

TEACHERS SERVICE COMMISSION BILL, 2011

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KNUT DRAFT

TEACHERS SERVICE COMMISSION BILL, 2011

A Bill for

AN ACT of Parliament to provide for the functions, powers, qualifications of, and appointment procedure for members of the Teachers Service Commission established by Article 237 of the Constitution, for the regulation of the teaching profession and for connected purposes .

ENACTED by the Parliament of Kenya as follows:

PART 1- PRELIMINARY

Short title

1. This Act may be cited as the Teachers Service Commission Act, 2011

Interpretation

2. In this Act, except where the context otherwise requires:-

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to education;

“**Chairperson**” means the Chairperson of the Commission appointed under section 5 of this Act and includes the Vice-Chairperson when performing the functions of the chairperson;

“**Commission**” means the Teachers Service Commission established under Article 237 (1) of the Constitution;

“**Committee**” means the Committee appointed to undertake any of the functions on behalf of the Commission;

“**Educational institution**” means all educational institutions registered under the Education Act or other relevant law and includes public and private institutions;

“**Employee**” means a person whose services have been retained by the Commission and includes a teacher;

“**interdiction**” includes suspension ;

“**Member**” means a member of the Commission appointed under the Constitution and in accordance with Section 6 of this Act;

“**Panel**” means the panel convened under section 4;

“**prescribed**” means prescribed by the Commission;

“**Principal Secretary**” means the Principal Secretary for the time being responsible for matters relating to education;

“**Public school**” means a centre, school, or institution operated by the Ministry responsible for education;

“**Register**” means the register of teachers as provided for by Section 31 of this Act;

“**Remuneration**” means all monies paid to employees for their service and includes salaries, allowances and benefits (other than retirement benefits);

“**Salaries and Remuneration Commission**” means the salaries and remuneration commission established under Article 230 (1) of the Constitution;

“**Secretariat**” means staff of the Commission appointed in accordance with section 15 of this Act;

“**Secretary**” means the Secretary of the Commission appointed under Article 250 (12) of the Constitution and includes a member of staff of the Commission when discharging the functions of the Secretary;

“**Teaching certificate**” means a certificate issued to a registered teacher under this Act;

“**Teaching service**” means a professional service offered by teachers in learning in educational institutions;

“**Teaching standards**” means such standards for the teaching profession as may be prescribed under this Act;

“**Teacher**” means a person who offers a teaching service;

“**Tribunal**” means the Teacher Appeals Tribunal established under section 59 of this

Act.

PART 11:-ADMINISTRATION OF THE COMMISSION

Composition of the
Commission

- 3.** (1) The Commission shall comprise:—
- (a) the Chairperson appointed in accordance with section 7 of this Act;
 - (b) eight members appointed in accordance with section 8 of this Act; and
- (2) To qualify for appointment of the member of the Commission a person shall be qualified in, and shall have had a distinguished career, and possess a university degree and at least ten years working experience, in any of the following fields:—
- (a) education;
 - (b) curriculum development;
 - (c) arts;
 - (d) science;
 - (e) human resources;
 - (f) labour law;
 - (g) industrial relations; and
 - (h) administration and management;
- (3) To qualify for appointment of the Chairperson a person shall possess a university degree in any of the fields mentioned in subsection 2 and shall have had a distinguished career and at least fifteen years working experience.
- (4) A person shall not be appointed as chairperson, member or Secretary of the Commission unless that person:-
- (a) is of irreproachable integrity and moral standing;
 - (b) has not been convicted of an offence involving fraud, dishonesty and abuse of office;

Interview and Short-listing panel

- 4.** (1) There shall be an interview and short-listing panel which shall comprise the persons set out in subsection (2).
- (2) The panel referred to in subsection (1) shall comprise—
- (a) the Chairperson of the Public Service Commission who shall be the Chairperson;
 - (b) the Principal Secretary in the Ministry responsible for matters relating to education, or his or her representative appointed in writing;
 - (c) the Attorney-General, or his or her representative appointed in writing;
 - (d) two representatives nominated by a trade union that represents majority of the registered teachers;
 - (e) a retired teacher appointed by the Cabinet Secretary; and
 - (f) a representative nominated by an organization or association dealing with the rights of women;
- (3) The panel shall be responsible for the identification and recommendation for appointment of the Chairperson and the commissioners.
- (4) Without prejudice to the generality of subsection (3), the panel shall be responsible for announcement of the vacancies in the offices of the members of the Commission, the short-listing of applicants and interviewing the applicants for onward transmission to the National Assembly.
- (5) The Public Service Commission shall provide administrative services to the panel.

First appointment of chairperson of the Commission.

- 5** (1) The panel shall within fourteen days of the coming into force of this Act, in the Gazette and in at least two newspapers with national circulation:-
- (a) notify the public of the vacancy in the office of the chairperson of the Commission;
 - (b) Invite applications to be submitted by qualified persons within such number of days as shall be specified in the notice, to fill the vacancy in

the office of the chairperson.

