

SAINT LUCIA

STATUTORY INSTRUMENT, 2017, No. 37

[2nd May, 2017]

In exercise of the powers conferred under section 85(13) of the Saint Lucia Constitution Order Cap. 1.01, the Public Service Commission, makes these Regulations:

Citation

1. These Regulations may be cited as the Public Service Commission (Disciplinary Proceedings) Regulations, 2017.

Interpretation

2. In these Regulations —

“act of misconduct” means —

- (a) a breach of an enactment, staff order or lawful oral or written directions given to a public officer; or
- (b) a breach of an implied term of the contract of employment of the public officer;
- (c) conduct that brings the reputation of the public service into disrepute;

“appointment” means the conferment of an office of emolument in the public service on a public officer;

“assignment” means the movement of a public officer from one Ministry or Department to another Ministry or Department or within a Ministry or Department for a specified period not exceeding six months for a particular purpose without affecting the substantive public office;

“Commission” means the Public Service Commission constituted under section 85 of the Constitution of Saint Lucia, Cap. 1.01;

“demotion” means the appointment of a public officer to a public office to which is attached a lower salary and grade

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to the most recent substantive appointment of the public officer;

“Department” means an autonomous department that is not under the control of a Minister;

“Head of Department” means the person responsible for the management of a Department;

“hearing” means an inquiry before the Commission to determine an allegation of an act of misconduct;

“Ministry” means an organizational unit under the general direction and control of a Minister;

“particular office” means a public office specified under sections 87, 90 and 94(1) of the Constitution of Saint Lucia, Cap. 1.01 in respect of which the Commission is required to provide advice to the Governor General;

“particular officer” means a public officer specified under sections 87, 90 and 94(1) of the Constitution of Saint Lucia, Cap. 1.01 in respect of whom the Commission is required to provide advice to the Governor General;

“penalty” means a penalty specified under regulation 13;

“Permanent Secretary” means a public officer referred to in section 69 of the Constitution of Saint Lucia, Cap. 1.01;

“public office” has the meaning assigned under section 124(1) of the Constitution of Saint Lucia, Cap. 1.01;

“public officer” has the meaning assigned under section 124(1) of the Constitution of Saint Lucia, Cap. 1.01;

“Public Service Board of Appeal” means the Public Service Board of Appeal constituted under section 95 of the Constitution of Saint Lucia, Cap. 1.01;

“salary” means basic pay excluding allowances;

“Staff Order” means an administrative direction contained in the Public Service Staff Orders of Saint Lucia or a prerogative order made by the Governor General for the management of the public service;

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“suspension” means a temporary removal of a public officer from the performance of the duties of his or her public office under regulation 5 or regulation 13;

“temporary appointment” includes the appointment of a person to a public office for a specified period;

“the public service” has the meaning assigned under section 124(1) of the Constitution of Saint Lucia, Cap. 1.01.

Application

3.—(1) Subject to sub-regulations (2) and (3), these Regulations do not apply to a particular officer.

(2) The Commission in giving its advice with respect to the exercise of disciplinary control under sections 87, 90 and 94(1) of the Constitution of Saint Lucia, Cap. 1.01 shall —

- (a) apply where practicable, the procedures in these Regulations; and
- (b) ensure that no advice is tendered to the Governor General with respect to the exercise of disciplinary control or removal of a particular officer until the particular officer is given a reasonable opportunity to be heard.

(3) The Commission when considering a matter under these Regulations shall —

- (a) consider any policy pertaining to the management of the public service, and the values and objectives of the public service as prescribed;
- (b) be guided by the principles of natural justice.

Allegation of an act of misconduct

4. An allegation of an act of misconduct must be —

- (a) submitted to the Commission;
- (b) in writing and be accompanied by supporting evidence.

*Public Service Commission (Disciplinary Proceedings) Regulations***Suspension**

5.—(1) Where an allegation of an act of misconduct by a public officer is submitted to the Commission under regulation 4, the Commission may suspend the public officer from duty on full salary by notice of suspension in writing, until conclusion of the disciplinary proceedings.

(2) Where the Commission is of the opinion that the public interest or the reputation of the public service requires, the Commission may suspend a public officer from duty on full salary by notice in writing until further notice.

