



ANALYSIS

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1975, No. 10

An Act to provide for the administration and regulation of the Cook Islands Public Service

(7 March 1975)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title and Division into Parts -

(1) This Act may be cited as the Public Service Act 1975

(2) This Act is divided into Parts as follows:

Part I	-	Public Service Commissioner (Sections 3 - 7)
Part II	-	The Public Service (Sections 8 - 35)
Part III	-	Appeals (Sections 36 - 44)
Part IV	-	Special Posts (Sections 45 - 47)
Part V	-	Miscellaneous (Sections 48 - 58)

2. Interpretation - In this Act, unless the context otherwise requires, -

"Commissioner" means the Public Service Commissioner appointed by the High Commissioner under Article 73 of the Constitution:

"Departmental head" or "Head of Department" means the head of a Department of the Public Service:

"Employee", in relation to the Public Service, means a person employed therein, whether on the permanent staff (including any probationer) or temporarily or as a wage worker or as an expatriate:

"Expatriate employee" means any employee appointed under section 13 of this Act:

"Graded position" means any position on the permanent staff of the Public Service above the trainee and basic grades of each occupational class:

"Minister" means the Minister appointed under the provisions of the Constitution as the Minister in charge of the Public Service:

"Officers", in relation to the Public Service, means an employee on the permanent staff of the Public Service other than a probationer or a temporary salaried employee or a wage worker or an expatriate employee:

"Permanent staff" means those employees employed on a permanent basis and who are placed in grades in occupational classes and who are not temporary employees or wage workers or expatriate employees:

"Probationer" means a person serving on probation in terms of section 14 or section 31 of this Act:

"Promotion" means advancement from one grade to another within an occupational class or transfer from one occupational class to another involving in either case an increase in salary:

"Public Service" means the Public Service as defined in Article 72 of the Constitution:

"Special post" means any position in the Public Service which has been so designated pursuant to section 45 of this Act:

"Temporary employee" means an employee for the time being employed in terms of section 1 of this Act:

"Wage worker" means an employee for the time being employed in terms of section 12 of this Act.

PART I - PUBLIC SERVICE COMMISSIONER

3. Functions, powers and duties of Commissioner -

(1) Subject to the control of the Minister the Commissioner shall be responsible for the administration of this Act.

(2) The Commissioner shall, in respect of the Departments of the Public Service, be responsible for -

- (a) Reviewing the efficiency and economy of each Department, including and discharge by the departmental head of the responsibilities placed on him by section 9 of this Act:
- (b) Approving and reviewing establishments of staff after consultation with the heads of Departments affected:
- (c) Prescribing basic training programmes after consultation with the heads of Departments affected and making recommendations to the Minister on the facilities necessary for the proper training of staff

(3) The Commissioner shall have the powers necessary to perform his lawful functions and to carry out his lawful duties.

4. Annual report - (1) The Commissioner shall as soon as practicable after the end of each financial year furnish a report to the Minister on the state of the efficiency and economy of the Public Service and on his own operations for that year.

(2) A copy of the report shall be laid before the Legislative Assembly as soon as practicable after it has been received by the Minister.

5. Delegation of powers - (1) The Commissioner may from time to time, either generally or particularly, delegate any of his powers to the holder for the time being of any specified office in the Public Service.

(2) In any case where the Commissioner has, pursuant to subsection (1) of this section, delegated any of his powers to any person, that person may, with the prior approval of the Commissioner delegate such of these powers as the Commissioner approves to any other person or to the holder for the time being of any specified office in the Public Service.

(3) Subject to any general or special directions given by the Commissioner, the person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this Act and not by delegation.

(4) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(5) Any delegation under this section may be made to a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or of specified classes of offices.

(6) Every such delegation shall be revocable in writing at will and no delegation shall prevent the exercise of any power or function by the Commissioner.

(7) Any such delegation shall, until it is revoked, continue in force according to its tenor, notwithstanding any change of Commissioner.

6. Investigations and inquiries - (1) The Commissioner shall have the power to conduct investigations or inquiries and for this purpose may specially appoint a person or persons to conduct such an investigation or inquiry and to report the result of the investigation or inquiry to the Commissioner. For the purposes of this section the Commissioner or the person or persons he appoints shall have the same powers and authority to summon witnesses as are conferred upon Commissions of inquiry by the Commissions of Inquiry Act 1966.

(2) Payment of any fees or expenses incurred in connection with any such investigation or inquiry shall be authorised by the Commissioner out of money appropriated by the Legislative Assembly for this purpose.

7. Officers and employees of the Commissioner - There shall from time to time be appointed pursuant to the provisions of this Act such officers and employees as may be necessary to enable the Commissioner to carry out his functions and duties and those officers and employees shall have all such powers, duties and functions as may be lawfully conferred upon them.

PART II - THE PUBLIC SERVICE

8. The Public Service - There shall be appointed pursuant to this Act such heads of Departments and other officers and employees as shall be necessary to carry out the functions of Departments of the Public Service.

9. Heads of Departments - In addition to any other functions and duties imposed by any other law in force in the Cook Islands the head of any Department of the Public Service shall be responsible to the Minister for the time being in charge of that Department for the efficient and economical administration of that Department.

Appointments and Promotions

10. Appointments to the Public Service - (1) Except as provided in subsection (2) hereof the Public Service Commissioner shall make all appointments to the Public Service and shall, in making such appointments have regard to the need to maintain and develop an efficient career service based on the recruitment of adequately qualified persons. The Public Service Commissioner shall make no appointment to the Public Service unless he is satisfied that such appointment is necessary and that the appointee has clearly more merit for the position to be filled than any other officer who is available for the position.

