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I assent,

CUTHBERT M SEBASTIAN

*Governor-General.*

20<sup>th</sup> July, 2011.

## SAINT CHRISTOPHER AND NEVIS

### No. 19 of 2011

AN ACT to provide for the structure, organisation and management of the Public Service; for matters relating to the Public Service Commission; for the appointment, discipline and removal of public officers; and for related or incidental matters.

*[Published 20<sup>th</sup> July 2011, Extra-Ordinary Gazette No. 38 of 2011.]*

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and by the authority of the same as follows:

#### PART I – PRELIMINARY MATTERS

**1. Short title.**

This Act may be cited as the Public Service Act, 2011.

**2. Interpretation.**

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

“Commission” means the Public Service Commission established under section 77 of the Constitution;

“Committee” means the Permanent Secretaries Committee established under section 5 of this Act;

“Head of Department” means the Head of Department of Government referred to in section 79 of the Constitution;

“Head of the Public Service” means the Head of Public Service referred to in section 4 of this Act;

“Minister” means the Minister responsible for the Public Service;

“public officer” has the meaning given to a public officer under the Constitution;

“salary” means basic salary;

“Secretary” means the Secretary to the Commission;

“Secretariat” means the Secretariat serving the Commission.

(2) Except where the office is an office to which section 79 of the Constitution applies, for the purposes of Division 1 of Part IV, Part V and VI, “Governor-General” includes a person to whom the Governor-General has, in accordance with the provisions of section 78.(2) of the Constitution, delegated his or her power to appoint, remove and exercise disciplinary control over public officers.

### **3. Application of Act.**

This Act shall not apply

- (a) to a member of Saint Christopher and Nevis Defence Force, and any civilian working in the Defence Force pursuant to the provisions of the Saint Christopher and Nevis Defence Force Act, Cap. 19.14; and
- (b) to a member of the Royal Saint Christopher and Nevis Police Force, other than
  - (i) a Commissioned Police Officer; and
  - (ii) a civilian person working in the Police Force in accordance with the provisions of the Police Act.

## **PART II – MANAGEMENT OF THE PUBLIC SERVICE**

### **4. Head of Public Service.**

(1) There shall be a Head of the Public Service who shall be a public officer appointed by the Governor – General, acting on the recommendation of the Commission.

(2) The Head of the Public Service shall, subject to the general direction and control of the Minister as provided in section 61 of the Constitution, be responsible for the management and organisation of the Public Service.

(3) The Head of the Public Service may

- (a) request for any information from a Department of Government concerning the activities of that Department;
- (b) in carrying out the functions relating to the Public Service, conduct such inspections or investigations and make or receive such reports as he or she may consider necessary or as the Governor-General, acting on the recommendation of the Commission, may direct.

### **5. Permanent Secretaries Committee.**

(1) There is established a Permanent Secretaries Committee comprising of the Head of the Public Service and Permanent Secretaries.

(2) The Head of the Public Service shall be the Chairperson of the Committee.

(3) The functions of the Committee are to:

- (a) advise the Minister on such areas of the management of the Public Service as the Minister may require, and on the policies necessary to administer and develop the Public Service;
- (b) consider and make recommendations on any specific matter referred to it by the Minister;
- (c) co-ordinate the functions of the Public Service that relate to the management of the Public Service to ensure that there exists the capacity of Government to provide a modern and efficient Public Service;
- (d) expedite the decision making process particularly in matters that require the involvement of several departments of Government;
- (e) submit to the Minister, not later than three months after the end of each financial year, a report outlining the activities of the Committee; and
- (f) generally create a working environment that is conducive to increased productivity and greater job satisfaction in the public Service.

(4) The Committee shall meet as often as it deems necessary or expedient for the performance of its functions, but the Committee shall at least meet once in every three months.

(5) The Committee shall regulate its own procedure, including the designation of one of its members as the Secretary to the Committee.

### **PART III – PUBLIC SERVICE COMMISSION**

#### **6. Advisory Committees.**

(1) The Commission may establish an advisory committee to give advice to the Commission on any matter relating to the Commission's functions.

(2) The Commission may appoint persons as members of an advisory committee who are not members of the Commission, and such persons shall hold office for such period as the Commission may determine.

(3) Decisions taken by an advisory committee appointed under this section are not binding on the Commission, but such decisions may be considered by the Commission in making decisions for the purposes of the discharge of its functions.

#### **7. Teaching Service Committee.**

(1) Without prejudice to the generality of the provisions of section 6, the Commission shall establish a Teaching Service Committee to give advice to the Commission on matters relating to the Commission's functions with respect to the appointment, removal and disciplinary control of public officers who are teachers.

(2) The Commission may appoint persons as members of the Teaching Service Committee who are not members of the Commission, and such persons shall hold office for such period as the Commission may determine.

(3) Decisions taken by the Teaching Service Committee appointed under this section are not binding on the Commission, but such decisions may be considered by the Commission in making decisions for the purposes of the discharge of its functions.

