

**THE SALARIES AND REMUNERATION COMMISSION
BILL, 2011**

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

1—Short title.

2—Interpretation.

PART II—COMPOSITION AND ADMINISTRATION

3—Powers of the Commission as body corporate.

4—Appointment of chairperson and members.

5—Qualification for appointment of chairperson and members.

6—Nomination of members.

7—Procedure for nominations.

8—Oath of office.

9—Vacancy in office of chairperson or member.

10—Filling of vacancy.

11—Functions of the Commission.

12—Guiding principles for the Commission.

13—Powers of the Commission.

14—Committees of the Commission.

15—Procedures of the Commission.

16—Appointment of secretary of the Commission.

17—Removal of secretary.

18—Secondment of staff.

19— The common seal of the Commission.

PART III—FINANCIAL PROVISIONS

20—Funds of the Commission.

21—Financial year.

22—Annual estimates.

23—Accounts and Audit.

**THE SALARIES AND REMUNERATION
COMMISSION BILL, 2011**

A Bill for

AN ACT of Parliament to make further provision as to the functions and powers of the Salaries and Remuneration Commission, the qualifications and procedures for the appointment of the chairperson and members of the Commission, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Salaries and Remuneration Commission Act, 2011.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“chairperson” means the chairperson of the Commission appointed under the Constitution, in accordance with the procedure set out in section 4;

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

“Commission” means the Salaries and Remuneration Commission established by Article 230 of the Constitution;

“salary and remuneration” includes the ordinary, basic or minimum wage or pay and any additional emoluments whatsoever payable, directly or indirectly, whether in cash or in kind, by an employer to an employee and arising out of the employment of that employee;

“secretary” means the secretary to the Commission appointed by the Commission under Article 250 (12) of the Constitution, in accordance with the procedure set out in section 16;

“public officer” means a person holding a public office as defined in the Constitution.

(2) Despite subsection (1), until after the first general elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean “Minister.”

PART II—COMPOSITION AND ADMINISTRATION

Powers of the Commission as a body corporate.

3. In addition to the powers of the Commission under article 253 of the Constitution, the Commission shall have the power to—

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

Appointment of chairperson and members.

4. (1) The chairperson and other members of the Commission shall be appointed in accordance with the provisions of Article 230 of Constitution and this Act.

(2) The chairperson and members shall serve on part-time basis for a non-renewable term of six years.

Qualification for appointment of chairperson and members.

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

- (a) holds a degree from a university recognized in Kenya;
- (b) has knowledge and at least fifteen years' experience in matters relating to either—
 - (i) public management;
 - (ii) finance and administration;
 - (iii) human resource management;
 - (iv) economics; or
 - (v) labour laws.
- (c) has knowledge of labour market trends in Kenya as relates to income in the public and private sector;
- (d) meets the requirements of Chapter Six of the Constitution; and
- (e) has had a distinguished career in their respective fields.

(2) A person shall be qualified for appointment as a member if the person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has knowledge and at least ten years' experience in either—
 - (i) finance and administration;
 - (ii) public management;
 - (iii) economics;
 - (iv) human resource management; or
 - (v) labour laws.
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) has had a distinguished career in their respective fields.

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

- (a) is a member of Parliament or County Assembly;
- (b) is a member of a governing body of a political party;
- (c) is a member of a local authority;
- (d) is an undischarged bankrupt; or
- (e) has been removed from office for contravening the provisions of the Constitution or any other law.

Nomination of members.

6. (1) Every nominating body under Article 230 (2) (b) and (c) of the Constitution shall nominate its representative to the Commission in a competitive and transparent manner in accordance with section 7.

(2) A person shall not be qualified for nomination under Article 230 (2) (d) or (e) of the Constitution unless such person holds the qualifications specified in section 5 (2).

Procedure for nominations.

7.(1) Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the Commission relating to the members under Article 230 (2) (b) and (c) of the Constitution, the relevant nominating body shall, by advertisement in at least two local daily newspapers of national circulation, invite applications from persons who qualify for nomination under the Constitution and this Act for nomination as a member of the Commission.

