

JUDICIAL AND LEGAL SERVICE COMMISSION REGULATIONS

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* JUDICIAL AND LEGAL SERVICE COMMISSION REGULATIONS

S.I. 33/1973

S.I. 80/1975

(ARTICLE 125)

[Commencement 15th May, 1973]

PART I

PRELIMINARY

Title.

1. These Regulations may be cited as the Judicial and Legal Service Commission Regulations.

Interpretation.

2. In these Regulations unless the context otherwise requires-
"appointment" means-

(i) the conferment of an office of emolument S.I. 80/1975, r. 2. referred to in Article 117 of the Constitution, in the public service, whether or not subject to subsequent confirmation, upon a person not in the public service;

(ii) the grant of permanent and pensionable terms of service in a public office, referred to in S.I. 80/1975, r. 2. Article 117 of the Constitution, to a person recruited and serving on contract terms of service or in a non-established capacity in a pensionable or non-pensionable office;

(iii) the engagement in a public office, referred S.I. 80/1975, r. 2. to in Article 117 of the Constitution, of a person on contract terms of service for a further period of service on the conclusion of his previous period of engagement on contract terms in the same or other public office; and

(iv) the appointment of a public officer to act S.I. 80/1975, r. 2. in any public office, referred to in Article 117 of the Constitution, other than that to which he is substantively appointed;

"the Chairman" means the Chairman of the Commission;

"the Commission" means the Judicial and Legal Service Commission constituted under the provisions of Article 116 of the Constitution;

"the committee" means a committee appointed under the provisions of these Regulations;

"court" means either the Supreme Court or a magistrate's court;

"criminal charge" means a charge in respect of an offence for which the court imposes a sentence of imprisonment without the option of a fine, or any other offence which in the opinion of the Commission involves serious moral turpitude;

"disciplinary control" includes control in so far as it relates to dismissal;

"Director of Public Personnel" means any holder for the time being of the post of Director of Public Personnel;

"Head of Department" means the Registrar of the S.I. 80/1975, r. 2. Supreme Court, the Director of Legal Affairs or the Registrar General;

"judicial or legal office" means an office referred to in Article 117 of the Constitution;

"judicial or legal officer" means the holder of a judicial or legal office;

"member" means any person appointed to the S.I. 80/1975, r. 2. Commission under the provisions of Article 116 of the Constitution and includes any temporary member;

"non-pensionable officer" includes an officer serving under a contract or agreement which does not provide for the payment of a pension;

"office of emolument" in relation to a Judicial or Legal office means any pensionable or non-pensionable post which is shown under a Personal Emolument sub-head in current Commonwealth of The Bahama Islands estimates;

"official document" means any document or paper prepared by any public officer in the course of his employment or any document or paper which comes into the custody of any public officer in the course of such employment;

"Permanent Secretary" means the Permanent Secretary who exercises supervision over the Registrar General's Department;

"promotion" means the conferment upon a person in the public service of a judicial or legal office, to which is attached a higher salary or higher salary scale than that attached to the office to which he was last substantively appointed;

"public office", "public officer" and "public service" shall have the same meanings as are assigned to those expressions in the Constitution except that the

definition of the expression "office of emolument" used therein shall be limited to the meaning given in these Regulations;

"salary" means basic salary;

"Secretary" means the secretary to the Judicial and Legal Service Commission;

"seniority" means the relative seniority of officers and except as may be otherwise provided by the Commission or in these Regulations shall be determinable and shall be regarded as having always been determinable as follows:

(i) as between officers of the same grade-

(a) by reference to the dates on which they respectively entered that grade;

(b) if any officers entered that grade on the same day by reference to their seniority on the day immediately preceding that day;

(c) if any officers who entered the same grade on the same day did so by appointment and not by promotion (excluding promotion from a non-pensionable to a pensionable grade), their seniority relative to each other shall be determinable by reference to their respective ages;