(3) The effective date of suspension of the public officer is the date specified in the notice of suspension.

(4) A public officer who is suspended from duty under subregulation (1) or (2) shall —

- (a) on receipt of the notice of suspension, cease to report to his or her public office; and
- (b) make himself or herself available to the Commission until the conclusion of the disciplinary proceedings.

(5) Where a public officer is suspended from duty and proceeds on sick leave or maternity leave during the period of suspension, the suspension of the public officer ceases during the sick leave and maternity leave and the suspension of the public officer resumes immediately after the expiration of the sick leave or maternity leave.

Investigation

6.—(1) Subject to subregulation (2), the Commission shall cause an investigation to be undertaken into the allegation of an act of misconduct —

- (a) on receipt of an allegation of an act of misconduct; or
- (b) after the public officer is suspended under regulation 5.

(2) The Commission shall not cause an investigation to be undertaken under subregulation (1) if the Commission is satisfied from the supporting evidence submitted to the Commission that there is a prima facie case.

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Disciplinary proceedings

7.—(1) The Commission may institute disciplinary proceedings against a public officer on an allegation of an act of misconduct.

(2) A court record or report of a commission established under the Commission of Inquiry Act, Cap. 17.03 or other inquiry established by Cabinet, may be used in determining whether or not proceedings should be instituted against a public officer.

(3) If the Commission institutes disciplinary proceedings under subregulation (1), it shall serve a notice in writing on the public officer.

(4) A notice under subregulation (3) must state –

(a) the allegation of the act of misconduct; and

(b) the particulars of the allegation under paragraph (a).

Criminal investigation or criminal proceedings

8.—(1) Notwithstanding that a public officer is charged for an offence under an enactment or is the subject of police investigation or criminal proceedings have been instituted against that public officer, the charge, investigation or proceedings does not preclude the Commission from instituting disciplinary proceedings under these Regulations for an alleged act of misconduct which is in breach of his or her terms and conditions of employment.

(2) The Commission may institute disciplinary proceedings against a public officer who has appealed against a conviction arising out of criminal proceedings in relation to an alleged act of misconduct which is in breach of his or her terms and conditions of employment.

(3) These Regulations do not preclude the Commission from instituting disciplinary proceedings against a public officer for another act of misconduct arising out of his or her conduct resulting in the allegation referred to in sub-regulation (1).

Disciplinary proceedings arising out of acquittal of criminal charge

9. A public officer who is acquitted of a criminal charge in a court may have disciplinary proceedings instituted against him or her under these Regulations in respect of an allegation of an act of misconduct arising in respect of, or arising out of, that criminal charge.

*Public Service Commission (Disciplinary Proceedings) Regulations***Disciplinary proceedings arising out of proven criminal charge**

10.—(1) Where a public officer pleads guilty to a criminal charge, or is convicted of a criminal charge, the Commission may consider the court's finding and, if available, other court records in respect of that charge, and require the public officer to provide a written report on the matter and, where practicable, to appear before the Commission to show cause why the Commission should not impose a penalty.

(2) The Commission, after considering the representation of the public officer, may impose such penalty as it sees fit.

Hearing

11.—(1) A public officer against whom disciplinary proceedings have been instituted shall be given a reasonable opportunity to be heard in accordance with the principles of natural justice in a hearing before the Commission.

(2) A hearing may be in writing or it may be oral.

(3) Where a hearing is oral, the public officer against whom the disciplinary proceedings have been instituted may be represented by an attorney-at-law or a person of his or her choice.

(4) A hearing must be conducted —

(a) in private; and

(b) with speed and efficiency.

(5) The standard of proof in a hearing is the balance of probabilities.

(6) In a hearing the Commission may make a decision, without regard to the rules of evidence specified in the Evidence Act, Cap. 4.15 or to other legal technicalities and form.

(7) In an oral hearing where a witness gives evidence, the public officer against whom disciplinary proceedings have been instituted shall have the opportunity to question that witness or to respond to evidence that is in writing.

(8) Documentary evidence must not be used against a public officer in a hearing unless the public officer has been supplied with a copy of, and has been given a reasonable opportunity to peruse the document before the hearing.

