
Public Service Regulations 2004
NIUE LAWS
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PUBLIC SERVICE REGULATIONS 2004

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SCHEDULE

Pursuant to article 68 of the Constitution the Niue Public Service Commission, with the approval of Cabinet, makes the following Regulations

GENERAL

1 Name

These are the Public Service Regulations 2004.

2 Interpretation

(1) Expressions in these Regulations have the same meaning as they have in the Constitution.

(2) In these Regulations –

"actual service" means the period of an employee's employment in the Service, including any period of authorised paid leave, but does not include any period of voluntary leave without pay or any period of broken service;

"Appeals Committee" means the Appeals Committee referred to in regulation 80;

"broken service" means any situation where an employee has ceased to be a member of the Service and is subsequently re-employed;

"certificate of employment" means a statement in writing of the work record in the Service of an employee;

"consequential vacancy" means a position that becomes vacant immediately following the appointment of an employee to fill another position or an advertised vacancy;

"continuous service" means an uninterrupted period of employment including any period of authorised leave;

"contract employee" means a person employed on a contract of service under regulation 26;

"contributory service" means the period during which an employee contributes to a superannuation scheme or fund approved by the Commission, including any period of previous service the employee elects to include in contributions to the superannuation scheme or fund;

"controlling officer" in relation to an employee, means the person who is for the time being in charge of that employee and authorised to require that employee to do or abstain from doing any act or thing;

"Department" means each separate organisation or office of the Service;

"employee" means any person employed in the Service as a permanent employee, a probationer, a contract employee, or a temporary employee;

"healthy" means not harmful;

"Manual" means the Manual of Instructions 1983 issued by the Commission under article 68(2) of the Constitution or regulation 4 and includes any updated Manual;

"Official Circular" means the Niue Public Service Official Circular issued by the Commission;

"permanent employee" means an employee other than a probationer, or a contract employee, or a temporary employee;

"probationer" means a person employed on probation under regulation 25;

"redeployment" means the release of an employee by the Commission from normal duties for a specified period to undertake work on a community project, or other duties outside the Service, approved by the government;

"Service" means the Niue Public Service;

"Service Organisation" means the Niue Public Service Association Incorporated;

"specified office" means the office of Secretary to the Government, of High Commissioner to New Zealand, or of Head of Department, or of a medical or legal officer, or of an accountant or teacher or of any other similar office for which a tertiary-level qualification is required;

"temporary employee" means a person employed in a temporary or relieving capacity under regulation 27;

"transfer" means the moving of an employee by the Commission from one position in the Service to another, either within a department, or to another department, as a disciplinary measure, with or without promotion, following a request of the employee, or for some other reason consistent with the purposes of these Regulations.

3 Purposes and achievement of Service goals

(1) The purposes of these Regulations are –

(a) To provide standards of service for all departments and offices of the executive government;

(b) To promote the efficiency, effectiveness and economy and harmonious functioning of all departments and offices of the executive government by –

(i) procuring the application of quality technical and professional knowledge, methods, system and practice;

- (ii) avoiding extravagance and waste;
 - (iii) aiming at high quality work and output;
 - (iv) controlling the volume of the work performed;
 - (v) training, up-skilling and re-skilling of employees;
 - (vi) maintaining a proper standard of conduct and ethics by employees;
 - (vii) encouraging employees, through incentives, to submit suggestions for increasing the efficiency, effectiveness or economy of the Service, and decreasing the cost and volume of work of the State;
- (c) To promote mutual trust and confidence in all aspects of the employment relationship which must be built on good faith behaviour.

(2) In all cases these Regulations shall be interpreted consistently with the purposes set out in regulation 3 and with a view to achieving those purposes.

4 Manual of Instructions

- (1) The Commission must produce and publish an updated Manual of Instructions at regular intervals.
- (2) All terms and conditions for employees must be consistent with the Constitution and with these Regulations.
- (3) Additional instructions, and amendments of, or revocations to existing instructions shall be published in the Official Circular or in such other manner as the Commission thinks fit.
- (4) Every head of department must ensure copies of these Regulations and the Manual in their possession are in secure custody and are kept up to date.

5 Access to Regulations and Manual

- (1) The Commission must supply departments with sufficient copies of Part VI of the Constitution, these Regulations and the Manual, and the head of every department must ensure these documents are readily available for employees to read.
- (2) Every employee is deemed to have notice of, and must comply with, all instructions, directions and conditions of employment contained in Part VI of the Constitution, these Regulations, the Manual, the Official Circular, or which have been communicated to the employee in any other manner.

6 Code of conduct

The Commission must establish and maintain a code of minimum standards of conduct for the Service, reflecting the following principles of conduct –

(a) In assisting the Cabinet in exercising the executive authority of Niue, under article 62 of the Constitution, employees must act with professionalism and political neutrality;

(b) Employees must perform their official duties honestly, faithfully and efficiently, respecting the rights of the public and those of their colleagues;

(c) Employees must not bring the Service into disrepute through their private activities.

7 Appointment of employee as a member of the Commission

Where an employee is appointed as a member of the Commission the employee must take leave of absence from the Service for the period of membership of the Commission.