(2) Subject to subclauses (3) and (4) of Article 74B of the Constitution the Public Service Commissioner together with two heads of department appointed in accordance with subsections (3) and (4) of this section, shall make all appointments to graded positions of the Public Service and shall in making such appointments have regard to the need to maintain and develop an efficient career service based on the recruitment of adequately qualified persons. The Public Service Commissioner and heads of departments shall make no appointment to the Public Service unless they are satisfied that such appointment is necessary and that the appointee has clearly more merit for the position to be filled than any other officer who is available for the position:

Provided that before making such appointments the Public Service Commissioner and the two departmental heads shall consult with the departmental head within whose Department the position to be filled exist.

(3) For the purposes of subsections (1) and (2) of this section merit shall be determined in accordance with section 15 of this Act.

(4) The two departmental heads to be appointed for the purposes of making appointments and promotions as provided in subclause (2) of Article 74B of the Constitution and subsection (2) of this section shall be appointed as follows:

- (i) One departmental head shall be nominated for the purpose by the Executive of the Cook Islands Public Service Association (Inc.) and appointed by the High Commissioner for a term of not more than two years: and

- (ii) One departmental head shall be nominated for the purpose by a simple majority of all departmental heads and appointed by the High Commissioner for a term of not more than two years:

Provided that no departmental head shall take part in the making of any appointment or promotion as aforesaid when the position to be filled is within his Department.

(5) In the event of a departmental head being disqualified from taking part in the making of an appointment by the proviso to subsection (4) of this section, or in the event of his absence from the Cook Islands the position of that departmental head shall be filled for the purpose of making that appointment by a deputy appointed in the same manner as the departmental head.

(6) The two departmental heads appointed pursuant to subsection (4) of this section shall perform such additional functions as may be prescribed by this Act.

(7) Every appointment of any person to the permanent staff of the Public Service shall be notified within the Public Service by Official Circular.

11. Temporary salaried employees - Commissioner may engage such temporary salaried employees as may from time to time be require and may dismiss any person so engaged with not less than one week's notice, or, in the case of misconduct, without notice.

12. Wage workers - The Commissioner may engage such wage workers as may from time to time be required and may dismisss any person so engaged with not less than one day's notice, or in the case of misconduct, without notice.

13. Expatriate employees - In accordance with the provisions of subclause (4) of Article 74B of the Constitution persons from outside the Cook Islands may be appointed to positions in the Cook Islands Public Service but such persons shall be deemed not to be appointed to the permanent staff of the Public Service or as officers of the Public Service.

14. Appointments to be on probation - (1) Every person appointed to the permanent staff of the Public Service shall be on probation for such period being not less than three months nor more than twelve months (except as provided in subclause (2) of this section), as the Commissioner specified generally or in any particular case or class of cases.

(2) The Commissioner may by notice in writing to the probationer extend the period of probation of any probationer for a specified period not exceeding six months provided that the total period of probation of that probationer does not exceed eighteen months.

(3) The Commissioner may at any time, and shall at the expiration of the term of probation, in writing, confirm or annul the appointment to the Public Service of any probationer.

15. Appointments to vacant positions - (1) Subject to the provisions of subclauses (3) and (4) of Article 74B of the Constitution all appointments to vacant positions in the Public Service other than graded positions shall be made by the Public Service Commissioner, and all appointments to graded positions shall be made by the Public Service Commissioner and two heads of department appointed in accordance with the provisions of section 10 of this Act.

(2) The Commissioner shall whenever practicable notify every vacancy or prospective vacancy in a permanent position (including any newly created permanent position) in the Official Circular or in such other manner as he thinks sufficient to enable any employee qualified for appointment to make applications therefor.

(3) Notwithstanding anything in subsection (2) of this section, and subject to subclauses (2), (3) and (4) of Article 74B of the Constitution the Commissioner may in any case fill any vacancy without having notified the same.

Provided that any appointment so made shall be notified in accordance with subsection (2) of section 10 of this Act and where a right of appeal exists there shall be an open right of appeal.

(4) In the event of two or more officers being available for the same position, preference shall be given to the officer who has the most merit for appointment to the position.

(5) For the purposes of this Act, the merit of an officer for promotion shall be determined by -

(a) Work experience, dedication and competence shown in performance of duties previously carried out by him; and

(b) Personal qualities, characteristics, and attributes relevant to the position to be filled; and

(c) Relevant educational or other qualifications:

Provided that where two or more officers who are applicants for a vacancy are adjudged to be equal in merit for promotion having regard to the matters specified in the foregoing provisions of this subsection, regard shall be given to the length of continuous permanent service of each officer.

(6) Every promotion of an officer or probationer shall be notified within the Public Service by notice in the Official Circular.

(7) The Commissioner may in any case allow any officer to decline any offered promotion or appointment without prejudice to his right to any future promotion or appointment for which he might be qualified.

16. Effective date of appointments - (1) Notwithstanding anything to the contrary in any enactment other than this section, the power conferred by this Act to appoint any person to any position in the Public Service shall be deemed to include a power to appoint that person from and including a date to be specified in that behalf in the instrument or minute of appointment, whether or not that date is earlier or later than the date on which the power of appointment is exercised, and salary shall be payable from and including such date (not being earlier than the date so specified in the instrument or minute) as the Commissioner may determine.

(2) The provisions of subsection (1) of this section shall apply notwithstanding that any other person previously appointed to the position may on the specified date and for any time thereafter continue to hold and receive the salary for that position though (by reason of absence or other circumstances) not actually performing the duties thereof.

17. Acting appointments - (1) In the case of absence from duty of any employee other than an employee in a special post (from whatever cause arising) or on the occurrence from any cause of a vacancy in any position in the Public Service other than a special post (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the employee or pertaining to the position may be exercised and performed by -

- (a) any other employee who is not an expatriate employee for the time being directed by the Commissioner to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues; or
- (b) any other employee who is an expatriate employee for the time being directed by the Commissioner with the concurrence of Cabinet to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.

