

THE WITNESS PROTECTION (AMENDMENT) ACT

No. 2 of 2010

Date of Assent: 12th May, 2010

Date of Commencement: 12th May, 2010

AN ACT of Parliament to amend the Witness Protection Act, 2006

ENACTED by Parliament of Kenya, as follows —

1. This Act may be cited as the Witness Protection (Amendment) Act, 2010. Short title.

2. The long title to the Witness Protection Act, 2006, in this Act referred to as “the principal Act”, is amended by inserting the following words immediately after the word “proceedings” — Amendment of the long title to No. 16 of 2006.

“to establish a Witness Protection Agency and provide for its powers, functions, management and administration, and for connected purposes”.

3. Section 2 of the principal Act is amended by inserting the following new definitions in their proper alphabetical sequence- Amendment of section 2 of No. 16 of 2006.

“Agency” means the Witness Protection Agency established by section 3A;

“Board” means the Witness Protection Advisory Board established by section 3P;

“Committee” means the State Corporations Advisory Committee established under the State Corporations Act; Cap. 446

“Director” means the Director of the Agency appointed under section 3E;

“Minister” means the Minister for the time being responsible for matters relating to witness protection;

“protected person” means a person who has been placed under protection in accordance with the provisions

of sections 3(2), 5 and 9;

“Tribunal” means the Witness Protection Appeals Tribunal established by section 3U.

Amendment of
section 3 of No
16 of 2006.

4. Section 3 of the principal Act is amended —

(a) by deleting subsection (1) and substituting therefor the following new subsection —

(1) For the purposes of this Act, a witness is a person who needs protection from a threat or risk which exists on account of his being a crucial witness, who -

(a) has given or agreed to give, evidence on behalf of the State in —

(i) proceedings for an offence; or

(ii) hearings or proceedings before an authority which is declared by the Minister by Order published in the Gazette to be an authority to which this paragraph applies;

(b) has given or agreed to give evidence, otherwise than as mentioned in paragraph (a), in

relation to the commission or possible commission of an offence against a law of Kenya;

(c) has made a statement to —

(i) the Commissioner of Police or a member of the Police Force; or

(ii) a law enforcement agency, in relation to an offence against a law of Kenya;

(d) is required to give evidence in a prosecution or inquiry held before a court, commission or tribunal outside Kenya -

(i) for the purposes of any treaty or agreement to which Kenya is a party; or

(ii) in circumstances prescribed by regulations made under this Act.

(b) by deleting subsection (2) and substituting therefor the following new subsection-

(2) A person shall be a protected person for the purpose of this Act if that person qualifies for protection -

(a) by virtue of being related to a witness; or

(b) on account of a testimony given by a witness; or

(c) for any other reason which the Director may consider sufficient.

Insertion of new Part 1A in No. 16 of 2006.

5. The principal Act is amended by inserting the following new Part immediately after Part I-

PART IA— ESTABLISHMENT, POWERS AND FUNCTIONS OF THE WITNESS PROTECTION AGENCY, ADVISORY BOARD AND TRIBUNAL

A. The Witness Protection Agency

Establishment of the Agency.

3A. (1) There is established an Agency to be known as the Witness Protection Agency.

(2) The Agency shall be a body corporate with perpetual succession and a common seal, and shall, in its corporate name, be capable of-

- (a) suing and being sued;
- (b) holding and alienating movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all such other acts or things as may be lawfully done by a body corporate.

Object and purpose of the Agency.

3B.(1) The object and purpose of the Agency is to provide the framework and procedures for giving special protection, on behalf of the State, to persons in possession of important information and who are facing

potential risk or intimidation due to their co-operation with prosecution and other law enforcement agencies.

(2) The nature of the special protection referred to in subsection (1) shall entail the power of the Agency to acquire, store, maintain and control firearms and ammunition and electronic or other necessary equipment, despite the provisions of any other law.

3C.(1) The functions of the Agency shall be to -

Functions of the Agency.

- (a) establish and maintain a witness protection programme;
- (b) determine the criteria for admission to and removal from the witness protection programme;
- (c) determine the type of protection measures to be applied;
- (d) advise any Government Ministry, department, agency or any other person on the adoption of strategies and measures on witness protection; and
- (e) perform such other functions as may be necessary for the better carrying out of the purpose of this Act.

3D.(1) The Agency shall have power to-

Powers of the Agency.