- (2) Within fourteen days of the expiry of the deadline for the submission of applications referred to in subsection (1) (b), the Cabinet Secretary shall convene the panel for the purpose of short-listing and interviewing the candidates for the advertised position.
- (3) The panel shall in accordance with the results of the interview, list out the applicants in the order of merit, taking into consideration gender and regional balance, and submit a list of the first three names to the National Assembly
- (4) The National Assembly shall consider the names and either approve or reject all or any name in the list.
- (5) Where, under subsection (4), National Assembly has rejected a name in the list it shall ask the panel to submit a name in the list of those interviewed next following the first three names for its consideration.
- (6) The National Assembly shall within fourteen days of receipt of the names from the panel submit the approved names to the President who shall, within fourteen days, appoint and publish in the Gazette the name of the person appointed as chairperson of the Commission.

appointment of the other
members of the
Commission.

- 6** (1) The panel shall within fourteen days of the coming into force of this Act, in the Gazette and in at least two newspapers with national circulation:-
- (a) notify the public of the vacancies in the offices of members of the Commission, and
 - (b) invite applications to be submitted by qualified persons within such number of days as shall be specified in the notice, to fill the vacancy in the office a commissioner in the Commission.
- (2) Within fourteen days of the expiry of the deadline for the submission of applications referred to in subsection (1) (b), the panel shall short-list and interview the candidates for the advertised positions.
 - (3) The panel shall in accordance with the results of the interview, list out the

applicants in the order of merit, taking into consideration gender and regional balance, and submit a list of the first eight names in the list to the National Assembly.

- (4) The National Assembly shall consider the eight names in the list and either approve or reject all or any name in the list.
- (5) Where, under subsection (4), National Assembly has rejected any name in the list, it shall ask the panel to submit, in substitute thereof, a name next following the first eight names, in the order of merit, for its consideration.
- (6) The National Assembly shall within fourteen days of receipt of the names from the panel submit the approved names to the President who shall, within fourteen days, appoint and publish in the Gazette the names of the persons appointed as commissioners.

Filling of a vacancy in the
Commission

7

- (1) The panel shall:-
 - (a) at least three months before the expiry of the term of a member of the Commission;
 - (b) within thirty days of there being a vacancy in the office of a member of the Commission otherwise than by the expiration of a term of a member, in the Gazette and in at least two newspapers with national circulation—
 - (i) notify the public of the vacancy or vacancies, as the case may be; and
 - (ii) invite applications to be submitted by qualified persons within such number of days as shall be specified in the notice, to fill the vacancy in the office a commissioner in the Commission.
- (2) Within fourteen days of the expiry of the deadline for the submission of applications referred to in subsection (1) (b), the panel shall short-list and interview the candidates for the advertised position.
- (3) The panel shall, in accordance with the results of the interview, list out the applicants in the order of merit and submit to the National Assembly a list of the first three names.

- (4) The National Assembly shall consider the list and either reject or approve any or all the names in the list.
- (5) If the National Assembly rejects any of the names received from the panel, the panel shall substitute the rejected name with a name next in the list, in the order of merit, of those interviewed.
- (6) The National Assembly shall within seven days of the approval of the names from the panel, submit the approved names to the President who shall, within seven days, appoint and publish in the Gazette the name of the person appointed as commissioner.

Gender, Regional balance, transparency; public information on the appointment process.

- 8** (1) The President, the National Assembly, the panel and any other person or institution involved in the process of appointment under this Act shall ensure that the process is transparent and that the public is fully informed of any decision taken and the reason for that decision.
- (2) Without prejudice to the generality of subsection (1), the names of all the applicants for the position of the chairperson or member of the Commission shall, prior to the consideration of the applications, be published in the Gazette and in at least two newspapers with national circulation.
- (3) The composition of the Commission shall reflect gender and regional balance.

Full-time members.

- 9** The Chairperson and members of the Commission shall serve on full time basis.

Oath of office

- 10** The chairperson and members of the Commission shall, before assuming office, take and subscribe to an oath of office or affirmation before the Chief Justice as prescribed in the Second Schedule.

Functions of the Commission

- 11** In addition to the functions of the Commission set out in Article 237 of the Constitution, the Commission shall:-
- (a) maintain a register of all trained teachers;
 - (b) prepare and pay the salaries remunerations and benefits for teachers employed in

the public service;

(c) Supply adequate teachers to all schools in Kenya:

(d) keep under review standards of education, training, fitness to teach appropriate to all persons entering the service;

(e) advise with the Ministry responsible for education to mainstream the standards and training of teachers in a national educational policy;

(f) compile, publish, amend the code of regulations for teachers; and

(g) Disciplinary functions

- Powers of the Commission **12** (1) In addition to the powers of the Commission under Article 252 of the Constitution, the Commission shall have the power to: –
- (a) purchase or otherwise acquire, hold, charge and dispose of movable or immovable property;
 - (b) enter into contracts; and
 - (c) do or perform all such other things or acts necessary for the proper performance of its functions under the Constitution and this Act which may be lawfully done or performed by a body corporate.
- (2) Without limiting the generality of subsection (1), the Commission shall have powers to:-
- (a) enforce a code of conduct of teachers; and
 - (b) make regulations on matters relating to the employment, remuneration and discipline of teachers.
- Delegation by the Commission **13** Subject to the provisions of the Constitution or any other law, the Commission may hire such experts or consultants, or delegate such of its functions as are necessary for the day-to-day management of its functions to subcommittees or to the secretariat.
- Structure of the Commission **14.** (1) There shall be such sections, departments or divisions of the Commission, and such categories and classifications of staff under the Commission as the Commission may, from time to time, determine.