(ii) as between officers of different grades on the same salary scale or the same flat rate of salary, by reference to the dates on which they respectively entered their grades;

(iii) as between officers of different grades on different salary scales, by reference to the maximum point on their salary scales, a flat rate of salary being regarded for this purpose as a salary scale with a maximum point equivalent to the flat rate:

Provided that, when assessing the seniority of a pensionable public officer, service by that officer or any other person in a non-pensionable capacity shall not be taken into account;

"transfer" means the conferment upon a public officer, to whom these Regulations apply, whether permanently or otherwise of some public office other than that to which the officer was last substantively appointed, not being a promotion; but the posting of an officer between duty posts in the same grade within a Department shall not be regarded for this purpose as a transfer.

PART II

JUDICIAL AND LEGAL SERVICE COMMISSION

Appointment and function of the Secretary.

3. (1) The Governor General, acting on the recommendation of the Commission, shall appoint a secretary to the Commission, and such other staff as the Commission shall from time to time think necessary.

(2) The secretary to the Commission and other staff of the Commission shall be public officers.

(3) The secretary shall not be a member of the Commission and his functions and duties shall be limited to matters of an administrative nature.

Quorum and voting.

4. (1) Every meeting of the Commission shall be presided over by the Chairman and the Chairman and two members shall form a quorum for a meeting.

(2) Any question proposed for a decision at any meeting of the Commission shall be determined by a majority of the votes of the members present and voting and if on any

such question the votes are equally divided the Chairman shall have and exercise a casting vote.

Record of meetings and decisions.

5. A record shall be kept of the members present and of the business transacted at every meeting of the Commission. Any member who is present at a meeting when a decision is made shall be entitled to dissent therefrom and to have his dissent and his reasons therefor set out in the record of such meeting.

Other decisions.

6. A decision may be made by the Commission without a meeting by circulation of the relevant papers among the members and the expression of their views in writing; and in any such case the decision shall be the view of the majority of members expressing a view:

Provided that if any member requires that a decision on a matter being dealt with by circulation of the relevant papers shall be deferred until the subject matter shall be considered at a meeting of the Commission, no decision shall be made on that subject except at a meeting of the Commission:

Provided further that where a member dissents from a view recorded by a majority of members on paper circulated for a decision, the decision shall not be implemented until that member records the reasons for his view.

Privilege from disclosure in legal proceedings.

7. Any report, statement of other communication or record of any meeting, inquiry or proceedings which the Commission may make in exercise of its functions or any member may make in performance of his duties, or in discharge of any duty to the Governor-General or to any public officer, shall be privileged in that its production may not be compelled in any legal proceedings if the Governor-General certifies that such production is not in the public interest.

Protection of members from legal proceedings.

8. The Chairman and any member shall have such and like protection and privilege in case of any action or suit brought against him for any act done or omitted to be done in the execution of his duties under these Regulations as is by law given to the acts done or words spoken by a judge of the Supreme Court in the exercise of his judicial office.

Consultation with persons other than members.

9. The Commission may require any public officer to attend and give evidence before it concerning any matter which it is required to consider in the exercise of its functions, and may, unless the Governor-General certifies that such production is not in the public interest, require the production of any official document relating to any such matter.

Documents to be made available.

10. Any public officer who submits any matter for the consideration of the Commission shall ensure that all relevant documents and papers are made available to the Commission.

Failure to comply with requirement of Commission.

11. Any public officer who without reasonable excuse fails to appear before the Commission when required by the Commission to do so or who fails to comply with any other requirement lawfully and properly made by the Commission shall be guilty of a

breach of discipline and the Commission may refer the matter to the Public Service Commission, in the case of an officer not holding a judicial or legal office, in order that disciplinary proceedings may be instituted against him, or, in the case of a public officer holding a judicial or legal office, direct the head of Department, or the Permanent Secretary, as the case may be, that disciplinary proceedings should be instituted against him and the Head of Department or the Permanent Secretary, as the case may be, shall act accordingly.

