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THE REPUBLIC OF UGANDA

ATTORNEY GENERAL'S CHAMBERS
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Permanent Secretaries
All Chief Administrative Officers
All Accounting Officers

GUIDANCE ON THE PROCEDURE TO FOLLOW AFTER AN OFFICER HAS BEEN INTERDICTED FROM SERVICE

This Office has previously guided different Ministries, Government Agencies (MDAs), and Local Governments in relation to the question of interdiction of Public Officers; particularly, the question of whether a public officer should be reinstated by the Responsible Officer, where their matter is not concluded within three (3) months, for cases that do not involve Police and Court and within six (6) months, for cases that involve the Police and Court.

This Office continued to receive requests from individuals and entities seeking legal guidance on the same matter. The continued receipt of several requests on the same matter has necessitated the issuance of this circular guidance to all Responsible Officers.

This, therefore, is to guide on the law and procedure for interdiction as follows:

1. Regulation 38 of the Public Service Commission Regulations 2009 provides for interdiction in the following terms:

“(1) Where –

- (a) a responsible officer considers that public interest requires that a public officer ceases to exercise the powers and perform the function of his or her office; or*
- (b) disciplinary proceedings are being taken or are about to be taken or if criminal proceedings are being instituted against him or he, she or she shall interdict the officer from exercising those powers and performing those functions.*

The above provision is also provided for in the Uganda Public Service Standing Order, 2021 (*See section (F-s) Paragraph 14 (b) of the Standing Orders*)

2. The Uganda Public Service Standing Orders, 2021, define interdiction as the temporary removal of a public officer from exercising the duties of his or her office while investigations over a particular misconduct are being carried out.
3. An officer who has been interdicted is prohibited from coming to work, and he or she is supposed to receive no less than one-half of his or her salary with effect from the date of interdiction until the matter is finalized. (See *Regulation 38(2) of the Public Service Commission Regulations*).
4. The Public Service Commission Regulations vests the power of interdiction on the “responsible officer”. Responsible Officer is defined in the Public Service Standing Orders, 2021 to include a Permanent Secretary, Chief Administrative Officer, and Town Clerk.
5. Upon interdiction, Regulation 38 (6) requires the Responsible Officer to make a detailed report to the Secretary of the respective Service Commission of the circumstances that led to the interdiction including a statement of the allegations and charge, if any, preferred against the officer, a copy of the letter of interdiction and the disciplinary or criminal proceedings which are being taken against the officer for the Commission to note the interdiction.
6. The public officer may at the stage of interdiction be interviewed by the Responsible Officer or other investigating officers and be made aware of the investigations. What is critical is that the interdicted public officer should be informed of the reasons for such interdiction.
7. The interdiction letter should, therefore, be express that the interdiction is the first step and forms part of a process that would be finalized after the public officer has been given an opportunity to present his or her evidence and to appear before the disciplinary body in person. Interdiction should not be mistaken for a declaration of guilt.
8. Similarly, Regulation 38(5) provides that:
“Where a public officer has been interdicted by a responsible officer, investigations into the conduct of the public officer shall be speeded up and brought to conclusion within a period of:
 - (a) *Three months from the date of interdiction for offences under investigation by the Ministry or Department, or Auditor General, and not requiring or the police or a court of law.”*

(b) Six months from the date of interdiction for offences requiring or involving the police or a court of law.”

9. The law requires that the investigation into the conduct of the interdicted officer is expedited and a report is submitted within three months of the investigation of the misconduct. In so doing, the officer is entitled to be heard as per Regulation 44 (4) of the Public Service Commission Regulations gives the right for the officer to be heard. Regulation 44(4) of the Public Service Commission Regulations provides that:

“The Commission may inform the accused officer that-

(a) on a specified day the charges against him or her will be investigated and he or she shall be allowed or, if the commission so determines, shall be required to appear before it to defend himself or herself.

(b) “the Commission shall give the accused a fair hearing.”

10. In line with the requirement for the expeditious conclusion of the investigations, Regulation 38(9) of the Public Service Commission Regulations, 2009 gives a public officer concerned the right to appeal to the relevant Commission to have the interdiction lifted where investigations are not finalized within the timeframe allowed under the law. Regulation 38(9) stipulates thus:

“Where there is failure to conclude investigations within the time stipulated in sub-regulation 5, the officer shall be free to appeal to the Commission to have his or her interdiction lifted.

11. Further, Section (F-s), paragraph 15 of the Standing Orders provides that:

“Where the responsible officer is unable to conclude an investigation within six months, the interdiction may be lifted on condition that the matter will be revisited when further evidence by investigating bodies is adduced.

12. Accordingly, the Service Commissions should advise the responsible officers to lift interdiction where an investigation or a court case has not been concluded against a public officer within the timeframe set in the Public Service Regulations. The lifting of interdictions does not stop the responsible officer from reopening the investigation when new evidence is adduced.

13. Where the investigations have been concluded, the responsible officer is required to refer the case to the relevant Service Commissions with recommendations of the action to be taken and the relevant documents

to justify or support the recommendations should be attached. (see Section (F-s) Paragraph 14(g) of the Standing Orders)

14. Upon the conclusion of investigations, and where the responsible officer considers that the officer is innocent, he or she makes a recommendation to the responsible service commission for the lifting of the interdiction and reinstatement of the officer on full pay, including the arrears. Regulation 38 (7) of the Public Service Commission Regulations provides;

“On conclusion of investigations by the Ministry or Department or Police, the responsible officer, if he or she considers that the officer is innocent or the case against him or her is not serious enough to warrant criminal prosecution or dismissal shall –

(a) Make a detailed report on the investigations carried out, a copy of the court charge, proceedings and judgement of the case against the officer; and

(b) Make appropriate justification and recommendations on the lifting of the interdiction.”

15. The purpose of this circular, therefore, is guide as follows:

- (a) Responsible officers may interdict public officers under Regulation 38 of the Public Service Regulations, 2009 and Section (F-s) Paragraph 14 of the Uganda Public Service Standing Orders, 2021, to pave the way for the investigation of the public officer.
- (b) The interdiction letter to be issued to the affected officer should spell out the reason for interdiction.
- (c) Following interdiction, investigations into the matter that led to interdiction should be concluded within 3 months for investigations that do not involve police and court and 6 months for investigations that involves police and court. In this regard, the investigation into a matter should be done expeditiously. During the investigation, the public officer must be accorded a fair hearing.
- (d) Where investigations or prosecution is not completed within three (3) months for matters that do not involve police and court and six (6) months for matters that involve police and court, the officer is at liberty to appeal to the relevant service commission to have the interdiction lifted and be reinstated.

- (e) Considering the risk of litigation and possible financial loss in the form of damages in cases of interdiction beyond the timeframe set out in the law, it is advised that institutions of Government endeavor to conclude the investigation or court cases within the timeframe set in the law. In case the investigations or prosecution has not been achieved in the timeframe provided in the law, the responsible officer should lift the interdiction, even when investigations continue. Once the investigation is ultimately completed, the concerned officer can still be taken through disciplinary action or criminal action following the conclusion of the investigation, and where culpable, can be punished in accordance with the law.


Kiryowa Kiwanuka

ATTORNEY GENERAL

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Hon. Minister of Public Service
Hon. Deputy Attorney General
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