



REPUBLIC OF KENYA



16

PUBLIC SERVICE COMMISSION

PSC/LEG/019/14/185 IV(16)

1st March, 2022

Chairperson
Salaries and Remuneration Commission
Williamson House
4th Ngong Avenue
NAIROBI.

 THE NATIONAL ASSEMBLY	
DATE: 07 JUN 2022	
DAY: TUESDAY	
TABLED BY:	LOM
CLERK-AT-THE-TABLE:	Maina wanjiku

REQUEST FOR WRITTEN SUBMISSIONS ON THE DRAFT SALARIES AND REMUNERATIONS COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

Reference is made to your letter dated 23rd February, 2022.

Attached is the written memorandum from the Public Service Commission.

Don
Dr. Simon K. Rotich, CBS
Secretary/CEO
Public Service Commission

Attch.



SALARIES AND REMUNERATION COMMISSION (REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

MEMORANDUM OF THE PUBLIC SERVICE COMMISSION

No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
PART I—PRELIMINARY PROVISIONS			
1.	2	The interpretation of “job evaluation” violates the mandate of PSC under Article 234(2)(a)(i) of the Constitution as read together with Section 27 of the Public Service Commission Act, 2017.	“Job Evaluation” should be interpreted to mean a systematic and objective process of determining the worth of a job in relation to other jobs. for purposes of establishing a rational grading structure; <i>(delete)</i>
2.	2	The interpretation of the term “public service institution” is unconstitutional as it purports to usurp the constitutional mandate of the Public service Commission specifically Art. 234(2)(g) by giving SRC the power to directly engage public service institutions that fall under the mandate of the Public Service Commission i.e. Ministries and State Corporations.	The definition should be as follows:- “public service institution” means a) Public Service Commission; b) Parliamentary Service Commission; c) Judicial Service Commission; d) National Police Service Commission; e) Teachers Service Commission; f) County Public Service Board; g) County Assembly Service Board; and h) Constitutional Commission and Independent Office.
3.	2	Review of remuneration and benefits	It should be amended to only provide for the definition of review.
4.	3(2)(c)	The provision contravenes Art. 234(2) (g) of the Constitution and it also contravenes the provisions of Section 11(b) of the Salaries and Remuneration Act which only gives SRC the power to keep under review all matters relating to the salaries and remuneration of public officers. It should be noted that under Article 230(4) of the Constitution SRC is only mandated to set and regularly review the remuneration and benefits of all State Officers and to	Clause 3(2)(c) should be deleted.



