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THE PARLIAMENTARY SERVICE BILL, 2018

A Bill for

AN ACT of Parliament to make further provisions as regards the Parliamentary Service Commission and the Parliamentary Service as re-established under the Constitution of Kenya 2010; to repeal and replace the Parliamentary Service Act, 2000 and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Parliamentary Service Act, 2018 and shall come into operation upon publication in the Gazette.

Short title and commencement.

2. In this Act, unless the context otherwise requires—

Interpretation.

“chairperson” includes the vice-chairperson or any other member of the Commission when discharging the functions of the chairperson;

“Clerk” means the Clerk of the National Assembly or of the Senate, as the case may be;

“Commission” means the Parliamentary Service Commission established under Article 127 of the Constitution;

“former Commission” means the Parliamentary Service Commission established under section 45B of the former Constitution;

“former Constitution” means the Constitution of Kenya in force immediately before 27th August, 2010;

“office”, in relation to the Service, means a paid office as an employee of the Service, not being the office of a member of the Commission, or a part-time office, or an office the emoluments of which are payable at an hourly or daily rate;

“officer” or “employee” means any person who holds or acts in any office of the Service otherwise than as a part-time officer or employee and includes the Clerk;

“Parliamentary Service Code of Conduct” means the code of conduct prescribed under section 6;

“Parliamentary Service values” means the values specified in or under section 5;

“Secretary” means the Clerk of the Senate as stipulated in Article 127(3) of the Constitution;

“Service” means the Parliamentary Service established under section 4;

“services and facilities” includes all means by which members and staff of Parliament are officially assisted in performing their parliamentary duties; and

“Speaker” means the Speaker of the National Assembly or of the Senate, as the case may be.

3. The object and purpose of this Act is to—

Object and Purpose
of the Act.

- (a) provide for further functions and powers of the Commission pursuant to Articles 127(6)(e) and 252(1)(d) of the Constitution;
- (b) provide for the manner of appointment of members of the Commission under Article 127(2)(c) and (d);
- (c) give further effect to Article 232 of the Constitution in respect of the Parliamentary Service;
- (d) prescribe, pursuant to Article 250(3) of the Constitution, the qualifications of members of the Commission to be appointed under Article 127(2)(d) of the Constitution;
- (e) provide for the procedural functions of the Clerk of each House
- (f) provide for the administrative functions and powers of the Clerk of each House over the members of staff of the Clerks as contemplated by Article 128(2) of the Constitution so as to safeguard the independence of each House
- (g) provide for the role of the Secretary to the Commission;
- (h) provide for the procedure for the conduct of business and affairs of the Commission;
- (i) provide for the execution of the functions of the Commission; and

- (j) provide for such other matters as may be necessary for the welfare, security and proper administration of the Service.

PART II—THE PARLIAMENTARY SERVICE

4. (1) There shall be a service to be known as the Parliamentary Service.

The Parliamentary Service.

(2) The Service shall be an institution of exemplary administrative and technical competence.

(3) In the performance of their functions, employees of the Service shall not seek or receive directions from any source external to the Service.

(4) Every member of Parliament shall respect the non-partisan and apolitical character of the Service and shall not seek to influence employees of the Service in the discharge of their functions.

5. In addition to the national values and principles of governance set out in Article 10 of the Constitution, and the values and principles of public service set out in Article 232(1) of the Constitution, the Service shall uphold the following values—

Parliamentary Service Values.

- (a) the fostering of peace;
- (b) the provision of non-partisan and impartial advice and services to Parliament, its committees and its members;
- (c) the maintenance of honesty, accountability and integrity in the delivery of services, having regard to the principles of political neutrality, professionalism, economy, efficiency, equality and fairness, courtesy and discipline;
- (d) the provision of a workplace that recognises the diverse backgrounds of the Service employees and promotes national integration;
- (e) the maintenance of the spirit of co-operation in the workplace based on consultation and communication;
- (f) the provision of a fair, flexible, safe and rewarding workplace;
- (g) the inspiration of public confidence in and respect for the institution of Parliament;

- (h) the fostering of understanding and co-operation among the three arms of State, namely, the Parliament, the Executive and the Judiciary in the context of their autonomy and complementarity; and
- (i) such other values as the Commission may, from time to time, prescribe.

6. (1) The Commission may, from time to time, prescribe a Parliamentary Service Code of Conduct.

Parliamentary
Service Code of
Conduct.

