appropriate to his qualifications at a grade not lower than the office which he vacated when he took up the appointment which is being terminated.

*[Regulation 21 paragraph (4)(a) amended and paragraph (4)(aa) inserted by BR 64 / 2013 reg. 3 effective 20 July 2013; Regulation 21 paragraph (6)(aa) inserted by BR 85 / 2021 reg. 4 effective 7 June 2021]*

### Annual performance reports

22 (1) Every Head of Department shall make and submit written performance reports to the Commission on officers serving in their departments in such form and by such date as the Commission may prescribe.

(2) Where the Head of a Department intends to make an adverse entry in the report of any officer made under this section he shall inform that officer accordingly and the Head of Department shall inform the officer concerned of the content of any report.

### Establishing annual performance objectives for senior officers

22A (1) The Commission shall, in consultation with—

- (a) the Governor and the Secretary to the Cabinet, establish annual performance objectives in respect of the Secretary to the Cabinet;
- (b) the Governor and the Head of the Public Service, establish annual performance objectives in respect of the Head of the Public Service.

(2) The Secretary to the Cabinet shall, in consultation with the Governor the Commission and each Assistant Secretary to the Cabinet, establish annual performance objectives in respect of each Assistant Secretary to the Cabinet.

(3) The Head of the Public Service shall, in consultation with—

- (a) the Governor, the Commission, and the Deputy Head of the Public Service, establish annual performance objectives in respect of the Deputy Head of the Public Service;
- (b) the Governor, the Commission, and the Financial Secretary, establish annual performance objectives in respect of the Financial Secretary;
- (c) the Governor, the Commission and each Permanent Secretary, establish annual performance objectives in respect of each Permanent Secretary.

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(4) When establishing annual performance objectives under paragraphs (1), (2) and (3), account shall be taken of the business of the Government and its policy and programme objectives, and the overall management of the public service.

(5) For the avoidance of doubt, failing to achieve the performance objectives established under this regulation is not a disciplinary offence under regulation 6A(1).

*[Regulation 22A inserted by BR 114 / 2016 reg. 8 effective 7 December 2016; Regulation 22A revoked and replaced by BR 60 / 2017 reg. 2 effective 29 May 2017; Regulation 22A revoked and replaced by BR 153 / 2018 reg. 2 effective 24 December 2018; Regulation 22A amended by BR 85 / 2021 reg. 2 effective 7 June 2021]*

### Conducting appraisals of senior officers

22B (1) For the purpose of making recommendations to the Governor pursuant to section 82 of the Constitution, there shall be conducted an annual appraisal of the performance of senior officers in accordance with this regulation.

(2) The Commission shall conduct an annual appraisal of the performances of the Secretary to the Cabinet and the Head of the Public Service and, when conducting such appraisal, shall—

- (a) take account of the annual performance objectives established under regulation 22A(1);
- (b) consult with the Premier;
- (c) consult with—
  - (i) other senior officers;
  - (ii) officers who serve under the Secretary to the Cabinet and the Head of the Public Service,

if, in the opinion of the Commission, such officers are able to provide information relevant to the appraisal.

(3) The Secretary to the Cabinet shall conduct an annual appraisal of the performance of each Assistant Secretary to the Cabinet and, when conducting such appraisal, shall—

- (a) take account of the annual performance objectives established under regulation 22A(2);
- (b) consult with the Premier and the Commission; and
- (c) consult with—
  - (i) other senior officers;
  - (ii) officers who serve under the Assistant Secretary to the Cabinet concerned,

if, in the opinion of the Secretary to the Cabinet, such officers are able to provide information relevant to the appraisal.

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(4) The Head of the Public Service shall conduct an annual appraisal of the performance of the Deputy Head of the Public Service, the Financial Secretary and each Permanent Secretary and, when conducting such appraisal, shall—

- (a) take account of the annual performance objectives established under regulation 22A(3);
- (b) consult with the relevant Minister and the Commission;
- (c) consult with—
  - (i) other senior officers;
  - (ii) officers who serve under the Deputy Head of the Public Service, the Financial Secretary, and the Permanent Secretary concerned,if, in the opinion of the Head of the Public Service, such officers are able to provide information relevant to the appraisal.