Improper influence.

12. 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 shall be guilty of an offence and upon summary conviction be liable to a fine not exceeding one hundred and fifty dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment:

Provided that nothing in this regulation shall prohibit any person who may properly give a certificate or testimonial to any applicant or candidate for any public office, from giving such a certificate or testimonial or from supplying any information or assistance at the request of the Commission.

Penalty for supplying false information to Commission.

13. Any person who in connection with any application by any person for employment or promotion in the public service, or with any matter upon which it is the duty of the Commission to make a recommendation to the Governor-General or to make any decision, wilfully gives to the Commission or to any member thereof, or to any person or body of persons properly appointed 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, shall be guilty of an offence and upon summary conviction be liable to a fine not exceeding three hundred dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Unauthorised disclosure of information.

14. (1) Neither the Chairman nor any member nor any other person shall without the written permission of the Governor-General publish or disclose to any person otherwise than in exercise of his functions under these Regulations the contents of any document, communication or information whatsoever which has come to his notice in the course of his duties in respect of any matter referred to the Commission, and any person who knowingly acts in contravention of this regulation shall be guilty of an offence and upon summary conviction be liable to a fine not exceeding three hundred dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(2) If any person having possession of any information which to his knowledge has been disclosed in contravention of the provisions of paragraph (1) of this regulation, publishes or communicates to any other person any such information otherwise than for the purpose of any criminal prosecution or of disciplinary proceedings in respect of such disclosure, he shall be guilty of an offence and upon summary conviction be liable to a fine not exceeding three hundred dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

PART III

APPOINTMENTS, PROMOTIONS AND TRANSFERS

Functions of Commission with regard to appointments, promotions and transfers.

15. The Commission shall advise the Governor-General on-

(a) appointments, promotions and transfers to public offices to which Article 117 of the Constitution S.I. 80/1975, r. 3. applies;

(b) petitions against decisions by the Governor-General under Article 117 of the Constitution, in respect of appointments, promotions and transfers.

Supervision of recruitment.

16. In order to discharge its duties under the provisions of regulation 15 the Commission shall exercise supervision over and approve any scheme for appointment to a judicial or legal office by examination or for the award of any scholarship for training for a judicial or legal office, and over any other method of recruitment including the appointment and procedure of any board for the selection of candidates.

Advertisement of vacancies.

17. Where any vacancy is not to be filled by promotion or by the result of an examination, a scholarship or a training award, the vacancy shall, unless the Commission otherwise directs, be notified to the public by advertisement in time to enable candidates to make application in accordance with such advertisement.

Principles and procedures applicable to selection for promotion.

18. (1) In considering the claim of any judicial or legal officer for promotion, merit and ability shall be taken into account as well as seniority, experience and formal qualifications.

(2) Any recommendations made to the Commission for promotion shall state whether the person recommended is the senior officer in the department or grade eligible for promotion and, where this is not the case, detailed reasons shall be given in respect of each person in that department of grade over whom it is proposed that the person recommended should be promoted.

Maintenance of a confidential report system.

19. In order to discharge its duties under regulation 18 the Commission may issue such directions as it may see fit for the maintenance of a system of confidential reports on judicial and legal officers and for their safe custody.

Principles and procedures applicable to selection for acting appointments.

20. The procedure for making acting appointments shall be the same as that prescribed in these Regulations for making a promotion. Any recommendation to the Commission for the making of an acting appointment, except one under subsection (2) of section 16 of the Ch. 39. Public Service Act, shall contain a statement whether or not the officer recommended for acting appointment is in every way qualified to perform all the duties of the office in which he is to act.

Selection for scholarships and courses.

21. The procedure for making appointments shall be followed where it is desired to select an officer for a scholarship or a course of training which is designed to fit him for a higher post or which may enhance his qualifications for promotion.

Procedure for transfers.

22. The procedure for transfers shall, where any increase in emoluments is involved, be that prescribed in these Regulations for promotions, and, in any other case, be that so prescribed for appointments.