- (2) The units referred to in subsection (1) shall be set up with specific mandates.
- (3) The Commission may, from time to time:-
- (a) allocate functions to any such units; and
 - (b) make such arrangements as may appear to the Commission to be expedient in connection with the division, amalgamation or abolition of any such units.
- (4) Nothing in this section shall be construed as precluding the Commission from constituting special Committees for the effective discharge of its mandate.

Secretariat and Staff

- 15** There shall be a secretariat of the Commission which shall comprise such officers and other staff as the Commission may appoint to assist it in the discharge of its functions under the Constitution and this Act.

Appointment of Secretary and removal from office

- 16** (1) There shall be a Secretary of the Commission appointed by the Commission through a competitive recruitment process.
- (2) The Secretary shall be the Chief Executive Officer of the Commission and head of the Secretariat and shall be responsible to the Commission.
- (3) The Secretary shall be appointed for one term of seven years on such terms and conditions of employment as the Commission may determine unless the office falls vacant earlier owing to any reasons specified in subsection 5.
- (4) A person may be appointed Secretary if that person has experience and qualifications mentioned in section 3(2) of this Act.
- (5) The Commission may remove the Secretary from office only for :-
- (a) inability to perform the functions of his office arising out of physical or mental incapacity;
 - (b) misbehaviour or misconduct; or
 - (c) incompetence.
- (6) Before the Secretary is removed from office under subsection 5 she or he shall be informed of the case against her or him and shall be given an opportunity to defend himself against any allegations.

Functions of the Secretary	17	<p>(1) The Secretary to the Commission shall, in relation to the proceedings before the Commission, act in accordance with the provisions of the Constitution, this Act and any other written law and shall, in particular, be responsible for:-</p> <p>(a) the acceptance, transmission, service and custody of documents in accordance with this Act;</p> <p>(b) the enforcement of decisions of the Commission;</p> <p>(c) certifying that any order, direction or decision is an order, direction or decision of the Commission, the Chairperson or a member, as the case may be;</p> <p>(d) 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; and</p> <p>(e) undertaking any duties assigned by the Commission.</p> <p>(2) With the authorization of the Commission, the Secretary may consider and dispose of procedural or administrative matters in accordance with this Act.</p> <p>(3) Any administrative function of the Secretary under this Act may in the Secretary's absence, be performed by any member of staff of the Commission whom the Chairperson may authorize for that purpose.</p>
Commission to establish county offices.	18	<p>(1) The headquarters of the Commission shall be in Nairobi.</p> <p>(2) The Commission shall, for purposes of ensuring access to its services in all parts of the country, establish such offices in the counties, and may establish such offices in such other locations as it may deem necessary.</p>
Conduct of business and affairs of the Commission	19	The conduct and regulation of the business and affairs of the Commission shall be provided for in the First Schedule.
Tenure of office	20.	The Chairperson and members of the Commission shall serve for a one term of six years only
Members not other to hold other offices	21	The Chairperson and members of the Commission shall not be engaged in any gainful employment during their term in office.

- Remuneration of members of the commission **22** The Chairperson and members of the Commission shall be paid such salaries, allowances or remuneration as shall be determined by the Salaries and Remuneration Commission.
- Standard of service by the Commission **23** In the exercise of the powers and the performance of its functions the Commission shall:-
- (a) be bound in its respective activities by the provisions of the Constitution;
 - (b) demonstrate commitment, technical, infrastructural and administrative competence in carrying out its mandate;
 - (c) adopt the principle of quality service and formulate relevant scheme of training for all categories of staff to uphold that principle;
 - (d) be non-partisan and non-political in orientation and operations;
 - (e) adhere to any performance targets that the Commission may set from time to time in the discharge of its mandate; and
 - (f) apply and promote such other positive values as the Commission may, by regulations, prescribe

PART 111: FINANCIAL PROVISIONS

- Funds of the Commission **24** The Funds of the Commission shall comprise—
- (a) monies appropriated by Parliament for the purposes of the Commission;
 - (b) monies accruing to the Commission in the course of the discharge of its functions or exercise of its powers; or
 - (c) monies that the commission may obtain from any lawful source by way of donations, gifts or grants.
- Statement of Accounts **25** (1) The Commission shall keep proper records in respect of all its activities, funds and property.
- (2) As soon as possible after the end of each financial year, the Commission shall prepare and submit to the Auditor-General a statement of accounts in respect of

that financial year or in respect of such other period as the Auditor-General may direct.

- Financial year **26** The financial year of the Commission shall be the period of twelve months ending on the thirtieth June in each year
- Annual Estimates **27** (1) At least three months before the commencement of each financial year, the Secretary shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.
- (2) The annual estimates shall make provision for all estimated expenditure of the Commission for the financial year and in particular, the estimates shall provide for:-
- (a) the payment of the salaries, allowances and other charges in respect of the staff of the Commission;
 - (b) the payment of pensions, gratuities and other charges in respect of the staff of the Commission;
 - (c) the proper maintenance of the buildings and grounds of the Commission;
 - (d) the maintenance, repair and replacement of the equipment and other property of the Commission; and
 - (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Commission may consider appropriate.
- (3) The Commission shall present the annual estimates to Parliament for consideration and approval.
- Accounts and audit **28** (1) The Secretary shall cause to be kept all proper books, and records of accounts of the income, expenditure and assets of the Commission.
- (2) Within a period of four months from the end of each financial year, the Commission shall submit to the Auditor-General the accounts of the Commission together with:-

(a) a statement of the income and expenditure of the Commission during that year; and

(b) a balance sheet of the Commission on the last day of that year.