(5) Notwithstanding paragraphs (2), (3) and (4), a performance appraisal may be conducted periodically in respect of a particular matter; and this regulation applies in respect of any such periodic appraisal.

(6) A written report of the annual appraisal and any periodic appraisal conducted under this regulation shall be submitted to the Commission for its review and comment for the purpose of ensuring that the appraisal has been conducted appropriately and in accordance with this regulation, and the Chairman shall counter-sign the report.

(7) Following its review, the Commission shall—

- (a) prepare a written report setting out the manner and extent to which the senior officer achieved the performance objectives established under regulation 22A; and
- (b) send a copy of the report to the senior officer concerned,

and the senior officer may make written comments to the Commission regarding the report.

*[Regulation 22B inserted by BR 114 / 2016 reg. 8 effective 7 December 2016; Regulation 22B revoked and replaced by BR 60 / 2017 reg. 2 effective 29 May 2017; Regulation 22B revoked and replaced by BR 153 / 2018 reg. 2 effective 24 December 2018; Regulation 22B amended by BR 85 / 2021 reg. 2 effective 7 June 2021]*

Commission to send report to Governor and others

22C The Commission shall—

- (a) send to the Governor the written report, prepared under regulation 22B(7), together with the senior officer's comments; and

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- (b) send a copy of the report and the comments to the Premier, the senior officer concerned, and the person who conducted the performance appraisal.

*[Regulation 22C inserted by BR 114 / 2016 reg. 8 effective 7 December 2016; Regulation 22C revoked and replaced by BR 60 / 2017 reg. 2 effective 29 May 2017; Regulation 22C revoked and replaced by BR 153 / 2018 reg. 2 effective 24 December 2018]*

### PART VI

#### DISCIPLINARY PROCEDURE AND APPEALS

##### Disciplinary offence

- 23 (1) Subject to paragraph (3), an officer commits a disciplinary offence if—
- (a) he commits an act of misconduct or gross misconduct described in the Code; or
  - (b) he does an act or makes an omission which is made a disciplinary offence by any other provision of these Regulations.
- (2) Where an officer is found guilty of a disciplinary offence, the disciplinary award shall state the disciplinary penalty that the award imposes for the offence.

(3) Nothing in this regulation or regulations 24 to 28 applies in relation to a police officer or a prison officer, or, if regulations or orders are made under section 17 or 18 of the Bermuda Fire and Rescue Service Act 1982 which relate to discipline, to a fire officer to whom those regulations or orders apply.

*[Regulation 2 para 2 amended by 2007:23 s.16 effective 2 July 2007; paragraph (3) amended by BR 64 / 2013 reg. 3 effective 20 July 2013]*

##### Procedure for the adjudication of disciplinary offences

- 24 (1) The First Schedule to these Regulations states the procedure to be followed in the adjudication of disciplinary offences not involving gross misconduct.
- (2) The Second Schedule to these Regulations states the procedure to be followed in the adjudication of disciplinary offences involving gross misconduct.
- (3) The procedures set out in the Schedules referred to in this regulation do not apply to officers during their probationary period.
- (4) Disciplinary proceedings shall be commenced within 6 months of the last occurrence or incident giving rise to the proceedings, or, if criminal proceedings are instituted, within 6 months of the final decision in those proceedings taking into account any period within which an appeal may be taken.

##### Standard of proof

- 25 (1) Subject to paragraph (2), the standard of proof in disciplinary proceedings is that required in court proceedings that are not criminal.

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(2) Where—

- (a) the act alleged against an officer in disciplinary proceedings constitutes a criminal offence; but
- (b) the officer has not been charged with a criminal offence,

the standard of proof in the disciplinary proceedings is that required in criminal proceedings.