(2) The relevant nominating body shall consider the applications received under subsection (1) to determine their compliance with the provisions of the Constitution and this Act, interview the applicants and forward the names of two persons so qualified, who shall be of opposite gender, to the Cabinet Secretary for onward transmission to the President.

(3) Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the office of the chairperson, the President shall convene a selection panel (hereinafter referred to as “the panel”) for the purpose of selecting suitable candidates for appointment as the chairperson.

(4) Until the first general election after the commencement of this Act, the President shall consult with the Prime Minister on the nomination of the selection panel under subsection (3).

(5) The panel shall comprise a chairperson and four other members drawn from the executive and professional organisations.

(6) The panel shall, subject to this section, determine its own procedure and the Ministry responsible for Public Service shall provide it with such facilities and other support as it may require for the discharge of its functions.

(7) The panel shall, within seven days of its convening, invite applications from qualified persons and publish the names and qualifications of all applicants in the Gazette and two daily newspapers of national circulation.

(8) The selection panel shall consider the applications, and shortlist and interview the applicants.

(9) After carrying out the interviews, the panel shall select three persons qualified to be appointed as chairperson of the Commission and forward the names to the President.

(10) Until after the first general election after the commencement of this Act, the President, in consultation with the Prime Minister shall, within seven days of receipt of the names forwarded under subsections (2) and (9), nominate a chairperson and other members of the Commission and forward the names of the nominees to the National Assembly.

(11) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the nominees under subsection (9), consider all nominations and may approve or reject any nomination.

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

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

(14) Where the National Assembly rejects any nomination, the Speaker shall communicate the decision to the President to submit fresh nominations.

(15) In appointing members under this section, the President shall observe the principle of gender equity, regional and ethnic balance and equal opportunities for persons with disabilities and shall ensure that at least one-third of the members are of either gender.

Oath of office.

8. The chairperson, members and secretary shall each make and subscribe before the Chief Justice to the oath or affirmation set out in the First Schedule.

Vacancy in office of chairperson or member

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

- (a) dies;
- (b) by notice in writing addressed to the President resigns from office;
- (c) is removed from office under any of the

circumstances specified in Article 251 and chapter six of the Constitution.

(2) The President shall notify every resignation, vacancy or termination in the Gazette within fourteen days.

Filling of vacancy.

10. (1) Where a vacancy occurs in the membership of the Commission under sections 9, the appointment procedure provided for under the Constitution and this Act, shall apply.

(2) A member appointed under subsection (1) shall serve for a term of six years but shall not be eligible for reappointment.

Functions of the Commission.

11. In addition to the powers and functions of the Commission under Article 230 (4), the Commission shall -

- (a) inquire into and determine the salaries and remuneration to be paid out of public funds to State officers and other public officers;
- (b) keep under review all matters relating to the salaries and remuneration of public officers;
- (c) advise the national and county governments on the harmonization, equity and fairness of remuneration for the attraction and retention of requisite skills in the public sector;
- (d) conduct comparative surveys on the labour markets and trends in remuneration to determine the monetary worth of the jobs of public offices;
- (e) determine the cycle of salaries and remuneration review upon which Parliament may allocate adequate funds for implementation;
- (f) make recommendations on matters relating to the salary and remuneration of a particular State or public officer;
- (g) make recommendations on the review of pensions payable to holders of public offices; and

(h) perform such other functions as may be provided for by the Constitution or any other written law.

Guiding principles for the Commission.

12. In addition to the principles set under Article 230 (5) of the Constitution, the Commission shall also be guided by the principle of equal remuneration to persons for work of equal value.

Powers of the Commission.

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

- (a) gather, by any means appropriate, any information it considers relevant, including requisition of reports, records, documents or any information from any source, including governmental authorities;
- (b) interview any individual, group or members of organizations or institutions and, at the Commission's discretion, conduct such interviews;
- (c) hold inquiries for the purposes of performing its functions under this Act;
- (d) take any measures it considers necessary to ensure that in the harmonization of salaries and remuneration, equity and fairness is achieved in the public sector.

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

- (a) may inform itself in such manner as it thinks fit;
- (b) may receive written or oral statements from any person, governmental or non-governmental agency; and
- (c) shall not be bound by the strict rules of evidence.