Procedure in cases of urgency.

23. When it is necessary to make an appointment, promotion or transfer of a judicial or legal officer, the procedure in the subsequent regulations in this Part of these Regulations shall be followed except that, where any delay involved in carrying out such procedure is likely to cause serious inconvenience, the Head of Department or the Permanent Secretary, as the case may be, shall report the matter to the Chairman who may as a matter of urgency recommend an acting appointment without regard to that procedure. The Chairman shall notify all members of the Commission as soon as possible after he has made a recommendation under this regulation.

Detailed procedure for appointments, promotion and transfers.

24. The appointment, promotion and transfer of judicial and legal officers shall be made by the Governor-General, acting in accordance with the recommendation of the Commission and, subject to the provisions of regulation 23 of these Regulations, the following procedure shall be followed-

(a) the Head of Department shall, after verifying from the Director of Public Personnel that there is no establishment or financial objection to the filling of the post, report to the Secretary without delay the creation of a new post or any impending vacancy in an existing post in his department. The report shall include a recommendation as to how the post should be filled and whether or not the post should be advertised;

(b) in the case of a vacancy in the post of Registrar General or Deputy Registrar General the Permanent Secretary shall follow the procedure in Regulation 24(a);

(c) if the Commission decides that a post should be advertised, the Commission shall arrange the publication of the advertisement and shall receive the replies to the advertisement;

(d) the Commission may interview the candidates for any post or it may appoint a selection board for this purpose and the selection board shall report to the Commission in such manner as the Commission directs. The Commission shall take into consideration the recommendations by the Head of Department or the Permanent Secretary, as the case may be, on the candidates and shall in every case consult with the Director of Public Personnel before recommending an appointment;

(e) if the Commission is unable to recommend any candidate for appointment to the post, the Commission may propose such arrangements as may be necessary for recruitment to the post from outside The Bahamas.

PART IV

DETERMINATION OF APPOINTMENT AND EXTENSION OF PROBATIONARY SERVICE

Termination of appointment on abolition of office.

25. Where a post, being one of a number of such posts, is abolished, but one or more of such posts remain, the Head of Department, or, in the case of the Register General's Department, the Permanent Secretary, shall report to the Secretary making his recommendations, with reasons therefor, as to which of the substantive holders of such posts shall have his appointment terminated. The Commission shall thereupon make its recommendations thereon to the Governor-General.

Termination of non-pensionable appointments.

26. If a Head of Department or, in the case of the Registrar General's Department, the Permanent Secretary, is of the opinion that the appointment of a non-pensionable judicial or legal officer should be terminated (otherwise than as provided in regulation 28 and 42 of these Regulations) the Head of Department, or the Permanent Secretary, as the case may be, shall, in writing, set out his reasons and require the officer to show cause, in writing, why his service should not be terminated; if no reply is received within two weeks of the receipt thereof or if the Head of Department or the Permanent Secretary, as the case may be, considers that no adequate cause has been shown, the Head of Department or the Permanent Secretary, as the case may be, shall report the case, giving his reasons and forwarding any representations made by the officer to the Secretary, and the Commission shall recommend to the Governor-General whether the appointment should be terminated.

Probationary appointments.

27. (1) Where a judicial or legal officer holds an appointment subject to a period on probation, which period shall in no case be less than twelve months, six weeks before the expiration of the probationary period the Head of Department or the Permanent Secretary, as the case may be, shall consider whether such officer should on such expiration be confirmed in an established post or should serve a further period on probation or should not remain in the public service. If he considers that the officer should serve a further period on probation or should not remain in the public service, and in every case in which he considers that the officer should be confirmed in an established post, he shall report the matter together with his reasons therefor to the Secretary; and the Commission shall make its recommendations to the Governor-General upon the matter.