(3) The accounts of the Commission shall be audited and reported on by the Auditor-General.

Annual report

- 29** (1) The Commission shall cause an annual report to be prepared for each financial year.
- (2) The Commission shall cause the annual report to be published in the Gazette and shall send a copy of the report to the President and to Parliament.
- (3) The annual report shall contain, in respect of the year to which it relates:-
- (a) the financial statements of the Commission; and
- (b) description of the activities of the Commission.

PART III – REGISTRATION OF TEACHERS

Commission to register teachers

- 30** (1) The Commission shall be responsible for the registration of teachers in the teaching service.
- (2) A person shall not engage in the teaching service unless such a person is registered as a teacher under this Act.

Register to be kept

- 31** (1) The Commission shall keep or cause to be kept a register which shall contain :-
- (a) a list of the names and qualifications of all registered teachers;
- (b) such other details as the Commission may prescribe after consultation with stakeholders.
- (2) The Commission shall continuously update the register and records required to be kept under this Act.
- (3) The Commission may cause to be published a list of all registered teachers or the names of persons who have been de-registered.

- Qualifications for registration as a teacher **32** A person shall be eligible to be registered as a teacher if such person –
- (a) has paid the prescribed registration fees; and
 - (b) is a holder of an education certificate issued by a recognized educational
- Application for Registration **33** (1) Any person wishing to be registered as a teacher under this Act may apply to the Commission.
- (2) An application under this section shall be made in the prescribed manner and form and shall be accompanied by the prescribed fee.
- (3) Where an application is made by a person in accordance with this section, the Commission shall approve the application if it is satisfied that the person meets the requirements specified under section 32 of this Act.
- (4) Upon approval, the Commission shall register every qualified person by entering his name, address, professional qualifications and such other particulars as the Commission may prescribe, in the appropriate register kept for that purpose pursuant to section 31 of this Act.
- (5) Where the Commission refuses to register a person under this section, the Commission shall cause a notice to be served upon that person informing him of the refusal and stating the grounds thereof.
- (6) A person aggrieved with the decision of the Commission under this section may appeal to the Tribunal within 14 days.
- Certificate of registration **34** The Commission shall issue a certificate of registration in the prescribed form to every teacher registered under this Act.
- Removal of name from the register **35** (1) The Commission may, at any time, direct that the name of a teacher be removed from the register where such teacher:-
- (a) has been convicted of a criminal offence which renders him unfit to be a teacher;
 - (b) has obtained registration by use of forged documents; or
 - (c) as a result of disciplinary process under this Act.

- (2) The Commission shall cause the name and address of every teacher whose name is removed from the register under this section, to be published in the Gazette within one month from the date of such removal.
- (3) Subject to the provisions of this Act, the removal of a teacher's name from the register shall be notified by the Commission to the person by registered mail addressed to the address appearing in the register against his name immediately before such removal
- (4) Where the name of any teacher has been removed from the register under this Act, such name shall not be re-instated except by direction of the Commission.
- (5) A teacher whose name has been removed from the register shall cease to be a teacher for the purpose of this Act from the date of such removal.
- (6) A person aggrieved with the decision of the Commission under this section may appeal to the Tribunal within 14 days.

- Correction of register **36** The Commission may from time to time make any necessary register alteration or correction in the register in relation to any entry in the register.
- Reinstatement of name in the register **37** (1) Where the name of any person has been removed from the of name in the register, the Commission may, either of its own motion or on the register , application by the teacher concerned, made in the prescribed manner, and in either case after holding such inquiry as the Commission thinks fit, direct that:-
- (a) the removal of such teacher's name from the register be confirmed; or
 - (b) the name of the teacher be restored in the register.
- (2) An application made under subsection (1) shall be within one (1) years from the date of deregistration.
- Commission to make regulations regarding registration **38** The Commission shall make regulations with respect to the register and registration of teachers.

PART IV – DISCIPLINARY MATTERS

- Discipline of registered teachers and secretariat **39** The Commission shall have the power to discipline a person whose name has been entered into the register as a teacher under this Act for contravening the provisions of this Act, regulations or the prescribed Code of Conduct for teachers.
- Investigations by the Commission **40** (1) The Commission shall conduct an investigations into any alleged offence and in doing so shall;
- (a) inform the person concerned of the nature of the allegations made against him;
 - (b) afford that person adequate time for the preparation and presentation of his defence;
 - (c) afford that person the opportunity of being heard ;
 - (d) act on general evidence or statements relating to the character or conduct of the person concerned;
 - (e) administer oaths and may, for the purpose of dealing with any matter before it, summon any person to attend and give evidence and produce any relevant documents; and
 - (f) as soon as practically possible inform the person of the action to be taken against him and the reasons thereto.
- (2) In the exercise of its powers under this Section, the Commission shall regard to the principles of natural justice and shall endeavour to speedily dispose of matters under investigations.
- Powers of the Commission to discipline teachers **41** (1) Where the Commission is satisfied that a teacher is in breach of any of the prescribed terms and conditions of service, it may:-
- (a) issue a warning letter to the teacher;
 - (b) suspend the teacher for a period not exceeding three months; or
 - (c) remove the name of the teacher from the register.
- (2) A person aggrieved with the decision of the Commission under this section may appeal to the Tribunal within 45 days.