(2) In the case of absence from duty of any employee in a special post (from whatever cause arising) or on the occurrence from any cause of a vacancy in any special post (whether by reason of death, resignation or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the employee or pertaining to the position may be exercised and performed by any other employee for the time being directed by the Commissioner with the concurrence of Cabinet to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.

(3) No direction given under subsection (1) or subsection (2) of this section and no acts done by any employee acting pursuant to any such direction shall in any proceedings be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the employee had not been appointed to any position to which the direction relates.

18. Evidence of appointments - (1) Any appointment to any office or position in the Public Service shall be made, confirmed or approved in writing by an instrument or minute by the Commissioner or by any person to whom the Commissioner has delegated power in that behalf in accordance with section 5 of this Act; and, notwithstanding anything to the contrary in any enactment, it shall not be necessary for the Commissioner or any such person to execute any formal warrant or other instrument in special form.

(2) A certificate signed by the Commissioner that any person named in the certificate was appointed to any office or position in the Public Service from and including a day stated therein shall be sufficient evidence that the person so named was duly so appointed to and continues to hold the office or position unless the contrary is proved.

19. Appointment subject to appeal to be provisional -

(1) Every appointment or promotion which is subject to a right of appeal by any officer under section 40 of this Act shall be provisional until all appeals lodged in respect thereof have been duly determined, or, if no appeal is lodged, until the time for the lodging of appeals has expired.

(2) If any appeal against a provisional appointment or promotion is allowed, the Commissioner shall cancel the provisional appointment or promotion.

(3) In the case of any graded position the Commissioner and the two heads of departments appointed pursuant to subsection (4) of section 10 of this Act may at any time cancel a provisional appointment or promotion, whether or not an appeal against the appointment or promotion has been lodged, if in their opinion the office is not required, or if they consider that further notification of the position is desirable, or for any other sufficient reason.

20. Redundancy - (1) If at any time the Commissioner, after consultation with the head of the Department, finds that a greater number of persons is employed in that Department than is considered necessary for the efficient working thereof, such persons as are redundant may (if practicable) be transferred to any other Department which in the opinion of the Commissioner after consultation with the head of that Department requires additional assistance; and if any persons so found to be redundant cannot be usefully employed in any other Department the Commissioner may terminate his employment.

(2) If at any time the Commissioner finds that any officer is in receipt of a greater salary than the maximum determined by him to be fairly appropriate to work performed by or assigned to that officer, the case shall be dealt with by the Commissioner subject to the following provisions:-

- (a) If in the opinion of the Commissioner the officer is fitted for or capable of performing work of a class equivalent to the amount of his salary, and that class of work is available in the same or another Department, the Commissioner may assign that class of work to that officer:
- (b)
 - (i) If that class of work is not available, the Commissioner may reduce the salary of the officer to the maximum determined by the Commissioner to be appropriate to the class of work actually performed by or assigned to the officer:
 - (ii) Any such determination shall be subject to right of appeal:
- (c) If any such reduction of salary is certified by the Commissioner to be made on the ground only that no work equivalent to the salary previously received by the officer affected is

at the time of the reduction available, and the officer affected elects to continue in the Public Service at that reduced salary, the officer shall remain eligible for promotion as from the grade to which his salary before reduction was incident notwithstanding the reduction, and shall be entitled to employment on the class of work to which his previous salary was appropriate as soon as a vacancy occurs therein in preference to any other officer of the same or lower grade whose salary has not been reduced.

21. Employees may be transferred - (1) The Commissioner may, after consultation with the head of any Department affected, transfer any employee, whether on probation or otherwise, from one position in a Department to any other position in that Department or to a position in any other Department whether or not the transfer involves a change of location.

(2) There shall be a right of appeal against any transfer pursuant to subsection (1) of this section on the grounds specified in the proviso to paragraph (c) of subsection (2) of section 40 of this Act, and the provisions of that proviso shall apply to any such case.

22. Failure to comply with a direction to transfer - (1) Any employee who fails to comply with a direction of the Commissioner requiring him to transfer from one position or locality to another may be forthwith dismissed or reduced in grading by the Commissioner unless he justifies the non-compliance in the opinion of the Commissioner by adducing some valid and sufficient reason therefor.

(2) There shall be no right of appeal against any dismissal or reduction in grading under this section:

Provided that nothing in this subsection shall affect the right to appeal against transfer conferred by the proviso to paragraph (c) of subsection (2) of section 40 of this Act.

23. Notice of termination of employment - (1) Every officer shall be deemed to be a three-monthly employee and notwithstanding any other provision in this Act, his employment may be terminated at any time after three months' notice in writing has been given -

(a) By the Commissioner to the officer on the ground of redundancy or to effect retirement in accordance with retirement policy; or

(b) By the officer to the Commissioner

(2) The Commissioner may forthwith terminate the employment of any officer who gives less than three months' notice under this section.

(3) This section shall not derogate in any manner from any other provisions of this Act conferring power on the Commissioner to dismiss officers.

Remuneration, Classification and Grading

24. Occupational classification and grades - (1) The occupational classes of the Public Service shall be under the general categories of Executive, Professional, Technical and General.

(2) The Commissioner and the Departmental heads appointed pursuant to subsection (4) of section 10 of this Act shall sub-divide each occupational class into grades according to their assessment of the relative levels of responsibility and skills required to be exercised by employees of the occupational class, and shall prescribe a salary rate and a maximum salary rate and incremental steps for each such grade.