(2) Where a judicial or legal officer holds a probationary appointment and the Head of Department, or the Permanent Secretary, as the case may be, at any time during the period of such probationary appointment is of the opinion that such appointment should be terminated, the Head of Department, or the Permanent Secretary, as the case may be, shall follow the procedure provided in paragraph (1) of this regulation in respect of an officer whom he considers should not remain in the public service, as the circumstances require.

(3) Before either reaching a final conclusion or deciding to make a report, as the case may be, under the provisions of paragraph (1) or (2) of this regulation, that a further period of probationary service by an officer is necessary, or that an officer's service should be terminated, the Head of Department or the Permanent Secretary, as the case may be, shall, if it appears prima facie that such a conclusion may be reached or that such a report may be required, call upon the officer concerned to submit his representations on the matter.

PART V

DISCIPLINE

A. General

Premature termination of contract and withholding of gratuities.

28. (1) Where a judicial or legal officer is serving under a contract and where the Head of Department or the Permanent Secretary, as the case may be, is of the opinion that such contract should be terminated, he shall report the matter to the Secretary together with the reasons for such course; and the Commission shall recommend to the Governor-General whether such course should be taken:

Provided that where it appears to the Chairman that there is any doubt whether under the terms of the contract such termination can be lawfully effected, the Chairman shall refer the case to the Attorney-General for advice.

(2) Where a judicial or legal officer is serving under a contract which provides for the payment of a gratuity on completion of satisfactory service and where the Head of Department or the Permanent Secretary, as the case may be, is of the opinion that no gratuity or part only of such gratuity should be paid, he shall report the matter to the Secretary together with the reasons for such course. The Chairman, if it appears to him that such an opinion can prima facie be justified, shall call upon the officer concerned to submit his representations on the matter and the Commission shall recommend to the Governor-General whether such gratuity should be paid in whole or in part.

Regulations to govern disciplinary procedure.

29. Any act of alleged misconduct by a judicial or a legal officer shall be dealt with under this Part of these Regulations as soon as possible after the time of their occurrence.

Cases not otherwise provided for.

30. Any case not covered by these Regulations shall be reported to the Secretary and the Commission shall make recommendations to the Governor-General as to how the case shall be dealt with.

Functions of the Commission with regard to discipline.

31. (1) The Commission shall advise the Governor-General on any such question involving disciplinary control over public officers as is required to be submitted S.I. 80/1975, r. 4. to the Governor-General by virtue of Article 117 of the Constitution.

(2) Where in any case the Commission is of the opinion that disciplinary proceedings should be instituted against a judicial or legal officer the Commission may, notwithstanding the provisions of these Regulations, direct the Head of Department, or the Permanent Secretary, as the case may be, to initiate such proceedings:

Provided that in any case where it appears to the Commission that the conduct of the officer in question may constitute a criminal offence, the case shall be referred to the Attorney-General; and where the Attorney-General advises that it is intended to institute criminal proceedings in respect thereof, the Commission shall postpone consideration of the giving of such a direction until the conclusion of such proceedings and any appeal therefrom.

Grounds for criminal prosecution.

32. When a preliminary investigation or a disciplinary inquiry discloses that an offence against any law may have been committed by a judicial or legal officer, the Head of Department or the Permanent Secretary, as the case may be, shall unless action by the police has been or is about to be taken, consult the Attorney-General as to whether a prosecution should be instituted and, if he does not advise a prosecution, as to whether disciplinary action should be taken or continued under the appropriate regulation. In the latter case the charges framed against the officer shall be approved by the Attorney-General before the officer is required to answer them or before the inquiry proceeds.

No dismissal while criminal proceedings pending.

33. Where criminal proceedings are instituted against a judicial or legal officer in any court, proceedings for his dismissal upon any grounds involved in the criminal

charge shall not be taken until the conclusion of the criminal proceedings and the determination of any appeal therefrom.

Disciplinary action after acquittal on a criminal charge.