(3) The tribunal may annul or vary or uphold the decision of the Commission as it thinks fit.

Establishment of the
Disciplinary Committee

42 (1) The Commission shall establish, for the purpose of undertaking all disciplinary matters under this Act, a committee to be known as the Teachers Service Disciplinary Committee.

(2) The Committee shall consist of -

(a) a chairman appointed by the Cabinet Secretary from among persons qualified to be a judge of the High Court;

(b) the Secretary of the Teachers Service Commission;

(c) three representatives of a trade union that represents majority of registered teachers;

(d) a representative of the Public Service Commission; and

(e) a representative of the Principal Secretary in the Ministry responsible for education.

(3) The Commission shall make regulations to govern the operations of the Committee.

PART V — STANDARDS OF PERSONS ENTERING THE TEACHING SERVICE

Commission to maintain
education and teaching
service Standards

43 The Commission shall review the standards of education and training of all persons entering the teaching service.

Continuous teacher training
courses

44 (1) All registered teachers shall undertake continuous courses which shall be prescribed, paid for and administered by Commission.

(2) A

Power to make regulations

45 The Commission shall make regulations on the quality assurance and standards for teachers.

PART VI- SALARIES AND REMUNERATION OF TEACHERS

- Remuneration of teachers **46** The Commission shall set and regularly review the salaries and remuneration of teachers in consultation with the Salaries and Remuneration Commission.
- Representation to the Salaries and Remuneration Commission. **47** (1) The Commission shall nominate a person qualified under section 3(2) of this Act to represent the Commission in the Salaries and Remuneration Commission in accordance with Article 230 (2) (b) of the Constitution.
(2) The Commission shall undertake the nomination under subsection (1) through a competitive and transparent process.
- Procedure for nomination **48** Subject to section 47 of this Act, the Commission shall make regulations to govern the nomination of its representative to the Salaries and Remuneration Commission.
- Teachers Service Remuneration Committee **49** (1) There is established a TSRC for the purpose of considering the salaries and remuneration payable to teachers in the teachers service, a committee to be known as the Teachers Service Remuneration Committee.
(2) The Committee shall consist of -
(f) a chairman appointed by the Cabinet Secretary through a competitive recruitment process;
(g) the Secretary of the Teachers Service Commission;
(h) four representatives of a trade union that represents majority of registered teachers;
(i) a representative of the Public Service Commission;
(j) a representative of the Principal Secretary in the Ministry responsible for education; and
(k) a representative of the Principal Secretary in the Ministry responsible for finance.
(3) The Commission shall make regulations to govern the operations of the Committee.

PART VIII - MISCELLANEOUS PROVISIONS

- Protection from personal liability
- 50** (1) An employee or any person acting or discharging duties or functions of the Commission shall not be liable to any civil action or other proceedings for damages on account, or in respect, of any act committed or omitted to be done in good faith and in the course of employment.
- (2) This section and Article 250(8) of the Constitution shall not relieve the Commission from any liability to any person for any wrongful act or omission of the Commission
- Offences in respect of registration
- 51** (1) Any person who –
- (a) procures or attempts to procure the entry of any name on the register by willfully making or producing or causing to be made or produced, either orally or in writing, any declaration, certificate or representation which he or she knows to be false or fraudulent;
 - (b) falsely or fraudulently holds himself or herself out to be a registered teacher;
 - (c) not being a registered teacher, or a person exempted under this Act, teaches or assists in teaching in any school;
 - (d) suffers or permits or employs to teach in any school or related institution a person not being a registered teacher shall be guilty of an offence and liable to a fine not less than fifty thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and such imprisonment;
 - (e) defaces, amends or erases any entry in a certificate of registration;
 - (f) having been removed from the register in accordance with Section 36 of the Act and has not subsequently been entered in the register and who is in possession of, or uses for any purpose a certificate of registration; or
 - (g) not being the person whose full name, address and registration number appears in a certificate of registration, uses such certificate for any purpose, shall be guilty of

an offence and liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding five years or to both such fine and such imprisonment;

(h) applies for employment as a teacher in any name other than the full name as entered in the register

commits an offence and is liable on conviction to a fine not exceeding Kenya Shillings two hundred thousand shillings or to imprisonment for two years or to both

Disciplinary offences relating review of standards of persons entering the teaching service

52 Any person who

(a) resists, hinders or obstructs a quality assurance and standards officer acting in the course of his duty under this persons regulations;

(b) does anything calculated to improperly influence the quality assurance and standards officer concerning any matter connected with the exercise of any power or the performance of his duty;

(c) fails produce any document or thing in his or her possession lawfully required by the quality assurance and standards officer;

(d) willfully fails to comply with any requirements lawfully made hereunder; or

(e) knowingly provides false information to the quality assurance and standards officer;

commits an offence and is liable on conviction to a fine not exceeding Kenya Shillings fifty thousand shillings or to imprisonment for two years or to both

General penalty

53 Any person convicted of an offence under this Act for which no penalty is provided, shall be liable to a fine not less than Fifty thousand shillings or to imprisonment to a term not exceeding two years or to both.