(2) Without prejudice to the provisions of any Code of Conduct prescribed under subsection (1), every employee of the Service shall, in the course of his or her employment—

- (a) be patriotic and loyal to Kenya and at all times conduct himself or herself in a manner that promotes the image and interests of the country;
- (b) conduct himself or herself with honesty and integrity and act with care and diligence;
- (c) use the resources of the nation conscientiously and combat corruption and misuse or wastage of public resources;
- (d) respect and observe the law of the land and co-operate with all lawful agencies in the maintenance of law and order;
- (e) treat all persons with respect and courtesy and, in particular, protect persons with disabilities and other vulnerable groups against any form of abuse, harassment or ill-treatment;
- (f) promote gender equality and respect for the rights and freedoms of others;
- (g) preserve and protect the environment and national heritage;
- (h) comply with any lawful and reasonable direction given by any person in the Service having authority to give such direction;
- (i) maintain appropriate confidentiality about dealings that the employee has with Parliament, its committees, its members and its staff (including employees of members, if any);

- (j) disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with the Service;
- (k) not provide false or misleading information in response to a request for information that is made for official purposes;
- (l) not make improper use of—
 - (i) any information obtained through or in connection with the office of such employee and which is not yet made available to the public; or
 - (ii) the employee's duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for him or herself or for anyone else;
- (m) conduct himself or herself in a manner that upholds the letter and spirit of the values and the integrity and good reputation of the Service;
- (n) while on duty overseas, conduct himself or herself in a manner that promotes the good image of Kenya; and
- (o) comply with any other requirements of conduct as may be prescribed by the Commission.

7. The Parliamentary Service values and the Parliamentary Service Code of Conduct provided for in sections 5 and 6 shall be in addition to, and not in derogation from any others that may be specified by or under any other written law in relation to the citizens of Kenya generally.

Complementarity of values and codes of conduct.

PART III—PARLIAMENTARY SERVICE COMMISSION

8. In nominating or appointing any person as a member of the Commission under Article 127(2)(c) of the Constitution, Parliament shall have regard to—

Qualification of Members of the Commission.

- (a) the person's experience or interest in consolidating and advancing the ideals and objectives of Parliamentary democracy;
- (b) the national values and principles set out in Article 10 of the Constitution; and

- (c) the regional and ethnic diversity of the people of Kenya.

9. (1) A person shall not be qualified for appointment as a member of the Commission under Article 127(2)(d) of the Constitution unless such person —

Qualifications and procedure for appointment.

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years experience in public affairs; and
- (d) meets the requirements of leadership and integrity in Chapter Six of the Constitution.

(2) The procedure for appointment of the members of the Commission referred to in subsection (1) shall be as set out in the First Schedule.

10. (1) A member of the Commission may be removed from office in accordance with the grounds and procedure set out in Article 251 of the Constitution.

Removal from office.

(2) The form of petition for the removal of a member of the Commission under Article 251(2) of the Constitution and the procedure for the consideration of the petition by the National Assembly shall be as specified in the standing orders.

11. (1) In addition to the functions set out in Article 127(6) of the Constitution, the Commission shall —

Functions of the Commission.

- (a) direct and supervise the administration of the services and facilities provided by, and exercise budgetary control over, the Service;
- (b) determine and review the terms and conditions of service of persons holding or acting in the offices of the Service;
- (c) initiate, co-ordinate and harmonize policies and strategies relating to the development of the Service;
- (d) initiate programmes —
 - (i) for training and capacity building of members and staff of Parliament and other persons;

- (ii) that promote ideals of parliamentary democracy as set out in Article 127(6)(d) of the Constitution; and
- (iii) that promote public awareness and participation in the activities of Parliament; and
- (e) do such other things as may be necessary for the well-being of the members and staff of Parliament.
- (2) In the performance of its functions under the Constitution and this Act, the Commission shall apply—
 - (a) the national values and principles of governance set out in Article 10 of the Constitution; and
 - (b) the values and principles of public service set out in Article 232(1) of the Constitution.

12. (1) In addition to the powers of the Commission under Article 253 of the Constitution, the Commission shall have the power to—

Powers of the Commission as a body corporate.

- (a) acquire, hold, charge and dispose of movable and immovable property;
- (b) despite the provision of any other written law, establish a pension scheme for officers of the Service and, from time to time, determine—
 - (i) the rates of contribution to the scheme; and
 - (ii) the multiple of the annual basic salary for the group life and group personal accident benefits; and
- (c) do or perform all such other things or acts for the proper discharge of its functions under the Constitution, this Act and any written law, as may lawfully be done or performed by a body corporate.
- (2) The Commission may, where appropriate and in writing, delegate any power or assign a duty conferred to it under the Constitution or this Act to its members, the Clerks or an officer, body or authority in the parliamentary service.
- (3) A delegation or assignment under subsection (2) shall not prevent the Commission from exercising the power in person.

(4) A delegation under this section —

- (a) shall be subject to any conditions that the Commission may impose;
- (b) shall not divest the Commission of the responsibility concerning the exercise of the powers or the performance of the duty delegated, and
- (c) may be withdrawn, and any decision made by the person to whom the delegation is made may be withdrawn or amended by the Commission.

13. (1) The Commission may from time to time establish such committees as may be necessary for the better carrying out of its functions and the exercise of its powers.

Committees of the Commission.

(2) The Commission may co-opt into the membership of any of the committees established under subsection (1) any person or persons whose knowledge and skills are necessary for the proper performance of the functions of the Commission.

