



ANALYSIS

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1968-69, No. 28

An Act to amend and consolidate the law relating to the Public Service

(9 May 1969)

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, Commencement and Division into Parts -

- (1) This Act may be cited as the Public Service Act 1968-69.
(2) This Act shall come into force on the date of commencement of the Constitution Amendment (No. 2) Act 1968-69.
(3) This Act is divided into Parts as follows:

Part I - Public Service Commission	{ Sections 3 to 6 }
Part II - The Public Service	{ Sections 7 to 34 }
Part III - Appeals	{ Sections 35 to 44 }
Part IV - Miscellaneous	{ Sections 45 to 56 }

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

"The Constitution" means the Constitution of the Cook Islands (as set out in the Second Schedule to the Cook Islands Constitution Amendment Act 1965 of the Parliament of New Zealand);

"Commission" means the Public Service Commission established under Article 73 of the Constitution;

"Commissioner" means any member of the Public Service Commission appointed by the High Commissioner under Article 73 of the Constitution;

"Departmental head" means the departmental head of a Department;

"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;

"Occupational class" means any group of employees on the permanent staff expressly prescribed as an occupational class by the Commission;

"Officer", in relation to the Public Service, means an employee of the Public Service other than a probationer or a temporary salaried employee or a wage worker;

"Probationer" means a person serving on probation in terms of section 33 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 maximum salary;

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

"Service Organisation" means the Cook Islands Public Service Association Incorporated;

"Temporary employee" means an employee for the time being employed in terms of section 11 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 COMMISSION

3. Powers, duties and functions of Commission - (1) The Commission shall be responsible to the Minister charged with the responsibility of the administration of this Act:

Provided that in matters relating to decisions on individual employees the Commission shall act independently;

Provided further that the provisions of subclause (2) of Article 74B of the Constitution shall also apply.

(2) The Commission shall have the powers necessary to perform the functions and carry out the duties described in this section as well as the functions and duties prescribed for it under any other section of this Act or any other law in force in the Cook Islands.

(3) The Commission shall, in respect of the departments of the Public Service, be responsible for -

- Reviewing the machinery of Government, including the allocation of functions to and between Departments, the desirability of or need for the creation of new Departments, and the amalgamation or abolition of existing Departments, and (subject to the provisions of any law in force in the Cook Islands) the extent and nature of controls exercised by any one Department over the operations of another Department;
- Reviewing the efficiency and economy of each Department, including the discharge by the departmental head of the responsibilities placed on him by section 8 of this Act;
- The provision of suitable office accommodation and the prescription and supervision of physical working conditions of all employees in the Public Service;
- Approving and reviewing establishments of staff;
- Acting as the central personnel authority for the Public Service and carrying out such functions as are prescribed in this Act;
- Prescribing basic training programmes and salary limits for qualifications and making recommendations to the Premier on the facilities necessary for the proper training of staff.

4. Annual report - (1) The Commission shall as soon as practicable after the 31st day of March each year furnish a report to the Premier on the state of the efficiency and economy of the Public Service and on its own department's operations for the year ending with that date.

(2) A copy of this report shall be laid before the Assembly within 28 days after the date on which it is furnished to the Premier if the Assembly is then in Session, and, if not, shall be laid before the Assembly within 28 days after the date of the commencement of the next ensuing Session.

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

(2) In any case where the Commission has, pursuant to subsection (1) of this section, delegated any of its powers to any person, that person may, with the prior approval of the Commission delegate such of these powers as the Commission 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 Commission, 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 Commission.

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

6. Investigations and inquiries - (1) The Commission 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 Commission. For the purposes of this section the Commission or the person or persons it 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 Commission out of money appropriated by the Assembly for this purpose.

PART II - THE PUBLIC SERVICE

7. The Public Service - Except where a contrary intention appears in this Act, the provisions of this Act shall apply to -

- (a) All persons employed in any of the Departments specified in the Schedule to this Act;
- (b) The Departments specified in the said Schedule so far as may be necessary for the due administration of this Act;
- (c) All offices and positions in the Departments specified in the said Schedule.