**8. Consultation with other persons.**

(1) The Commission may, in considering any matter or question, consult with any public officer, staff association or other person who is not a member of the Commission as the Commission may consider proper and desirable, and may require that person to attend any meeting of the Commission for the purpose of assisting the Commission in its deliberations and producing any document or providing information relating to the matter or question.

(2) A person required to attend a meeting of the Commission by virtue of the provisions of this section shall not have to vote at that meeting.

**9. Protection from liability.**

(1) No action or other proceedings shall lie against any member of the Commission for or in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of any power, duty or function under this Act, except in case of liability for personal injury.

(2) The Commission shall indemnify a member of the Commission for the legal cost of defending an action in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of any power, duty or function under this Act.

**10. Declaration of interest and abstention from voting.**

(1) A member of the Commission, who is in any way, either directly or indirectly, interested in a matter before the Commission shall declare the nature of his or her interest at the first meeting of the Commission as soon as possible.

(2) The Commission shall, where a member of the Commission declares an interest under subsection (1), determine whether or not the member's interest in the matter is material, and where the Commission determines that a member's interest is material, the member shall leave the meeting upon the matter coming up for discussion.

(3) A declaration and departure of a member from the meeting in accordance with the provisions of subsection (1) shall be noted in the minutes of the meeting.

(4) A member of the Commission shall

- (a) comply with the provisions of subsection (1);
- (b) not vote in respect of a matter before the Commission in which he or she is materially interested, whether directly or indirectly; or
- (c) not seek to influence the vote of any other member in relation to a matter before the Commission in which he or she is materially interested, whether directly or indirectly.



(5) A member of the Commission who contravenes any provision of subsection (4) commits an offence and shall be liable, on summary conviction, to a fine of not less than twenty thousand dollars or to imprisonment for a term not exceeding two years or both.

#### **11. Expenses of the Commission.**

All expenses incurred by the Commission in carrying out its functions under this Act shall be paid out of monies appropriated by the National Assembly.

#### **12. Financial year, budget and plan of action.**

(1) The financial year of the Commission shall be the twelve Months period commencing on 1<sup>st</sup> January of any year and ending on the 31<sup>st</sup> December of that year.

(2) The Commission shall, not later than 31<sup>st</sup> September in each year, cause to be prepared a budget, and shall adopt and submit to the Minister the adopted budget with the estimates of its income and expenditure and a plan of action for the Commission in respect of the next financial year.

#### **13. Accounts.**

The Commission shall keep a proper record of accounts in accordance with generally accepted international accounting standards and principles, and shall prepare and retain financial statements in respect of each financial year.

#### **14. Audit.**

(1) The Commission shall, within four months after each financial year, have its accounts audited annually by an independent auditor appointed by the Commission, after consultation with the Director of Audit, who shall conduct the audit in accordance with generally accepted international auditing standards and submit a report together with the audited financial statements on the same to the Commission.

(2) The Commission, the members of the Commission, the public officer serving the Commission shall grant to the auditor appointed pursuant to subsection (1) access to all books, deeds, contracts, accounts, vouchers, or other documents which the auditor may deem necessary, and the auditor may require the person holding or accountable for such documents to appear and make a signed statement or to provide such information in relation to the documents as the auditor may deem necessary.

(3) A person who fails to comply with the provisions of subsection (2) commits an offence and shall be liable, on summary conviction, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or both.

#### **15. Annual Report.**

(1) Subject to subsection (2), the Commission shall, not later than five months after the end of each financial year, submit to the Minister an annual report on the operations and activities of the Commission for that financial year, and the Minister shall cause the annual report to be laid before the National Assembly not later than one month after the submission of the report by the Commission.

(2) An annual report submitted to the Minister pursuant to the provisions of subsection (1) shall be accompanied by the auditor's report made pursuant to the provisions of section 14 of this Act.

**16. Exemption from taxes.**

The Commission is exempt from the payment of taxes, levies, and fees on income, property and documents of the Commission.

**PART IV – APPOINTMENT OF PUBLIC OFFICERS**

**Division I - Appointments to offices specified  
in section 78 of the Constitution**

**17. Non-application of Division I.**

This Division shall not apply to any office specified in subsection (3) of section 78 of the Constitution, that is to say,

- (a) any office to which section 79 of the Constitution applies;
- (b) the office of Attorney – General;
- (c) the office of Director of Public Prosecutions;
- (d) the office of Director of Audit;
- (e) any office to which section 83 of the Constitution applies;
- (f) any office in the Police Force.

**18. Appointments to offices specified in section 78.**

Subject to section 17, appointments to offices specified in section 78 of the Constitution shall be made in accordance with the provisions of that section, this Act, the Public Service Commission Regulations, and the Public Service Recruitment and Employment Code made under this Act.

**19. Notification of vacancy specified in section 18.**

The Chief Personnel Officer, shall, where a vacancy arises or is expected to arise in the Public Service in an office to which section 18 of this Act applies,

- (a) notify the Commission accordingly by delivering to the Commission a copy of the advertisement of the vacancy and a job description for the public office; and
- (b) constitute a selection panel, in accordance with the Public Service Recruitment and Employment Code made under section 54.(3) of this Act, for the purpose of selecting a suitable candidate to fill the vacant public office, and shall inform the Commission accordingly.