(3) The question whether an act referred to in paragraph (2)(a) constitutes a criminal offence shall be determined by the Director of Public Prosecutions.

### Suspension of officers

26 (1) The Head of the Public Service may direct that an officer be suspended from duty if—

- (a) the Head of the Public Service believes that the officer has committed a criminal offence or a disciplinary offence involving gross misconduct and that the suspension is required in the public interest; and
- (b) proceedings for the adjudication of a disciplinary offence involving gross misconduct have been commenced under this Act.

(1A) Where the Head of the Public Service directs that an officer be suspended, he shall cause a written notice of the reasons for the suspension to be sent to the officer forthwith.

(1B) The suspension shall remain in effect pending the outcome of the proceedings referred to in paragraph (1)(b).

(2) There may be withheld from an officer suspended from duty under this regulation such emoluments as the Head of the Public Service may think fit.

(3) Where the proceedings against an officer do not lead to his dismissal from the service, any emoluments withheld from him by virtue of subsection (2) shall be restored to him upon the conclusion of the proceedings unless the emoluments are withheld as a disciplinary penalty.

(4) The Head of the Public Service may delegate any of his functions under this regulation to the Deputy Head of the Public Service.

*[Regulation 26 amended by BR 51/2003 effective 29 August 2003; para (1) substituted, (1A) and (1B) inserted, by BR 53/2006 effective 16 June 2006; amended by BR 86/2007 reg. 2 effective 28 September 2007; paragraph (4) inserted by BR 54 / 2011 reg. 2 effective 7 October 2011; paragraph (4) amended by BR 153 / 2018 reg. 3 effective 24 December 2018; Regulations 26 amended by BR 85 / 2021 reg. 2 effective 7 June 2021]*

### Officers convicted of criminal offences

27 (1) Where an officer has been convicted of an indictable offence or an offence which constitutes serious misconduct of the description set out in section 25 of the Employment Act 2000, the Commission—

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- (a) may determine that the act constituting that offence need not be dealt with as a disciplinary offence in proceedings under this Part; and instead
  - (b) may recommend to the Governor that the officer be dismissed from the public service.
- (2) Where an officer has been dismissed from the public service under this regulation on account of a criminal conviction which is then quashed on appeal—
- (a) the officer shall, if he so wishes, forthwith be reinstated in the office that he held immediately before he was so dismissed; and
  - (b) any emoluments that were withheld from him on account of the criminal conviction shall forthwith be restored to him.

### Appeal to the Commission

28 (1) Where—

- (a) the disciplinary powers vested in the Governor by section 82 of the Constitution have been delegated to an empowered person under the Public Service (Delegation of Powers) Regulations 2001;
- (b) a disciplinary award of a gross misconduct penalty has been made by the empowered person;
- (c) in the case of a member of the Bermuda Police Service who has received a disciplinary outcome of dismissal or reduction in rank following a stage 3 meeting under the Police (Performance) Orders 2016 or any disciplinary outcome following a misconduct hearing under the Police (Conduct) Orders 2016, the member may appeal to the Commission;
- (d) the grounds of appeal for a member of the Bermuda Police Service are that—
  - (i) the finding or disciplinary action imposed was unreasonable; or
  - (ii) there is evidence that could not reasonably have been considered at the original hearing, which could have materially affected the finding or decision on disciplinary action; or
  - (iii) there was a breach of the procedures set out in the Police (Conduct) Orders 2016 or the Police (Performance) Orders 2016 or other unfairness, which could have materially affected the finding or decision on disciplinary action,

any officer who is aggrieved by the disciplinary award may, within fourteen days of receiving notice of the disciplinary award, appeal to the Commission by giving notice in writing to the Commission and to the person who made the disciplinary award.

(2) The officer may include with the notice referred to in paragraph (1) any representations he wishes to bring to the attention of the Commission but, unless the Commission otherwise orders, neither the officer nor the empowered person who made the disciplinary award shall be entitled to appear before the Commission.

