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Permanent Secretaries and Heads of Departments are being asked to ensure that there is adherence not only to the written rules but also that due process, in keeping with the rules of natural justice, is observed prior to the separation of officers from the Public Service by way of termination.

There are provisions in the **Public Service Regulations, 1961 (The Regulations)**, for officers temporarily appointed or appointed on probation to be terminated. Additional guidance can be found in the Fixed-Term Contract Officers Policy Guidelines, **Circular No. 15 Ref 11131 Vol^{VIII}** dated the 8th May, 2012 from the then Ministry of Finance and Planning in particular Paragraph 8, which deals with termination of contract officers with notice or payment in lieu of notice. In light of Court rulings, these provisions should not be used in isolation to separate officers/employees without regard for the rules of natural justice that is, maintaining procedural fairness so that a fair decision is reached.

Ministries/Departments have a general responsibility, to ensure that officers are given an opportunity to respond to disciplinary charges prior to taking any decision regarding the officer despite the penalty (including dismissal) which may be imposed on the Officer against whom a disciplinary charge has been established.

Please be reminded of the following:-

Summary Dismissal

In commencing summary dismissal in accordance with **Regulation 37 (3), the absence of an Officer from the island without permission, and Regulation 37 (4), the absence of an Officer from duty for a period of five (5) or more consecutive days without permission**, the Officer must first be informed of the reason for the summary dismissal and must be given the opportunity to respond in writing concerning his/her absence from work prior to any decision to dismiss the officer.

Where an officer cannot be located, a letter should be sent to him/her by registered mail bringing the absence to his/her attention and that steps are being contemplated for his/her summary dismissal in accordance with **Regulation 37 (3) or 37 (4)** as the case may be. The officer should be given the opportunity to respond in writing within a specified time. If there is no response from the officer within that specified time or within a reasonable time or the letter returns unclaimed, the Ministry should proceed with the summary dismissal. The Human Resource Department should ensure that these documents (registered slips and unclaimed mails) are kept on file as evidence if required in the future.

Disciplinary action with a view to Dismissal

The proper procedure to be followed in the event of a disciplinary action with a view to dismissal is provided by **Regulation 43**, for monthly paid appointed officers (to include contract officers employed against an established post).

For weekly paid appointed officers, the procedure to be followed is outlined at **paragraphs 15-18 of the Second Schedule to the Public Service Regulations, 1961**.

At all material times the Officer is to be informed of the charges against him/her and due process observed before any decision is taken to dismiss the Officer from the service.

The following precedents established by the Courts are instructive: -

- **Alfred McPherson v The Minister of Land and Environment SCCA 85 of 2007**
(A contract officer employed against an established post is protected by the constitutional provisions of Section 125 of the Constitution of Jamaica and is entitled to due process of the law notwithstanding the termination clause provided for in the contract);

- **Erlin Hall v The Public Service Commission (1993) 30 JLR 442 (SC)**
(An appointed officer was summarily dismissed for being absent from duty; the Court of Appeal found that there was a breach of the rules of natural justice where the officer was dismissed without first informing him of the charges against him).

Appeals

An Officer has the right to appeal to the Local Privy Council against the imposition of any penalty as provided by **Regulation 39**. All Officers are entitled to be informed of this right to appeal.

Please be guided accordingly.

A handwritten signature in blue ink, appearing to read 'J Mendez', with a stylized flourish at the end.

Mrs. Jacqueline Mendez, JP
Chief Personnel Officer (acting)