Committees of the Commission.

14. (1) The Commission may, from time to time, establish committees for the effective discharge of its functions.

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

Procedures of the Commission.

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

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

(3) The Commission may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Commission.

Appointment of secretary of the Commission.

16. (1) The appointment of the secretary to the Commission under Article 250 (12) of the Constitution shall be through a competitive recruitment process.

(2) A person shall be qualified for appointment under subsection (1) if such person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least fifteen years' experience in human resource management, financial management or public management; and
- (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(3) As the chief executive officer, the secretary shall be responsible to the Commission for-

- (a) the implementation of functions of the Commission;
- (b) the formation and development of an efficient administration; and

(c) the organization, control and management of staff.

Removal of secretary. **17.** (1) The secretary may be removed from office by the Commission, in accordance with the terms and conditions of service, for—

(a) inability to perform the functions of the office arising out of physical or mental incapacity;

(b) gross misconduct or misbehaviour;

(c) incompetence or negligence of duty; or

(d) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the secretary is removed under subsection (1), the secretary shall be given an opportunity to defend himself or herself against any allegations against him or her.

Secondment of staff **18.** (1) In addition to the staff appointed by the Commission under Article 252 (1) (c) of the Constitution, the Government may, upon the request by the Commission, second to the Commission such number of public officers as may be necessary for the purposes of the Commission.

(2) A public officer seconded to the Commission shall, during the period of secondment, be deemed to be an officer of the Commission and shall be subject only to the direction and control of the Commission.

The common seal of the Commission.

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

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

PART III—FINANCIAL PROVISIONS

Funds of the Commission

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

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

(2) The receipts, earnings or accruals of the Commission and the balances at the close of each financial year shall not be paid into the Consolidated Fund but shall be retained for purposes of this Act.

Financial year.

21. The financial year of the Commission shall be the period of twelve months ending on the thirtieth of June in every year.

Annual estimates.

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

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

- (a) payment of remuneration in respect of the members of the Commission;
- (b) payment of salaries and remuneration in respect of staff of the Commission;
- (c) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Commission;
- (d) maintenance of the buildings and grounds of the Commission;
- (e) funding of training, research and development of activities of the Commission; and

(f) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Commission may think fit.

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

Accounts and
Audit.

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

(2) Within a period of three months after the end of each financial year, the Commission shall submit to the Auditor General the accounts of the Commission in respect of that year together with—

(a) a statement of the income and expenditure of the Commission during that year; and

(b) statement of the assets and liabilities of the Commission on the last day of that financial year.

(3) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Audit, 2003.

No.12 of 2003.

PART IV—MISCELLANEOUS PROVISIONS

Report of the
Commission.

24. (1) The report of the Commission under Article 254 of the Constitution shall, in respect of the financial year to which it relates, contain—

(a) the financial statements of the Commission;

(b) a description of the activities of the Commission;

(c) such other statistical information as the Commission considers appropriate relating to the Commission's functions; and

(d) any other information relating to its functions that the Commission considers necessary.

Offences.

25. (1) A person who—

(a) without justification or lawful excuse, obstruct or hinder, or assault or threaten a member or staff of the Commission acting under this Act;

(b) submit false or misleading information; or

(c) misrepresent to or knowingly mislead a member or staff of the Commission acting under this Act.

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

Regulations.

26. The Commission may make regulations generally for the better carrying into effect of any provisions of this Act.

Code of conduct.

27. The Commission shall develop a code of conduct for its members and staff.

Transitional and savings.

28. (1) Every person who immediately before the commencement of this Act was an employee of the Government attached to the former Permanent Public Service Remuneration Review Board shall, upon the commencement of this Act be given an option to serve in the Commission and if not appointed by the Commission, be redeployed in the Public Service.

FIRST SCHEDULE

(S 8)

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

I having been appointed (the chairperson to/member of /Secretary to) the Salaries and Remuneration Commission under the Salaries and Remuneration Commission Act, 2011, do swear/ solemnly affirm that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said

Before me this Day of

.....
Chief Justice.

SECOND SCHEDULE**(S. 15)****CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMISSION**

Meetings.