(3) In addition to any other powers conferred upon him by this Act or any other law in force in the Cook Islands the Commissioner shall have power to prescribe for the Public Service or any class or classes of employees thereof annual and special leave, public holidays, ordinary hours of work, and the period to be worked before overtime rates become payable: rates of remuneration and conditions in respect of minimum earnings, overtime, travelling time, shift work, night work, and special duty, and in respect of work on Saturdays, Sundays, and public holidays, and at any other time outside the ordinary hours of duty; separation allowances, locality allowances, dirty work allowances and other allowances relating to conditions of work; tool allowances, travelling allowances, lodging allowances, camp allowances, and several allowances; and the terms and conditions under which working clothing may be issued.

25. Classification, grading and salaries of officers and probationers - (1) The Commissioner and the Departmental heads appointed pursuant to subsection (4) of section 10 of this Act shall place every officer and probationer in an occupational class and shall also place every officer and probationer in a grade in the appropriate occupational class according to the level of responsibility and skill required to be exercised in the performance of the duties assigned to him. Salary shall be payable to each officer or probationer according to his grading and on promotion, unless the Commissioner acting on his own or with the Departmental heads appointed pursuant to subsection (4) of section 10 of this Act, as the case may require, otherwise determines, an officer or probationer shall be awarded the minimum salary and proceed to the maximum for the grade as provided in section 27 of this Act.

(2) From the date of the commencement of this Act until the Commissioner and Departmental heads have classified and graded all officers and probationers in accordance with this section, any enactment repealed by this Act so far as it relates to classification and grading shall continue notwithstanding its repeal to apply to all officers and probationers not for the time being graded in accordance with this section as if this Act had not been passed.

(3) It shall be lawful for the Commissioner to permit an officer or probationer to receive a salary greater than that determined as appropriate in accordance with this section if the officer or probationer was in receipt of such higher salary at the date of the commencement of this Act.

(4) Notwithstanding the foregoing provisions of this section, the Commissioner and Departmental heads

appointed pursuant to subsection (4) of section 10 of this Act may promote officers in any graded positions beyond the maximum salary of the grade in which they have been classified when they have shown outstanding ability but such promotion shall not entitle the employee to advance to the maximum salary of the next higher grade.

26. Reviews of grading and classification - (1)

The Commissioner and the Departmental heads appointed pursuant to subsection (4) of section 10 of this Act shall as far as practicable review on a continuing basis the classification and grading of the Public Service.

(2) If the Commissioner and Departmental heads appointed pursuant to subsection (4) of section 10 of this Act at any time find that any graded position in an occupational class is not in a grade appropriate to the level of responsibility and skill required in the discharge of its functions, they shall determine the new grading of the position. Where the new grading determined does not coincide with the grading of the officer for the time being holding the position they may either appoint the holder to the position at its new grade, or they may declare the position vacant and fill it in any manner authorised by this Act.

(3) Any regrading pursuant to subsection (2) of this section shall take effect from and including such date as may be specified.

(4) At intervals of not less than 3 years, every person in any graded position shall have the right to apply to the Commissioner and the Departmental heads appointed pursuant to subsection (4) of section 10 of this Act in writing for a review of the classification and grading of the position which he occupies. If the officer is not satisfied with the decision in respect of his application he may then lodge an appeal in accordance with the provisions of section 42 of this Act:

Provided that nothing in this subsection shall prevent an officer from making representations at any time on the grading of his position.

(5) On receipt of any application under subsection (4) of this section the Commissioner and Departmental heads appointed pursuant to subsection (4) of section 10 of this Act shall review the classification and grading of the position, and shall notify the officer in writing of the decision reached after the review has been completed.

27. Salary increments - (1) Each person appointed to a graded position shall unless the Commissioner otherwise determines advance annually to the next highest salary on the salary scale until he reaches the maximum salary set for that graded position. In any case where any such person has exceptional merit or acquires additional qualifications he may advance further steps on the salary scale, not exceeding three steps at any one time, until he reaches the maximum salary set for that graded position.

(2) The method of determining merit for the purpose of salary advancement shall be that prescribed in subsection (5) of section 15 of this Act.

(3) Before approving any salary advances on the basis of merit, the Commissioner shall consult the head of the Department in which the employee is employed and in the case of any employee in a special post the Commissioner shall consult the Minister in charge of the Department concerned.

28. Allowances and grants - The Commissioner may approve the payment of allowances and grants to employees.

Code of Conduct

29. Private employment - Except with the express permission of the Commissioner (which may at any time be withdrawn), no employee shall undertake any employment, appointment or occupation outside the Public Service or have any financial interest in any undertaking, which in the opinion of the Commissioner is incompatible with the due and proper discharge of his duties as an employee of the Public Service.

30. Fees for official services - (1) No fee, reward, or remuneration of any kind whatsoever, beyond his salary, shall be received and kept for his own use by any employee for the performance of any service for the Government, unless specially authorised by the Commissioner.

(2) Any employee who is required in the course of his duty to perform any service rendered otherwise than in the Public Service for which a charge would lawfully be payable shall report the fact to the head of his Department, who shall decide what amount should be charged for that service. The amount charged for that service shall be paid into the Cook Islands Government Account or into the account of the Department concerned.

31. Conviction for offences - (1) If any employee is convicted by any Court of any offences punishable by imprisonment he shall notify his controlling officer who shall report the circumstances relating thereto through official channels to the Commissioner.

(2) An officer or expatriate employee who is charged with having committed any offence punishable by imprisonment may be transferred to other duties or suspended from duty by the Commissioner; and if he is convicted (whether or not he has been suspended) one or more of the following penalties may be imposed on him by the Commissioner:

- (a) He may be dismissed:
- (b) He may be deemed to have committed an offence under this Act and required to suffer such penalty less than dismissal as the Commissioner may impose:
- (c) He may be placed on probation for such period not exceeding eighteen months as the Commissioner may determine, when the provisions of this Act

relating to probationers shall apply except that he shall not be deemed to have been newly appointed at the time he is placed on probation:

Provided that this paragraph shall have no application in the case of an expatriate employee.