Establishment of the Teachers Appeals Tribunal

54 (1) For the purpose of hearing and determining appeals and exercising other powers conferred on it by this Act, there is established a Tribunal to be known as the Teachers Appeals Tribunal.

(2) Where under this Act the provision is made for appeals from the decisions of the Commission, all such appeals shall be made to the Teachers Appeals

Tribunal, in accordance with the provisions of this Part.

- (3) The members of the Tribunal shall be appointed by the Cabinet Secretary through a transparent and competitive process from among persons with a university degree and not less than fifteen years relevant experience in matters related to education, science, arts, human resources, labour relations, curriculum development, management, or law and shall consist of-
 - (a) a chairperson and vice chairperson appointed by the Cabinet Secretary, in consultation with the Judicial Service Commission from among persons qualified to be judges of the High Court; and
 - (b) three other members who are persons possessing, in the opinion of the Cabinet Secretary, expert knowledge of the matters likely to come before the Tribunal and who are not in Public Service.
- (4) A decision of the Tribunal shall be final and binding to the Commission and any other person or authority.

Tenure of office for
Tribunal members.

- 55**
- (1) A member of the Tribunal shall hold office for a period of three years and shall be eligible for re-appointment for one further term of three years.
 - (2) A member of the Tribunal shall hold office on such terms and conditions as shall be prescribed in the instrument of appointment.
 - (3) The provisions set out in the Third Schedule shall have effect in relation to the membership and conduct of business and affairs of the Tribunal.

Establishment of the
Teachers Advisory
Committee

- 56**
- (1) There is established for the purpose reviewing and compilation of the code of conduct for teachers, a committee to be known as the Teachers Advisory Committee.
 - (2) The Committee shall consist of -
 - (a) a chairman appointed by the Cabinet Secretary through a competitive recruitment process;
 - (b) the Secretary of the Teachers Service Commission;
 - (c) a representative of the Commission for Higher Education;

- (d) a representative of an association of tertiary education institutions;
- (e) four representatives of a trade union that represents majority of registered teachers; and
- (f) a representative of the Ministry responsible for education.

(3) The Commission shall make regulations to govern the operations of the Committee.

Enforcement of the Act

- 57** (1) The Commission may on its own motion or upon complaint by any person-
- (a) warn any person or entity against contravening this Act ;
 - (b) notify any person or entity in writing on any acts or omissions which, in its opinion, constitute contravention of this Act ;
 - (c) require any person or entity to remedy any contravention of this Act within such period as the Commission may specify in the notice;
- (2) Where a contravention provided for under subsection (1) continues for fifteen days after notification from the Commission, the person contravening the relevant Act shall be liable to a fine of Kenya Shillings fifty thousand shillings, which shall be a civil debt to the Commission and recoverable summarily.
- (3) A person aggrieved by a decision of the Commission under this section may appeal to the Tribunal within Forty Five days of communication of the decision.
- (4) Nothing done under this section shall affect a person's liability for an offence under this Act.

PART IX – TRANSITIONAL PROVISIONS

Consultation with the Prime Minister with respect to appointments

- 58** If this Act come into force before the general elections as contemplated in section 9(1) of the Sixth Schedule of the Constitution:-
- (a) the appointments to, or initiation of the removal process from, the Commission shall be made by the President after consultation with the Prime Minister, as required by section 29 of the Sixth Schedule of the Constitution;
 - (b) the panel shall, in addition to the persons mentioned as members of that panel,

include a representative from the Office of the Prime Minister.

- Transitional powers of the Minister and Permanent Secretary
- 59** (1) If this Act comes into force before the first general elections as contemplated under section 9 (1) of the Sixth Schedule of the Constitution the Minister for the time being responsible for matters relating to education shall perform the duties assigned by this Act to the Cabinet Secretary.
- (2) If this Act comes into force before the first general elections as contemplated under section 9 (1) of the Sixth Schedule of the Constitution the Permanent Secretary for the time being responsible for matters relating to education shall perform the duties assigned by this Act to the Principal Secretary.
- Repeal and savings
- 60** (1) The Teachers Service Commission Act, Chapter 212 of the Laws of Kenya is repealed.
- (2) Notwithstanding subsection (1):-
- (a) An act, decision, rule, order or direction lawfully done or made under the repealed Act prior to the commencement of this Act shall remain valid and binding until it is annulled, revoked, amended or otherwise vacated by the Commission.
- (b) A register kept in terms of the repealed Act, immediately before the effective date shall, if the Commission so directs, continue to be kept under this Act.
- (c) Any registration, qualification, grouping, grading, certificate or licence effected, required or issued under the repealed Act and in force immediately before the commencement of this Act shall, if the Commission so directs, continue in force under this Act.
- (d) Any regulation or notice made in terms of the repealed Act which was in force immediately before the effective date shall, if the Commission so directs, continue in force as if it had been made in terms of section 24 of this Act.
- (3) Officers or staff of the Teachers Service Commission established under the repealed Act holding office immediately before the commencement of this Act shall, unless absorbed by the Commission or deployed into any other public office, be retired in accordance with the terms of their engagement and the applicable

laws.

