

STATUTORY INSTRUMENTS SUPPLEMENT

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STATUTORY INSTRUMENTS

2005 No. 87.

THE JUDICIAL SERVICE COMMISSION REGULATIONS, 2005

ARRANGEMENT OF REGULATIONS

Regulation

PART I—PRELIMINARY

1. Title
2. Interpretation

PART II—MEETINGS AND OTHER MATTERS RELATING
TO THE COMMISSION

3. Presiding at meetings
4. Record of proceedings
5. Decision by circulation of papers
6. Dissent
7. Enforcement of attendance
8. Attendance allowance
9. Failure to appear or produce documents or obey orders of the Commission
10. Oath on appointment

PART III—APPOINTMENTS, CONFIRMATION
OF APPOINTMENTS, ETC.

11. Matters to be considered on appointment
12. Consultation and selection boards
13. Obligation to conform to Constitution, Act and Regulations
14. Procedures and forms
15. Filling of vacancies

Regulation

16. Advertisement
17. Vacancies to be filled after examination, interviews or course of study
18. Recruitment from outside Uganda
19. Appointments
20. Acting appointments
21. Renewal of contracts
22. Compulsory retirement on grounds of age

PART IV—DISCIPLINE

23. Offences
24. Absconding from duty
25. Interdiction
26. Report on institution of criminal proceedings
27. Procedure after acquittal on criminal charge
28. Procedure on criminal conviction
29. Misconduct justifying dismissal
30. Misconduct not justifying dismissal
31. Disciplinary penalties which may be imposed by Commission
32. Termination of temporary or probationary appointments
33. Report of unsatisfactory conduct of officer serving on contract
34. Retirement in the public interest

PART V—MISCELLANEOUS

35. Commission to commence proceedings on its own
36. Relevant documents to be submitted
37. Documents to be submitted in triplicate
38. Service of documents
39. Correspondences
40. Consent to prosecution
41. Cases not otherwise provided for
42. Revocation of S.I No. 22 of 1989

SCHEDULES.

SCHEDULE 1— OATH OF MEMBER OF THE JUDICIAL SERVICE COMMISSION

SCHEDULE 2— OATH OF SECRETARY OR OFFICER OF THE JUDICIAL SERVICE COMMISSION

STATUTORY INSTRUMENTS

2005 No. 87.

The Judicial Service Commission Regulations, 2005.

(Under section 27 of the Judicial Service Act, Cap. 14)

IN EXERCISE of the powers conferred on the Judicial Service Commission by section 27 of the Judicial Service Act, these Regulations are made this 8th day of November, 2005.

PART I—PRELIMINARY

1. These Regulations may be cited as the Judicial Service Commission Regulations, 2005. Title

2. In these Regulations, unless the context otherwise requires— Inter-pretation

“Act” means the Judicial Service Act, Cap 14;

“appointment” includes appointment on promotion or appointment on transfer;

“Chief Registrar” means the Chief Registrar of the Courts of Judicature;

“Commission” means the Judicial Service Commission;

“functions” includes powers and duties;

“judicial officer” means—

(a) a Judge or any person who presides over a court or tribunal howsoever described;

(b) the Chief Registrar or Registrar of a court;

(c) such other person holding any office connected with the court as may be prescribed by law;

“Ministry” includes a department;

“responsible officer” means the Permanent Secretary of the Ministry or Department under which a judicial officer is serving;

“salary” means basic salary, and in the case of an officer in receipt of overseas addition to salary or inducement pay, the addition to salary or inducement pay as the case may be;

“Secretary” means the Secretary to the Judicial Service Commission;

“service” means the judicial service; and

“tribunal” means a tribunal established under the Land Act Cap 227, the Uganda Communications Act Cap.106, the Electricity Act 1999 Cap 145 and any other tribunal as may be prescribed by law.

PART II—MEETINGS AND OTHER MATTERS RELATING TO THE COMMISSION

Presiding at
meetings

3. Every meeting of the Commission shall be presided over by the Chairperson or, in his or her absence, by the Deputy Chairperson and in the absence of both the Chairperson and the Deputy Chairperson, by a member of the Commission representing the Judiciary.