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(3) The Commission may call for a report from the empowered person who made the disciplinary award and shall at a meeting determine the appeal.

(4) The Commission may—

- (a) affirm, reverse or vary any disciplinary penalty imposed by the disciplinary award; or
- (b) remit the matter for determination on rehearing by the empowered person with or without any observations the Commission thinks fit to make.

(5) The decision of the Commission on an appeal shall be final.

*[Regulation 28 paragraph (1) amended by 2016 : 44 s. 6 effective 2 December 2016]*

### PART VII

#### REMOVAL FROM OFFICE

##### Staff Medical Board

29 Where any question arises of whether or not an officer is incapable by reason of some infirmity of mind or body of discharging the duties of his office and whether such infirmity is likely to be permanent, the Commission shall refer such question to a Staff Medical Board established under regulation 30 for their report on such questions.

##### Composition of Staff Medical Board

30 (1) The Staff Medical Board shall consist of—

- (a) The Chief Medical Officer, who shall be chairman; and
- (b) ten other qualified medical practitioners, appointed by the Governor acting in his discretion and whose appointments shall be at the Governor's pleasure.

(1A) The chairman shall select a panel consisting of himself and two of the qualified medical practitioners for the purpose of determining the question referred to the Staff Medical Board under regulation 29.

(1B) Notwithstanding paragraph (1A), the Staff Medical Board may vary the number of qualified medical practitioners, provided the panel consists of an odd number of members.

(2) Fees shall be paid to members of the Staff Medical Board in accordance with the Government Authorities (Fees) Act 1971.

*[Regulation 30 amended by BR 9/2009 reg.2 effective 29 December 2008; paragraph (1) amended and paragraphs (1A) and (1B) inserted by BR 114 / 2016 reg. 9 effective 7 December 2016]*

##### Procedure of Staff Medical Board

31 (1) The Staff Medical Board in considering any question referred to it shall give notice to the officer concerned that they intend to consider such a question and shall give

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him an opportunity to be heard and adduce evidence before reporting to the Commission their opinion on such question.

(2) The Staff Medical Board may adopt rules of procedure of general application in respect of the hearing, subject to the requirements of procedural fairness.

(3) Notwithstanding that it has adopted procedures of general application, the Staff Medical Board may adopt particular procedures or vary existing procedures for a given circumstance, subject to the requirements of procedural fairness.

*[Regulation 31 paragraphs (2) and (3) inserted by BR 114 / 2016 reg. 10 effective 7 December 2016]*

### Retirement in public interest

32 (1) Where a Head of Department considers that it is desirable in the public interest that an officer holding an established office should be required to retire from the public service on grounds which cannot suitably be dealt with under any other regulation, he shall report the matter to the Head of the Public Service.

(2) The Head of the Public Service may obtain reports from senior officers under whom the officer concerned has served, as to his work and conduct, and shall allow such officer to consider such reports and shall allow him to show cause why he should not be retired and to make a written statement if he so desires.

(3) The Head of the Public Service shall forward to the Commission all reports obtained under this regulation together with any statement of the officer concerned and his own observations and the Commission shall thereupon recommend to the Governor whether or not the officer should be retired.

(3A) The Head of the Public Service may delegate any of his functions under this regulation to the Deputy Head of the Public Service.

(4) Where the Public Service Superannuation Act 1981 or other relevant statutory provision permits the grant of a pension or other allowance to an officer who is being retired under this regulation, the Commission shall also recommend to the Governor whether or not any such pension or allowance should be granted to the officer upon his retirement.

(5) Whenever the Commission decides to recommend to the Governor that an officer should be retired from the public service the Secretary shall forthwith inform the officer in writing that such recommendation is being made.