- (a) control and supervise its staff in a manner and for

- such purposes as may be necessary for the promotion of the purpose and the object for which the Agency is established;
- (b) administer the funds and assets of the Agency;
 - (c) receive any grants, gifts, donations or endowments and make legitimate disbursement therefrom;
 - (d) enter into association with such other persons, bodies, or organizations within or outside Kenya as it may consider desirable or appropriate in furtherance of its object and purpose;
 - (e) enter into confidential agreements with relevant foreign authorities, international criminal courts or tribunals and other regional or international entities relating to the relocation of protected persons and other witness protection measures;
 - (e) open bank accounts for the funds of the Agency;
 - (f) collect, analyze, store and disseminate information

related to witness protection;

- (g) give such instructions to a protected person as the Agency may consider necessary;
- (h) search the protected person and their property and seize items regarded by the Agency to be a threat to the protected person or another person or the integrity of the programme;
- (i) summon a public officer or other person to appear before it or to produce a document or thing or information which may be considered relevant to the functions of the Agency within a specified period of time and in such manner as it may specify;
- (j) invest the funds of the Agency not currently required for its purposes.

(2) A person who fails to comply with a direction of the Agency issued under subsection (1) (i), commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year or both.

3E.(1) There shall be a Director of the Agency who shall be appointed by the Agency on the recommendation of the Board on terms and conditions as the

Director of
the Agency.

Minister may, in consultation with the Committee, approve.

(2) The Director shall have all the powers necessary or expedient for the performance of his functions under this Act.

(3) A person shall not be appointed as Director under this section, unless that person-

(a) is a citizen of Kenya;

(b) is of high moral character and proven integrity; and

(c) is an advocate of the High Court of Kenya, and has since qualification, practiced law in the public or private sector or has been engaged in the teaching of law or research for a period of not less than ten years, and has performed duties of an administrative nature for not less than five years.

(4) The Director shall-

(a) be the chief executive of the Agency and shall be responsible for carrying out the policy decisions of the Agency, its day to day administration and management and control of other staff of the Agency;

(b) be an *ex officio* member of the Board;

- (c) cause to be kept minutes of the meetings of the Board and other records as the Agency may direct;
- (d) ensure that, in conducting its affairs, the Agency is guided by the Laws of Kenya and international best practices which shall include, but not be limited to, the development and implementation of information security measures, technical and administrative competence, and the principles of impartiality, confidentiality, objectivity and integrity; and
- (e) perform other functions as may be assigned by the Board.

(5) The Director shall hold office for a period of five years and shall be eligible for re-appointment for one further term.

(6) The Director may be removed from office for –

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;
- (b) misconduct or misbehavior;
- (c) incompetence; or
- (d) conviction for a criminal offence attracting a term of imprisonment of not less than six months without the option of a fine.

(7) Where the question of the removal of the Director arises, on grounds set out in paragraphs (a) (b) or (c), the Chief Justice shall, by notice in the Gazette, appoint a Tribunal which shall consist of a chairperson and two other members selected by the Chief Justice from among persons who hold or have held office as judges of the High Court.

(8) The Tribunal appointed under subsection 7 shall inquire into the matter and report on the facts to the Chief Justice and recommend whether or not the Director ought to be removed from office.

(9) The Chief Justice shall upon receipt of recommendations of the Tribunal under sub-section (8), communicate the same to the President.

(10) Where the question of the removal of the Director has been referred to a Tribunal under subsection (7), the President may suspend the Director from the performance of his functions.

(11) Where the Tribunal recommends to the President that the Director should not be removed from office, the President shall, where the Director is on suspension under subsection (10), lift the suspension and reinstate the Director in office.

(12) The Director shall be afforded appropriate opportunity to defend himself before the question of his removal is referred to the Tribunal, and, where the

Tribunal has commenced proceedings against him, during the proceedings.

3F.(1) The Agency may, for the proper discharge of its functions, appoint professional and technical staff and other staff upon such terms and conditions as the Minister may, in consultation with the Committee, approve.

Staff of the
Agency.

(2) The staff referred to in subsection (1) may include deputy directors, assistant directors, protection officers and other officers as the Agency may determine.

(3) A number of public officers may be transferred or seconded to the Agency as the Agency may, in consultation with the Public Service Commission, determine, for specified periods of time and on such terms and conditions as may be agreed upon between the Agency and the Public Service Commission.

(4) For the purposes of this Act, a public officer who is transferred or seconded to the Agency under subsection (3) shall be regarded as a member of the staff of the Agency and subject only to the control and direction of the Agency.