**20. Recommendation of the Commission to the Governor-General to make appointments to offices under section 18.**

(1) The Chief Personnel Officer, shall, upon the selection of a candidate by the selection panel to a fill a vacancy in an office to which section 18 applies, submit to the Commission



a copy of the application of the candidate and such other information regarding the candidate as the Commission may think fit for the purpose of the Commission's recommendation to the Governor – General on the proposed appointment of the candidate to fill the vacancy.

(2) Where the Commission, acting in accordance with the provisions of sections 78.(5) or 78.(6) of the Constitution, recommends the appointment of a candidate to fill a vacancy in the Public Service under this section, the Commission shall inform the Governor – General and the Permanent Secretary, Human Resources, in writing, accordingly.

(3) The Governor – General shall, upon receipt of the Commission's recommendation referred to in subsection (2), unless excepted under section 78.(4) of the Constitution, appoint the candidate, and the Candidate shall be informed, in writing, of his or her appointment.

(4) Where the Commission, acting in accordance with the provisions of sections 78.(5) or 78.(6) of the Constitution, recommends against the appointment of a candidate to fill a vacancy in the Public Service under this section,

- (a) the Commission or other person shall inform the Governor-General and the Chief Personnel Officer, in writing, accordingly, giving reasons for not recommending the candidate, and shall submit copies of documents on which it or he or she relies to the Governor-General and the Chief Personnel Officer;
- (b) the candidate shall be informed, in writing, that his or her application was not successful.

(5) Where, under subsection (2), (3) or (4), the term Governor-General refers to a person to whom the Governor – General has delegated his or her powers to appoint a person under section 78.(2), the person exercising the delegated power shall,

- (a) in accordance with section 78.(5) of the Constitution, consult the Speaker before exercising the delegated power in relation to the Clerk of the National Assembly or a member of his or her staff;
- (b) in accordance with section 78.(6) of the Constitution, consult the Prime Minister before exercising the delegated power to appoint to hold or act in any public office of any person who is in the Public Service of a Government of any other country or territory.

(6) A candidate may make representations to the Commission for a review of the Commission's recommendation referred to in subsection (2) or (4), and the representations shall be made within fourteen days from the date of receipt of the notice under any of those subsections by the candidate or within such longer period as the Commission may allow.

(7) Where a candidate makes representations to the Commission for a review under subsection (6), that candidate is not required to assume the duties of the public office with respect to which he or she has made representation, unless the Governor – General directs otherwise, in writing.

(8) The Commission shall consider all the representations received by it under this section, and shall, in writing, make recommendations to the Governor-General, accordingly.

**Division II - Appointments to offices specified  
in section 79 of the Constitution**

**21. Appointments to offices specified in section 79.**

(1) Appointments to offices specified in section 79 of the Constitution, that is to say,

- (a) the office of Secretary to the Cabinet;
- (b) the office of Permanent Secretary of a Ministry or Department;
- (c) the office of Head or Deputy Head of a Department;
- (d) any office for the time being designated by the Commission as an office of a chief professional advisor to a Department of Government; and
- (e) any office for the time being designated by the Commission, after consultation with the Prime Minister, as an office the holders of which are required to reside outside Saint Christopher and Nevis or whose functions relate to external affairs;

shall be made in accordance with the provisions of that section and this Act.

(2) The provisions of this section shall not apply to appointments required to be made under the proviso to section 79.(2) of the Constitution.

**22. Notification of vacancy specified in section 21.**

(1) The Head of the Public Service shall, where a vacancy arises or is expected to arise in the Public Service in an office to which section 21 of this Act applies, and subject to the provisions of subsection (2) of this section,

- (a) notify the Commission accordingly by delivering to the Commission a copy of the advertisement of the vacancy and a job description for the public office; and
- (b) constitute a selection panel, in accordance with the Public Service Recruitment and Employment Code made under section 54.(3) of this Act, for the purpose of selecting a suitable candidate to fill the vacant public office, and shall inform the Commission accordingly.

(2) The provisions of this section shall not apply to appointments required to be made under the proviso to subsection (2) of section 79 of the Constitution.

**23. Recommendation of the Commission to the Governor-General to make appointments to offices under section 21.**

(1) The Head of the Public Service shall, upon the selection of a candidate by the selection panel to fill a vacancy in an office to which section 21 applies, submit to the Commission a copy of the application of the candidate and such other information regarding

the candidate as the Commission may think fit for the purpose of the Commission's recommendation to the Governor – General on the proposed appointment of the candidate to fill the vacancy.

(2) Where the Commission recommends the appointment of a candidate to fill a vacancy in the Public Service under this section, the Commission shall inform the Governor-General and the Head of the Public Service, in writing, accordingly, and the Governor-General shall, acting in accordance with the recommendation of the Commission, appoint the candidate, and the Candidate shall be informed, in writing, of his or her appointment.