8 Inspection

(1) The Commission may appoint and authorise any person (employed in the Service or otherwise) to inspect any department, employee or class of employee.

(2) The person making the inspection shall report on –

(a) The efficiency, effectiveness and economy of the department inspected, or the performance of the employee or class of employees; and,

(b) Specify in the report any changes and measures considered necessary to improve the efficiency, effectiveness and economy of the department, or to improve the performance of the employee or class of employees.

(3) Any report arising from the inspection of a department in relation to its functions and responsibilities must be referred to Cabinet for its information.

9 Notice to employees

Where under these Regulations any notice is required to be given to an employee in respect of any decision or other matter, it is (except in the case specified in regulation 69) sufficient compliance with that requirement if the notice is published in the Official Circular or is sent to the employee by letter or by facsimile to the employee's place of employment or last known place of abode.

10 Representation by the Service Organisation

(1) The Service Organisation, without prejudice to the right of any employee to act on his own behalf, may make representations to the Commission on any matter affecting the conditions of employment of an employee, or class of employee.

(2) In making a decision on any matter, the Commission must give due consideration to representations made by the Service Organisation, or by an employee, in addition to any other consideration that the Commission thinks fit.

(3) The Service Organisation must, as far as possible, endeavour to discuss all its concerns and grievances with the Commission.

11 Industrial action unlawful

(1) No employee shall participate in any form of industrial action or refuse to perform duties as lawfully directed by the Commission or act or conspire to act in any way that would adversely affect the provision, the adequacy and quality of essential services or any work primarily the responsibility and duty of the employee to carry out.

(2) Any employee who acts in breach of this regulation is deemed to have forfeited office forthwith and the Commission must inform the employee accordingly.

12 Essential services

(1) "Essential services" includes –

(a) The supply of electric power and water, sanitation and plumbing services, and other public utilities;

(b) The provision of medical, dental and associated or support services;

(c) The maintenance of law and order;

(d) Teaching and the provision of other services related to education;

(e) The provision of fire and rescue services (sea and land);

(f) The provision of transport services by air, land or sea;

(g) The provision of border control services such as customs, health, immigration, quarantine, and security;

(h) The provision of telecommunications and postal services, both internal and external;

(i) The provision of meteorological services;

(j) The provision of fuel and oil;

(k) The provision of administrative, economic, financial, legal and planning advice, and corporate support services;

(l) Any other service as determined by the Cabinet.

(2) The minimum level and quality of essential services to be provided by the Service are such as determined by the Cabinet in consultation with the Commission.

13 Occupational safety and health

The Commission must take all practical steps to ensure the safety and health of employees while at work, and in particular must take practical steps to –

- (a) Provide and maintain a safe and healthy working environment; and
- (b) Provide and maintain facilities for safety and health; and
- (c) Provide safety and health awareness information and instruction programmes; and
- (d) Develop procedures for dealing with emergencies.

14 Advice and counselling

The Commission must take practical steps to provide work related advice and counselling to employees on matters affecting their individual employment, including their health and welfare in relation to their employment.

VACANCIES, ADVERTISEMENTS, APPOINTMENTS, STATUS AND TENURE OF EMPLOYEES

15 Establishment of positions

- (1) The Public Service shall comprise such positions as are publicly notified from time to time by the Commission.
- (2) The Commission may, with the approval of Cabinet, establish or disestablish any position within the Service.
- (3) The Commission shall, on the advice of Cabinet, and subject to article 69 of the Constitution, establish or disestablish any position within the Service.

16 Vacancies

- (1) The Commission may fill any vacancy –
 - (a) With an employee from within the Service by way of transfer, either with or without promotion provided that only a transfer or promotion will be subject to an open right of appeal; or,
 - (b) By advertising the vacancy within or outside the Service, or both; or,
 - (c) By making an appointment to a consequential vacancy from among the unsuccessful candidates who applied for an advertised vacancy; and, where an appointment made in this manner involves promotion, it will be subject to appeal but only by those who applied for the advertised vacancy.

(2) If the Commission advertises a vacancy it must –

(a) Publish the advertisement in the Official Circular or in some other suitable manner;

(b) Provide at least 14 days between the date of the first advertisement for a vacancy and the deadline for receipt of applications for that vacancy.

(3) Every application for a vacancy must be in writing and shall include all such information as the Commission requires as specified in any advertisement.

17 Educational qualifications for appointment

The Commission may specify a standard of education required as a minimum qualification for appointment as an employee or for a particular position or class of occupation in the Service.

18 Medical examination and retirement for medical reasons

(1) Before any person is appointed as an employee, that person must furnish to the Commission at his own expense an up-to-date certificate or report on his general state of health and fitness by a registered medical practitioner or medical officer approved by the Commission.

(2) Every employee must if called upon, furnish to the Commission a medical certificate or report on the employee's general state of health and fitness to continue in employment.

(3) If an employee has become inefficient or becomes unable to properly perform the employee's duties because of chronic or continuous illness, or change in nature of a disability, the Commission may require the employee to retire from the Service.

(4) An employee who provides to the Commission 2 independent medical reports supporting that employee's retirement for medical reasons may apply to the Commission to retire as medically unfit for further duty, and the Commission must grant such retirement if satisfied that the medical reports are valid.