(3) No officer shall be paid any salary of any amount in respect of less of earnings in respect of any period of suspension from duty under this section unless the Commissioner otherwise directs or he is acquitted of the charge:

(4) Nothing in section 32 of this Act shall apply with respect to any action taken under this section.

32. Offences with which officers and expatriate employees may be charge - Every officer and expatriate employee commits an offence against this Act who -

- (a) By any act or omission fails to comply with the requirements of this Act or of any regulations thereunder or of any official instruction given under the authority of the Commissioner or of the head of his Department:
- (b) In the course of his duties disobeys, disregards, or makes wilful default in carrying out any lawful order or instruction given by any person having authority to give the order or instruction, or by word or conduct displays insubordination:
- (c) Is negligent, careless, indolent, inefficient, or incompetent in the discharge of his duties:
- (d) Behaves in a manner calculated to cause unreasonable distress to other employees or to affect adversely the performance of this duties:
- (e) Uses intoxicating liquors or drugs to excess or in such manner as to affect adversely the performance of his duties:
- (f) Improperly uses property or stores for the time being in his official custody or under his control, or fails to take reasonable care of any such property or stores:
- (g) Otherwise than in the proper discharge of his duties (except with the approval of the Minister in charge of his department) directly or indirectly discloses or for private purposes uses any information acquired by him either in the course of his duties or in his capacity as an employee of the Public Service:
- (h) Absents himself from his office or from his official duties during hours of duty without leave or valid excuse, or is

habitually irregular in the time of his arrival or departure from his place of employment:

- (i) Is guilty of any improper conduct in his official capacity, or of any other improper conduct which affects adversely the performance of his duties or brings the Public Service into disrepute.

33. Offences - (1) If a head of a Department has reason to believe that any officer or expatriate employee of his Department has committed an offence to which section 32 of this Act applies he shall forthwith report the matter to the Commissioner and, if required to do so by the Commissioner, he shall reprimand, caution or charge the officer or expatriate employee in writing as the Commissioner determines or the Commissioner may reprimand, caution or charge the officer or expatriate employee in writing.

(2) If the Commissioner determines that a reprimand or caution or fine of \$50 or less shall be the penalty then that decision shall be final and there shall be no right of appeal by the officer or expatriate employee against the penalty.

(3) If the officer or expatriate employee is charged he shall by notice in writing be required to state in writing within a reasonable time to be specified in the notice whether he admits or denies the truth of the charge and shall also be required to give to the head of Department or Commissioner in writing such explanation as will enable proper consideration to be given to the alleged offence. If a denial of the truth of the charge is not made within the required time, the officer or expatriate employee shall be deemed to have admitted the truth thereof.

(4) The head of Department, if he has charged the officer or expatriate employee, shall forthwith forward to the Commissioner a copy of the charge and any replies thereto, together with his own report on the matter and such other reports as he may have obtained, and the Commissioner shall thereupon proceed to consider and determine the matter.

(5) If the Commissioner is of the opinion that the charge should be investigated by some other person or persons he may appoint such person or persons; and each person he appointed shall conduct an inquiry into the matter.

(6) Where a charge is made against an officer or expatriate employee under this section, any person or persons appointed under subsection (5) of this section shall have the same powers as the Commissioner to summon and examine upon oath any witness whose evidence may be deemed necessary or material, and shall, after fully hearing the case, report to the Commissioner his opinion thereon, and forward to the Commissioner with his report a copy of all evidence received by him.

(7) If the truth of the charge is admitted by the officer or expatriate employee concerned, or if the Commissioner after consideration of the reports relating to the charge and any reply or explanation furnished by the officer or expatriate employee, and after such further investigation or inquiry (if any) as he considers necessary, is satisfied as to the truth of the charge, he may after taking into account the service record of the officer or

expatriate employee impose one or more of the following penalties:-

- (a) Caution and reprimand the officer or expatriate employee:
- (b) Order to be deducted by way of penalty from the salary of the officer or expatriate employee such sum not exceeding \$200 as the Commissioner thinks fit and the amount so deducted shall be credited to the salaries account of the officer's or expatriate employee's Department:
- (c) Transfer him to other duties:
- (d) Reduce the rate of salary of the officer or expatriate employee (with or without a consequent reduction in grading):
- (e) Dismiss the officer or expatriate employee from the Public Service.

(8) As soon as practicable after the conclusion of any investigation or inquiry under this section the Commissioner shall, by notice in writing, inform the officer or expatriate employee concerned of his decision and of the penalty (if any) imposed by him.

(9) If any charge is established under the provisions of this section, and the Commissioner is satisfied that any omission or default involved in that finding resulted in ascertained or assessable damage to property of the Government of the Cook Islands, or loss to the Government of the Cook Islands, the Commissioner, with the concurrence of the Minister responsible for finance, may direct the recovery of an amount not exceeding the amount of the said damage or loss in addition to any penalty that may lawfully be imposed under subsection (7) of this section, and the amount directed to be recovered shall be deducted from the salary or any money payable by the Government of the Cook Islands to the officer or expatriate employee in such manner as the Commissioner may direct.

(10) Any officer or expatriate employee against whom a charge is made or contemplated under this section may, pending the hearing and determination of the charge, be suspended or transferred to other duties by the Commissioner.

(11) Except with the express approval in writing of the Commissioner, no person who has been suspended under the foregoing provisions of this section shall be entitled to receive any salary or payment for loss of earnings in respect of the period of suspension if the charge made against him is sustained on inquiry or investigation as hereinbefore provided.