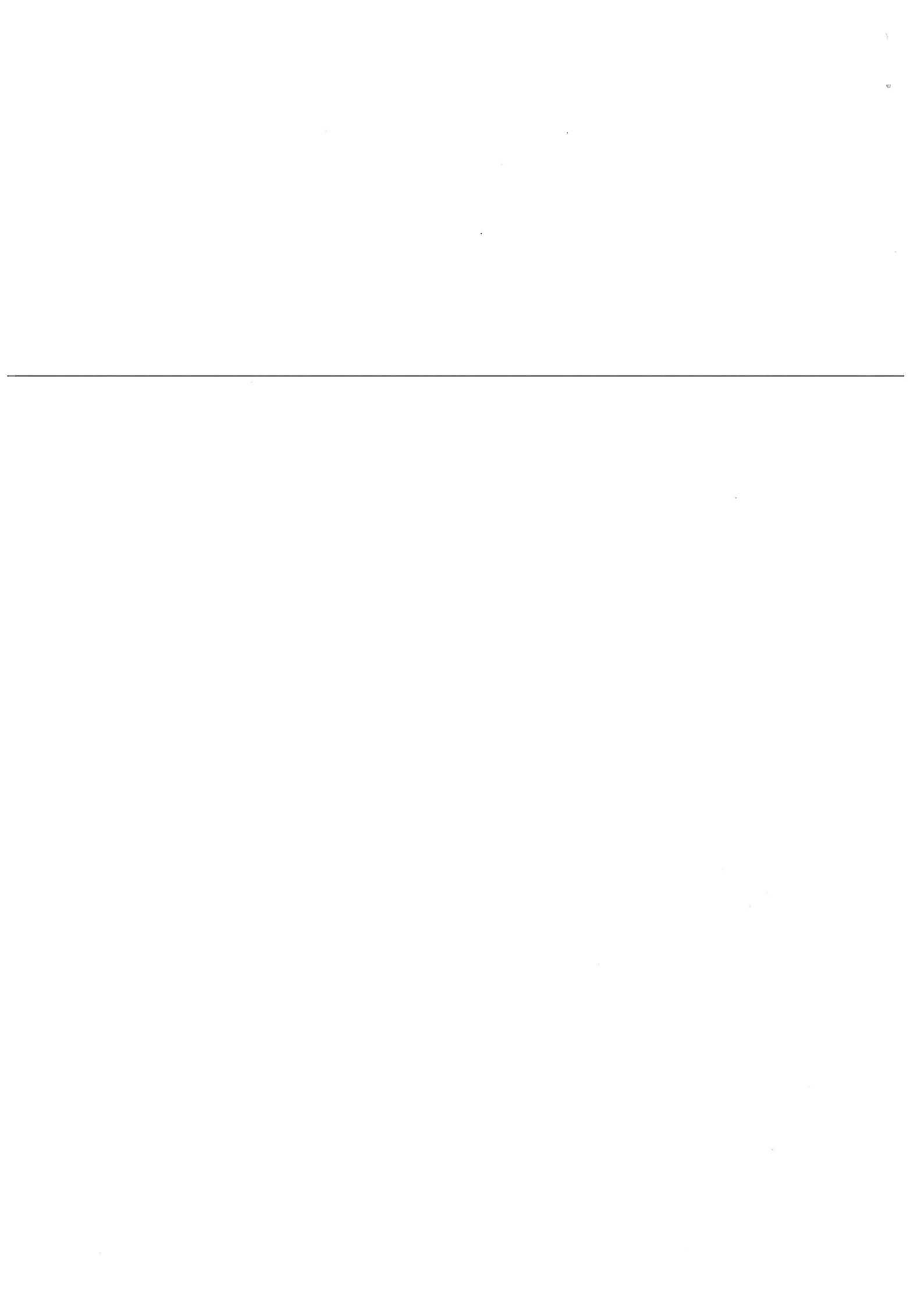
No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
		advise the National and County Governments on remuneration and benefits of all other public officers. Therefore, SRC cannot give itself powers, through Regulations, that exceed their Constitutional powers and functions.	
PART II- SETTING, REVIEWING AND ADVISING ON REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS			
5.	4	The entire clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.	<p>4(1) should read as follows</p> <p>4. “(1) The Commission shall —</p> <p>(a) undertake a review of State Officers’ remuneration and benefits every four years;</p> <p>(b) Keep under review other public officers’ remuneration every four years; and</p> <p>(c) Keep under review allowances and benefits of other public officers.”</p> <p>(3) The Commission may, notwithstanding the provisions of sub-regulation (1), undertake a special review of the remuneration and benefits of State officers and other public officers <i>(delete)</i> to address emerging circumstances and conditions.</p>
6.	5	The clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.	5(1) Whenever a review is due, the Commission shall call for relevant information from public service institutions, on remuneration and benefits for their respective State officers. other public officers. <i>(delete)</i>
7.	6	<p>The clause contravenes the mandate of the Public Service Commission under Article 234(2) (a) (i) as read together with Section 27 of the Public Service Commission Act.</p> <p>The clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.</p>	<p>(6) The Commission shall, in undertaking a review or keeping under review all matters relating to the salaries and remuneration of public officers in accordance with these Regulations, consider —</p> <p>(a) the principles set out under Article 230 (5) of the Constitution, Section 12 of the Act and other legal</p>