19 Criteria for appointment

(1) All appointments shall be made on merit.

(2) The Commission must determine the merits of an applicant for appointment to the Service by the applicant's –

(a) Work experience and competence shown in the performance of duties previously carried out in the Service or elsewhere; and

(b) Relevant educational and other qualifications; and,

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

(d) Any other factor specified by the Commission.

(3) The Commission may only appoint a person to a position in the Service, who –

(a) Is available to take up the position within a reasonable time; and,

(b) Has met at least the minimum qualifications criteria established for the position.

(4) A member of the Commission who wishes to apply for a position in the Service must not be a part of the interview panel.

20 Form of appointment

(1) The Commission may appoint an employee only –

(a) In the case of a permanent employee or a probationer, by issuing a letter of appointment setting out the employee's position and capacity, and the salary and grade to which the employee has been appointed;

(b) In the case of a contract employee, by entering into a contract with specific terms and conditions;

(c) In the case of a temporary employee, by entering into a contract with specific terms and conditions of employment.

(2) Except where express conditions of employment are provided in respect of a contract employee or a temporary employee, the conditions of employment shall be as provided in these Regulations and the Manual.

21 Effective date of appointment and promotion

(1) The date of the document of appointment or promotion is the date the appointment or promotion is effective unless the document of appointment or promotion states otherwise.

(2) When a person is appointed or promoted to a position in the Service, the salary in respect of that position is payable from the date on which the appointment takes effect.

22 Appointment to specified offices

(1) Before appointing a person to a specified office, the Commission must, in a manner that is consistent with its responsibilities under articles 68 and 69 of the Constitution, consult the Minister to whom primary responsibility for the department is allocated.

(2) Appointment to a specified office shall be for a term not exceeding 3 years and the appointment shall terminate at the end of the period specified in the contract without further notice by the Commission.

(3) On the termination of appointment to a specified office, a permanent employee shall, unless reappointed to that office or appointed to another specified office, be transferred to another position in the Service on conditions no less favourable than those that applied to the employee at the time of appointment to the specified office.

23 Statutory declaration

Every employee must, on taking up employment in the Service, complete a statutory declaration in a form approved by the Commission to the effect that the attention of the employee has been drawn to the general conditions of employment contained in these Regulations and the Manual, including specifically regulations 4, 5, 11, 12 and 53.

24 Permanent employees

No person under the age of 18 years at the time of appointment shall be a permanent employee.

25 Probation

(1) Subject to paragraphs (2) and (3), a person who is appointed to the Service, other than as a contract or temporary employee, is on probation for a period of not less than 3 months or more than 6 months, as the Commission determines.

(2) The Commission may waive the probation period of an employee who has previously been employed in the Service for 12 months or more.

(3) At the expiry of an employee's period of probation, the Commission may by notice in writing to a probationer –

(a) Extend the employee's period of probation for a specified period not exceeding 3 months; or

(b) Confirm or annul the employee's appointment.

(4) Unless an earlier or later date is specified in the notice, the extension, confirmation or annulment under paragraph (3) takes effect on and from the date of the notice.

(5) If 30 days elapse following the period of probation and the Commission has not taken action under paragraph (3), the appointment of that employee is deemed to have been confirmed.

26 Contract employee

(1) The Commission may, in the best interest of the Service, enter into a contract of service for a specific task or purpose for a specified period with any person who is not a permanent employee of the Service.

(2) A contract entered into under paragraph (1) –

(a) Will be governed by its express terms and conditions and, to the extent that they are not inconsistent with the contract, by these Regulations as they apply to permanent employees; and,

(b) Shall be for a term not exceeding 3 years, but may be renewed or extended for such period as considered necessary by the Commission; and

(c) May be terminated at any time by the Commission on account of serious misconduct by the employee.

(3) Where the appointment of the contract employee is to a specified office, the appointment is subject to regulation 22.

(4) A contract employee who is subsequently appointed as a permanent employee may apply to the Commission to have the period of contract employment included as service as a permanent employee.

27 Temporary employee

(1) Temporary employees may be engaged and discharged as considered necessary on terms and conditions of employment determined by the Commission.

(2) A temporary employee who is subsequently appointed as a permanent employee may apply to the Commission to have the period of temporary employment included as service as a permanent employee.

28 Cessation of employment

(1) Cessation of employment in the Service may occur by –

(a) In the case of a contract employee or a temporary employee, the end of the term of the contract; or;

(b) By notice under this regulation; or,

(c) Retirement on medical grounds under regulation 18, by choice, or under regulation 29(2); or,

(d) Forfeiture of office under regulation 69;

(e) Dismissal as the ultimate disciplinary measure; or

(f) Death.

(2) The employment of every permanent employee or contract employee can be terminated by either party giving at least 3 months written notice.

(3) If a permanent employee gives the Commission less than 3 months notice, the Commission may –

(a) Require a minimum of 3 months notice, or

(b) The Commission may accept a shorter period of notice, or

(c) May terminate the employment forthwith.

(4) The employment of a temporary employee may be terminated by either party giving at least 2 weeks written notice.