8. Functions of departmental heads - In addition to any other functions and duties imposed by any other law in force in the Cook Islands the departmental head of every 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 the Department.

Appointments and Promotions

9. Employees appointed to the Commission - In the case of the appointment to the Commission of an employee of the Public Service, his term of office as a member of the Commission shall be deemed to be continuous service in the department in which he was employed at the date of that appointment for the purposes of:

- (a) appointment to any position in the Public Service on the termination of his service as a member of the Commission;
- (b) Entitlement to leave of absence.

10. Appointments to the Public Service - (1) All appointments to the Public Service shall be made by the Commission which shall, in making appointments to the Public Service, have regard to the need to maintain and develop an efficient career service based on the recruitment of adequately qualified persons. The Commission shall make no appointment to the Public Service unless it is satisfied that such appointment is necessary and that the appointee has clearly more merit for the position to be filled than any officer who is qualified and available for the position; merit to be determined in accordance with section 14 of this Act.

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

11. Temporary salaried employees - (1) The Commission may engage such temporary salaried employees as may from time to time be required in the public interest, and may dismiss any person so engaged with not less than one week's notice, or, in case of misconduct, without notice. No action shall lie in any Court in respect of the dismissal of any temporary salaried employee.

(2) Temporary salaried employees shall be paid such salaries and be subject to such conditions of employment as may from time to time be determined by the Commission.

(3) The Commission shall review all temporary salaried employees annually, and shall satisfy itself in respect of each such employee that his services continue to be required in the public interest.

12. Wage workers - (1) Where in the opinion of the Commission any work required to be done by any Department of the Public Service does not warrant the employment of salaried staff by reason of its temporary, fluctuating, or special nature, the Commission may authorise the engagement of wage workers by the Department.

(2) Wage workers may be engaged and with the appropriate notice, if any, discharged by the persons for the time being holding such positions as the Commission designates from time to time for that purpose; and any such person may, with the permission of the Commission, authorise any responsible employee under his control to engage discharge wage workers subject to his approval.

(3) The Commission shall prescribe the general conditions of employment for any wage worker or class or classes of wage workers which are not prescribed in any award or industrial agreement.

13. Appointments to be on probation - (1) Every person appointed to the permanent staff of the Public Service or who is appointed again after having ceased employment shall be on probation for such period being not less than six months or not exceeding two years (except as provided in subsection (2) of this section), as the Commission specifies generally or in any particular case or class of cases:

Provided that an employee in the Trainee grade, on completion of the period of training laid down for his occupational class and upon confirmation of his appointment under the provisions of subsection (3) of this section, shall not be required to serve a further period of probation unless required to do so under the provisions of subsection (2) of this section.

(2) The Commission may from time to time extend the period of probation of any probationer for a specified period not exceeding twelve months at any one time, by notice in writing to the probationer.

(3) The Commission may at any time, in writing, confirm or annul the appointment to the Public Service of any probationer.

(4) Every such confirmation shall take effect on the date of the instrument of confirmation, or, as the case may be, on such earlier or later date as may be specified in that behalf in the instrument.

(5) Notwithstanding that the period of probation of any probationer may have expired, and whether or not he is appointed to any other position in the Public Service, he shall, while he remains in the Public Service, be deemed to be employed on probation until his appointment to the Public Service is confirmed or annulled under this section:

Provided that if, at the end of six months after the expiration of his period of probation (including every extension thereof), he is still deemed under the foregoing provisions of this subsection to be employed on probation his appointment to the Public Service shall thereupon be deemed to be confirmed under this section.

14. Appointments to vacant positions - (1) All appointments to vacant positions in the Public Service shall be made by the Commission.

(2) The Commission 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 it thinks sufficient to enable any employee qualified for appointment to make application therefor.

(3) Notwithstanding anything in subsection (2) of this section, the Commission 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 that officer who, in the opinion of the Commission, 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 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 first be given to the officer who is not in receipt of any allowances payable only to employees recruited from outside the Cook Islands, and in the event of there being more than one such officer then 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 Commission may in any case allow any officer to decline any offered promotion or appointment without prejudice to this right to any future promotion or appointment for which he might be qualified.