(3) Where the Commission recommends against the appointment of a candidate to fill a vacancy in the Public Service under this section,

- (a) the Commission or other person shall inform the Governor-General and the Head of the Public Service, in writing, accordingly, giving reasons for not recommending the candidate, and shall submit copies of documents on which it relies to the Governor-General and the Head of the Public Service;
- (b) the candidate shall be informed, in writing, that his or her application was not successful.

(4) A candidate may make representations to the Commission for a review of the Commission's recommendation referred to in subsection (2) or (3), and the representations shall be made within fourteen days from the date of receipt of the notice under any of those subsections by the candidate or within such longer period as the Commission may allow.

(5) Where a candidate makes representations to the Commission for a review under subsection (4), that candidate is not required to assume the duties of the public office with respect to which he or she has made representation, unless the Governor-General directs otherwise, in writing.

(6) The Commission shall consider all the representations received by it under this section, and shall, in writing, make recommendations to the Governor-General, accordingly.

(7) The provisions of this section shall not apply to appointments required to be made under the proviso to section 79.(2) of the Constitution.

#### **24. Appointments to offices specified in the proviso to section 79(2).**

Appointments to offices specified in the proviso to subsection (2) of section 79 of the Constitution, that is to say,

- (a) where a person is being appointed to hold or act in an office of Permanent Secretary on transfer from another office carrying the same salary;
- (b) any office of Ambassador, High Commissioner or other principal representative of Saint Christopher and Nevis in any other country or accredited to any international organisation;

shall be made in accordance with the provisions of that proviso and this Act.

**25. Notification of vacancy specified in section 24.**

The Head of the Public Service shall, where a vacancy arises or is expected to arise in the Public Service in an office to which section 24 of this Act applies,

- (a) notify the Prime Minister accordingly; and
- (b) constitute a selection panel, in accordance with the Public Service Recruitment and Employment Code made under section 54.(3) of this Act, for the purpose of selecting a suitable candidate to fill, hold or act in that office, and shall, in writing, inform the Prime Minister accordingly.

**26. Appointments by the Governor-General acting on advice of the Prime Minister.**

(1) The Head of the Public Service shall, upon the selection of a candidate by the selection panel to fill a vacancy in an office to which section 24 of this Act applies, submit to the Prime Minister the name of the candidate for the purpose of the Prime Minister tendering advice to the Governor – General on the proposed appointment of the candidate to fill the vacancy, and the Governor-General shall, acting on the advice of the Prime Minister, appoint the candidate.

(2) The Candidate referred to in subsection (1) shall be given notice, in writing, of his or her appointment.

**Division III - Appointments to offices specified  
in section 83 of the Constitution**

**27. Appointments to offices specified in section 83.**

Appointments to offices specified in section 83 of the Constitution to which persons are required to hold one or other of the specified qualifications, that is to say,

- (a) the offices of Magistrates;
- (b) Registrar of the High Court;
- (c) the office of Head or Deputy Head of a Department;
- (d) any public office in the Department of the Attorney-General (other than the public office of the Attorney-General) or the Department of the Director of the Public Prosecutions (other than the office of Director);

shall be made in accordance with the provisions of that section, this Act, the Public Service Commission Regulations, and the Public Service Recruitment and Employment Code made under this Act.

**28. Notification of vacancy specified in section 27.**

The Head of the Public Service shall, where a vacancy arises or is expected to arise in the Public Service in an office to which section 27 of this Act applies,

- (a) notify the Commission and the Judicial and Legal Services Commission with a copy of the advertisement of the vacancy; and



- (b) constitute a selection panel, in accordance with the Public Service Recruitment and Employment Code made under section 54.(3) of this Act, for the purpose of selecting a suitable candidate to fill the vacant public office, and shall, in writing, inform the Commission and the Legal and Services Commission, accordingly.

**29. Recommendation of the Commission to the Governor-General to make appointments to offices specified in section 27.**

(1) The Head of the Public Service shall, upon the selection of a candidate by the selection panel to fill a vacancy in an office to which section 27 of this Act applies, submit to the Commission a copy of the application of the candidate and such other information regarding the candidate as the Commission may think fit for the purpose of the Commission's recommendation to the Governor-General on the proposed appointment of the candidate to fill the vacancy.

(2) Where the Commission, after consultation with the Judicial and Legal Services Commission in accordance with section 83 of the Constitution, recommends the appointment of a candidate to fill a vacancy in the Public Service to which section 83 of the Constitution applies, the Commission shall inform the Governor-General and the Head of the Public Service, in writing, accordingly, and the Governor-General shall, acting in accordance with the recommendation of the Commission, appoint the candidate, and the Candidate shall be given notice, in writing, of his or her appointment.

(3) Where the Commission, after consultation with the Judicial and Legal Services Commission in accordance with section 83 of the Constitution, recommends against the appointment of a candidate to fill a vacancy in the Public Service to which section 83 of the Constitution applies, the Commission shall inform the Governor-General and the Head of the Public Service, in writing, accordingly, giving reasons for not recommending the candidate, and shall submit copies of documents on which it relies to the Governor-General and the Head of the Public Service.