(5) If a temporary employee gives the Commission less than 2 weeks notice, the Commission may –

(a) Require a minimum of 2 weeks notice, or

(b) The Commission may accept a shorter period of notice, or

(c) May terminate the employment forthwith.

29 Retirement from the Service

(1) A permanent employee who has completed not less than 10 years of actual service may apply for retirement from the Service at 50 years of age.

(2) All permanent employees must retire at 55 years of age.

30 Re-employment

The Commission shall not employ as a permanent employee any person who has been dismissed from the Service.

CANDIDACY AND MEMBERSHIP OF ASSEMBLY OR VILLAGE COUNCIL

31 Candidacy

(1) When an employee decides to become a candidate in the Assembly or a Village Council election he must forthwith give notice in writing to his Head of Department who must notify the Commission as soon as possible.

(2) An employee who becomes a candidate for election as a member of the Assembly must be placed on leave of absence and the leave must commence no later than nomination day and must continue until the day after polling day.

(3) During leave of absence under paragraph (2) the employee must –

- (a) Not be required or permitted to carry out any official duties in the Service; and
- (b) Not be entitled to receive any salary or other remuneration as an employee in respect of that period except to the extent to which during that period any leave with pay to which the employee is entitled is taken.
- (4) Except as provided in paragraph (3) the rights and entitlements of the candidate as an employee are not to be affected by the candidacy.

32 Membership of the Assembly or Village Council

- (1) An employee who has become a candidate for election to the Assembly or to a Village Council must, if the employee's candidature is successful, give notice in writing to the Commission through the Head of Department stating he has been elected and declare whether he accepts the membership.
- (2) An employee who has been granted leave of absence under article 18 of the Constitution must not, except with the Commission's consent –

- (a) Carry out any official duties in the Service; or
- (b) Receive any salary or other remuneration as an employee for the period of leave of absence other than leave with pay to which the employee is entitled or for any official duties performed that have been authorised by the Commission under this paragraph.
- (3) Subject to paragraphs (1) and (2) the rights of a person as an employee are not to be affected by membership of the Assembly or of a Village Council.

GRADING AND PROMOTION

33 Permanent positions to be graded

- (1) The Commission must, to the extent that it considers practicable, organise positions in the Service into occupational groups or classes.
- (2) The Commission must divide each occupational group or class into professional, technical, and support service grades.
- (3) The Commission must place every employee, other than a contract employee or temporary employee, in a suitable grade.

34 Determination and allocation of grades in the Service

- (1) The Commission must allocate, and determine the date of application (whether before, on, or after the date of the determination) of a grade and salary to a position, having regard to –

(a) Any minimum qualifications required for the position;

(b) The level of responsibility the position entails;

(c) The experience and skill required for the position.

(2) There is no right of appeal against the Commission's allocation of a grade and its determination of the date of application of that grade for any position.

(3) The Commission must from time to time conduct a review of the grading of the positions in Service and in so doing must ascertain whether or not there is any need to adjust the salary scale or grading structure, having regard to the criteria in paragraph (1).

35 Application for review of grading

(1) Notwithstanding regulation 33(3), a Head of Department may apply to the Commission for a review of the grading of a position within the department.

(2) If the grade of the position has not been reviewed in the three years immediately prior to the application, a permanent employee may apply in writing to the Commission for a review of the grading for the position he occupies.

(3) On receipt of any application under paragraph (2) the Commission must review the grade of the position in question and notify the employee of its decision.

(4) An employee who is not satisfied with the decision given under paragraph (3) may, within 14 days after notification of the Commission's decision, apply to the Appeals Committee for a review of the application.

36 Performance assessment report on employees

(1) At least once every 12 months each Head of Department must provide to the Commission in respect of each employee in the department, a performance assessment report according to criteria determined by the Commission.

(2) At least once every 12 months the Commission must provide a performance assessment report to Cabinet –

(a) In respect of the Secretary to the Government, after consultation with the Premier; and

(b) In respect of Heads of Department, after consultation with the appropriate Minister.

37 Advancement on merit

(1) The Commission may direct that an employee may not proceed beyond a specific point in the salary range of the relevant grade, or it may approve advancement if the Commission is satisfied that the employee's assessed performance warrants the advancement.

(2) The Commission may direct that an employee may not proceed beyond a specific salary point until he has passed any qualifying examination or complied with any professional standard that the Commission specifies.

(3) The Commission may accelerate the increase in salary of an employee within the given grade for the position held by that employee, or it may instead approve the payment to an employee of a special grant where –

(a) The employee has successfully completed a relevant course of studies or achieved a professional standard which in the opinion of the Commission is deserving of a special consideration; or

(b) In any other case of outstanding merit.

GENERAL CONDITIONS OF EMPLOYMENT

38 List of employees

The Commission will publish annually a list of all employees, in such a form and with such particulars as the Commission determines.

39 Allowances

The Commission may make provision in the Manual for the classes or types, and the nature and rates of allowances employees may receive in addition to their remuneration or, as additional terms and conditions of employment.

40 Hours of attendance

(1) The Commission must determine the hours of attendance to be observed by all employees.

(2) The total ordinary time per week must not exceed 40 hours.

41 Additional hours of duty

(1) Any employee who is called upon by the head of department to work additional hours must work such hours as required.