15. 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 Commission 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.

16. Acting Appointments - (1) In the case of absence from duty of any employee (from whatever cause arising) or on the occurrence from any cause of a vacancy in any position in the Public Service (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 Commission to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.

(2) No such direction 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.

17. 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 Commission or by any person to whom the Commission 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 Commission or any such person to execute any formal warrant or other instrument in special form.

(2) A certificate signed by the Commission 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.

18. Appointments 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 Commission shall cancel the provisional appointment or promotion.

(3) The Commission 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 its opinion the office is not required or can be suitably filled by the transfer without promotion of any other officer, or if it considers that further notification of the position is desirable, or for any other sufficient reason.

Transfers and Terminations

19. Redundancy - (1) If the Commission at any time finds that a greater number of persons is employed in any Department of the Public Service than it considers to be necessary for the efficient working thereof, such persons as are redundant may (if practicable) be transferred to any other Department of the Public Service which in the opinion

of the Commission requires additional assistance; and if any person so found to be redundant cannot be usefully employed in any other Department of the Public Service the Commission may terminate his employment.

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

- (a) If in the opinion of the Commission 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 Commission may assign that class of work to that officer:
- (b) (i) If that class of work is not available, the Commission may reduce the salary of the officer to the maximum determined by the Commission 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 Commission 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.

20. Employees may be transferred - The Commission may transfer any employee, whether on promotion or otherwise, from one position in any Department of the Public Service to a position in the same or any other such Department, whether or not the transfer involves a change of location; and except as otherwise provided in this Act, there shall be no right of appeal against any such transfer.

21. Failure to comply with direction to transfer - (1) Any employee who fails to comply with a direction of the Commission requiring him to transfer from one position or locality to another may be forthwith dismissed or reduced in grading by the Commission unless he justifies the non-compliance in the opinion of the Commission 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 subparagraph (a) of subsection (2) of section 40 of this Act.

22. 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 Commission to the officer on the ground of redundancy or to effect retirement in accordance with retirement policy; or

(b) By the officer to the Commission.

(2) The Commission 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 Commission to dismiss officers.

Remuneration, Classification and Grading

23. Occupational classifications and grades - (1) The permanent staff of the Public Service shall consist of officers and probationers.

(2) The Commission shall prescribe occupational classes according to the nature of the duties required to be performed by the permanent staff.

(3) In prescribing any occupational class in accordance with the provisions of subsection (2) of this section, the Commission may specify that no person shall be eligible for appointment to the class or to a specified grade in a class unless he has such minimum educational or other qualifications as are appropriate to the duties normally performed by members of that class or grade, and may prescribe other conditions not inconsistent with this Act.

(4) The Commission shall sub-divide each occupational class into grades according to its assessment of the relative levels of responsibility and skills required to be exercised by officers and probationers of the occupational class, and shall prescribe a salary rate and a maximum salary rate and incremental steps for each such grade.

(5) The Cook Islands Public Service Association (Incorporated) shall be the service organisation recognised as representing the views of the employees of the Public Service.

(6) In addition to any other powers conferred upon it by this Act or any other law in force in the Cook Islands the Commission 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.

24. Classification, grading and salaries of officers and probationers - (1) The Commission 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 Commission otherwise determines, an officer or probationer shall be awarded the minimum salary of the new grade, but not less than his previous salary and proceed to the maximum for the grade as provided in Section 26 of this Act.

(2) From the date of the commencement of this Act until the Commission has classified and graded all officers and probationers in accordance with this section, the enactments repealed by this Act so far as they relate to classification and grading shall continue notwithstanding their 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 Commission 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 Commission may promote employees 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.

25. Reviews of grading and classification - (1) The Commission shall as far as practicable, review on a continuing basis the classification and grading of the Public Service.

(2) If the Commission at any time finds that a 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, it shall determine the new grading of the position. Where the new grading determined does not coincide with the grading of the officer or probationer for the time being holding the position the Commission may either appoint the holder to the position at its new grade, or it 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 the Commission may specify.