(4) A candidate may make representations to the Commission for a review of the Commission's recommendation referred to in subsection (2) or (3), and the representations shall be made within fourteen days from the date of receipt of the notice under any of those subsections by the candidate or within such longer period as the Commission may allow.

(5) Where a candidate makes representations to the Commission for a review under subsection (4), that candidate is not required to assume the duties of the public office with respect to which he or she has made representation, unless the Governor-General directs otherwise, in writing.

(6) The Commission shall consider all the representations received by it under this section, and shall, in writing, make recommendations to the Governor-General, accordingly.

**PART V – DISCIPLINING OF PUBLIC OFFICERS**

**30. Application of this Part.**

This Part shall not apply to any person holding or acting in an office specified in section 78.(3) (b), (c), (d), (e), and (f) of the Constitution.



**31. Forms of discipline.**

The Governor-General may, acting in accordance with the recommendation of the Commission, institute disciplinary proceedings against a public officer, and may impose any of the following forms of discipline on a public officer, as may be appropriate, that is to say,

- (a) demotion;
- (b) reduction in salary;
- (c) suspension of increment;
- (d) deferment of increment;
- (f) withholding of increment;
- (g) surcharge for loss to the Government by the public officer's negligence or misconduct.

**32. Interdiction.**

(1) Where disciplinary or criminal proceedings are or are about to be instituted against a public officer, and the Governor-General, acting in accordance with the recommendation of the Commission, determines that the public officer should, in public interest, immediately cease to perform the functions of his or her office, the Governor-General shall interdict the public officer.

(2) The Commission shall, in making a recommendation to the Governor-General under subsection (1), have regard to the gravity of the case against the public officer and any representations made by the public officer in his or her defence.

(3) Where a public officer is interdicted pursuant to the provisions of this section, the public officer shall be entitled to receive such portion of his or her salary, not being less than one half, as the Governor-General, acting on the recommendation of the Commission, may determine.

**33. Grounds for criminal proceedings.**

Where, upon an investigation into a disciplinary matter, an offence against any law in force in Saint Christopher and Nevis appears to have been committed by a public officer, the Commission and the Governor-General shall be informed accordingly by the Head of the Public Service, and unless action has already been taken or is about to be taken, the Governor-General shall, in consultation with the Attorney General and acting in accordance with the recommendation of the Commission, decide whether criminal proceedings should be instituted or not.

**34. No disciplinary action while criminal proceedings pending.**

(1) Where criminal proceedings are instituted in any Court against a public officer, no disciplinary proceedings upon any ground arising out of the criminal charge shall be taken until after the Court has given its judgment and the time allowed for appeal against the judgment has expired, and where the public officer has, after conviction, appealed, no disciplinary proceedings shall be taken until after the withdrawal or dismissal of the appeal.

(2) Nothing in this section shall prevent a public officer from being interdicted in accordance with the provisions of section 32 of this Act.

**35. Disciplinary action after acquittal of criminal charge.**

Where a public officer is acquitted of a criminal charge or where an appeal against conviction of a public officer is allowed, the public officer shall not be dismissed from the Public Service or otherwise punished in respect of that charge:

PROVIDED that nothing in this Act shall prevent the dismissal of the public officer or otherwise punishing the public officer in respect of any other charge arising out of his or her conduct in the matter, unless such other charge is substantially the same as that in respect of which the public officer has been acquitted or his or her appeal has been allowed.

**36. Disciplinary action after conviction of criminal charge.**

Subject to section 47, where a public officer is convicted of a criminal charge in any court the Governor-General may consider the relevant proceedings of that court and if, in respect of the offence of which the public officer has been convicted, the Governor-General, acting in accordance with the recommendation of the Commission, decides that

- (a) the public officer ought to be dismissed from the Public Service, the procedure set out in section 46 shall apply;
- (b) a form of discipline specified in section 31 ought to be imposed, the Governor-General shall, acting on the recommendation of the Commission, impose the appropriate form of discipline.

**37. Disciplinary proceedings for dismissal.**

(1) Subject to the provisions of this Act, a public officer shall not be dismissed except in accordance with the following procedure:

- (a) the Governor-General, acting in accordance with the recommendation of the Commission, shall cause the public officer to be notified, in writing, of the charge and to be called upon to state, in writing, before a specified day, which day shall allow reasonable time for the purpose, any grounds upon which the public officer relies on to exculpate himself or herself;
- (b) if the public officer does not furnish a statement within the specified time or if the public officer fails to exculpate himself or herself, the Governor-General, acting on the recommendation of the Commission, shall constitute a tribunal consisting of not less than three senior retired public officers selected with due regard to the standing of the public officer concerned and the nature of the charges made against the public officer;
- (c) the tribunal shall, if appointed, inform the public officer concerned that on a day specified by the tribunal the tribunal shall inquire into the charges and that the public officer may appear before the tribunal and defend himself or herself either in person or through a representative of his or her choice;
- (d) if the tribunal examines witnesses, the public officer may present and may put any questions to the witnesses, and no documentary evidence may be used

against the public officer unless the public officer has, prior to or at the inquiry, been supplied with a copy of or has been given access to the documentary evidence and has been given adequate time or opportunity to respond;

- (e) if, during the course of the inquiry by the tribunal, further grounds for dismissal are disclosed, and the Governor-General, acting in accordance with the recommendation of the Commission, thinks it fit to proceed against the public officer upon the new grounds, the public officer shall be furnished with the written charge and the same steps shall be taken as specified in this section in respect of the original charge;
- (f) if, having heard the evidence in support of the charges, the tribunal is of the opinion that the evidence is insufficient it may report its findings accordingly to the Commission and the Governor-General without calling upon the public officer for his or her defence;
- (g) the tribunal shall furnish to the Commission and the Governor-General a report of its findings together with copies of evidence and all material documents relating to the charge.