Record of
proceedings

4. A record shall be kept of the members present and of the business transacted at every meeting of the Commission.

Decision by
circulation
of papers

5. (1) Except for matters of appointment, discipline, reviewing and making recommendations on the terms and conditions of service of Judges and other judicial officers, or a proposal to remove from office, a Judge or any other judicial officer, decisions may be made by the Commission without a meeting by circulation of the relevant documents among the members and the expression of their views in writing.

(2) Any member may require that any decision referred to in subregulation (2) be deferred until the subject matter is considered at a meeting of the Commission.

(3) A decision made by circulation of papers under this subregulation is not valid unless it is supported by all the members of the Commission.

6. Any member may dissent from a decision of the Commission and the reasons for the dissent shall be set out in the records of the Commission. Dissent

7. The Commission may require any person to attend and give evidence before it concerning any matter, which it may properly consider in the exercise of its functions and may require the production of any documents relating to any such matter by any person attending before it. Enforcement of attendance

8. Any person attending a meeting of the Commission at the request of the Commission, other than a person, who is applying for appointment to the service or to a tribunal, is entitled to be paid by the Commission an allowance as the Commission may determine. Attendance allowance

9. Any person, other than a person who is notified to appear before the Commission solely in connection with his or her application for appointment to the service or to a tribunal, who— Failure to appear or produce documents or obey orders of the Commission

(a) without reasonable cause fails to appear before the Commission when notified to do so;

(b) willfully fails to produce any document in his or her possession when requested to do so by the Commission; or

(c) willfully fails to obey or carry out a lawful order of the Commission,

commits an offence and is liable on conviction to the penalty specified under section 18 of the Act.

Oath on
appointment

10. (1) Every member of the Commission shall, before assuming the functions of commissioner—

(a) take and subscribe the official oath as required by section 2 of the Oaths Act; and

(b) take and subscribe the oath set out in Schedule 1 to these Regulations.

(2) The oath taken by a member of the Commission under subregulation (1) shall be administered by the Chief Justice or, in his or her absence, by the Deputy Chief Justice.

(3) The Secretary and such other officer of the Commission as the Chairperson may require shall, before assuming the performance of his or her functions, take and subscribe the oath set out in Schedule 2 to these Regulations.

(4) The oath taken by the Secretary or other officer of the Commission under subregulation (3) shall be administered by the Chairperson or such officer as the Chairperson may delegate.

PART III—APPOINTMENTS, CONFIRMATION OF APPOINTMENTS, ETC.

Matters to
be
considered
on
appointment

11. (1) In the performance of its functions in connection with the appointment of judicial officers and members of tribunals, the Commission shall have regard to the maintenance of the high standard of independence, propriety, integrity, impartiality, equality, competence and diligence required of a judicial officer and shall take into account the qualification, merit and experience of a candidate.

(2) In the case of appointment of judicial officers already in service, the Commission shall take into account all the qualities specified in subregulation (1) before seniority.

Consultation
and
selection
boards

12. In the performance of its functions in connection with the appointment of judicial officers, the Commission may—

(a) consult with any other organisation, department or person; or

(b) seek the advice of a selection board appointed by the Commission which may appoint to it members of the Commission and other persons who are not members of the Commission.

13. The Commission shall, in the exercise of its powers in connection with the dismissal or other termination of appointment of any judicial officer, act in accordance with the provisions of the Constitution, the Act, and these Regulations.

Obligation to conform to Constitution, Act and Regulations

14. (1) The Commission shall determine—

Procedures and forms

(a) the procedure for applications for appointment to a judicial office or tribunal, including the procedure of any selection board appointed by the Commission to interview candidates; and

(b) the forms to be used in connection with the performance of its functions.

(2) The appointment of members to a tribunal shall be made in accordance with the law establishing that tribunal.

15. (1) Where a vacancy occurs or it is known that a vacancy will occur in the Supreme Court, the Court of Appeal, the High Court, or in the office of a Chief Registrar, Registrar, Deputy Registrar and Assistant Registrar, the Chief Justice shall report the fact to the Commission.

Filling of vacancies

(2) The Chief Justice shall forward a list of all judicial officers in the relevant cadre or post who are available to fill the vacancies specified in subregulation (1), together with the records of their service and any recommendations.