(3) A person co-opted under subsection (2) shall have no right to vote at any meeting of the committee.

14. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

Seal of the Commission.

(2) The affixing of the seal shall be authenticated by the secretary or any other person authorized in that behalf by a resolution of the Commission.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

15. The conduct of business and affairs of the Commission shall be as set out in the Second Schedule.

Conduct of business and affairs of the Commission.

16. The Secretary shall be responsible for—

Role of the Secretary.

- (a) preparing, planning and facilitating the meetings of the Commission and its committees;
- (b) causing to be kept records of the proceedings and minutes of the meetings of the Commission and such other records as the Commission may direct;
- (c) communicating the decisions of the Commission for execution by the Clerks pursuant to Articles 128(2) and any law made under Article 226(1)(b) of the Constitution or such other offices as the Commission may designate pursuant to Articles 127(6) (b) or any law made under Article 226(1)(b) of the Constitution;
- (d) custody of the seal of the Commission;
- (e) the performance of such other duties as may be assigned by the Commission.

PART IV—THE CLERKS AND OTHER OFFICES**17. A person shall be qualified for appointment as a Clerk if that person—**

Qualifications for appointment as Clerk.

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years proven experience in senior management and leadership position in the public service;
- (d) has demonstrated flair and good understanding of parliamentary practice and procedure; and
- (e) meets the requirements of leadership and integrity as prescribed in Chapter Six of the Constitution.

18. (1) The nomination of a person for appointment as a Clerk for each House of Parliament pursuant to Article 128 of the Constitution shall be done through an open, transparent and competitive recruitment process.

Procedure for appointment.

(2) The name of a person nominated by the Commission for appointment as a Clerk of a House of Parliament shall be submitted to the relevant House for approval in accordance with the standing orders of that House.

(3) The Commission shall, within seven days of receipt of the resolution of the relevant House approving a person for appointment as a Clerk of a House of Parliament, appoint that person as Clerk of the relevant House.

19. The Clerks shall, in each of their respective Houses, be responsible to the Commission for—

Administrative functions of the Clerks.

- (a) the day-to-day management and functioning of the respective Houses;
- (b) the execution of the Commissions decisions relating to the respective Houses;
- (c) the overall management of the staff under their respective control pursuant to Article 128(2) of the Constitution and in particular, shall be the authorised officer responsible for advising the Commission and implementing Commission resolutions on all matters relating to -
 - (i) the appointment, promotion, and discipline of the members of staff of the respective Clerks;
 - (ii) the assignment of duties, supervision and training of the staff of the respective Clerks;
 - (iii) the deployment of staff of the respective Clerks to serve in any other area in the parliamentary service.
- (d) the preparation and submission of the programmes necessary for the achievement of the mandate of the respective Houses for approval by the Commission; the performance of such other duties as the Commission might determine or as may be provided for in any other written law.

20. (1) The procedural functions of the Clerks shall include—

Procedural functions of the Clerks.

- (a) rendering expert, non-partisan and impartial advice to the members of the respective House of Parliament on the legislative process, and parliamentary procedure and practice; and
- (b) carrying out such other duties and exercising powers as may be conferred on him or her by law or by the Standing Orders and practices of the respective House of Parliament.

(2) In carrying out the functions specified in subsection (1), the Clerk shall be assisted by such other officers of the Service as may be necessary.

(3) Subject to this Act and any other written law, the Clerk shall, in carrying out and exercising the power conferred by the Standing Orders and practices of the respective House of Parliament, be under the direction of the Speaker of the relevant House.

(4) At any time when the office of the Speaker of the relevant House of Parliament is vacant or the holder of the office is unable for any reason to carry out the duties and exercise the powers and functions of his or her office, the Clerk of the relevant House of Parliament shall, during that period and in relation to the carrying out of the duties and exercise of the powers and functions referred to in this section, be under the direction of the Deputy Speaker of that House.

21. If the office of a Clerk of a House of Parliament is vacant, or if for any reason the Clerk is unable to exercise the functions of his or her office, the Senior Deputy Clerk in the relevant House or, in the absence of the Senior Deputy Clerk, any other officer in the Parliamentary Service appointed by the Commission may exercise all the functions, duties and powers of the Clerk.

Exercise of functions of a Clerk during vacancy or inability.

22. (1) The Clerk of a House of Parliament may be suspended or removed from office by the Commission for—

Suspension or removal of a Clerk.

- (a) inability to perform the functions of the office, whether arising from infirmity of body or mind;
- (b) gross misconduct or misbehaviour;
- (c) incompetence;
- (d) bankruptcy;
- (e) violation of the provisions of the Constitution, including Chapter Six of the Constitution; and
- (f) violation of the provisions of this Act and any other written law.

(2) Where the Commission considers it necessary to remove a Clerk under subsection (1), the Commission shall, in the following sequence—

- (a) frame a charge or charges against the Clerk;
- (b) forward the statement of the said charge or charges to the Clerk together with a brief statement of the allegations in support of the charges;
- (c) invite the Clerk to respond to the allegations in writing setting out the grounds on which the Clerk relies to exculpate himself or herself; and
- (d) invite the Clerk to appear before the Commission, either personally or with an advocate as he or she may opt, on a day to be specified, to exculpate himself or herself.