34. No disciplinary action of any kind shall be taken against any judicial or legal officer in respect of any conduct, or any conduct raising, in the opinion of the Attorney-General, substantially the same issues as conduct in respect of which he has been acquitted in a criminal court.

Copies of evidence of inquiries.

35. (1) Subject to paragraph (3) of this regulation, any judicial or legal officer, in respect of whom a disciplinary inquiry is to be held, shall be entitled at or before the commencement of the inquiry to receive, free of charge, a copy of every document that is to be relied on for the purpose of or in connection with establishing his guilt, or in default thereof shall be allowed access thereto.

(2) Subject as aforesaid, any judicial or legal officer in respect of whom a disciplinary inquiry has been held, shall be entitled, after the conclusion of such inquiry, to receive a copy of every document tendered in evidence at such inquiry on the payment of twenty-five cents therefore, and a copy of the record of evidence on payment of five cents for every hundred words after the first hundred words of that record.

(3) Nothing in this regulation shall entitle any person to receive any copy of any official document (not being a document given in evidence at any inquiry) or any recorded reason for any decision reached at any inquiry.

Interdiction.

36. (1) Where the Commission considers that the interests of the public service require that a judicial or legal officer should cease forthwith to exercise the powers and functions of his office, the Commission may interdict him from the exercise of those powers and functions if disciplinary proceedings for his dismissal are being taken or are about to be taken or if criminal proceedings are being instituted against him.

(2) An officer who is interdicted shall, subject to the provision of regulation 37, receive such emoluments, not being less than half as the Commission thinks fit.

(3) Where any disciplinary proceedings mentioned in paragraph (1) do not result in the dismissal of the officer or in the award against him of any punishment, the whole of any emoluments withheld from him shall be restored to him when the final decision is made; but where any punishment, not amounting to dismissal, is awarded against him there shall be restored to him such proportion, if any, of any emoluments withheld from him as in the opinion of the Commission is justified in the circumstances of the case.

Non-payment of salary on conviction on criminal charge.

37. Where any judicial or legal officer is convicted by any criminal court of an offence, and is dismissed from the service on account of such conviction, he shall, with effect from the date of such conviction and until his dismissal, be entitled to receive such emoluments, if any, as the Commission may think fit.

Provided that any emoluments withheld from an officer pursuant to this regulation shall be restored to the officer in any case where any such conviction as aforesaid is quashed pursuant to the decision of any higher court.

Interdicted officers not to leave The Bahamas.

38. (1) An officer who is under interdiction shall not leave the Commonwealth of The Bahamas without the permission in writing of the Commission.

(2) It shall be the duty of an officer under interdiction to leave with the Secretary an address, within or outside the Commonwealth of The Bahamas, as the case may be, where he may at any time be contacted and any notice or other communication delivered for him at that address by order of the Commission shall be deemed duly served.

Punishments.

39. (1) The following punishments may be ordered as a result of proceedings under these Regulations-

- (a) dismissal;
- (b) reduction in rank;
- (c) reduction in salary;
- (d) deferment of increment;
- (e) withholding of increment;
- (f) reprimand;
- (g) forfeiture of any part of any emoluments withheld during any period of

interdiction under the provisions of regulations 37:

Provided that nothing in this paragraph shall limit any power conferred under regulation 26, 27, 28 and 43 to terminate the appointment of a judicial or legal officer or any power conferred in these Regulations to require a judicial or legal officer to retire from the public service in the public interest.

(2) Notwithstanding the provisions of paragraph (1) of this regulation, on completion of proceedings instituted for dismissal of a judicial or legal officer, the Governor-General, acting on the recommendation of the Commission, may, if of the opinion that the proceedings disclose grounds for requiring him to retire in the public interest, require him to do so.

(3) Where a Head of Department, or the Permanent Secretary, as the case may be, is of the opinion that a judicial or legal officer should be required to retire in the public interest, he shall make a report to the Secretary. The Commission shall, after causing such a further enquiry to be made as appears necessary, recommend to the Governor-General whether the officer should be required to retire in the public interest.