(3) Where a vacancy occurs or if it is known that a vacancy will occur in any other judicial office, the Chief Registrar in consultation with the Chief Justice or the Principal Judge, shall report the fact to the Commission.

(4) The Chief Registrar shall forward a list of all judicial officers in the relevant cadre or post who are available to fill the vacancies specified in subregulation (3), together with the records of their service and any recommendations.

(5) Where a vacancy occurs or if it is known that a vacancy will occur in a tribunal, the responsible officer shall report the fact, together with any recommendations to the Commission.

(6) Where any recommendation under this regulation involves the supercession of a judicial officer, reasons for the supercession shall be given.

(7) The Chief Registrar shall forward to the Secretary, a draft advertisement setting out the details of the vacant post and the duties and qualifications attached to that post.

Advert-
isement

16. (1) Where a vacancy exists in any judicial office or in a tribunal, the vacancy may be advertised.

(2) The Commission shall determine the content and form of the advertisement to be issued.

(3) The advertisement may—

(a) be restricted in its circulation to persons already in the service;

(b) be restricted in its circulation to Uganda; or

(c) be unrestricted in its circulation, if the Commission is satisfied that no suitable candidate is available in Uganda.

(4) Where the Commission deems it necessary, a vacancy may be filled by a substantive or acting appointment.

Vacancies to
be filled
after
examination,
interviews
or course of
study

17. Where a vacancy is to be filled—

(a) according to the results of an examination or interview conducted or supervised by the Commission; or

(b) on the successful completion of a course of study or training designed to qualify a candidate for appointment to the judicial service or to a tribunal, the Commission may make arrangements and take decisions to fill the post, as it considers appropriate.

18. (1) Where, after consulting the Chief Justice, the Commission considers that a particular vacancy should be filled by recruitment on expatriate terms, the Commission shall take appropriate steps to effect the required recruitment.

Recruitment
from
outside
Uganda

(2) The recruitment of a non-Ugandan expert, adviser or volunteer by whatever title known, under a multi-lateral or bilateral arrangement shall be considered as recruitment from outside Uganda for the purposes of these Regulations, regardless of the existence of a vacancy on the establishment against which to hold the expert, adviser or volunteer, as the case may be, on his or her terms and conditions of service.

19. (1) The Commission may advise the appointing authority on the nature of appointment to be made such as substantive, acting, contract, temporary or probation in respect of Judges and Registrars and shall have powers to appoint under any nature of appointment in respect of other judicial officers.

Appoint-
ments

(2) A probationary appointment shall be for a period of two years and any extension of a probationary appointment shall not exceed one year.

(3) Three months before the expiration of the period of probation of a judge, Chief Registrar, Registrar, Deputy Registrar or Assistant Registrar, the Chief Justice shall consider—

(a) whether the judicial officer should be confirmed in a pensionable post;

(b) whether a further period of probationary service is necessary to determine whether the judicial officer should be so confirmed; or

(c) whether the judicial officer should not remain in the service.

(4) Three months before the expiration of the period of probation of a judicial officer other than one specified in subregulation (1), the Chief Registrar shall consider—

(a) whether the judicial officer should be confirmed in a pensionable post;

(b) whether a further period of probationary service is necessary to determine whether the judicial officer should be so confirmed; or

(c) whether the judicial officer should remain in the service.

(5) If after consideration of the matters referred to in subregulations (3) and (4), the Chief Justice or the Chief Registrar, as the case may be, is of the opinion that a judicial officer should be confirmed in a pensionable appointment and if the judicial officer has passed such examinations as may be required as a condition for confirmation in his or her appointment, the Chief Justice or the Chief Registrar shall, as soon as practicable, before the expiration of the period of probation, forward to the Secretary a recommendation that the officer should be confirmed.

(6) If upon consideration of a recommendation under subregulation (5) that a judicial officer should be confirmed in a pensionable post, the Commission is of the opinion that it requires further information, the Commission may refer the matter back to the Chief Justice or the Chief Registrar as the case may be, for further report.