(2) If, after consideration of the report and the evidence and documents relating to a charge furnished under subsection (1), the Governor-General, acting on the recommendation of the Commission, determines that

- (a) the report should be amplified in any respect or that further inquiry is desirable, the Governor-General may refer any matter back to the tribunal for further inquiry or amplification of the report;
- (b) the public officer should be dismissed, the Chief Personnel Officer shall notify the public officer of the decision, in writing, stating the grounds on which the decision is based;
- (c) the public officer deserves some punishment other than dismissal, then the Chief Personnel Officer shall notify the public officer of the decision, in writing, stating the grounds on which the decision is based;
- (d) the public officer does not deserve to be dismissed by reason of the charges alleged, but that the proceedings disclose some other grounds for removing the public officer from the public service in the public interest, then the procedure set out in Part VI of this Act shall apply.

(3) A public officer aggrieved by the recommendation of the Commission under this section may apply to the Commission for a review of the Commission's recommendation and may make oral or written representations in support of his or her case either in person or through a representative of his or her choice.

(4) The Commission shall consider all the representations and comments received by it under this section, and shall, in writing, advise the public officer and Governor-General, accordingly.

**PART VI – REMOVAL OF PUBLIC OFFICERS FROM  
THE PUBLIC SERVICE**

**38. Application of this Part.**

This Part shall not apply to any person holding or acting in an office specified in section 78.(3) (b), (c), (d), (e), and (f) of the Constitution.

**39. Reasons for termination of appointment.**

(1) The appointment of a public officer shall be terminated only in accordance with the provisions of this Act and the Public Service Code of Discipline made under this Act.

(2) Where a public officer holds a permanent appointment, such officer's appointment shall only be terminated on any one of the following reasons:

- (a) retirement on medical grounds;
- (b) on voluntary retirement;
- (c) on compulsory retirement;
- (d) abandonment;
- (e) on dismissal in consequence of disciplinary proceedings;
- (f) on resignation without benefits payable under any enactment providing for the grant of pensions, gratuities or compensation;
- (g) on abolition of the office.

(3) Where a public officer holds a temporary appointment, such officer's appointment shall only be terminated on any one of the following reasons:

- (a) on the expiry or other termination of an appointment for a specific period;
- (b) when the public office being held is of a temporary nature and is no longer necessary;
- (c) on the termination of the appointment in the case of a public officer on probation;
- (d) on the termination of the appointment in the case of a public officer holding a non-pensionable office with no service in a pensionable office;
- (e) on the termination of the appointment in the public interest;
- (f) on dismissal in consequence of disciplinary proceedings;
- (g) for ill health in that the public officer is incapable, by reason of infirmity of mind or body, of discharging the duties of his or her office, and such infirmity is likely to be permanent;
- (h) on abandonment of office.

(4) Where a public officer is on contract that officer's service shall be terminated in accordance with the terms of the contract.

**40. Abandonment.**

(1) Where a public officer is absent from duty without leave for a continuous period of one month such officer shall be deemed to have resigned his or her office, and the office shall become vacant.

(2) The public officer referred to in subsection (1) shall cease to be a public officer, unless declared otherwise by the Governor-General, acting in accordance with the recommendation of the Commission.

**41. Voluntary retirement.**

(1) A public officer may, at any time such officer has attained the minimum age specified in the Pensions Act, Cap. 22.06 for voluntary retirement, apply to the Governor-General for permission to retire, and shall state in his or her application the grounds on which his or her application is based.

(2) The Governor-General shall, acting in accordance with the recommendation of the Commission, determine whether an application submitted in accordance with the provisions of subsection (1) ought to be granted.

(3) Where it appears to the Head of the Public Service that a public officer at or above the level of Head of Department having attained the minimum age specified in the Pensions Act for voluntary retirement ought to be called upon to retire from the public service, he or she shall inform the public officer and report the matter to the Commission giving reasons why the Commission should recommend to the Governor-General to call upon the officer to retire from the public service voluntarily.

(4) Where it appears to the Permanent Secretary, Human Resources, that a public officer below the level of Head of Department having attained the minimum age specified in the Pensions Act for voluntary retirement ought to be called upon to retire from the public service, he or she shall inform the public officer and report the matter to the Commission giving reasons why the Commission should recommend to the Governor-General to call upon the officer to retire from the public service voluntarily.

(5) A public officer referred to in subsections (3) and (4) shall be afforded an opportunity to submit to the Commission any representations that the public officer may wish to make regarding his or her proposed retirement.