No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
			provisions; (b) the economic performance of the country; (c) the outcome of comparative surveys on the labourmarkets and trends in remuneration; and (d) the job evaluation results <i>as undertaken by public service institutions</i> .
8.	7(1)	The clause contravenes on the mandate of the Public Service Commission under Article 234(2) (a) (i) as read together with Section 27 of the Public Service Commission Act. The clause exceeds the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.	7(1) The Commission shall undertake periodic review <i>or keep under review, as the case may be</i> , allowances and other benefits and advise public service institutions taking into account provisions of regulation 4.
9.	8	The entire clause contravenes the provisions of, among others, the Presidential Retirement Benefits Act, Retirement Benefits (Deputy President and Designated State Officers) Act, Retirement Benefits Act, Pensions Act and the Public Service Superannuation scheme Act.	Clause 8 should be deleted in its entirety.
10.	9	Clause 6 and 9 are dealing with the same or related issue.	Clauses 6 and 9 should be <i>merged</i> . In the merger, clause 9(1) should read: 9(1) The Commission shall, in setting, reviewing and or advising on remuneration and benefits, where applicable, consider... and 9(1)(g) should read; the job evaluation results <i>as undertaken by public service institutions</i> . And 9(2) should read; In the discharge of its mandate, the Commission may shall



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			invite views from stakeholders which include—
9.	10(b)	The clause exceeds the powers of SRC as provided for in Article 230 (4)(b) of the Constitution which has since been interpreted by the Supreme Court in Pet. No. 42 of 2019.	The clause should read; advice on remuneration and benefits for other public officers <i>indicating the effective date of implementation.</i> (delete)
10.	11to 18	<p>The clauses contravene on the mandate of the Public Service Commission under Article 234(2) (a) (i) as read together with Section 27 of the Public Service Commission Act.</p> <p>The clauses exceed the powers and functions of SRC as provided in Article 230(4) of the Constitution and Section 11 of the SRC Act.</p> <p>With regard to State Officers their jobs are defined in the Constitution and enabling legislation.</p>	Clauses 11 to 18 should be deleted.



No.	CLAUSE	ISSUE	PROPOSED AMENDMENT
11.	19 & 20(2)	The clauses exceed the constitutional and statutory powers and functions of SRC, specifically Article 230(4)(b) of the Constitution which has been interpreted by the Supreme Court in Petition No. 42 of 2019.	<p>19.1) The Commission, shall, prior to developing salary structures for State Officers—</p> <p>(a) conduct comparative surveys on labour markets and trends in remuneration to determine the relativity of remuneration of public service in relation to the market trends; and</p> <p>(b) subject the outcome of the comparative surveys on labour markets and trends in remuneration to the provisions of regulation 9 (1).</p> <p>(2) The Commission shall develop and communicate to public service institutions the set and reviewed salary structures for State officers and advice on the salary structures for other public officers.(delete)</p> <p>(3) A public service institution shall—</p> <p>(a) ensure its salary structure is as advised by the Commission; and</p> <p>(b) submit the information requested by the Commission while undertaking comparative surveys on labour markets and trends in remuneration; Delete</p> <p>Clause 20(2) should be deleted.</p>
12.	21	The clause exceeds the constitutional and statutory mandate of SRC.	(a) Salary structures that are set, reviewed or advised Delete shall remain valid until reviewed by the Commission.
13.	23	The clause encroaches on the Public Service Commission powers and functions in Article 234(2)(e) of the Constitution as read with Section 62 of the Public Service Commission Act.	Clause 23 should be deleted in its entirety.



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14.	26(3) & (4)	The clauses exceed the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.	Clause 26(3) & (4) should be deleted in entirety.
PART III— MISCELLANEOUS PROVISIONS			
15.	27	The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.	27A public service institution may, at any time, request the Commission, in writing, to- a) Set and review the remuneration and benefits for its State Officers, and b) Advise on the remuneration of its public officers.
16.	28	The clause exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.	Clause 28 should be deleted.
17.	30(3)	The clause is superfluous as the procedures for dispute resolution in court is provided for in various rules of procedure for different courts.	Clause 30(3) should be deleted.
18.	31(1)	The clause exceed the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.	(1) The Commission may take any measures it considers necessary to ensure that public service institutions adhere to the set and reviewed remuneration and benefits for State Officers. and advice issued by the Commission. Delete
19.	31(3), (4) and (5)	The clauses exceeds the constitutional mandate of SRC in Article 230(4)(b) of the constitution as interpreted by the Supreme Court in Petition no 42 of 2019.	Clauses 31(3), (4) and (5) should be deleted.



Amb. Anthony Muchiri

Chairperson, Public Service Commission

28th February 2022.