(7) If after consideration of the matters referred to in subregulation (3), the Chief Justice or Chief Registrar is of the opinion that the work and conduct of a judicial officer have been of a standard to justify confirmation in a pensionable office, but the judicial officer has not completed the examinations required

for his or her appointment, the Chief Justice or Chief Registrar shall, as soon as practicable, before the expiration of the judicial officer's period of probation, forward a report to the Secretary together with a recommendation as to the period of further probationary service which the judicial officer should be granted in order to pass the required examination.

(8) If after consideration of the matters referred to in subregulations (3) and (4), the Chief Justice or Chief Registrar is of the opinion that the work or conduct of a judicial officer is not in all respects satisfactory, the Chief Justice or Chief Registrar as the case may be shall inform the judicial officer in writing with a copy to the Commission and may recommend—

(a) an extension of the judicial officer's period of probation to enable the officer overcome the shortcomings noted; or

(b) that the judicial officer's appointment be terminated.

(9) If the report received by the Commission about the judicial officer is adverse, the Commission shall forward to the officer, a copy of the report and the judicial officer shall make a representation within thirty days from the date of receipt of the report from the Commission.

(10) The Commission may at any time call upon the Chief Registrar to explain why a judicial officer was not confirmed on the due date.

20. (1) If a Justice of the Supreme Court or the Court of Appeal or a Judge of the High Court, the Chief Registrar, Registrar, Deputy Registrar or Assistant Registrar is for any reason unable to perform the functions of his or her office, or if for any reason it is necessary to appoint a judicial officer in acting capacity and the Chief Justice is of the opinion that some other judicial officer should be appointed to act in such office, the Chief Justice shall

Acting
appoint-
ments

report the matter to the Commission and shall submit, for the consideration of the Commission, the name of the judicial officer recommended to be appointed to act in that office.

(2) If any other judicial officer is for any reason unable to perform the functions of his or her office, or if for any reason it is necessary to appoint a judicial officer in acting capacity, and the Chief Registrar is of the opinion that some other judicial officer should be appointed to act in such office, the Chief Registrar shall report the matter to the Secretary who shall submit the matter for consideration of the Commission.

(3) If the recommendation in subregulations (1) and (2) involve the supercession of a senior officer, the Chief Justice or the Chief Registrar shall inform the Commission of his or her reasons for recommending the supercession of such officer.

(4) In considering recommendations for acting appointments, the Commission shall apply the standards prescribed in regulation 11 except that consideration may also be given to the special interests of an institution or division within the judicial service.

Renewal of
contracts

21. (1) If a Justice of the Supreme Court or the Court of Appeal or a Judge of the High Court, the Chief Registrar, Registrar, the Deputy Registrar, or the Assistant Registrar is serving on contract for a specified period, the Chief Justice shall forward to the Commission, four months before the judicial officer is due to proceed on leave pending the determination of the contract, a notification of the date of the determination of the contract and his or her recommendation whether it should be renewed or not.

(2) If any other judicial officer is serving on contract for a specified period, the Chief Registrar shall forward to the Secretary, four months before the judicial officer is due to proceed on leave pending the determination of the contract, a notification of the date of the determination of the contract and his or her recommendation whether it should be renewed or not.

(3) In the case of a tribunal, the responsible officer shall forward the submission to the Secretary.

22. (1) If the Chief Registrar is of the opinion that a judicial officer who holds a pensionable office should retire from the judicial service on grounds that he or she has attained the mandatory age of retirement, the Chief Registrar shall remind the judicial officer in writing, three months before the actual date of retirement.

Compulsory
retirement
on grounds
of age

(2) The Chief Registrar shall furnish the Commission, before the 15th of December of every year, a status report on judicial officers showing how many of the judicial officers have resigned from service, died, been promoted or demoted and how many are to retire during the coming year.

(3) In the case of a tribunal, the responsible officer shall forward the report with the necessary modifications, to the Secretary.

