LEGAL NOTICE NO. 5

THE NATIONAL YOUTH SERVICE ACT

(No. 17 of 2018)

COMMENCEMENT

IN EXERCISE of the powers conferred by section 1 of the National Youth Service Act, 2018, the Cabinet Secretary for Public Service, Youth and Gender Affairs appoints the 1st February, 2019 as the date on which the Act shall come into operation.

Dated the 30th January, 2019.

MARGARET KOBIA,
Cabinet Secretary for Public Service,
Youth and Gender Affairs.

LEGAL NOTICE NO. 6

- THE PUBLIC OFFICER ETHICS ACT

(No. 4 of 2003)

IN EXERCISE of the powers conferred by section 33(1) of the Public Officer Ethics Act, 2003, the Witness Protection Agency establishes the following Administration Procedures—

THE WITNESS PROTECTION AGENCY PROCEDURES FOR ADMINISTRATION OF PART IV OF THE ACT

PART I—PRELIMINARY PROVISIONS

1. These procedures may be cited as the Witness Protection Agency Procedures for the Administration of Part IV of the Act.

2. In these procedures, unless the context otherwise requires—

"Act" means the Public Officer Ethics Act, 2003;

"Agency" has the meaning assigned to it under section 3A of the Witness Protection Act;

"Board" means the Witness Protection Advisory Board established under section 3P of the Witness Protection Act, 2006;

"Director" has the meaning assigned to it under section 2 of the Witness Protection Act;

"public officer" has the meaning assigned to it under section 2 of the Act; and
"two-year declaration" means a declaration made in accordance with section 26(1) of the Act.

3. These Procedures are for the Administration of Part IV of the Act in respect to the public officers for whom the Board is the responsible commission.

4. (1) The Director shall be responsible for the administration of Part IV of the Act on behalf of the Board.

(2) The Director may designate in writing public officers to assist him or her for the purpose of the application of these procedures.

PART II—PROCEDURE IN RELATION TO DECLARATIONS

5. Declarations to be submitted to the Board under Part IV of the Act shall be submitted to the Director or the public officer designated by him or her for that purpose in writing.

6. (1) The Director or a public officer designated by him or her for that purpose in writing shall issue all public officers with a declaration form if that public officer is required to file a declaration in accordance with the Act.

(2) Where a public officer is required to make a two–year declaration, the Director or a public officer designated by him or her for that purpose in writing shall provide the public officer with a declaration form before the 1st of November of the year in which the two–year declaration is to be made.

(3) Where a public officer is required to make an initial declaration or a final declaration, as the case may be, the Director or a public officer designated by him or her for that purpose in writing shall issue that public officer with the declaration form at least thirty days before that officer is to make the declaration.

7. (1) A public officer shall complete and return his or her declaration form to the Director or the public officer designated by him or her for that purpose in writing and that designated public officer shall retain that declaration in safe custody.

(2) The Director or the public officer designated by him or her for that purpose in writing shall not disclose, access, acquire or publish the information in the declaration as may be provided in the Act and these Procedures.

8. (1) The Director or the public officer designated by him or her for that purpose in writing shall maintain a register containing details of each public officer who is required to make a declaration in accordance with the Act, including—

(a) the name of the public officer;
(b) the public officer's staff personal number;
(c) the date a declaration form was delivered to the public officer;
(d) the date the completed declaration was delivered by the public officer to the Director or a public officer designated by him or her for that purpose in writing;
(e) the signature of the public officer designated by the Director to receive the declaration form on behalf of the Director;

(f) any remarks relating to the declaration.

(2) The Director or a public officer designated by him or her for that purpose in writing may maintain separate registers in respect of initial, two-year and final declarations.

PART III—PROCEDURE IN RELATION TO CLARIFICATIONS

9. Request for clarification under section 28 of the Act shall be made by the Director or the public officer designated by him or her for that purpose in writing.

10. A request for a clarification shall be made by the Director or the public officer designated by him or her for that purpose in writing only after an analysis of the declaration has been made.

11. (1) The Director, or a public officer designated by her or him for that purpose in writing shall—

(a) ascertain that all public officers who are required to submit their declarations have done so; and

(b) review each declaration to ascertain if, in the opinion of the Director, the following conditions are satisfied—

(i) on the face of the declaration, or in light of any other information the Director may have, there is no reason to suspect the declaration may be false or incomplete;

(ii) the assets of the person who submitted the declaration are proportionate to his or her income; or

(iii) the income, assets and liabilities of the person who submitted the declaration does not raise concerns of impropriety or conflict of interest.

(2) If it is ascertained that any of the conditions in subparagraph (1)(b) are not satisfied, the person who submitted the declaration shall be given an opportunity to give an explanation.

(3) If, after considering the explanation given by the person who submitted the declaration and the Director is of the opinion that any of the condition in subparagraph (1) is still not satisfied, or the Director may, in addition to any other action including investigations and civil proceedings, take disciplinary action against the officer concerned or the Director shall bring the matter to the attention of the Board.

12. The Director shall ensure that failures by public officers to comply with the requirements of Part IV of the Act are brought to the attention of the Board.

PART IV—PROCEDURE FOR THE ACCESS, DISCLOSURE, ACQUISITION OR PUBLICATION OF INFORMATION

13. (1) The Director may authorize a person to access or publish the contents of the declarations pursuant to section 30(1) of the Act and the application to access or publish the information—

(a) shall be in writing;

(b) shall demonstrate the legitimate interest in the information; and;
(c) access to or publication of that information shall be in the
furtherance of the objectives of the Act.

(2) Any authorization under sub-paragraph (1) shall be in writing.

14. (1) Information shall not be disclosed pursuant to section
30(2) of the Act to any law enforcement agency unless a written
request is provided to the Director.

(2) The Director may decline to make a disclosure under
subparagraph (1) if he or she is of the opinion that such disclosure
would be a violation of any written law.

15. Information shall not be disclosed, pursuant to section 30(1)
of the Act, to a representative of the person who declared unless the
representative provides documents that establish the authority to
receive the information.

16. Where a person has made an application to the Director or the
public officer designated by him or her for that purpose in writing in
accordance with paragraph 13—

(a) the concerned public officer shall be informed;

(b) the Director or the public officer designated by him or her
for that purpose in writing, shall give the public officer a
reasonable opportunity to make a representation in relation
to the application;

(c) the Director, or the public officer designated by him or her
for that purpose in writing, shall take into consideration the
representation by the public officer while determining the
application;

(d) the Director or the public officer designated by him or her
for that purpose in writing, shall determine the application
within reasonable time;

(e) the Director or the public officer designated by him or her
for that purpose in writing, shall maintain a register and
decisions made under this paragraph setting out the
following—

(i) the name of the applicant;

(ii) the date each application was received;

(iii) the name and staff personal number of the public officer
who was subject of the application;

(iv) a brief description of the information applied for, and a
brief description of the decision made in relation to the
application.

17. Except as provided under the Act and these Procedures, the
decision of the Board in relation to a declaration by a public officer
shall be final.

PART V—MISCELLANEOUS

18. The Director or the public officer designated by him or her
for that purpose in writing shall render the declaration records in digital
formats for ease of retrieval, reference and storage.
19. The Director may issue written instructions in relation to any matter that has not been provided for in these Procedures in relation to the application of Part IV of the Act.

20. The Board may audit or investigate the manner in which a designated public officer has discharged his or her duties under these Procedures.

Dated the 25th January, 2019.

ALICE ONDIEKI,
Director/Chief Executive,
Witness Protection Agency.