*[Regulation 32 amended by BR 51/2003 effective 29 August 2003; amended by BR 86/2007 reg. 2 effective 28 September 2007; paragraph (3A) inserted by BR 54 / 2011 reg. 3 effective 7 October 2011; paragraph (3A) amended by BR 153 / 2018 reg. 4 effective 24 December 2018; Regulation 32 amended by BR 85 / 2021 reg. 2 effective 7 June 2021]*

### Premature termination of contract

33 Where an officer is serving under a contract which provides for termination by notice before the expiration of the period of service stipulated therein and the Head of Department considers that the contract should be so terminated, he shall report the matter

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in writing to the Head of the Public Service who shall determine whether such course be taken.

*[Regulation 33 amended by BR 51/2003 effective 29 August 2003; and amended by BR 86/2007 reg. 2 effective 28 September 2007; Regulations 33 amended by BR 85 / 2021 reg. 2 effective 7 June 2021]*

Termination of employment on abolition of office, etc.

34 (1) Where an established office, being one of a number of such offices, is abolished but one or more of such offices remain, the Head of Department shall report to the Head of the Public Service as to which of the substantive holders of such offices shall have his employment terminated.

(2) Where—

(a) the Commission receives a recommendation that the employment of any officer holding an established office be terminated otherwise than as a result of disciplinary action; and

(b) efforts to redeploy that officer have failed,

the Commission shall recommend to the Governor that the employment of that officer be terminated.

(3) The Commission shall satisfy itself that the officer will receive or has received his entitlements under the Public Service Superannuation Act 1981 or other relevant statutory provisions.

(4) The Commission shall ensure, in terminating the employment of an officer holding an established office, that officers who are in a higher category of preference under regulation 19 are retained in preference to officers in a lower category of preference.

*[Regulation 34 amended by BR 51/2003 effective 29 August 2003; and amended by BR 86/2007 reg. 2 effective 28 September 2007; Regulation 34 amended by BR 85 / 2021 reg. 2 effective 7 June 2021]*

## PART VIII

### OFFENCES IN RELATION TO THE FUNCTIONS OF THE COMMISSION

Saving for Criminal Code

35 The provisions of this Part shall be without prejudice to any provisions of the Criminal Code.

Improper influence

36 (1) Any person who otherwise than in the course of his duty directly or indirectly by himself or by any other person in any manner whatsoever influences or attempts to influence any decision of the Commission or of the Chairman or of any member or any person acting under delegation powers commits an offence and is liable on summary conviction to imprisonment for 6 months or a fine of \$1200, or both.

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(2) Nothing in paragraph (1) prohibits any person who may properly do so from giving a certificate or testimonial to any applicant or candidate for any office or from supplying any information or assistance upon formal request by the Commission.

### False information

37 Any person who in connection with any application by any person for employment in, or promotion to, an office or with any matter upon which it is the duty of the Commission to advise, or make a recommendation to the Governor or to make any decision, wilfully gives to the Commission or to any member thereof, or to any person or body of persons appointed by any Regulation or by any competent authority to assist the Commission in the exercise of its functions or the discharge of its duties, any information which he knows to be false or does not believe to be true, or which he knows to be false by reason of the omission of any material particular, commits an offence and is liable on summary conviction to imprisonment for 1 year or a fine of \$1200, or both.

### Unauthorized disclosure or use of information

38 (1) Neither the Chairman or any member nor any other person shall without the written permission of the Governor publish or disclose to any person otherwise than in exercise of his functions under these Regulations the contents of any documents, communication or information whatsoever which has come to his notice in the course of his duties under these Regulations or the Constitution in respect of any matter referred to the Commission or dealt with by an officer holding a delegated authority, and any person who knowingly acts in contravention of this regulation commits an offence and is liable on summary conviction to imprisonment for 1 year or a fine of \$1200, or both.

(2) If any person having possession of any information which to his knowledge has been disclosed in contravention of paragraph (1) publishes or communicates to any other person otherwise than for the purpose of any prosecution or proceedings under these Regulations any such information, he commits an offence and is liable on summary conviction to imprisonment for 1 year or a fine of \$1200, or both.

### Revocation of SRO79/1968

39 The Public Service Commission Regulations 1968 are revoked.

### Transitional provisions

40 Notwithstanding regulation 39, any matter which is being dealt with under the regulations revoked by that regulation ("the revoked regulations") on the day these Regulations come into force shall be continued under the revoked regulations as if these Regulations had not been made.