(3) If the Clerk does not furnish a reply to the charge or charges within the period specified, or if in the opinion of the Commission the Clerk fails to exculpate himself or herself, the Commission shall remove the Clerk from office.

23. (1) The Commission shall establish such offices in the Parliamentary Service as it considers necessary or expedient for the efficient performance of the functions of the Service.

Offices in the
Parliamentary
Service.

(2) The offices established under subsection (1) shall be set out in an organisational structure issued by the Commission.

(3) The Commission may from time to time—

- (a) allocate functions to any directorate or department of the Service;
- (b) make such arrangements as appear to the Commission expedient in connection with the creation, division, amalgamation or abolition of any directorate or department of the Service.

(4) The Commission shall, for the purposes of reviewing the organisational structure issued under subsection (2), appoint a reputable human resource firm to advice on the effectiveness and efficiency of the intended review.

(5) The Commission shall, in establishing the offices under section (1) have regard to strengthen the offices referred to in Article 108 (1) of the Constitution

24. (1) The Commission shall establish an office of joint services.

Office of joint services.

(2) The office of joint services shall be responsible for the provision of such services jointly shared between the two Houses of Parliament as the Commission may determine.

(3) The office of joint services shall be headed an officer appointed by the Commission on such terms and conditions as it may determine.

(4) The provisions of sections 19, 26(2) and 27(4) shall with the necessary modifications apply to the officer heading the office of joint services.

25. (1) The Commission may establish a centre for parliamentary studies and training.

Centre for parliamentary studies and training.

(2) The centre shall provide learning and development programmes to build capacity for members and staff of Parliament and other stakeholders and shall—

- (a) facilitate continuous learning for members and staff of Parliament and other stakeholders;
- (b) develop linkages and collaborations with other institutions of learning and professional organizations;
- (c) develop and deliver programmes that promote parliamentary democracy, national values and principles of governance and the parliamentary service values; and
- (d) perform any function assigned by the Commission or that is necessary, or expedient for the discharge of its functions under this Act.

(3) The centre shall be headed by an officer appointed by the Commission on such terms and conditions as it may determine.

26. (1) The Commission shall formulate and disseminate to officers of the Parliamentary Service schemes of service setting out the terms and conditions for the appointment of the officers and other staff of the Service which shall provide for—

Parliamentary schemes of service.

- (a) the appointment and confirmation of appointment of officers and other staff;

- (b) promotions, resignations and termination of appointments;
- (c) secondment of staff and transfer of service;
- (d) the scales of salaries and allowances;
- (e) the designation and grades of officers and other staff; and
- (f) deployment of officers in the service.

(2) The Clerks shall be responsible to the Commission for the administration of the schemes of service for the staff under their respective mandate pursuant to Article 128(2) of the Constitution.

27. (1) The Commission shall exercise disciplinary control over the officers of the Service.

Disciplinary control of officers.

(2) The Commission may terminate the employment of an employee of the Service in accordance with the provisions of this Act and its regulations.

(3) The provisions of Article 236 of the Constitution shall apply in relation to the exercise of the powers conferred under this section.

(4) The Clerks shall be the authorised officers of the Commission responsible for the discipline of the staff under their respective control pursuant to Article 128(2) of the Constitution.

28. (1) An employee shall retire from the Service on attaining the age of sixty years.

Retirement and resignation of employees.

(2) An employee may —

- (a) after attaining the age of fifty years, elect to retire from the Service at any time; or
- (b) in such manner as may be prescribed, resign from the Service at any time.

29. Notwithstanding the provisions of any other law, the Commission—

Social security scheme.

- (a) shall establish a contributory pension scheme for all its employees;
- (b) shall determine the rates of contribution to the pension scheme referred to in paragraph (a);

- (c) may establish or adopt a contributory optional superannuation, provident or medical fund or other scheme for its employees and may grant pensions, gratuities, retiring allowances or sickness or injury benefits to any employee.

PART V—PARLIAMENTARY POLICE UNIT

30. (1) There is established a Parliamentary Police Unit which shall be a specialised police service under the supervision of the National Police Service and the command of the Inspector-General of the National Police Service.

Establishment of the
Parliamentary Police
Unit.

(2) The Inspector-General shall, by notice in the Gazette, appoint an officer not below the rank of Assistant Commissioner of the Police to be in charge of the Parliamentary Police Unit.

(3) Officers serving in the Parliamentary Police Unit shall be deployed from the National Police Service by the Inspector-General.

(4) The standard operating procedures and staffing requirements of the Parliamentary Police Unit shall—

- (a) be determined by the National Police Service Commission on the recommendation of the Inspector General;
- (b) take into account the views of the Commission; and
- (c) be publicised to the officers of the Unit.