B. Proceedings Against Judicial and Legal Officers

Proceedings for dismissal.

40. (1) Where a Head of Department or the Permanent Secretary, as the case may be, considers it necessary to institute proceedings against a judicial or legal officer who is serving in a department under his supervision, on grounds of misconduct which, if proved, would justify his dismissal from the public service, he shall cause such preliminary investigation to be made as he considers necessary and shall report the facts to the Secretary. The Chairman shall, after considering the report-

(a) if he considers that a charge should be made against the officer and after consulting the Attorney-General as to the terms of the charge, forward to the officer a statement of the charge preferred against him together with a brief statement of the particulars of the allegation upon which the charge is based, in so far as they are not clear from the charge itself; and shall call upon the accused officer to state in writing, within such reasonable time as shall be specified, any grounds upon which he relies to exculpate himself; or

(b) if he considers that, if the offence is proved, some penalty other than dismissal is likely to be appropriate, arrange for the procedure set out in regulation 26, 27, 28 or 42, as the case may be, of these Regulations to be followed.

(2) If the officer does not furnish a reply to any charge forwarded under subparagraph (a) of paragraph (1) of this regulation within the period specified, or if, in the opinion of the Chairman he fails to exculpate himself, the Governor-General may cause a committee to be appointed to inquire into the matter. One member of the committee shall be a judge, magistrate or a public officer with legal qualifications who shall be chairman. The Head of Department under whom the officer is serving shall not be a member of the committee.

(3) The committee shall inform the accused officer that on a specified day the charge made against him will be investigated by them and that he will be allowed or, if the committee shall so determine, will be required, to appear before the committee.

(4) If witnesses are examined by the committee the accused officer shall be given an opportunity of being present and of putting questions on his behalf to the witnesses, and no documentary evidence shall be used against him unless he has been previously supplied with a copy thereof or given access thereto.

(5) The committee may permit the Head of Department or the Permanent Secretary or the accused officer to be represented by a public officer or a legal practitioner:

Provided that where the committee permit the one party to be so represented they shall permit the other party to be represented in the same manner.

(6) If during the course of the inquiry grounds for the framing of an additional charge against the accused officer are disclosed, the committee shall so inform the Secretary, and if the Chairman thinks fit to recommend proceedings against the accused officer upon such grounds, the same procedure shall be followed in respect of the additional charge as was adopted in respect of the original charge.

(7) The committee, having inquired into the matter, shall forward their report thereon to the Chairman, accompanied by the record of the charges made, the evidence taken and any other proceedings relevant to the inquiry.

(8) The Commission, after consideration of the report of the committee, may if it is of the opinion that the report should be amplified in any way or that further investigation is desirable, refer the matter back to the committee for further investigation and report. The Commission shall forward the written proceedings of the inquiry to the Governor-General together with its recommendation as to the punishment, if any, which should be inflicted on the accused officer. The decision on each charge preferred against the accused officer shall be communicated to him (but not the reasons for the decision). Proceedings for misconduct not warranting dismissal.

41. (1) Where a Head of Department, or the Permanent Secretary, as the case may be, considers it necessary to institute disciplinary proceedings against a judicial or legal officer and is of the opinion that the misconduct alleged is not serious enough to warrant dismissal, he shall investigate the matter in such manner as he thinks proper or he may request the Chairman to cause an investigation to be made; in either case the officer shall be entitled to know the whole case against him and shall be given adequate opportunity of making his defence.

(2) If as a result of an investigation referred to in paragraph (1) of this regulation the Head of Department, or the Permanent Secretary, as the case may be, is of the opinion that the allegation is proved, he shall make a report to the Secretary.

(3) The Commission shall, if it endorses the opinion of the Head of Department or the Permanent Secretary, as the case may be, make recommendations to the Governor-General as to what penalty, if any, should be inflicted on the officer.

(4) The decision on each charge preferred against the officer shall be communicated to him (but not the reasons for the decision) by the Secretary.