(6) Where the Commission receives a report under subsection (3) or (4) and a representation made by a public officer under subsection (5), the Commission shall make a recommendation to the Governor-General as to whether or not a public officer should be called upon to retire from the public service and the officer shall be informed of the decision accordingly.

**42. Retirement on medical grounds.**

(1) Where it appears to the Head of the Public Service that a public officer at or above the level of Head of Department is unable to perform the functions of his or her office because of physical or mental incapacity and that such officer ought to be called upon to retire from the public service, the Head of the Public Service shall inform the public officer



and report the matter to the Commission giving reasons why the Commission should recommend to the Governor-General to call upon the officer to retire from the public service on medical grounds.

(2) Where it appears to the Chief Personnel Officer that a public officer below the level of Head of Department is unable to perform the functions of his or her office because of physical or mental incapacity and that such officer ought to be called upon to retire from the public service, the Head of the Public Service shall inform the public officer and report the matter to the Commission giving reasons why the Commission should recommend to the Governor-General to call upon the officer to retire from the public service on medical grounds.

(3) A public officer referred to in subsections (1) and (2) shall be afforded an opportunity to submit to the Commission any representations that the public officer may wish to make regarding his or her proposed retirement.

(4) Where the Commission receives a report under subsection (1) or (2) and a representation made by a public officer under subsection (3), the Commission shall make a recommendation to the Governor-General as to whether or not a public officer should be called upon to retire from the public service, and the officer shall be informed of the decision accordingly.

(5) For the purposes of subsection (4), the Commission may require the public officer to undergo medical examination by a Medical Board appointed by the Commission consisting of three members each of whom shall be a qualified medical practitioner.

(6) Retirement of a public officer under this section shall not take effect until the day immediately after the day when the public officer exhausts any sick leave credit to which the officer is entitled before retirement.

(7) This section shall not prevent the award of pension or gratuity or both to the affected public officer where any law relating to pensions makes provision for the payment of the same.

#### **43. Termination of appointment on abolition of office.**

(1) Where a post, being one of a number of like posts, has been abolished but one or more than one of such posts remains the Governor-General, acting in accordance with the recommendation of the Commission shall determine which substantive holder of the post should have his or her appointment terminated or whether an offer of a suitable alternative position should be made to the holder of the post being abolished.

(2) The provisions of subsection (1) shall apply in relation to the termination of an appointment for the purpose of facilitating improvement in the organisation of a Ministry or Department in order to give effect to greater efficiency or economy.

#### **44. Retirement in public interest.**

- (1) Subject to subsection (2), a public officer may be retired in public interest where
- (a) the Head of the Public Service represents to the Commission that such officer be retired, and the Commission recommends to the Governor-General that such officer be retired; or

- (b) the Governor-General considers it desirable to retire such officer, acting in accordance with the recommendation of the Commission;

on grounds which cannot suitably be dealt with under any provision of this Act.

(2) Before a public officer is retired under the provisions of this section the Commission shall

- (a) review the performance appraisals of the public officer for the preceding ten years;
- (b) give the public officer an opportunity to submit a reply to the grounds on which his or her retirement is contemplated;
- (c) have regard to the conditions of the public service;
- (d) have regard to the usefulness of the public officer to the public service;
- (e) have regard to all other circumstances of the case.

(3) If, after complying with the provisions of subsection (2), the Commission recommends that it is desirable in the public interest to retire the public officer the Governor-General shall, acting in accordance with the Commission's recommendation, require the public officer to retire from the public service.

#### **45. Compulsory retirement.**

(1) Subject to subsection (2), a public officer shall retire from the public service on attaining sixty – two years, unless the Constitution or any other law specifies a different age for retirement in respect of any public office.

(2) In the public interest or exceptional circumstances, a public officer may be permitted to remain in the public service after such officer has attained sixty – two years by the Governor-General, acting in accordance with the recommendation of the Commission.

(3) The provisions of subsections (1) and (2) shall not apply to a public officer who has already been appointed in the public service prior to the coming into force of this Act.

(4) A public officer referred to in subsection (3) who, prior to the coming into force of this Act, is required to retire at the age of fifty-five by virtue of the provisions of the Pensions Act, Cap. 22.06 shall retire in accordance with the provisions of that Act, except that such officer may, within twelve months prior to the officer's retirement, apply to the Governor-General to continue his or her services until sixty years.

(5) Upon receipt of the application referred to in subsection (4), the Governor-General may, on the recommendation of the Commission, permit the officer to continue in service until the officer is sixty years old.

(6) In considering the application referred to in subsection (4), the Governor – General shall have regard to the conditions and exigencies of the public service and all other circumstances as the Governor-General may consider or deem fit.

**46. Procedure for termination.****(1) Where**

- (a) the Head of the Public Service represents to the Commission that an officer's appointment be terminated, and the Commission recommends to the Governor-General that such officer's appointment be terminated; or
- (b) the Governor-General considers that the appointment of an officer be terminated, acting in accordance with the recommendation of the Commission;

for any reason specified in section 39, not being dismissal in consequence of disciplinary proceedings, the procedure specified in subsection (2) shall apply.