(4) At intervals of not less than 5 years, every officer shall have the right to apply to the Commission 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 of the Commission in respect of his application he may then lodge an appeal in accordance with the provisions of section 40 of this Act:

Provided that nothing in this sub-section shall prevent an officer from making representations to the Commission at any time on the grading of his position.

(5) On receipt of any application under sub-section (4) of this section the Commission 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.

26. Salary increments - (1) The increments prescribed in any scale of salaries shall be paid only on the basis of an employee's merit and shall not accrue to any salary until the employee in receipt thereof has received the same for a period of twelve months.

(2) The method of determining merit for the purposes of payment of salary increments shall be prescribed by the Commission and notified to employees by notice in the Public Service Official Circular.

(3) Notwithstanding the foregoing provisions of this section, it shall be lawful for the Commission to allow to any employee in any year an increment or increments in excess of that to which he would otherwise have been entitled or from a date earlier than the date on which the increment would otherwise have accrued if in either case in the opinion of the Commission the employee is entitled to special consideration.

27. Allowances and grants - The Commission may approve the payment of allowances and grants to employees or other persons.

Code of Conduct

28. Private employment - Except with the express permission of the Commission (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 Commission is incompatible with the due and proper discharge of his duties as an employee of the Public Service.

29. 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 Commission.

(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 his departmental head, who shall decide what amount should be charged for that service; the amount shall be paid into the Cook Islands Government Account or into the account of the Department concerned, unless the Commission otherwise directs.

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

(2) An officer who is charged with having committed any offence punishable by imprisonment may be transferred to other duties or suspended from duty by the Commission; 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 Commission:

- (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 Commission may impose;
- (c) He may be placed on probation for such period not exceeding two years as the Commission 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.

(3) An officer 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 Commission otherwise directs or he is acquitted of the charge.

(4) Nothing in section 31 of this Act shall apply with respect to any action taken under this section.

31. Offences with which officers may be charged - Every officer 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 regulation thereunder or of any official instruction given under the authority of the Commission or of his departmental head;
- (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 their 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 or 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.

32. Offences (1) If a departmental head has reason to believe that any officer of his department has committed an offence to which section 31 of this Act applies he is required to forthwith report the matter to the Commission and, if required to do so by the Commission, he shall reprimand, caution or charge the officer in writing as the Commission determines or the Commission may reprimand, caution or charge the officer in writing.

(2) If the Commission determines that a reprimand or caution or fine of twenty dollars or less shall be the penalty then that decision is final and there is no right of appeal by the officer against the penalty.

(3) If the officer 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 departmental head or Commission 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 shall be deemed to have admitted the truth thereof.

(4) The departmental head, if he has charged the officer, shall forthwith forward to the Commission 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 Commission shall thereupon proceed to consider and determine the matter.

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

(6) Where a charge is made against an officer under this section, any person or persons appointed under subsection (5) of this section shall have the same powers as the Commission 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 Commission his opinion thereon, and forward to the Commission with his report a copy of all evidence received by him.

(7) If the truth of the charge is admitted by the officer concerned, or if the Commission after consideration of the reports relating to the charge and any reply or explanation furnished by the officer, and after such further investigation or inquiry (if any) as it considers necessary, is satisfied as to the truth of the charge, it may after taking into account the Service record of the officer, impose one or more of the following penalties:-

- (a) Caution and reprimand the officer;
- (b) Order to be deducted by way of penalty from the salary of the officer such sum not exceeding two hundred dollars as the Commission thinks fit and the amount so deducted shall be credited to the salaries account of the officer's department;
- (c) Transfer him to other duties;
- (d) Reduce the rate of salary of the officer (with or without a consequent reduction in grading);
- (e) Dismiss the officer from the Public Service.

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

(9) If any charge is established under the provisions of this section, and the Commission 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 Commission, 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 in such manner as the Commission may direct.

(10) Any officer 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 Commission.

(11) Except with the express approval in writing of the Commission, 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 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 Commission 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, the officer 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 are held not to have been proved, the Commission may allow the officer the whole or such part as it thinks fit of the legal costs and other expenses actually incurred by the officer.