(2) Payment or time off in lieu for additional hours must be made at such rates and conditions as the Commission determines.

42 Records of attendance

In every department attendance books or other records of attendance must be kept, and in a form and with such particulars as determined by the Commission.

43 Absence from place of employment

No employee may leave the place of employment during the prescribed hours of attendance, except on official business or with the permission of the controlling officer.

44 Care of government stores and property

Every employee must exercise strict care and economy in the use of plant, equipment, stores, stationery, documents and other property of the Government.

45 Accounts and government money

Every employee must exercise strict care in the handling of money held on behalf of the Government, and in the observance of all instructions relating to accounts and the collection, receipt, custody or payment of Government money.

46 Borrowing and lending of government money and property

No employee shall –

- (a) Seek from another employee any unauthorised loan or allowance from money held by that other employee as a receiver of public money;
- (b) Make any unauthorised loan or allowance out of money paid to or held by the employee as a receiver of public money;
- (c) Unlawfully authorise the expenditure, the use, or the lending of public money, stores, equipment or other property of the Government;
- (d) Borrow any item of stores, equipment, plant or other Government property for personal use.

47 Liability or commitment not to be incurred

No employee may, without proper authority, incur or attempt to incur any liability or commitment, or make or vary or attempt to make or vary any contract on behalf of the Government.

48 Secondary employment and participation in private business

- (1) Every employee who expects to be appointed or to be elected to any paid office in connection with any commercial or industrial or other business, or to undertake any private practice of any profession or trade or be involved in the management or work of any business whether or not owned by him, must first apply in writing to the Commission for approval.
- (2) Notwithstanding paragraph (1), an employee may engage in subsistence agriculture, fishing or hunting activity outside working hours.
- (3) Nothing in this regulation prohibits an employee from becoming a member or shareholder of an incorporated body.

49 Service on statutory authorities

An employee must inform the Commission after accepting a nomination or appointment as a judicial officer, a member of a statutory authority, board, or committee (whether established by enactment or otherwise), or other Cabinet nomination or appointment.

50 Conflict of interest

(1) If the employee becomes aware of any potential or actual conflict of interest between the employee's official duties, responsibilities and obligations and the employee's personal interest, whether directly or indirectly, the employee must inform the Head of Department and the Head of Department must inform the Commission accordingly.

(2) Examples of a conflict of interest include situations where –

(a) An individual or organisation with which an employee is involved is given preferential treatment (whether by access to goods and services or access to inside information) over any other individual or organisation; or

(b) An employee has a financial or other interest or undertaking that could directly or indirectly compromise the performance of the employee's duties, or the standing of the employee's department in its relationships with the public, clients, or Ministers.

(3) The Commission must take the necessary steps to emphasise to employees their obligation to avoid, minimise or prevent involvement in any situation where there will be a likely or actual conflict of interest.

51 Restrictions on remuneration

Except with the express approval of the Commission, no employee may receive or accept otherwise than for the use of the Government, any gratuity, fee, reward, refund or other remuneration of any kind whatsoever, except –

(a) The employee's salary and any allowance owing to the employee by the Government for services performed for the Government, or for attendance in an official capacity or under a subpoena or order to give evidence or produce documents in court;

(b) A refund for any necessary and reasonable expenses incurred and paid for the employee in the performance of a service for the Government or in attending at the court.

52 Solicitation, acceptance of gifts or bribery

(1) No employee shall, directly or indirectly, solicit or accept gifts or presents or gratuity or other valuable consideration from any person, either directly or indirectly, in relation to any matter connected with the duties and responsibilities of the employee.

(2) Nothing in this regulation prohibits the acceptance by an employee –

- (a) Of a gift made as a token of courtesy according to local custom; or
- (b) Of a gift presented to the employee on retirement from the Service or on transfer from one locality to another; or
- (c) Of a presentation from fellow employees.

53 Restriction on official information

- (1) For the purpose of this regulation official information includes any document, electronic storage device or instrument or item of equipment capable of recording and or retaining information or data whether in writing, print, graphics, film, voice, sound or in any other form.
- (2) No employee shall use, remove or cause to be removed, copy by whatever means or process, give to another person or party, damage or destroy, or howsoever dispose of any official information unless it is specifically authorised.
- (3) No employee shall use for any purpose, other than for the proper discharge of his official duties any information gained by or conveyed to an employee through his connection with the Service.
- (4) No employee shall make any communication to the media or to any person outside the Service –

- (a) On matters affecting the Service, without the consent of the Commission;
- (b) On matters affecting the Government, without the consent of the responsible Minister.

54 Outside influence

- (1) No employee may solicit the influence of any person in order to obtain an advantage on any matter concerning him, a friend or relative in the Service whether it relates to promotion, transfer, discipline, investigation or any other matter.
- (2) Nothing in this regulation applies to evidence given on behalf of an employee before a court, or the Appeals Committee, or to representations made by the Service Organisation or to any application or representations made to the Commission in accordance with these Regulations or the Manual, or to any request by an employee for a certificate of employment, or a character reference intended for a purpose outside of the Service.

55 Transfer and redeployment of employee

- (1) The Commission may transfer any employee, and the employee so directed must move accordingly and perform the duties assigned.