- (4) Pursuant, to Subsection (3) the Commission shall establish such vetting procedure and requirements for the persons employed by Teachers Service Commission established under the repealed Act for the purposes of engaging the services of such persons.
- (5) All property held by or vested in the Teachers Service Commission established under the repealed Act shall, on the commencement of this Act, be held by and vested in the Commission.
- (6) Any action or suit instituted or being defended by the Teachers Service Commission shall be continued or defended, as the case may be, by the Commission as if that action or suit was instituted by, or against, the Commission.

Duty to ensure smooth transition

- 61** The Cabinet Secretary shall, in consultation with the Commission, formulate and implement administrative measures to ensure smooth and orderly transition to the legal regime established by the Constitution and this Act

FIRST SCHEDULE (s. 19)

PROVISIONS ON THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE COMMISSION

Meetings

- (1) The Commission shall have such number of meetings as it shall deem fit for the effective discharge of its mandate.
- (2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Commission at any time for the transaction of the business of the Commission.
- (3) The quorum for the conduct of the business of the Commission shall be one half of the members including the Chairperson.
- (4) The Chairperson shall preside at every meeting of the Commission at which he or she is present.
- (5) Unless a unanimous decision is reached, a decision on any matter before

the Commission shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

- (6) Subject to such subparagraph (4), no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.

Committees

- (1) The Commission may establish such committees as it may consider appropriate to perform such functions and responsibilities as it may determine.
- (2) The Commission shall appoint the Chairperson of a committee established under subparagraph (1) from amongst its own members.

Disclosure of interest

- (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Commission and is present at a meeting of the Commission at which the contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.
- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.
- (3) A member of the Commission who contravenes subparagraph (1) commits an offence and is liable to a fine of one million shillings, or to imprisonment for a term of six months, or to both.

The common seal

- (1) The affixing of the common seal of the Commission shall be authenticated by the signature of the Chairperson and the Secretary and any document not required by law to be made under seal and all decisions of the Commission

may be authenticated by the signatures of the chairperson and the secretary.

- (2) Provided that the Commission shall, in the absence of either the Chairperson or the Secretary in any particular matter, nominate one member to authenticate the seal on behalf of either the chairperson or the secretary.

Contracts and instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Commission by any person generally or specially authorized by the Commission for that purpose.

SECOND SCHEDULE (S.12)

OATH/SOLEMN AFFIRMATION OF OFFICE OF CHAIRPERSON/MEMBER OF MEMBER OF COMMISSION

I -----

having been appointed chairperson/member of the Teachers Service Commission do solemnly swear/declare and affirm that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

THIRD SCHEDULE

{S.60 (3)}

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE TEACHERS APPEALS TRIBUNAL

1. Oath of office

A person who is appointed a member of the Tribunal shall, before assuming the duties of his office take and subscribe to the oath of allegiance to the office.

2. Disclosure of interest

Where a member of the Tribunal, as constituted for the purposes of a proceeding,

has any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions, he shall disclose the interest to the parties to the proceeding and shall not be present during any deliberations on the matter by the Tribunal to take part in decision of the Tribunal on that matter.

3. Termination of appointment

- (1) A member of the Tribunal may resign his office by notice in writing addressed to the Cabinet Secretary.
- (2) The Cabinet Secretary may in consultation with the Judicial Service Commission, as the case may be, remove from office, a member of the Tribunal who:-
 - (a) is unable to perform the functions of his office by virtue of mental or physical infirmity of body or mind;
 - (b) is absent from three consecutive meetings of the Tribunal without reasonable cause to the satisfaction of the Tribunal;
 - (c) is declared or becomes bankrupt;
 - (d) fails to disclose to the Tribunal any interest in any contract or other matter before the Tribunal; or
 - (e) is convicted of a criminal offence involving dishonesty, fraud or moral turpitude and sentenced for a term exceeding six months.

4. Secretary

The Commission shall appoint the secretary to the Tribunal through a competitive and transparent process.

5. Official seal

- (1) The Tribunal shall have an official seal;
- (2) The official seal of the Tribunal shall be affixed by the chairperson to such documents as the Tribunal may direct;
- (3) In the absence of the Chairman the Vice Chairman shall authenticate the seal of the Tribunal on behalf of the chairperson.

(4) The Courts shall take judicial notice of documents where the seal is properly affixed.

6. Arrangement of business

- (1) The chairperson shall be responsible for ensuring the orderly and the expeditious discharge of the business of the Tribunal.
- (2) Without limiting the operation of sub clause (1), the chairman shall give directions relating to:-
 - (a) the arrangement of the business of the Tribunal;
 - (b) the places at which the Tribunal may sit generally; and
 - (c) the procedure of the Tribunal at a particular place.
- (3) The times and places of the hearings of the Tribunal shall be determined by the Chairman with a view to securing a reasonable opportunity for applicants to appear before the Tribunal with as little inconvenience and expense as is practicable.

7. Quorum of the Tribunal

- (1) The Chairman shall preside at all sittings of the Tribunal at which he is present and in the absence of the chairman, the vice chairman shall preside.
- (2) The quorum of the Tribunal shall be three members including the chairman.