(15) This section shall not derogate in any manner from the powers and rights conferred by section 19 and 20 of this Act.

33. Offences by departmental head - If in any case the Commission has grounds to suspect that a departmental head may have committed an offence to which section 31 of this Act applies, it may notify the departmental head accordingly and institute an inquiry. In any such case the provisions of section 32 of this Act shall apply with the necessary modifications, references in that section to the departmental head being construed, where necessary for the purposes of this section, as references to the Commission.

34. Unauthorized absence - (1) Notwithstanding the provisions of sections 31 and 32 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 Commission that there was a valid reason for his absence and for his failure to inform the Commission earlier of that reason, the Commission 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

35. Constitution of the Board of Appeal - The Board of Appeal shall comprise three members as provided in Article 76 of the Constitution.

36. Nomination of Members - (1) For the purposes of paragraph (a) of subclause (3) of Article 76 of the Constitution it shall be the responsibility of the Service Organisation to nominate an officer or former officer 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.

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 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 Commission may from time to time appoint an officer or former officer of the Public Service to act, for such time as the Commission 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 Service Organisation, the Service Organisation shall nominate an officer 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 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 arisen or had ceased.

39. Remuneration of Board of Appeal members - (1) Any member of the Board of Appeal who is an employee of the Public Service shall not be granted remuneration in addition to his Public Service salary while he acts as a member of the Board of Appeal.

(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 responsible for finance.

(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 responsible for finance.

40. Rights of appeal - (1) 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 position on the permanent staff of the Public Service above the lowest basic grade (other than trainee) of each occupational class 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 thereto:

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 shall have a right of appeal against -

- (a) Any penalty fixed by the Commission 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 twenty dollars;
- (b) Any determination of guilt by the Commission in respect of an offence under this Act;
- (c) Any decision of the Commission to transfer the officer 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 of his obligation to comply with the decision of the Commission 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 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 be deemed not to include a temporary posting to a locality other than the usual place of employment when travelling allowance is payable for the whole of the absence from the usual place of employment.

41. Notice of Appeal - Notice of appeal under section 40 of this Act and of the grounds for appeal shall be forwarded to the Commission in writing in time to be received by it within fourteen days after the date on which the decision has been notified to the officer 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 Commission in time for it to have been delivered at the office of the Commission in the normal course of postal delivery on or before the last day fixed for the receipt of the notice:

Provided that an officer stationed on an island of the Cook Islands other than Karotonga shall be deemed to have complied with the requirements of this section if his notice of appeal is handed to the Resident Agent or Clerk-in-Charge 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 41, 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 matter 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 Commission shall forthwith appoint the successful appellant to the position.

(3) Where the appeal is against any penalty imposed by the Commission on any officer under section 30 or section 32 of this Act, or any amount directed to be recovered under section 32 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 Commission.

(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 Commission may be represented by counsel or other advocate.

(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 of Appeal 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 costs) 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 hearing; 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 Justice Department 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 directs.

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 two hundred dollars.

(3) An officer who is convicted of an offence under this section is liable without further charge or other proceedings to immediate dismissal or to such lesser penalty as the Commission 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 Commission 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 - MISCELLANEOUS

45. Medical examinations - The Commission may require any applicant for appointment or any employee to submit himself to medical examination at his own expense or otherwise by a medical practitioner nominated by the Commission.

46. Educational qualifications - The Commission 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.

47. Employee may be charged rent - If arising out of or in connection with his employment any employee is supplied by the Government of the Cook Islands with any house or other premises for the purposes of residence, the Commission may, if the employee is not entitled to free quarters, direct that a fair and reasonable sum as rent thereof be deducted from the employee's salary, and the amount of that sum shall from time to time be fixed by the Commission.

48. Bonds - (1) Any employee or prospective employee to whom money is advanced, or on whose behalf expenditure is incurred with the approval of the Commission 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 Commission 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 Commission may require that such a bond shall also be signed by a parent or guardian, or by some other person approved by the Commission, 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.