(12) An officer or expatriate employee shall not be paid any salary or any amount in respect of loss of earnings in respect of any period of suspension from duty under this section unless the Commissioner otherwise directs or he is acquitted of the charge.

(13) At any inquiry or investigation held under this section with respect to any charge made against an officer or expatriate employee, the officer or expatriate employee shall be entitled to be represented by counsel or an agent.

(14) In any case where, after inquiry or investigation, the charges made against an officer or expatriate employee are held not to have been proved, the Commissioner may allow the officer or expatriate employee the whole or such part as he thinks fit of the legal costs and other expenses actually incurred by the officer or expatriate employee.

(15) This section shall not derogate in any manner from the powers and rights conferred by sections 20 and 21 of this Act.

34. Offences by head of Department - If in any case the Commissioner has grounds to suspect that a head of Department may have committed an offence to which section 35 of this Act applies, he may notify the head of Department accordingly and institute an inquiry. In any such case the provisions of section 33 of this Act shall apply with the necessary modifications, references in that section to the head of Department being construed, where necessary for the purposes of this section, as references to the Commissioner.

35. Unauthorised absence - (1) Notwithstanding the provisions of sections 32 and 33 of this Act, an employee who absents himself from duty, or who fails to return to duty, and (in either case) continues to be absent without permission for a period of not less than four weeks shall be deemed to have forfeited office:

Provided that notice of the effect of this section shall be sent by post in a registered letter addressed to the employee at his usual or last known place of abode, and he shall not be deemed to have so forfeited office before the expiration of one week from the date on which the notice is so sent.

(2) If the employee subsequently satisfies the Commissioner that there was a valid reason for his absence and for his failure to inform the Commissioner earlier of that reason, the Commissioner may reinstate the employee: and in such a case, the employee shall be deemed not to have forfeited office, but to have been on leave from the Public Service during the period of absence.

PART III - APPEALS

36. Nomination of members - (1) For the purposes of paragraph (a) of subclause (3) of Article 76 of the Constitution the organisation of the employees of the Public Service shall nominate an employee or former employee of the Public Service to serve as a member of the Board of Appeal.

(2) The nomination shall be forwarded to the Registrar of the High Court at Rarotonga.

37. Member not to act in appeal affecting himself or his Department - No member of the Board of Appeal shall act on the Board of Appeal in any appeal affecting an officer of, or expatriate employee employed in the Department in which the member is employed, or in any appeal affecting himself.

38, Deputies to members - (1) In the event of the death or unavoidable absence or resignation or disqualification under section 37 of the member of the Board of Appeal appointed by the High Commissioner on the advice of the Premier, the Commissioner may from time to time acting on the advice of the Premier appoint an officer or expatriate employee or former officer of the Public Service to act, for such time as the Commissioner shall specify, in the place of the member who has died or has been unavoidably absent or has been disqualified or has resigned. No person appointed under this subsection shall so act after the expiration of six months after the position of member becomes vacant.

(2) In the event of the death or unavoidable absence or resignation or disqualification under section 37 of the member of the Board of Appeal nominated by the organisation of the employees of the Public Service, that organisation shall nominate an officer or expatriate employee or former officer who shall act in the place of the regular member at the meeting of the Board of Appeal and that officer or expatriate employee or former officer shall for the purposes of this Act be deemed to be a duly appointed member of the Board of Appeal for the purpose of the meeting of the Board of Appeal.

(3) No appointment of a deputy member under this section shall in any proceedings be called in question on the grounds that the occasion for the appointment had not arisen or had ceased.

39. Remuneration of Board of Appeal members - (1) A member of the Board of Appeal who is in receipt of a salary from Government shall not be granted remuneration in addition to his salary while he acts as a member of the Appeal Board.

(2) Any other members of the Board of Appeal shall be paid out of money appropriated by the Legislative Assembly for the purpose such remuneration by way of salaries or fees as may be determined by the Minister.

(3) Members of the Board of Appeal shall be paid out of moneys appropriated by the Legislative Assembly for the purpose such sums by way of travelling allowances as may be determined by the Minister.

40. Rights of appeal - (1) Subject to the provisions of sections 46 and 47 of this Act, every officer shall have a right of appeal in accordance with this section against the promotion of any officer, or the appointment of any person who is not an officer to any graded position if (in either case) the appointment of the appellant to the position would have involved his promotion:

Provided that no officer shall have any right of appeal in respect of any such promotion or appointment if the promotion or appointment was to a vacancy which had been notified in the Official Circular or otherwise, unless the officer was an applicant for appointment thereof:

Provided also that any such appeal shall be deemed to have lapsed if, before the appeal is determined, the appellant is promoted to an equivalent grade or to a position with the same or higher maximum salary or the promotion or appointment that is the subject of the appeal is cancelled, or if the officer promoted or the person appointed dies, or vacates or renounces or becomes incapable of taking up the position or grade.

(2) Every officer and expatriate employee shall have a right of appeal against:-

- (a) Any penalty fixed by the Commissioner for any offence against the provisions of this Act or any regulations thereunder or any instructions issued under this Act except in the case of a penalty of a reprimand or a fine not exceeding \$50:
- (b) Any determination of guilt by the Commissioner in respect of an offence under this Act:
- (c) Any decision of the Commissioner to transfer the officer or expatriate employee from one locality to another within the Cook Islands:

Provided that an appeal under this paragraph shall lie only on the grounds of extraordinary personal hardship and provided also that the fact that an appeal is pending under this paragraph shall not relieve the officer or expatriate employee of his obligation to comply with the decision of the Commissioner pending decision on the appeal, unless the Chairman of the Board, on application made to him in that behalf and on being satisfied that a prima facie case of such hardship is established, directs that the officer or expatriate employee shall not be so transferred pending the decision of the Board:

- (d) Any other decision in respect of which a right of appeal is expressly conferred by this Act or any other enactment.