**(2) The procedure referred to in subsection (1) shall be as follows:**

- (a) the Head of the Public Service shall notify the public officer, in writing, of the opinion stating the grounds on which the opinion is based;
- (b) a public officer aggrieved by the opinion may apply to the Commission for a review of the opinion and may make oral or written representations in support of his or her case either in person or through a representative of his or her choice;
- (c) irrespective of whether a public officer makes a representation under paragraph (b), the Commission shall consider all the evidence in the case, and shall then make a recommendation to the Governor-General as to whether the appointment of the public officer ought to be terminated, and the Governor-General shall act in accordance with the recommendation of the Commission to terminate or not to terminate the public officer's appointment, and the public officer shall be notified accordingly, in writing.

**PART VII – HUMAN RESOURCE DEVELOPMENT  
AND MANAGEMENT OF TRAINING**

**47. Policy of training.****(1) The Minister shall, in writing, state the policy of Government with respect to**

- (a) the goals and objectives of training; and
- (b) the management of training and human resource development in the Public Service.

**(2) The Minister shall, in stating the policy referred to in subsection (1), give due regard to ensuring that training at all levels of the Public service is**

- (a) given high priority;
- (b) structured, mandatory, on-going; and
- (c) aimed at enhancing the skills of persons in the Public Service.

(3) The Minister shall also, in stating the policy referred to in subsection (1), give due regard to the changing requirements of the Public Service and of Saint Christopher and Nevis, particularly in the areas of management, technical skills at both national and international levels, and all those as are required to give effect to the national goals of the Government to ensure that the Public Service is capable of meeting those requirements.

(4) The Minister may, on the advice of the Training Committee, and without prejudice to the provisions of section 54 of this Act, make regulations to give effect to the policy referred to in subsection (1).

#### **48. Training Committee.**

(1) There is established a Training Committee which shall be responsible for advising the Minister on training requirements and study leave in the Public Service.

(2) The Training Committee shall

- (a) advise the Commission in respect of officers to be granted study leave; and
- (b) determine the terms and conditions under which officers shall be granted training and study leave.

#### **49. Composition and procedure of the Committee.**

(1) The Training Committee shall consist of the following:

- (a) Head of the Public Service;
- (b) Chief Personnel Officer;
- (c) Training Manager;
- (d) Financial Secretary, Ministry of Finance;
- (e) Permanent Secretary, Ministry responsible for sustainable development; and
- (f) Permanent Secretary, Ministry of Education.

(2) The Head of the Public Service shall be the Chairperson of the Training Committee, and may, at any time, summon a meeting of the Committee.

(3) Four members of the Training Committee shall form a quorum, and, subject to this Act and the regulations made under the Act, the Committee may regulate its procedure.

(4) The Training Committee shall, in the exercise of its functions under this Act or regulations made under this Act, be subject to the policy to be followed pursuant to the provisions of section 47.

#### **50. Training Fund.**

(1) There is established a Public Service Training Fund into which shall be paid

- (a) moneys provided by Parliament for payment into the Training Fund for training purposes;

- (b) moneys that represent the payment of the proceeds of the forfeiture carried out in respect of any bond that secured an award made out of the Training Fund.
- (2) The Minister may, subject to such terms and conditions as may be prescribed, award scholarships for training purposes, out of the Training Fund.
- (3) The Training Fund shall be under the control and management of the Minister.

#### **51. Reports.**

The Minister shall, not later than four months after the end of each financial year, cause to be laid before Parliament a report on the Training Fund showing

- (a) the number of awards made and in force;
- (b) the amount of each award; and
- (c) the state of the Training Fund.

### **PART VIII – MISCELLANEOUS PROVISIONS**

#### **52. Appeals by public officers.**

A public officer in respect of whom a decision is made by the Governor-General in accordance with the provisions of this Act may, if the officer is aggrieved by the decision, appeal against the decision of the Governor-General, and the appeal shall lie to the Public Service Appeals Board in accordance with the provisions of section 87 of the Constitution.

#### **53. Regulations etc.**

(1) The Minister may generally make regulations respecting the Public Service in order to give effect to the provisions of this Act, as well as prescribing anything that is required to be prescribed under this Act.

(2) The Minister may generally make Standing Orders for the Public Service, and, without prejudice to the generality of the foregoing, such Standing Orders may make provision for the following matters:

- (a) salaries and acting allowances;
- (b) leave to be granted to public officers;
- (c) advances, subsistence, travelling and other allowances payable to public officers;
- (d) handling and maintenance of Government property.
- (3) The Minister may, for the purposes of this Act, make provision for the following:
  - (a) codes of recruitment and employment;
  - (b) codes of conduct and ethics for public officers;
  - (c) codes of discipline for public officers; and



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(d) any other matter relating to the Public Service.

CURTIS A MARTIN  
*Speaker*

Passed by the National Assembly this 23<sup>rd</sup> day of June, 2011.

JOSÉ LLOYD  
*Clerk of the National Assembly*