PART IV—DISCIPLINE

23. A judicial officer commits an offence against discipline if he or she does all or any of the following—

Offences

(a) conducts himself or herself in any manner prejudicial to the good image, honour, dignity and reputation of the service;

(b) practices favoritism, nepotism or corruption whether for personal advantage or gain or that of any other person;

(c) practices discrimination whether on the basis of sex, race, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability;

(d) is a habitual late comer or absents or absconds from duty without reasonable excuse;

- (e) is insubordinate, rude, abusive, and disrespectful or uses vulgar language;
- (f) is lazy or produces poor standard work;
- (g) is untrustworthy or lacks integrity in public or private transactions;
- (h) engages in private interests at the expense of his or her official duties;
- (i) divulges official information to unauthorised persons;
- (j) acts in contravention of the Code of Judicial Conduct, the Judicial Oath or any other oath taken by the judicial officer;
- (k) is convicted of a criminal offence by a court of law;
- (l) disregards the chain of command in his or her place of employment without reasonable excuse;
- (m) abuses judicial authority; or
- (n) in any way contravenes any provisions of the law, Uganda Government Standing Orders or any other instructions relating to the discipline of judicial officers.

Absconding
from duty

24. (1) Where a judicial officer, other than a Judge appears, to have absconded from duty, the Chief Registrar or the responsible officer or the Commission shall—

- (a) notify the judicial officer to that effect within fourteen days from the date of the absence from duty; or
- (b) call upon the judicial officer to explain his or her absence from duty within a period of fourteen days.

(2) Service of notice to the judicial officer shall be at the last known address of the judicial officer or the address, which the judicial officer has given to the Judiciary.

(3) Where the judicial officer fails to respond to the notice or call, the Chief Registrar or the responsible officer shall—

- (a) immediately stop payment of the salary of the judicial officer; and
- (b) report to the Secretary in a detailed memorandum including appropriate recommendation on the abscondment from duty of the judicial officer.

25. (1) Whenever the Chief Registrar or the responsible officer considers that the public interest requires that a judicial officer other than a Judge should cease to perform the functions of his or her office, the Chief Registrar or responsible officer may interdict the judicial officer from the performance of those functions if disciplinary proceedings are being taken or are about to be taken or if criminal proceedings are being instituted against the judicial officer.

Interdiction

(2) Where the Commission has facts relating to the misconduct of a judicial officer, it may direct the Chief Registrar or the responsible officer to interdict that judicial officer.

(3) A judicial officer who is interdicted shall receive at least half of his or her salary.

(4) Where disciplinary or criminal proceedings have been taken or instituted against a judicial officer on interdiction and the judicial officer is not dismissed or convicted as the case may be, as a result of those proceedings, the whole or any of his or her salary withheld under subregulation (3) shall be restored to the judicial officer upon the termination of the proceedings.

(5) A judicial officer on suspension or interdiction shall not leave Uganda without the permission of—

- (a) the Chief Justice in consultation with the Commission in the case of a Judge, the Chief Registrar or a Registrar;

- (b) the Chief Registrar in the case of a magistrate; or
- (c) the responsible officer, in case of any other judicial officer.

Report on institution of criminal proceedings

26. (1) If criminal proceedings of a nature likely to warrant disciplinary proceedings are instituted against a judicial officer in any court, the Chief Registrar or the responsible officer shall immediately report the facts to the Secretary as to whether the officer has or has not been interdicted from the performance of his or her functions.

(2) No proceedings for the dismissal of a judicial officer upon any grounds involved in a criminal charge shall be taken until the conclusion of the criminal proceedings in the court of first instance.

Procedure after acquittal on criminal charge

27. A judicial officer acquitted of a criminal charge in any court shall not be dismissed or otherwise punished on any charge upon which he or she has been acquitted, but nothing in this regulation shall prevent the judicial officer from being dismissed or otherwise punished on any other charges arising out of his or her conduct in the matter.

Procedure on criminal conviction

28. (1) If a judicial officer is adjudged guilty in any court of a criminal charge likely to warrant disciplinary proceedings, the Chief Registrar or the responsible officer shall obtain a copy of the charges, the judgment, and the proceedings of the court if they are available, and forward them to the Secretary.

(2) The Commission may in its discretion obtain a copy of the charges, the judgment, and the proceedings of the court if they are available.