49. Regulations - (1) The Commission may from time to time with the approval of the Executive Council, make regulations for all or any of the following purposes:-

(a) Promoting efficiency and economy in the Public Service:

- (b) Prescribing standards of and conditions relating to office accommodation and physical working conditions:
- (c) Facilitating the recruitment, appointment, classification, and grading of employees:
- (d) Prescribing normal or special hours of attendance or duty, and modes of recording times spent on duty:
- (e) Subject to the provisions of any enactment, safeguarding Government property within the custody of any Department or employee, and preventing the incurring by the Crown of unauthorised liabilities:
- (f) Defining the terms and conditions of occupancy of Government dwellings or residential properties in terms of section 47 of this Act, and fixing the rentals payable for such dwellings or residential properties and matters ancillary thereto:
- (g) Relating to the conduct of employees or of any class thereof, the maintenance of integrity, the control of activities which are or may be detrimental to the performance of official duties, the furnishing of official information, and the maintenance of impartiality in the performance of official duties:
- (h) Prescribing the responsibilities and duties of employees controlling staff:
- (i) Prescribing the nature of personal reports on employees and the times when they are to be made:
- (j) Prescribing the nature and duration of leave of absence that may be granted to employees, and the terms and conditions of such leave:
- (k) Empowering the Commission to prescribe allowances and make grants, and to prescribe the terms, conditions, and rates or amounts of allowances and grants, that may be paid to employees in addition to, or instead of, salary or wages:
- (l) Fixing terms, conditions, rates or amounts that may be paid to any person to recoup expenses incurred or to be incurred by such persons on the instructions or in the service of the Commission:
- (m) Providing for the training of staff:
- (n) Prescribing examinations or qualifications for the purposes of the appointment, the promotion, the classification, or the grading of employees:
- (o) Prescribing terms and conditions of employment in respect of temporary salaried employees and wage workers paid on an hourly, daily or weekly basis:
- (p) Prescribing conditions of retirement:
- (q) Prescribing the forms of documents to be employed in dealing with staff and employment and appeal matters:
- (r) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Regulations made pursuant to subsection (1) of this section may be made either generally or with respect of any particular case or class of cases.

(3) Regulations made under this section shall come into force on a date to be specified therein in that behalf (whether before or after the date of the approval of the Executive Council making the regulations), and if no such date is specified shall come into force on the date of their notification in the Cook Islands Gazette.

(4) 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.

50. Instructions - Subject to this Act and any regulations made or continuing in force thereunder, and without restricting the powers of the Commission, it is hereby declared that the Commission may from time to time issue, in the form of a Public Service Manual, instructions which shall be observed by all employees.

51. 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.

52. 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.

53. Offence to attempt to influence Commission - (1) Every person commits an offence against this Section who directly or indirectly solicits or endeavours either to influence the Commission to obtain preferment or reward or gain or to influence the Commission or any other person to whom the Commission 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 two hundred dollars.

(3) Nothing in this section shall apply to any person giving information or advice or making representations to the Commission in respect of any appointment, promotion or grading at the request of the Commission.

(4) Nothing in this section shall be construed so as to prevent the service organisation from making representations to the Commission 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 Commission in the manner prescribed by the Commission for such applications.

54. Substitution of the Commission - (1) The Public Service Regulations 1967 are hereby amended by omitting all references to the Secretary of the Premier's Department and substituting therefor references to the Public Service Commission.

(2) Every reference to the Secretary of the Premier's Department in any other enactment, agreement, deed, instrument, notice or other document whatsoever shall, unless the context otherwise requires, be read as a reference to the Public Service Commission.

55. Transitional provisions - 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 and status in that Service as if they had been duly appointed by the Commission and the provisions of this Act shall apply to them accordingly.

56. Repeal - The Public Service Act 1965 is hereby repealed.

SCHEDULE

DEPARTMENTS OF THE PUBLIC SERVICE

(s. 7)

Premier's Department
Office of the Public Service Commission
Department of Economic Development
Department of Co-operation
Department of Education
Department of Finance
Department of Health
Department of Inland Revenue
Department of Internal Affairs
Department of Police
Department of Justice
Department of Survey
Department of Works and Communications
Meteorological and Ionosphere Departments
(except officers of the New Zealand Public Service).