FIRST SCHEDULE

(Reg. 24(1))

PROCEDURE FOR HANDLING CASES OF ALLEGED MISCONDUCT WHICH IS NOT GROSS MISCONDUCT

1 The Head of Department shall prepare a written statement of the alleged disciplinary offence, give a copy to the officer in question, discuss it with him and provide him with an opportunity to state his case.

2 At the end of the discussion, the Head of Department may, if he so determines, give to the officer an oral warning that further disciplinary action may be taken if further misconduct occurs, and also give the officer advice on how he may avoid further misconduct.

3 The Head of Department shall make clear to the officer that the action taken under paragraphs 1 and 2 is formal action under the official disciplinary procedure.

4 The Head of Department shall place on the officer's departmental personal file a record of the action taken under paragraphs 1 to 3, and shall give the officer a copy of the record and shall invite the officer to acknowledge the warning by signing the record.

5 If there is further misconduct, the Head of Department shall prepare a written statement of the alleged offence, give a copy to the officer, discuss it with him and provide him with an opportunity to state his case.

6 At a discussion under paragraph 5, the officer's job supervisor shall be present. The officer may have a trade union representative or a friend present to assist him if he so wishes.

7 At the end of the discussion, the Head of Department may, if he so determines, give to the officer a first written warning and write to the officer setting out the reasons for the warning indicating the improvement required and fixing a date on which the case shall be reviewed ("the review date"). A copy of this written warning shall be placed on the officer's departmental personal file, and a further copy shall be sent to the Chief Officer for placing on the officer's primary personal file.

8 The Head of Department shall make clear to the officer that the action taken under paragraphs 5 to 7 is formal action under the official disciplinary procedure.

9 The Head of Department and the officer shall meet on the review date to determine whether the officer has achieved the required improvement. The officer's job supervisor shall be present. The officer may also have a trade union representative or a friend present to assist him if he so wishes.

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10 After the meeting referred to in paragraph 9, the Head of Department shall determine—

- (a) whether the matter is now resolved. If he so decides, he shall, at the expiration of two years from the date thereof, expunge from the officer's departmental personal file the records and written warnings placed there pursuant to paragraphs 4 and 7; and the Chief Officer shall then expunge from the officer's primary personal file the copy of the written warning recorded there pursuant to paragraph 7;
- (b) whether to conduct another review of the case. If he so decides, he shall inform the officer in writing accordingly, whereupon the procedure set forth at paragraphs 5 to 9 shall apply with the necessary changes;
- (c) whether to issue a final written warning. If he so decides, he shall inform the officer in writing accordingly whereupon the procedure set out in paragraphs 7 to 9 shall apply with the necessary changes and he shall fix a review date not less than four clear weeks after the interview;
- (d) whether to impose a disciplinary penalty which he has power to impose, that is to say, a misconduct penalty. If he so decides, he shall inform the officer accordingly by notice in writing, setting forth in the notice a statement of the officer's rights of appeal; or
- (e) whether the case merits the imposition of a penalty greater than he has power to impose, that is to say, a gross misconduct penalty. If he so decides, he shall refer the matter to the Head of the Public Service making a recommendation as to the disciplinary penalty to be imposed and inform the officer by notice in writing that he has done so.

11 Where a case is referred to the Head of the Public Service under sub-paragraph (e) of paragraph 10, he shall review the papers and determine to affirm the recommendation of the Head of Department, to impose any alternative disciplinary penalty, or to dismiss the case.

12 After the Head of the Public Service has reviewed a case pursuant to paragraph 11, he shall proceed to determine the matter and, where he does impose a disciplinary penalty, he shall inform the officer accordingly by notice in writing, setting forth in the notice a statement of the officer's rights of appeal.