(2) Subject to the exigencies of the Service, the Commission shall give an employee at least 1 week's notice of its decision to transfer the employee.

(3) The conditions of employment of an employee transferred under paragraph (1) shall be no less favourable than those that the transferred employee was entitled to receive at the date of the transfer.

(4) A transfer may be made –

(a) At the request of the employee; or

(b) Where the Commission decides that the transfer is in the interests of departmental efficiency or desirable on the grounds of administrative convenience; or

(c) Under regulation 76(3); or

(d) Under regulation 75(1)(c).

(5) In consultation with the Commission, the Cabinet or the Minister responsible may redeploy an employee by releasing that employee for a specified period and on agreed terms and conditions, to be engaged on an approved community project, or other work outside of the Service, provided the principal duties and responsibilities of the employee will not be adversely affected.

(6) Any decision as to transfer by the Commission shall be final and not subject to appeal or judicial review.

56 Rent for accommodation

Where the government provides an employee with accommodation, any rent payable in respect of that accommodation may be deducted from the employee's remuneration or from any other money due to the employee without further authority other than this regulation.

57 Authority to take money for unpaid debt to the Government

If an employee owes a debt to the Government which has been outstanding for at least 6 months, and the employee acknowledges in writing to the Commission that he owes the debt, then the Commission may authorise the deduction of a reasonable amount from the employee's fortnightly salary, not exceeding 10% of the employee's net after tax salary.

LEAVE

58 Annual leave

Every employee must be granted annual leave as the Commission may direct.

59 Special leave

In special cases the Commission may grant special leave of absence with or without pay on such terms and conditions as the Commission may determine.

60 Maternity leave

(1) Female employees may be granted maternity leave for such periods and subject to such conditions as the Commission determines, provided the employee has been in the Service for not less than 12 months immediately prior to application for maternity leave.

(2) Where a female employee has been granted maternity leave, that employee may receive up to 60 consecutive days leave on full pay, and a further 30 consecutive days on 50% pay, at current salary, payable fortnightly from the commencement of the maternity leave period.

(3) The Commission may, upon application, approve a period of up to 6 months at any one time of maternity leave to be counted towards continuous service and contributory service.

61 Paternity leave

A male employee may be granted 5 consecutive days paternity leave with pay in the event of the birth of his child.

62 Contract and temporary employee leave

(1) Leave of any kind for a contract employee is either stipulated in the contract document or, if not so stipulated, is the same as for permanent employees.

(2) If not otherwise determined by the Commission, leave of any kind for a temporary employee shall be the same as for permanent employees.

63 Retiring leave

Every employee who qualifies under criteria established by the Commission shall be entitled to retiring leave based on the length of the employee's service, and on terms and conditions determined by the Commission.

64 Payment for leave on death of employee

On the death of an employee the Commission may approve payment to the surviving spouse or dependants of the estate of any amount equal to the salary or wages that could have been granted to the deceased for any annual leave, retiring, and other leave due if he or she had retired on the date of death.

65 Sick leave

(1) Every employee must be granted sick leave on account of sickness or accident for such periods as determined by the Commission.

(2) No employee shall absent himself from duty under a false plea of sickness or accident.

66 Long service leave

Long service leave may be available for such class or classes of employee on such terms and conditions as are determined by the Commission.

67 Bereavement leave

(1) Employees shall be granted 5 days bereavement leave for immediate family members.

(2) In this regulation, "immediate family" means the spouse, child, mother, father, brother or sister.

68 Public holidays

(1) Holidays prescribed by any enactment must be observed in the Service.

(2) Cabinet may declare additional holidays to be observed by members of the Service as "Public Service Holidays".

69 Forfeiture of employment

(1) An employee who is absent from duty, or who fails to return to duty, and in either case continues to be absent without permission for a period of 4 weeks or more, forfeits office.

(2) Notice of the effect of this regulation must during such absence, but not sooner than 14 days after the first day of such absence, be sent to the employee by letter or facsimile to the employee's usual or last known place of abode. An employee who returns to duty before the expiration of the week beginning with the day after the date on which notice is so sent or the expiration of 4 weeks absence from duty, whichever is the later, does not forfeit office under paragraph (1).

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

DISCIPLINARY PROVISIONS

70 Compliance with instructions and employee complaints

(1) Every employee must carry out all lawful instructions given by the controlling officer.

(2) An employee who considers there is ground for complaint arising out of an instruction given in the Service, or harassment, or threatening behaviour from another employee or from any other cause, may report the matter to the Head of Department or to the Commission.

71 Unsatisfactory performance

Where it is found that the work or conduct of an employee is unsatisfactory but not of such nature as to warrant the taking of disciplinary proceedings before the Commission, the Head of Department or the controlling officer must draw the attention of the employee to his shortcomings and a record of the action taken must be made and copied to the Commission.

72 Allegations for disciplinary action

(1) Where the Head of Department believes that the work, conduct, behaviour or attitude of an employee is such that disciplinary proceedings should be instituted the Head of Department must report the matter to the Commission, and the report must include all necessary factual evidence.

(2) Where the Commission is in receipt of a substantiated complaint or report from another employee or member of the public, the Commission must request the department for a report on the matter before deciding whether to pursue disciplinary proceedings.