8. Technical advice

The Tribunal may seek technical advice from persons whose specialized knowledge or experience may assist the Tribunal in its proceedings:

Provided that such persons shall disclose any interest they may have in the matter before the Tribunal or any subsequent interest acquired relating to the matter in question.

9. Remuneration

- (1) There shall be paid to the chairman and the members of the Tribunal such

remuneration and allowance as the Cabinet Secretary may in consultation with the Salaries and Remuneration Commission determine.

(2) Any person giving technical advice to the Tribunal shall be paid such allowance as may be determined by the Cabinet Secretary.

10. Jurisdiction of the Tribunal

- (1) The Tribunal shall have the jurisdiction to hear and determine matters conferred upon it by this Act.
- (2) For greater certainty, the jurisdiction of the Tribunal shall not include the trial of any criminal offence or the hearing of any dispute that a licensee and any other party may have agreed to settle in accordance with their agreement.

11. Power of review and appeals from Tribunal

- (1) The Tribunal may, of its own motion or upon application by an aggrieved party, review its judgments and orders.
- (2) Judgments and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of the High Court.
- (3) Any person aggrieved by a decision of the Tribunal may, within thirty days from the date of the decision or order, appeal to the High Court.
- (4) The law applicable to appeals from the High Court in civil matters shall, with the necessary modifications or other adjustments as the Chief Justice may direct, apply to appeals from the Tribunal to the High Court.
- (5) Except in the case of an appeal under this section, it shall not be lawful for any Court or Tribunal to entertain any action or proceeding of any nature for the purpose of questioning any judgment, finding, ruling, order or proceeding of the Tribunal.
- (6) A person aggrieved by the decision of the High Court under this section may, within thirty days of the date of the decision, appeal to the Court of Appeal.

12. Procedure of the Tribunal

- (1) The Tribunal shall meet as and when there is need to exercise its jurisdiction under this Act.
- (2) The Tribunal shall conduct its proceedings without procedural formality but shall observe the rules of natural justice.
- (3) Except as prescribed in this Act, the Tribunal shall regulate its own procedure.

14. Funds of the Commission

The Funds of the Tribunal shall from monies appropriated by Parliament.

KNUT DRAFT

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to repeal and re-enact the Teachers Service Commission Act, Cap 212 Laws of Kenya to improve teaching services in Kenya and to be consistent with the Constitution of Kenya.

The Bill seeks to enhance the autonomy of the Commission by making it independent and not subject to the direction or control of any person or authority as per Article 249 of the Constitution.

The Bill seeks to fulfill the constitutional obligations imposed on the Commission under Article 237 of the Constitution which require the Commission to register trained teachers, recruit and employ registered teachers, assign teachers employed by the Commission, exercise disciplinary, control, terminate the employment of teachers, review the standards of education and training of persons entering the teaching services, review demand for and supply of teachers and advice the national government on matters relating to the teaching profession.

The Bill also enhances the Commissions operational and financial autonomy in that its budget shall be a separate vote from the consolidated fund as provided under Article 249 (2) of the Constitution.

The Bill proposes the procedure for appointment and removal of the Chairperson, members and Secretary to the Commission as provided under Article 250 of the Constitution.

This Bill further proposes to establish necessary institutional mechanisms for the decentralization of the functions of the Commission.

PART I - provides for the preliminary provisions, the short title, commencement date and interpretation of terms.

PART II - provides for establishment, membership, powers and functions of the Commission. It clearly outlines the procedure for nomination, election and appointment of members of the Commission as specified in the constitution. This part also provides for the structure and operations of the Commission including provisions

on the power to employ staff, the role of the Secretary, power to delegate the Commissions functions, power to develop codes of regulations and conduct, legal proceedings against the Commission and power to engage experts and consultants. This part also requires the Commission to prepare and submit annual reports to parliament.

PART III - provides for registration whereby no person shall engage in the teaching service unless such person is registered as a teacher. It contains provisions relating to application for a certificate of registration, it provides for grant of a certificate of registration and specifies persons not eligible for registration. Further, this part provides for appeal where any aggrieved teacher may appeal to the Commission or the High Court.

PART IV- makes provision for disciplinary provisions, clearly articulates the procedure of investigations by the Commission, as well as the powers of the Commission in cases where a teacher or a secretariat staff is in breach of any of the provisions under this Act. It also provides for appeal where any person aggrieved by the decision of the Commission.

PART V - provides for the maintenance of teaching standards including licensing whereby no person shall engage in the teaching service unless such person is licensed to teach. Further, it contains provisions relating to application for a license and grant of license. It further sets out the period of validity and renewal of licenses. This part also provides for the Commission to make regulations in regard to quality assurance and standards.

PART VI- provides for salaries and remuneration. The remuneration due and payable by the Commission to teachers and secretariat shall be prescribed by the Salaries and Remuneration Commission. The Commission shall nominate its representative to the Salaries and Remuneration Commission.

PART VII - sets out the financial provisions relating to the Commission including the requirement that all expenses incurred by the Commission in the execution of its mandate shall be a charge on the Consolidated Fund.

PART VIII -sets out a number of miscellaneous and supplementary provisions, these

range from offences and penalties, powers of the Commission to make regulations.

PART IX -deals with transitional issues.

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated

Hon. Prof. Sam Ogeri, EGH M.P

Minister for Education

KNUT DRAFT