(5) Notwithstanding the provisions of this regulation, if at any stage during proceedings it appears to the Commission that-

(a) the offence, if proved, would justify dismissal; or

(b) if the offence is proved, proceedings for the retirement of the officer from the public service in the public interest would be more appropriate; such proceedings shall be discontinued and the procedure in regulation 40 or 42, as the case may be, shall be followed.

Proceedings against a judicial or legal officer for retirement in the public interest.

42. (1) If a Head of Department, or the Permanent Secretary, as the case may be, considers that it is desirable in the public interest that a judicial or legal officer serving in his department 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 Secretary.

(2) The Chairman may obtain from any public officer under whom such judicial or legal officer has served, a report as to his work and conduct, and may allow any such officer to show cause why he should not be retired from the public service and to make a written statement, if he so desires.

(3) The Commission shall consider the officer's statement and all the circumstances of the case and shall recommend to the Governor-General whether or not the officer should be retired.

(4) If the Commission recommends that the officer shall be retired from the public service, the Commission shall further recommend whether the officer should be granted the full pension or gratuity for which he is eligible or a reduced pension, or reduced gratuity, or no pension or no gratuity, as the case may be.

Criminal conviction of a judicial or legal officer.

43. Where any judicial or legal officer is convicted by any court, on a criminal charge, the Head of Department or the Permanent Secretary, as the case may be, shall bring the matter to the notice of the Secretary. The Secretary shall write to the officer concerned to make any representations he desires concerning the conviction. The Commission shall consider the conviction (and the proceedings if available) and if, after considering any representations made by the officer, it is of the opinion that the officer should be dismissed or subjected to some other disciplinary penalty on account of the conviction, the Commission shall recommend to the Governor-General that such penalty should be inflicted without following the procedure prescribed in regulation 40 or 41 of these Regulations.

C. Procedure on Admission of Offences

Admission of offence.

44. Where the facts giving rise to any charge made against an officer under regulation 40 or 41 are admitted by that officer in writing, a record of the case together with the comments of the Head of Department or the Permanent Secretary, as the case may be, shall be forwarded to the Secretary and the Commission shall, after causing such further inquiry to be made as appears necessary, recommend to the Governor-General what punishment if any should be inflicted on the officer.

D. Miscellaneous

Absence from duty without leave.

45. Where any judicial or legal officer is absent from duty without leave or reasonable cause for a period exceeding seven days and the officer cannot be found within a period of fourteen days of commencement of such absence or, if found, no reply to a charge of absence without leave is received from him within ten days after the dispatch of the charge to him, the Head of Department or the Permanent Secretary, as the case may be, shall report the matter to the Secretary and the Commission shall make its recommendation to the Governor-General thereon.

Withholding and restriction of increments.

46. (1) If a Head of Department, or the Permanent Secretary, as the case may be, is of the opinion that an annual increment in salary of a judicial or legal officer holding a post in his department should be deferred or withheld on the ground of unsatisfactory service during the previous year, or for a failure to pass a prescribed examination, he shall make a confidential report to the Secretary giving the reasons therefor and the Commission shall make a recommendation to the Governor-General on the matter.

(2) If a Head of Department, or the Permanent Secretary, as the case may be, is of the opinion that an annual increment in salary of a judicial or legal officer which has been deferred or withheld should be granted, he shall make a confidential report to the Secretary giving the reasons therefor and the Commission shall make recommendations to the Governor-General on the matter.

(3) Where the award of the increment has been deferred the increment may be granted as from the incremental date, in which case the arrear of salary due may be paid to the officer concerned.

(4) Where the increment has been withheld for a period of less than one year, the officer concerned shall be entitled to draw the increased salary as from the day following the close of the period for which the increment has been withheld and shall be eligible for a further increment on the next incremental date.

(5) Where the increment has been withheld for a year, the officer concerned shall be eligible for one increment and no more on the next incremental date.