73 Disciplinary proceedings

(1) Disciplinary proceedings must be instituted if the Commission is satisfied that sufficient evidence exists to act under regulation 72.

(2) Disciplinary proceedings must commence with the Commission serving the employee with written notice of the complaint, stating whether by act or omission the employee has –

(a) Behaved in an improper manner in carrying out official duties; or

(b) Behaved in a manner that has affected or is likely to adversely affect the performance of his duties; or

(c) Behaved in a manner that has brought or is likely to bring the Service into disrepute; or

(d) Failed to comply with these Regulations.

(3) The employee must reply to the Commission in writing within a reasonable time to be specified in the notice, stating –

(a) Whether the truth of the complaint is admitted or denied; and,

(b) Any further explanation that the employee wishes to make in respect to the complaint.

(4) If the employee does not deny the truth of the complaint or decides not to reply to the notice within the time specified, the employee is deemed to have admitted the truth of the complaint.

(5) The Commission must then proceed to consider and determine the matter taking into account any reply, together with the report by the department and such other reports as may have been obtained that are relevant.

(6) If, after the expiry of the time specified, and the employee has in writing denied the truth of the complaint, the Commission decides that the complaint should be investigated it may appoint a person or persons specifically for that purpose, and that person or persons must hold an inquiry into the complaint.

(7) The person or persons appointed under paragraph (6) may summon and examine on oath any person, including the employee, whose evidence may be necessary or material.

(8) The employee in respect of whom the complaint is made is entitled to be present at all times during the enquiry and may be represented by counsel or an agent or the Service Organisation and shall be entitled either personally or through an adviser to make representations, call evidence (including giving evidence personally), and cross-examine other witnesses who give evidence, in respect of the complaint.

(9) After holding the inquiry, the person or persons appointed under paragraph (6) must report to the Commission on whether or not the inquiry is of the opinion the complaint is true or untrue, and must also forward to the Commission a copy of all evidence taken at the enquiry.

(10) If the truth of the complaint is admitted by the employee, or if the Commission after consideration of the reports relating to the complaint and any reply or explanation furnished by the employee and the department, and after such further investigation or inquiry (if any) as is considered necessary, is satisfied as to the truth of the complaint, the Commission may, after taking into account the service record of the employee, impose one or more of the penalties contained in regulation 75.

(11) If, in respect of any complaint made against an employee, the Commission does not find the complaint against the employee established, the employee must be declared to be not guilty and must be notified by the Commission in writing accordingly.

(12) The Commission must within 14 days of deciding any complaint against an employee under this regulation, notify the employee in writing of the decision.

(13) The procedure for dealing with a disciplinary matter in the case of a Head of Department is the same as for other employees.

(14) In the case of a disciplinary matter concerning the Secretary to the Government the Commission, using the same procedures, may institute disciplinary proceedings either at the request of the Premier, or at its own initiative.

74 Conviction for offence

(1) An employee who has been convicted of a criminal offence in Niue or elsewhere must notify his Head of Department who must in turn notify the Commission.

(2) In determining whether disciplinary proceedings should apply to an employee convicted of an offence, the Commission must take into account the nature and seriousness of the criminal offence and the penalty imposed by the court.

75 Penalties

(1) Subject to paragraph (2), if an employee is convicted of an offence, or if the Commission is satisfied of the truth of the allegations made in a notice under regulation 73 against an employee, the Commission may –

- (a) Dismiss the employee without notice forthwith; or
- (b) Dismiss the employee with notice; or
- (c) Assign the employee to other duties; or
- (d) Reduce the salary of the employee; or
- (e) Reprimand and warn the employee; or
- (f) Put the employee on probation for a specified period.

(2) The Commission may impose one or a combination of more than one of the above penalties, but where an employee is dismissed, the Commission may not impose additional penalties.

76 Suspension

(1) An employee who for the time being is considered by the Head of Department to be unfit to perform his duties properly shall be suspended from duty by the Commission until the employee is, in the opinion of the Head of Department and the Commission again capable of performing his duties effectively.

(2) An employee who has been charged with a criminal offence punishable by imprisonment for a term of one year or more, must be suspended from duty by the Commission until the matter has been determined.

(3) An employee who has been served with a notice of complaint under regulation 73 may be transferred to another position or be suspended from duty by the Commission pending the determination of the complaint.

(4) The Commission may at any time revoke any suspension made under this regulation if the circumstances warrant.

(5) Suspension under this regulation may be with or without pay as the Commission determines.

(6) Unless the Commission otherwise directs, an employee who has been suspended under paragraph (2) without pay and is subsequently found not guilty of the offence, whether it is criminal or a disciplinary proceeding to which the suspension relates or the allegations against the employee are not proved, must be paid any loss of earnings suffered while so suspended.

77 Incriminating questions

(1) No employee may refuse to answer a question properly asked under these Regulations solely on the grounds that it could lead to disciplinary proceedings being taken against himself or another employee.

(2) An employee who refuses to answer incriminating questions is entitled, before answering any questions, to consult a lawyer, or a Service Organisation representative, or any other person.