(5) The Commission may request the transfer or redeployment of the officers of the Unit.

31. In addition to the functions set out in section 24 of the National Police Service Act, 2011, the Parliamentary Police Unit shall be responsible for—

Functions of the
Parliamentary Police
Unit.
No. 11A of 2011.

- (a) maintenance of law and order within the precincts of Parliament;
- (b) provision of security to members, staff and property of Parliament and authorized persons within the precincts of Parliament; and
- (c) provision of security to the Speaker of each House of Parliament and members of Parliament generally.

32. The officer in charge of the Parliamentary Police Unit shall make such periodic reports as may be specified in the standard operating procedures to the Commission.

Reports.

PART VI—MISCELLANEOUS PROVISIONS

33. (1) The employees of the Commission shall be paid such remuneration and allowances as shall be determined by the Commission.

Remuneration of staff.

(2) The terms and conditions of employees of the Commission shall be reviewed every three years or within such shorter period as the Commission may determine.

34. (1) The expenses of the Commission incurred in the execution of their functions under the Constitution and this Act shall be charged on and issued out of the consolidated fund.

Expenses of the Commission.

(2) Without prejudice to subsection (1), there may be made to the Commission grants, gifts, donations or bequests towards achievements of the objects of the Commission.

(3) The Commission shall not accept any grant, gifts, donations or bequests made on any condition that the Commission or Parliament performs any function or discharges any duty or obligation other than duties under the Constitution and this Act.

35. (1) Proceedings against the Commission shall be commenced in the name of the Commission.

Legal proceedings against the Commission.

(2) Any notice or other processes in respect of legal proceedings under subsection (1) shall be served upon the Secretary to the Commission.

36. (1) Within three months after the end of each financial year, the Commission shall prepare and lay before Parliament, a report of its operations during that year.

Annual report of operations of the Commission.

(2) The annual report shall in respect of the year to which it relates, contain—

- (a) the activities the Commission has undertaken;
- (b) an evaluation on the extent to which the values and principles referred to in Articles 10 and 232 of the Constitution are complied with in the public service;

- (c) information relating to performance of the Parliamentary Service and attendant challenges; and
- (d) any other information that the Commission may consider relevant.

37. A member of the Commission authorised by the Commission in that behalf may—

Designated member may present documents, etc., in Parliament.

- (a) lay before Parliament any document or other matter;
- (b) reply to a question relating to the affairs of the Commission.

38. (1) The chairperson, vice-chairperson and members shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Third Schedule.

Oath of office for members and staff of the Commission.

(2) The Secretary and such other officers of the Commission as the Commission may require so to do, shall, on first appointment, take an oath in the form prescribed in the Third Schedule to this Act.

(3) Where any person required to take an oath has no religious belief or the taking of such oath is contrary to his religious belief, he or she may make and subscribe a solemn affirmation in the form of the oath appointed substituting the words “solemnly and sincerely declare and affirm” for the word “swear” and omitting the words “So help me God”.

(4) Every oath or affirmation taken by the chairperson shall be administered by the secretary and every oath or affirmation taken by any other member, the secretary, or any other officer shall be administered by the chairperson.

39. The Commission or any committee thereof may, subject to section 43, order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person.

Power to order attendance of witnesses.

40. Every person summoned to attend to give evidence or to produce any paper, book, record or document before the Commission or a committee thereof shall be entitled, in respect of that evidence or the

Privileges of witnesses.

disclosure of any communication or the production or any paper, book, record or document to the same right or privilege as before a court of law.

41. (1) A member or an officer of the Commission or any person employed to take minutes or evidence before the Commission or any committee shall not give evidence elsewhere in respect of the contents of those minutes or evidence or of the contents of any document laid before the Commission or that committee or in respect of any proceedings or examination held before the Commission or that committee without special leave first obtained from the chairperson.

Evidence of proceedings in the Commission not to be given without leave.

(2) The special leave referred to in subsection (1) may be given by the vice-chairperson in the absence or other incapacity of the chairperson.

42. (1) Any act or thing done by any member of the Commission or by any officer or servant of the Commission shall not, if the act or thing was done in good faith for the purposes of carrying out this Act into effect, subject him or her personally to any liability, action, claim or demand whatsoever.

Protection of members and staff of the Commission.

(2) The provisions of subsection (1) shall not relieve the Commission of the liability to pay compensation or damages to any person for an injury suffered by them, their property, or any of their interests arising directly or indirectly from the exercise of any power conferred by this Act.

43. (1) A person shall not in any legal proceedings be permitted or compelled to produce or disclose any communication, written or oral which has taken place between the Commission or any member or officer of the Commission, in the exercise of, or in connection with the exercise of, the function of the Commission unless in accordance with this section.

Communication of Commission privileged.

(2) Pursuant to Article 24 of the Constitution, the Commission may decline to give information to an applicant where —

- (a) the giving of the information requested is prejudicial to national security or the interests of Parliament in the performance of its functions;

- (b) the information requested is at a deliberative stage by the Commission;
- (c) there is failure to pay the prescribed fee; or
- (d) the applicant fails to satisfy any confidentiality requirements by the Commission.