(3) For the purposes of paragraph (c) of subsection (2) of this section a transfer shall not mean a temporary posting to another locality when travelling allowance is payable for the whole of the absence from the usual place of employment.

44. Notice of appeal - Notice of appeal under section 40 of this Act and of the grounds for appeal shall be forwarded to the Commissioner in writing in time to be received by him within 14 days after the date on which the decision has been notified to the officer or expatriate employee concerned, or within such extended time as the Board of Appeal may in any case allow after good and sufficient reason has been shown in writing by the appellant. An appellant shall be deemed to have complied with the provisions of this section if he establishes to the satisfaction of the Board of Appeal, by the production of corroborative evidence, that the notice of appeal was dispatched to the Commissioner in time for it to have been delivered at the office of the Commissioner in the normal course of postal delivery on or before the last day fixed for the receipt of the notice:

Provided that an officer or expatriate employee stationed on an island of the Cook Islands other than Rarotonga shall be deemed to have complied with the requirements of this section if his notice of appeal is handed to the Chief Administration Officer of the island on or before the last day fixed for the receipt of the notice.

42. Jurisdiction of Board of Appeal - (1) The Board of Appeal shall have jurisdiction to hear and determine every such appeal forwarded under section 38, and for this purpose to summon witnesses, including (if necessary) the provisional appointee, and to examine the witnesses on oath or otherwise. On any appeal the Board of Appeal may receive such evidence as it thinks fit, and receive any statement, document, information, or matter which in the opinion of the Board of Appeal may assist it to deal with the matters before it, whether or not the same would be admissible in a Court of law.

(2) In deciding any appeal against an appointment or promotion the Board may allow or disallow the appeal. Where there is more than one appeal against the same appointment or promotion only one appeal may be allowed and all other appeals against the same appointment or promotion shall be disallowed. Where the appeal is allowed the Commissioner shall forthwith appoint the successful appellant to the position.

(3) Where the appeal is against any penalty imposed by the Commissioner on any officer or expatriate employee under section 31 or section 33 of this Act, or any amount directed to be recovered under section 33 of this Act, the Board of Appeal may confirm, vary, or annul the penalty or the amount directed to be recovered or substitute therefor any other penalty authorised in the section under which the penalty was imposed.

(4) In any appeal the onus of proof shall rest upon the appellant:

Provided that, in any appeal against the appointment to the Public Service of any person who is not an officer, and in any appeal under the provisions of paragraph (a) or paragraph (b) of subsection (2) of section 40 of this Act, the onus of proof shall rest upon the Commissioner.

(5) The proceedings of the Board of Appeal shall not be open to the public.

(6) Any person authorised by the Board of Appeal may attend the hearing.

(7) At the hearing of any appeal the Commissioner may be represented by counsel or other advocates.

(8) At the hearing of any appeal the appellant shall be entitled to be present, and may be represented by counsel or by an officer of the Public Service:

Provided that the Board of Appeal shall have jurisdiction to hear any appeal on papers where the Board of Appeal considers such procedure warranted.

(9) Appeals affecting more than one appellant shall not be heard together, unless the Board of Appeal so desires.

(10) In matters not expressly provided for in this Act or in any regulations made or continuing in force thereunder, the procedure of the Board of Appeal, shall be such as the Board may determine.

(11) Proceedings before the Board of Appeal shall not be held bad for want of form. No appeal shall lie from any decision of the Board of Appeal and, except on the ground of lack of jurisdiction, no proceedings or decision of the Board of Appeal shall be liable to be challenged, reviewed, quashed, or called in question in any Court.

(12) The Board of Appeal shall within the scope of its jurisdiction be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1966 and, subject to the provisions of this Act, all the provisions of that Act except sections 13 and 14 (which relate to cost) shall apply accordingly.

(13) An appellant, if his appeal is allowed, shall be entitled to a refund out of money appropriated by the Legislative Assembly for the purpose of actual and reasonable personal travelling and accommodation expenses incurred within the Cook Islands in attending the hearings; but, if the appeal is not allowed, the appellant shall not be entitled to a refund of any such expenses unless the Board of Appeal expressly directs that the whole or a portion thereof should be refunded.

(14) If in the opinion of the Board of Appeal any appeal under this section is frivolous or vexatious, or one that should not have been made, the appellant shall not be entitled to a refund of expenses and the Board of Appeal may order him to pay the cost of the appeal in whole or in part, and the sum so ordered to be paid shall be recoverable by deduction from the salary of the appellant.

43. Services for Board of Appeal - The Registrar of the High Court shall furnish such secretarial, recording, and clerical services as may be deemed necessary to enable the Board of Appeal to discharge its functions. All evidence recorded in any appeal shall be retained for six months, and may then be disposed of, unless the Board of Appeal in any case otherwise direct.

44. Offence to attempt to influence Board of Appeal -
(1) Except as provided in subsection (4) of this section, no person shall in any way attempt to influence the Board of Appeal or any member of the Board of Appeal in respect of any appeal.

(2) Any person who acts in contravention of the provisions of this section commits an offence, and is liable to a fine not exceeding \$200.

(3) Any officer who is convicted of an offence under this section shall be liable without further charge or other proceedings to immediate dismissal or to such lesser penalty as the Commissioner may impose.

(4) Nothing in this section shall be so construed as to prohibit any person from giving information or making representations in respect of any appeal at the request or invitation of the Commissioner or the Board of Appeal, or as a witness or as an appellant or the representative of an appellant at a hearing before the Board of Appeal.

PART IV - SPECIAL POSTS

45. Special posts - In accordance with sub-clause (3) of Article 74B of the Constitution the posts set out in the Schedule to this Act are hereby designated special posts.