APPEALS

78 Right of appeal of permanent employee

(1) Only permanent employees have a right of appeal and an appeal may be made –

(a) Against any determination of the Commission to appoint any person other than an employee or to promote any employee to a position on the permanent staff with a higher salary grade than that of the appellant;

(b) Against a decision of the Commission made under regulations 72 and 73 that a complaint is established;

(c) Against a review of grading under regulation 35(4).

(2) The Appeals Committee shall hear all appeals made under these Regulations.

79 Situation where no appeal lies

Notwithstanding regulation 78 no appeal may lie against any determination of the Commission –

(a) Transferring an employee from one position to another at his existing salary and grade pursuant to regulations 16 and 55; or

(b) Appointing a person to a position for which the intended appellant himself had not applied; or

(c) Appointing a person as a contract or temporary employee; or

(d) In respect of the position of the Secretary to the Government.

80 Appeals Committee

(1) The Public Service Appeals Committee established under the Niue Public Service Regulations 1979 is continued in accordance with these Regulations.

(2) The Appeals Committee must consist of –

- (a) A Chairperson to be appointed by Cabinet;
 - (b) An employee or retired employee appointed as official member by the Commission;
 - (c) An employee appointed by the Commission on the nomination of the Service Organisation.
- (3) No member shall act on the Appeals Committee in any appeal affecting an employee of the department in which the member is an employee, or in any appeal affecting himself, a friend, a relative or associate.
- (4) Public notice shall be given of every appointment to the Appeals Committee.
- (5) Each member is to be paid such remuneration as the Cabinet determines on the recommendation of the Commission.

81 Appeals Committee procedures

- (1) A person who wishes to appeal a determination of the Commission may lodge a notice of appeal with the Commission within 14 days after the Commission's determination has been made known.
- (2) The Commission must, within 7 days of its receipt, forward to the Chairperson of the Appeals Committee a notice of appeal lodged in accordance with these Regulations.
- (3) The Appeals Committee must sit at such place and at such time as determined by its Chairperson.
- (4) The Appeals Committee must determine its own procedures and may receive such evidence in such manner as it thinks fit, whether or not that evidence would be admissible in a court of law.
- (5) After it has considered an appeal, the Appeals Committee must convey in writing to the Commission its findings stating –
- (a) Whether the appeal should be allowed or disallowed; and,
 - (b) Whether, in the case of an application for a review of grading, the grading of the applicant should be adjusted or not.
- (6) The Appeals Committee may add to its findings any recommendation or comment it thinks appropriate.
- (7) If any appeal is, in the opinion of the Appeals Committee, frivolous or vexatious, the Committee shall dismiss the appeal and may in any such case require the appellant to pay to the Government all or such part as the Committee may specify, of the costs of the appeal.

82 Appeal decision

- (1) The Commission must notify the appellant of the findings and recommendations of the Appeals Committee together with the decision of the Commission on the findings.
- (2) The Commission's decision on the appeal is final.

TRANSITIONAL AND REPEAL PROVISIONS

83 Transitional provision

The transition from the Niue Public Service Regulations 1979 to the Niue Public Service Regulations 2004 is provided for in the Schedule.

SCHEDULE

(Regulation 83)

TRANSITIONAL PROVISIONS

1 These Regulations take the place of the Niue Public Service Regulations 1979. They provide for the management, work conditions and employment rules of the Service in accordance with the Constitution.

2 (1) All employees appointed after the commencement of these Regulations shall be governed by these Regulations.

(2) Employees appointed before the commencement of these Regulations shall be governed by these Regulations unless otherwise specified in this Schedule, but in no case on terms less favourable than those that applied to them immediately before the commencement of these Regulations.

3 (1) Employees in specified offices at the commencement of these Regulations shall continue in their current office on the terms and conditions agreed under the revoked Regulations that applied to them immediately before the commencement of these Regulations.

(2) If the term of appointment to a specified office was for an agreed period of time, the holding of that office shall terminate at the time then agreed.

(3) On the termination of the period under paragraph (2) the Commission shall, if the office remains an office of the Service, advertise the vacancy, or reappoint the employee to the office.

(4) The employee whose term has expired and who has not been reappointed may apply for the vacancy and may, in accordance with these Regulations, be reappointed to it by the Commission.

(5) The employee whose term has expired and who has not applied or not been reappointed shall –

(a) Continue in the Service under these Regulations, and

(b) In such office as the Commission directs, and

(c) On conditions not less favourable than those that applied to the employee in the exercise of the specified office.

(6) An employee whose term in a specified office has expired shall, if the office ceases to be an office in the Service shall –

(a) Continue in the Service under these Regulations,

(b) In such office as the Commission directs, and

(c) On conditions not less favourable than those that applied to the employee in the exercise of the specified office.

4 Any disciplinary proceedings commenced before the entry into force of these Regulations shall continue in accordance with the requirements of the revoked Regulations.

5 (1) Any disciplinary proceeding commenced after the entry into force of these Regulations shall be conducted in accordance with these Regulations.

(2) If the proceedings relate to a matter or incident that occurred before the commencement of these Regulations the proceedings shall be conducted under these Regulations but no greater penalty shall be imposed on the employee than that which could have been imposed under the revoked Regulations.