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

(2) Meetings shall be convened by the Secretary in consultation with the chairperson and shall be held at such times and such places as the chairperson shall determine.

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

(4) The chairperson shall preside over all meetings and in the absence of the Chairperson, by a person elected by the Commission at the meeting for that purpose.

Conflict of interest.

2. (1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

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

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

(4) No member or staff of the Commission shall transact any business or trade with the Commission.

Quorum. **3.** The quorum of the meeting shall not be less than half of the appointed members with voting rights under article 230 of the Constitution.

Voting. **4.** A decision of the Commission shall be by a majority of the members present and voting and, in the case of an equality of votes; the person presiding at the meeting shall have a second or casting vote.

Minutes. **5.** Minutes of all meetings shall be kept and entered in records kept for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to give effect to the constitutional provisions relating to the Salaries and Remuneration Commission under Article 230. It provides for the additional functions and powers of the Commission; the qualifications and procedures for the appointment of the chairperson and members of the Commission. The Commission is mandated to regularly review the salaries, remuneration and benefits of State officers and to further advise the National and county governments on the remuneration and benefits of all other public officers.

Part I (Clauses 1 and 2) provides for the preliminary matters. **Clause 1** provides for the short title of the Bill. **Clause 2** defines terms as used in the Bill.

Part II (Clauses 3-19) provides for the functions and powers of the Commission, including additional ones to those provided for under the Constitution. **Clause 3** provides for the attributes of the Commission as a corporate body. **Clause 4** provides for the membership of the Commission. **Clauses 5 and 6** provide for the qualification of the chairperson and members and require among other things that the chairperson be qualified in areas of either labour law, public management, finance and administration or economics. The nominating bodies are required to nominate members in a competitive manner.

Clauses 7 provides for the procedure of appointment and require that all vacancies be advertised and individuals given opportunity to apply. Applicants can then forward their applications to their respective nominating institutions, which shall interview and nominate accordingly. The names are then forwarded to the President who shall in turn forward the same to the National Assembly for approval. Upon approval by the National Assembly, the President shall appoint the chairperson and members, respectively. Before taking office members are required to subscribe to an oath of office.

Clauses 9 and 10 provide for vacancies and the filling of the vacancies thereof.

Clause 11 outlines the functions of the Commission while **clause 12** provides for additional guiding principle that the Commission must take

into account when undertaking its functions and exercising its powers under the Constitution and this Act. **Clause 13** provides for the powers while **clauses 14 and 15** provide for the committees and procedures for the conduct of business and affairs of the Commission, respectively.

Clause 16 provides for the appointment of the secretary to the Commission. It requires that the secretary be appointed competitively. **Clause 17** provides for the removal of the secretary. It requires that the secretary be removed only after being given an opportunity to defend himself or herself before the Commission. **Clause 18** provides for secondment of staff to the Commission. **Clause 19** makes provisions on the custody and use of the Commission's common seal.

Part III (Clauses 20-23) provides for the financial affairs of the Commission. **Clause 20** deals with the funds of the Commission. It allows the Commission to retain the receipts, earnings or accruals and balances at the close of the financial year for its purposes. **Clauses 21 and 22** provide for the financial year and require the Commission to prepare its annual estimates before the end of each year. **Clause 23** provides for the accounts and audit of the Commission.

Part IV (Clauses 24-28) deals with miscellaneous matters. **Clause 24** requires the Commission to prepare its report. The report is to be forwarded to the President and Parliament who are key in performing the oversight functions on all Constitutional commissions. **Clause 25** provides for offences against obstruction, assault, false information or misinterpretation to a member or staff of the Commission. **Clause 26** empowers the Commission to make regulations for better carrying into effect the provisions of the Act. **Clause 27** mandates the Commission to prepare a code of conduct for its members and staff. **Clause 28** provides for savings and transition. It allows the Salaries and Remuneration Commission to take over the assets that are currently vested in the Ministry of State for Public Service for the use of the Permanent Public Service Remuneration Review Board.

The enactment of this Bill will occasion additional expenditure of public funds which shall be provided for through the estimates.

Date the 5th April, 2011.

DALMAS OTIENO,
Minister of State for Public Service.