13 Any officer who is aggrieved by a disciplinary award of a misconduct penalty by the Head of Department may, within fourteen days of receiving notice of disciplinary award, appeal to the Head of the Public Service by giving notice in writing to the Head of the Public Service.

14 Where an appeal is made pursuant to paragraph 13, the Head of the Public Service shall conduct a hearing and, after giving the officer full opportunity to be heard or to make representations, shall determine the matter and may affirm, reverse or vary the disciplinary award and shall inform the officer accordingly by notice in writing.

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15 The decision of the Head of the Public Service on an appeal is final.

16 The Head of the Public Service may delegate any of his functions under this Schedule to the Deputy Head of the Public Service.

17 For the avoidance of doubt, where the Head of the Public Service has delegated the hearing of an appeal under paragraph 14, the decision of the Deputy Head of the Public Service on the appeal is final.

*[First Schedule amended by BR 51 / 2003 effective 29 August 2003; amended by BR 86 / 2007 reg. 2 effective 28 September 2007; paragraphs 16 and 17 inserted by BR 54 / 2011 reg. 4 effective 7 October 2011; paragraphs 16 and 17 amended by BR 153 / 2018 reg. 5 effective 24 December 2018; First Schedule amended by BR 85 / 2021 reg. 2 effective 7 June 2021; First Schedule amended by BR 85 / 2021 reg. 3 effective 7 June 2021]*

SECOND SCHEDULE

(Reg. 24(2))

PROCEDURE FOR HANDLING CASES OF ALLEGED GROSS MISCONDUCT

1 The Head of Department shall prepare a written statement of the alleged offence and give a copy to the officer in question.

2 The Head of Department shall afford the officer the opportunity to meet him to discuss the allegation and present the officer's side of the matter. A representative of the Chief Officer and also, where appropriate, the officer's job supervisor shall be present at any such meeting. The officer may have a trade union representative or a friend present to assist him if he so wishes.

3 After the meeting referred to in paragraph 2, the Head of Department shall—  
(a) determine whether the allegation should be dismissed. If he so decides, he shall inform the officer by notice in writing accordingly; or  
(b) refer the case to the Head of the Public Service.

4 *[deleted by BR 9/2009]*

5 Where a case has been referred to the Head of the Public Service under paragraph 3(b) he shall conduct a hearing, after giving at least fourteen days' notice of the date, time and place of the hearing to the officer.

6 The officer shall appear before the Head of the Public Service in person and may have a trade union representative or friend to assist him if he wishes.

6A The Head of the Public Service shall invite the officer's job supervisor and Head of Department, and any other officers whom he considers relevant to the case, to appear before him.

7 The Head of the Public Service shall give the officer full opportunity to be heard or to make representations and shall, after hearing both sides, determine the matter or dismiss the allegation.

8 Where the Head of the Public Service imposes a disciplinary penalty, he shall inform the officer accordingly by notice in writing, setting forth in the notice a statement of the officer's rights of appeal to the Commission under these Regulations.

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9 The Head of the Public Service may delegate any of his functions under this Schedule to the Deputy Head of the Public Service.

*[Second Schedule amended by BR 51 / 2003 effective 29 August 2003; amended by BR 86 / 2007 reg. 2 effective 28 September 2007; amended by BR 9 / 2009 reg.3 effective 29 December 2008; paragraph 9 inserted by BR 54 / 2011 reg. 5 effective 7 October 2011; paragraph 9 amended by BR 153 / 2018 reg. 6 effective 24 December 2018; Second Schedule amended by BR 85 / 2021 reg. 2 effective 7 June 2021; Second Schedule amended by BR 85 / 2021 reg. 3 effective 7 June 2021]*

Made this 21st day of November, 2001

Governor

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*[Amended by:*

BR 51 / 2003

BR 53 / 2006

2007 : 23

BR 86 / 2007

BR 9 / 2009

BR 54 / 2011

BR 64 / 2013

2016 : 44

BR 114 / 2016

BR 34 / 2017

BR 60 / 2017

BR 153 / 2018

BR 85 / 2021]