46. No right of appeal against appointments to or promotions in special posts - There shall be no right of appeal against the appointment of any person to or promotion of any employee in any special post.

47. No right of appeal for those in special posts - No employee while in any special post shall have any right of appeal against the appointment of any person who is not an officer, or the promotion of any officer, to any position in the Public Service.

PART V - MISCELLANEOUS

48. Medical examination - The Commissioner may require any applicant for appointment or any employee to submit himself to medical examination at his own expenses or otherwise by a medical practitioner nominated by the Commissioner.

49. Educational qualifications - The Commissioner may from time to time prescribe and if necessary conduct examinations for the purpose of ascertaining the merit of candidates for appointment and employees for promotion.

50. Bonds - (1) Any employee or prospective employee to whom money is advanced, or on whose behalf expenditure is incurred with the approval of the Commissioner in connection with transportation, education, training or sustenance, or for any other special purpose, may be required as a condition of that advance or expenditure to sign a bond in a form to be determined by the Commissioner requiring him to pay to the Government of the Cook Islands the sum therein specified if he makes default in the performance of any condition of the bond:

Provided that the said amount shall be reduced during the currency of the bond by an amount equivalent to the proportion that the service rendered by the employee in accordance with the condition of the bond bears to the full period of service required for the discharge of the bond.

(2) The Commissioner may require that such a bond shall also be signed by a parent or guardian, or by some other person approved by the Commissioner, as surety; and the parent or guardian or person who signs such a bond shall be jointly and severally liable thereunder.

(3) Every such bond shall be enforceable against the employee or prospective employee and the surety who signs it, notwithstanding anything in this Act or any other enactment or any rule of law.

51. Regulations - (1) The High Commissioner may from time to time by Order in Executive Council make all such regulations as may be deemed necessary to give effect to the due administration of this Act.

(2) All regulations made under this section shall be laid before the Legislative Assembly within 28 days after the date of the making thereof if the Legislative Assembly is then in Session, and, if not shall be laid before the Legislative Assembly within 28 days after the date of the commencement of the next ensuing session.

52. Instructions - Subject to this Act and any regulations made of continuing in force thereunder, and without restricting the powers of the Commissioner, it is hereby declared that the Commissioner may from time to time

issue, in the form of a Public Service Manual, instructions which shall be observed by all employees.

53. Notices to employees - Where any notice has to be given under this Act to any employee, it may be given -

- (a) By delivering it to the employee to whom it has to be given; or
- (b) By sending it to the employee in a letter or telegram addressed and posted to him at his usual place of employment or at his last known place of abode; or
- (c) By publishing the notice in the Official Circular.

54. No compensation for loss of salary - Except as provided in this Act or any other enactment, no employee shall be entitled to any compensation by reason of any reduction in salary, or in consequence of his services being dispensed with.

55. Offence to attempt to influence Commissioner -

(1) Every person commits an offence against this section who directly or indirectly solicits or endeavours either to influence the Public Service Commissioner or any head of Department making an appointment pursuant to sections 10 or 15 of this Act to obtain preferment or reward or gain or to influence the Public Service Commissioner or head of Department has aforesaid or any other person to whom the Public Service Commissioner has delegated his powers under section 5 of this Act with respect to decisions on the matters described in the first proviso to subsection (1) of section 3 of this Act.

(2) Every person who commits an offence against this section is liable to a fine not exceeding \$200.

(3) Nothing in this section shall apply to any person giving information or advice or making representations to the Public Service Commissioner or any head of Department as aforesaid in respect of any appointment, promotion or grading at the request of the Public Service Commissioner.

(4) Nothing in this section shall be construed so as to prevent the Service organisation from making representations to the Public Service Commissioner or any departmental head as aforesaid on any matter affecting the salaries, wages, or conditions of employment of any employee or class of employee.

(5) Nothing in this section shall apply to any application made by an employee addressed to the Public Service Commissioner or any departmental head as aforesaid in the manner prescribed by the Public Service Commissioner or any departmental head as aforesaid for such applications.

56. Transitional provisions - (1) All persons who immediately before the commencement of this Act were employees of the Public Service shall continue to be employees of, and

to hold the same office in that Service as if they had been appointed pursuant to this Act and the provisions of this Act shall apply to them accordingly.

(2) In the case of persons who immediately before the commencement of this Act were employed in positions which on the coming into force of this Act are designated special posts such persons shall be deemed to have been appointed in accordance with the provisions of subclause (3) of Article 74B of the Constitution and of this Act and the provisions of this Act shall apply accordingly.

57. Consequential provision - Wherever in any Act, Ordinance or Bylaw it is provided that any office shall be filled by an officer of the Public Service or any function shall be performed by an officer of the Public Service that office may be filled or that function may be performed by any expatriate employee of the Public Service.

58. Repeal - The Public Service Act 1969 is hereby repealed.

SCHEDULE

SPECIAL POSTS

- (s.45) Financial Secretary
Secretary for Justice and Lands
Secretary of Internal Affairs
Secretary of Supportive Services
Secretary of Electric Power Supply
Secretary of Health
Secretary of Education
Secretary of Trades, Industry, Labour &
Commerce
Secretary of Post and Telecommunications
Secretary of Agriculture, Marine and Scientific
and Industrial Research
Secretary of Premier's Department
Collector of Inland Revenue
Secretary of Survey and Physical Planning
Superintendent of Police
Chief Administration Officer, Aitutaki
Chief Administration Officer, Mangaia
Chief Administration Officer, Atiu
Chief Administration Officer, Mauke
Chief Administration Officer, Manihiki
Chief Administration Officer, Penrhyn
Chief Administration Officer, Pukapuka
Chief Administration Officer, Mitiaro
Chief Administration Officer, Rakahanga
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This Act is administered in the Public Service Commission.