*Public Service Commission (Disciplinary Proceedings) Regulations***Hearing in absence of public officer**

12.—(1) Where, without good reason, the public officer against whom disciplinary proceedings have been instituted does not attend the oral hearing, the Commission may proceed and conclude the matter in his or her absence.

(2) Where good reason is given to the Commission by or on behalf of the public officer as to why he or she is unable to attend the hearing, the Commission may postpone the matter but not to the extent that quick and effective discipline is prejudiced.

Penalty

13.—(1) At the conclusion of a hearing the Commission may impose one or more of the following as a penalty:

- (a) an oral warning;
- (b) a written warning;
- (c) a written reprimand;
- (d) the deferment, suspension or withholding of a performance based increment;
- (e) the suspension of the public officer from duty without salary and allowances;
- (f) the demotion of the public officer; and
- (g) the dismissal or removal of the public officer from the public service.

(2) The Commission may after taking into account the age, period and quality of service provided by the public officer, retire that public officer in the public interest in lieu of imposing a penalty.

(3) Where an act of misconduct results in the destruction or loss of Government property, the Commission may, in addition to a penalty imposed under subregulation (1), order the public officer by way of restitution, to pay the Government an amount equal to the value of repair or replacement of the item as indicated by appropriate invoices or receipts from the Permanent Secretary or Head of Department.

*Public Service Commission (Disciplinary Proceedings) Regulations***Decision and right of appeal**

14.—(1) The Commission shall, at the conclusion of a hearing, inform the public officer —

- (a) in writing of its finding and reason for the penalty imposed;
- (b) of the right to appeal to the Public Service Board of Appeal; and
- (c) of the time required by the Public Service Board of Appeal for making an application for an appeal.

(2) Where a public officer lodges an appeal with the Public Service Board of Appeal within the specified period, the penalty takes effect pending the determination of the appeal of the public officer by the Public Service Board of Appeal.

Record of disciplinary proceedings

15.—(1) The Commission shall make a record of disciplinary proceedings.

(2) A record under subregulation (1) must include —

- (a) the allegation and related particular statement of evidence;
- (b) a transcript of the hearing, where applicable;
- (c) the finding of the Commission;
- (d) the reason for the finding; and
- (e) details of the penalty imposed.

(3) A record of the disciplinary proceedings must be made available to the public officer at his or her request.

Temporary and fixed term contract appointments

16. Where a public officer holds a public office on a temporary or fixed term contract appointment and termination of the appointment is contemplated on the grounds of an act of misconduct, the Commission shall request that public officer to make representations in writing or by personal appearance, before the Commission makes a decision.

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Service

17.— (1) A document required by these Regulations to be served on a public officer or an other person is so served —

- (a) by delivering the document to the public officer or other person personally; or
- (b) by preparing and posting the document as a registered letter to that public officer or other person at his or her last known address; or
- (c) by leaving the document at the last known place of abode of the public officer or with some other person who is apparently resident in that place and appears to be not less than sixteen years of age; or
- (d) by serving it on the legal representative of the public officer or the legal representative of the person; or
- (e) by electronic means.

(2) Where a document that is required by these Regulations to be served is posted as a registered letter under subregulation (1) (b) the document, unless the contrary is proved, is deemed to be served at the time it is delivered to the public officer or other person.

Transitional provisions

18.—(1) Where, at the commencement of these Regulations disciplinary proceedings are pending or not finally determined, the disciplinary proceedings are deemed to have been instituted, and continued, in accordance with these Regulations and the institution of proceedings are deemed to have complied with the procedures in these Regulations as if they had been instituted under these Regulations.

(2) Where, at the commencement of these Regulations, a hearing is being conducted in relation to disciplinary proceedings instituted against a public officer, the determination of the hearings are deemed to be valid for the purposes of these Regulations as if it had been conducted and determined under these Regulations.

(3) Where a person is suspended at the commencement of these Regulations but no institution of disciplinary proceedings is in effect, that person is deemed to have been suspended under regulation 5 for the purpose of these Regulations.

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Made this 30th day of March, 2017.

WILBERT KING
Chairperson

LORRAINE SIDONIE
Member

RENÈE ST. ROSE
Member

MERVIN E. ERMAY
Member

JASON EDGAR
Member