(3) The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section.

(4) Every member and employee of the Commission shall sign a confidentiality agreement.

44. (1) Any person who—

- (a) in connection with an application by himself or herself or any other person for employment, appointment or promotion in the Service, or in connection with any matter on which it is the duty of the Commission to require information or evidence, or into which it is the duty of the Commission to inquire, wilfully gives to the Commission or to any member thereof any information which is false or misleading in any material particular;
- (b) in a manner contrary to the provisions of this Act, publishes or discloses to any unauthorised person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which has come to his knowledge in the course of his or her duties under this Act, and any person who knowingly acts in contravention of this paragraph;
- (c) having possession of any information which to his or her knowledge has been published or disclosed in contravention of paragraph (b) of this section, publishes or communicates to any other person otherwise than for the purpose of any prosecution under this Act or in the course of his or her duty any such information;
- (d) otherwise than in the course of duty, directly or indirectly by himself or herself or by any other person in any manner whatsoever unlawfully influences or attempts to influence any decision of the Commission or of any member thereof;

Offences and
penalties under the
Act.

- (e) disobeys any order made by the Commission or a committee for attendance or for production of papers, books documents or records; or
- (f) refuses to be examined before, or to answer any lawful and relevant question put by the Commission or a committee;

commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

(2) Subsection (1)(d) shall not prohibit any person from giving a certificate or testimonial to any applicant or candidate for the Service or supplying any information or assistance upon formal request made by the Commission.

45. (1) The Commission may, in such manner as it deems fit, make provision for examinations and appoint such selection, promotion or other boards as it deems necessary for the proper discharge of its functions.

Examination and other boards.

(2) A board appointed under subsection (1) may wholly or in part consist of persons who are not members of the Commission.

46. (1) The Commission may make Regulations generally for the better carrying out of the provisions of this Act.

Regulations by the Commission.

(2) Without prejudice to the generality of subsection (1), regulations under this Act may provide for—

- (a) anything required by this Act to be prescribed;
- (b) the conduct of the business of the Commission;
- (c) the administrative and management structure for the services and facilities of the Commission in accordance with the principles set out in this Act;
- (d) the terms and conditions of service, pension and other retirement benefits of employees;
- (e) the measures for the discipline of employees;
- (f) the financial procedures of the Commission;
- (g) the orientation and training of members of Parliament and employees;
- (h) the security of members of Parliament;

- (i) the handling of the assets and other resources of the Commission;
- (j) the delegation of the Commission's functions or powers;
- (k) public participation and outreach; and
- (l) any other matter required under the Constitution, this Act or any other written law.

47. The Parliamentary Service Act, 2000 is repealed.

Repeal.
No. 10 of 2000
Diplomatic
passports.
No. 12 of 2011.

48. Despite the provisions of the Kenya Citizenship and Immigration Act, 2011, the following persons shall be entitled to diplomatic passports—

- (a) the Speakers of the Houses;
- (b) Members of Parliament;
- (c) members of the Commission appointed under Article 127(2)(d) of the Constitution;
- (d) the Clerks of the Houses;
- (e) the spouse(s) of the persons specified in paragraphs (a), (b), (c), and (d).

49. (1) All property, assets, rights, liabilities, obligations, agreements, contracts and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the former Commission and existing immediately before the commencement of this Act, shall, upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission to the same extent as they were enforceable by or against the former Commission before the commencement of the Act.

Transitional
provisions.

(2) Where the transfer of any property transferred to or vested in the Commission under subsection (1) is required by any written law to be registered, the Commission shall, within three months from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Commission or any person by way of registration fees, stamp or other duties—

- (a) make such entries in the appropriate register as shall give effect to the transfer;
- (b) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and
- (c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

(3) Any disciplinary proceedings that are pending before the former Commission before the commencement of this Act shall be continued as if the Commission was the Commission existing before the effective date of the Constitution.

(4) The pension scheme, superannuation, provident, medical fund or any other scheme existing immediately before the commencement of this Act shall continue to exist as if the pension scheme, superannuation, provident, medical fund or any other scheme has been established pursuant to this Act.

(5) A person who, immediately before the commencement of this Act, held office as a Clerk of a House of Parliament shall continue to hold that office as if appointed under this Act;

(6) A person who immediately before the commencement of this Act—

- (a) was a member of the former Commission under the repealed Act, shall continue to hold or act in that office for the remainder of the term as if appointed to that position under this Act;
- (b) was an employee or officer of the former Commission under the repealed Act, shall continue to hold or act in that office as if appointed to that position under this Act

FIRST SCHEDULE

(s. 9(2))

**PROCEDURE FOR APPOINTMENT OF A MEMBER OF THE
COMMISSION UNDER ARTICLE 127(2)(d) OF THE
CONSTITUTION**

1. Upon the convening of the first sitting of Parliament pursuant to Article 126(2) of the Constitution, or whenever a vacancy arises in the membership of the Commission under Article 127(2)(d) of the Constitution, the Secretary of the Commission shall, within fourteen days of that first sitting or the occurrence of the vacancy or within such time as would be reasonable, by notice in the Gazette and in at least two daily newspapers of national circulation, declare a vacancy and invite interested qualified persons to apply for appointment as members of the Commission under Article 127(2)(d) of the Constitution.