(3) The Commission, after giving the judicial officer an opportunity to make representations in writing or in person or to be heard in person shall determine whether the judicial officer should be dismissed or subjected to some lesser disciplinary

punishment or both, on account of the conviction for the offence of which he or she has been adjudged guilty, without any of the proceedings prescribed under the rules of procedure of these Regulations.

29. (1) Where the Chief Registrar or the responsible officer considers it necessary to institute disciplinary proceedings against a judicial officer other than a Judge, on the ground of misconduct which, if proved, would justify dismissal from the service, the Chief Registrar or the responsible officer shall, after any preliminary investigations, which he or she considers necessary—

Misconduct
justifying
dismissal

(a) forward to the judicial officer a statement of the charge or charges framed against the judicial officer together with a brief statement of the allegations, in so far as they are not clear from the charges themselves, on which each charge is based; and

(b) call upon the judicial officer to state in writing before a day to be specified by the Chief Registrar or the responsible officer, any grounds on which the judicial officer relies to exculpate himself or herself.

(2) If the judicial officer does not furnish a reply to any charge under subregulation (1) within the specified period, or if in the opinion of the Chief Registrar or the responsible officer, the judicial officer fails to exculpate himself or herself, the Chief Registrar or responsible officer shall make a report and forward copies of that report, the statement of the charges and the reply, if any, of the judicial officer to the Secretary.

(3) If, upon consideration of the report of the Chief Registrar or the report of the responsible officer, the Commission is of the opinion that proceedings for the dismissal of the judicial officer should be continued, it shall inquire into the matter in such manner as it thinks fit.

(4) The Commission shall inform the judicial officer that on a specified day the charges made against him or her will be investigated and that the judicial officer will be allowed or, if the Commission so determines, will be required to appear before it to defend himself or herself.

(5) Where a witness is examined by the Commission, the judicial officer shall be given an opportunity of being present and of putting questions to the witness and no documentary evidence shall be used against the judicial officer unless he or she has previously been supplied with a copy of the documentary evidence or been given access to the document.

(6) The Commission shall, where a judicial officer so requests, permit the judicial officer to be represented at its proceedings by an advocate.

(7) A charge may be amended at any stage of the proceedings as long as the amendment does not cause a miscarriage of justice.

Misconduct
not
justifying
dismissal

30. (1) Whenever the Chief Registrar or responsible officer considers it necessary to institute disciplinary proceedings against a judicial officer but is of the opinion that the misconduct alleged, if proved would not be serious enough to warrant dismissal under regulation 29, he or she shall, after any preliminary investigation which he or she considers necessary, forward to the judicial officer a statement of the charges against the judicial officer and shall call upon him or her to state in writing before a day to be specified, any grounds on which the judicial officer relies to exculpate himself or herself.

(2) If the judicial officer does not furnish a reply within the specified period or does not, in the opinion of the Chief Registrar or the responsible officer exculpate himself or herself, the Chief Registrar or the responsible officer shall forward to the Secretary a report on the case together with copies of the charges preferred against the judicial officer, his or her recommendations and the judicial officer's reply if any.

(3) If, on consideration of the report, including the grounds, if any, upon which the officer relies to exculpate himself or herself, the Commission, is of the opinion that no further investigation is necessary, it may immediately determine the punishment, other than dismissal, which should be imposed on the judicial officer.

(4) If the Commission, on consideration of the report, is of the opinion that the matter should be further investigated, it shall inquire into the matter in a manner, as it deems necessary.

(5) Notwithstanding subregulations (1), (2), (3) and (4), if at any stage during proceedings taken under this regulation—

(a) it appears to the Commission that the offence if proved would justify dismissal; or

(b) the Commission considers that if the offence is proved, proceedings for the retirement of the judicial officer from the service on grounds of public interest would be more appropriate, the proceedings so taken shall be discontinued and the procedure prescribed in regulation 29 shall be followed.

31. (1) Subject to the provisions of the Constitution, the Commission may impose any one or more of the following disciplinary penalties upon a judicial officer as a result of proceedings taken under these Regulations—

Disciplinary penalties which may be imposed by Commission

(a) dismissal;

(b) suspension;

(c) reduction in rank;

(d) order for a written undertaking from the officer not to repeat the offence;

(e) reduction in salary;