2. Any person qualified in accordance with the Constitution may make an application to the Secretary within fourteen days of the publication of the notice.

3. The Parliamentary Service Commission shall, within fourteen days after the last date of submission of applications under paragraph 2, consider the applications, shortlist, conduct interviews and recommend—

- (a) in respect of a vacancy of a member who is a woman, one female applicant qualified for the position; and
- (b) in respect of a vacancy of a member who is a man, one male applicant qualified for the position.

4. The name of a person recommended under paragraph 3 shall be submitted to the National Assembly and the Senate for approval and appointment in accordance with the Standing Orders of the respective Houses.

5. If both Houses of Parliament approve a person recommended under paragraph 3, the Secretary shall, within seven days after the approval, publish the name of the person in the Gazette.

6. Where one or both Houses of Parliament reject the persons recommended under paragraph 3, the Speaker of the relevant House shall communicate the decision of that House to the other House and shall request for a fresh nomination by the Commission.

7. On receipt of a request by a House under paragraph 6, the Commission shall, within seven days, submit to the National Assembly and the Senate a fresh nomination from amongst the persons shortlisted by the Commission under paragraph 3.

8. If either or both of the Houses of Parliament reject any or all of the subsequent nominees submitted by the Commission for approval under paragraph 7, the provisions of paragraphs 1 to 6 shall apply.

SECOND SCHEDULE

(s. 15)

**PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND
AFFAIRS OF THE COMMISSION**

1. The Commission shall meet as often as may be necessary for the carrying out of its business but it shall meet at least once every calendar month.

2. A meeting of the Commission shall be held on such date and at such time as the chairperson shall determine.

3. The chairperson or in the absence of the chairperson, the vice-chairperson, shall, within seven days of receipt of a written application of at least four members, convene a special meeting of the Commission.

4. The quorum for a meeting of the Commission shall be six members.

5. The quorum for a meeting of a Committee of the Commission shall be three members.

6. The chairperson shall preside at every meeting of the Commission and in the absence of the chairperson at a meeting, the vice-chairperson shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number to preside and who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

7. Subject to this section, the Commission may by regulations or otherwise regulate its own procedure and, with the consent of the Public Service Commission, as may be appropriate, may confer powers or impose duties on any public officer or authority for the purpose of the discharge of its functions.

8. Subject to any regulations made under paragraph 7, the Commission may act notwithstanding a vacancy in its membership or absence of a member, and its proceedings shall not be invalidated by the presence or participation of a person not entitled to be present at or to participate in those proceedings.

9. The Commission shall endeavour to reach every decision by consensus.

10. Where on any matter consensus cannot be obtained, the decision of the Commission shall require the concurrence of a majority of all the members present.

11. The Commission may, by directions in writing, delegate any of its powers under this section to any one or more of its members or to any officer in the parliamentary service.

12. The Commission shall cause minutes of all proceedings of meetings of the Commission to be entered in books for that purpose.

13. Except as provided by this Schedule, the Commission may regulate its own procedure.

THIRD SCHEDULE

(s. 37(1))

OATH/AFFIRMATION OF OFFICE**Oath/Affirmation of Member of the Commission**

I having been appointed as Chairman/Vice Chairman/Member of the Parliamentary Service Commission do swear/solemnly and sincerely declare and affirm that I will without fear or favour, affection or ill-will discharge the functions of the office of Chairman/Vice-Chairman/Member of the Parliamentary Service Commission, and that I will not, directly or indirectly, reveal any matter relating to such function to unauthorised persons or otherwise than in the course of my duty.

SO HELP ME GOD.

Sworn/Declared by the said

before me this day of

Chairman/Secretary

Parliamentary Service Commission

I having been appointed as Chairman/Vice Chairman/Member of the Parliamentary Service Commission do swear/solemnly and sincerely declare and affirm that I will without fear or favour, affection or ill-will discharge the functions of the office of Chairman/Vice-Chairman/Member of the Parliamentary Service Commission, and that I will not, directly or indirectly, reveal any matter relating to such function to unauthorised persons or otherwise than in the course of my duty.

SO HELP ME GOD.

Sworn/Declared by the said

before me this day of

Chairman/Secretary

Parliamentary Service Commission

Oath/Affirmation of Officer of the Commission

I being called upon to exercise the functions of secretary Officer/[other] of the Parliamentary Service Commission, do swear/solemnly and sincerely declare and affirm that I will not, directly or indirectly, reveal to any unauthorised person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of my duties as an officer of the Commission.

SO HELP ME GOD.

Sworn/Declared by the said

before me this day of

Chairman

Parliamentary Service Commission

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons of the Bill

This Bill seeks to repeal and re-enact the Parliamentary Service Act, Act No. 10 of 2000 for the following reasons;

First, the Parliamentary Service Act was enacted under the former Constitution and the Act was therefore enacted to give effect to the provisions of sections 45A and 45B of the former Constitution which established the Parliamentary Service and the Parliamentary Service Commission, respectively. These provisions of the Constitution are no longer in force. In their place, is Article 127 of the Constitution of Kenya, 2010 which establishes a Parliamentary Service Commission and Article 128 of the Constitution which provides for the offices of the Clerks of the Houses of Parliament and the offices of members of staff of the Clerks as offices in the Parliamentary Service. In light of these and other changes in the constitutional regime, it has become necessary to review the Parliamentary Service Act in order to ensure that it complies with the provisions of the Constitution of Kenya 2010.

Second, the Fifth Schedule to the Constitution provided for a period of five years for any legislation required to implement the Constitution. Although this period was subsequently extended by the House, the Parliamentary Service Act, 2000 needs this review in order to comply with the requirements of the Fifth Schedule of the Constitution. In this regard, this Act was first published in October 2015 but was not enacted by the House leading to its lapsing at the end of the last session. Indeed, the House has already reviewed the statutes of the other two constitutional Commissions (the Public Service Commission and the Judicial Service Commission) that existed together with the Parliamentary Service Commission prior the coming into force of the Constitution of Kenya 2010. In addition, all the other constitutional Commissions and independent Offices referred to in Chapter Fifteen of the Constitution have enacted operational legislation that is in tandem with the new constitutional principles. The Parliamentary Service has sadly lagged behind in this exercise and this Bill seeks to address this shortcoming.

Part I Preliminary – Part I of the Bill sets out certain preliminary issues: the short title, interpretation and the object and purpose of the Act.

Part II The Parliamentary Service – Part II of the Bill establishes the Parliamentary Service as a non-partisan and apolitical Service. This Part also provides for the values of the Parliamentary Service which are in addition to the national values and principles set out in Article 10 of the Constitution and the values and principles of public service set out under Article 232(1) of the Constitution.

Part III Parliamentary Service Commission – This Part makes further provisions on the Commission including: qualifications required for appointment as a member of the Commission under Articles 127(2)(c) and (d) of the Constitution and removal of a member of the Commission from office. This is necessitated by the fact that although the Parliamentary Service Commission is one of the constitutional Commissions specified in Chapter Fifteen, the application provision of Chapter Fifteen states at Article 248(1) that the provisions of the Chapter apply only except to the extent that the Constitution provides otherwise. This automatically makes the provisions of Chapter Eight of the Constitution including Articles 127 and 128 to have an overriding effect over the provisions of Chapter Fifteen of the Constitution

Part IV The Clerks and other Offices – This Part provides, among other things, for the qualifications and procedure for the appointment, suspension and removal of the Clerks of Parliament and the establishment of offices in the Parliamentary Service. This Part also seek to provide for the administrative functions and powers of the Clerk of each House over the members of staff of the Clerks as contemplated by Article 128(2) of the Constitution so as to guarantee the administrative and functional autonomy of the Houses under the constitutive, supervisory and overall administrative powers of the Commission. The model envisaged in this Part is similar to the way the Public Service Commission operates vis-à-vis the line ministries whereby the Commission functions on the elevated podium of policy direction and administrative oversight while the day to day management is devolved to the respective accounting and authorised officers in line with Articles 128(2), 226(1) and 127(6)(b) of the Constitution. This is in cognisance of the fact that firstly, Article 248(1) gives overriding effect to the provisions of Articles 128(2), 226(1) and 127(6)(b) of the Constitution over those contained in Chapter Fifteen of the Constitution and secondly, Article 249(2) and 252(1) (d) confer the enabling power for the making of this law as it requires the Commission to be subject the law.

Part V Parliamentary Police Unit—This Part establishes a Parliamentary Police Unit as a specialized Police Service dedicated to Parliament under the command of the Inspector-General of the National Police Service.

Part VI Miscellaneous Provisions—This Part provides for a number of matters, including: legal proceedings against the Commission, annual report of the operations of the Commission, power to order attendance of witnesses, etc.

Statement of the Delegation of Legislative Powers and Limitation of Fundamental Rights and Freedoms, if any

Clause 47 of the Bill delegates the power to make Regulations to the Parliamentary Service Commission which may make Regulations generally for the better carrying out of the provisions of this Act. The Bill does not limit any fundamental rights or freedoms.

Statement of financial implications

This Bill is not a “money Bill” in terms of Article 114 of the Constitution.

Statement of as to whether the Bill Concerns County Government

This Bill is not a Bill not concerning County Government. The Commission is a national government entity that is funded wholly from the share of national government funds.

Dated the 15th February, 2018.

ADEN DUALE,
Leader of the Majority Party.