(5) In determining the terms and conditions of service for the Director and staff, the Minister and the Committee shall be guided by the following principles-

(a) that witness protection falls in a strategic sector in the administration of justice process of the country and the nature of

the service entailed requires commensurate compensation; and

- (b) that the nature of the operations of the Agency requires probity, integrity and incorruptibility.

(6) The Agency shall, with the approval of the Minister responsible for Finance, establish a suitable social security scheme for the Director and staff of the Agency.

Independence of the Agency.

3G.(1) The Agency shall have all the powers necessary or expedient for the performance of its functions under this Act without interference from any authority.

(2) The Agency shall for the purposes of accountability, report to the Minister on the overall fulfillment of its object and purpose and the performance of its functions under this Act.

Sources of funding.

3H.(1) Except as otherwise provided in section 3I, the expenditure of the Agency shall be charged on and issued out of the Consolidated Fund without further appropriation than this Act.

(2) Without prejudice to subsection (1), there may be made to and accepted by the Agency such grants, gifts, donations or bequests as the Minister may approve where the grants, gifts or donations are not made on condition that the Agency perform a function or discharge an obligation other than that specified under this Act.

Victims Compensation Fund.

3I.(1) There is established a fund to be known as the Victims Compensation Fund

(hereinafter referred to as “the Fund”) which shall vest in and be operated by the Agency.

(2) There shall be paid into the Fund -

- (a) such moneys as may be provided pursuant to section 3H for the purposes of the Fund;
- (b) such moneys as may be realized from any property forfeited to the Government in connection with a crime referred to in subsection (4);
- (c) grants, gifts, donations or bequests made to the Fund by any person and received by the Agency with the approval of the Minister, where such receipt does not occasion a conflict of interest in the performance of the Agency’s functions under this Act;
- (d) moneys earned or arising from any investment of the Fund;
- (e) all other moneys which may in any manner become payable to, or vested in, the Fund.

(3) Where under subsection (2)(b), any immovable property is assigned to the Fund, the Agency shall deal with the property in such manner as it thinks fit and may sell the property and use the proceeds of sale for the purposes for which the Fund is established.

(4) There shall be paid out of the Fund -

- (a) restitution to a victim, or to the family of a victim of a crime committed by any person during a period when such person is provided protection under this Act;
- (b) compensation for the death of a victim of a crime committed by any person during a period when such person is provided protection under this Act, to the family of such victim; and
- (c) any moneys required to meet expenses relating to any other matter incidental to or connected with the matters stated in paragraphs (a) and (b).

(5) Unless the Treasury directs otherwise, the receipts, earnings or accruals of the Fund and the balances of the Fund at the close of each financial year shall not be paid into the Consolidated Fund, but shall be retained for the purposes of the Fund.

(6) Subject to this section, the Minister may, by regulations, provide for the management and administration of the Fund and for anything incidental to or connected therewith.

Estimates of
Expenditure.

3J. (1) The financial year of the Agency shall be the period of twelve months ending on the thirtieth day of June in each year.

(2) The Agency shall within three months before the commencement of the financial year, prepare annual estimates of the expenditure of the Agency and the Board for that financial year.

(3) The annual estimates shall make provision for all estimated expenditure of the Agency and the Board for the financial year to which they relate, including a reserve fund to provide for contingency in the event of an unforeseen increase in expenditure and other emergencies not contemplated at the time of making the estimates.

(4) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Minister and the Treasury for approval.

(5) Expenditure shall not be incurred by the Agency except in accordance with the annual estimates provided under subsection (2) or in pursuance of an authorization of the advisory Board given with prior written approval of the Minister.

3K.(1) The Agency shall keep books, and other proper records of accounts of the expenditure, assets and liabilities of the Agency, which shall be classified in accordance with the information security policy of the Agency and shall be preserved or disposed of in accordance with that policy.

Accounts and
Audit.

No. 12 of 2003. (2) The annual accounts of the Agency shall be prepared, audited and reported upon in accordance with the Public Audit Act, 2003, without prejudicing the integrity or security of the Agency's operations.

Annual reports. **3L.** (1) The Agency shall within four months after the end of each financial year, make a report to the Board on the activities and operations of the Agency during the financial year.

(2) The Board shall submit the annual report to the Minister within fourteen days of receipt of the report.

(3) The Minister shall within fourteen days after receipt of the report from the Board, submit the report to the President.

Director etc. to have powers of a police officer. **3M.** For the purposes of their functions under the Act, the Director, assistant directors and protection officers shall have the powers, privileges and immunities of a police officer in addition to any other powers they may have under the Act.

Identity certificate and appointment. **3N.(1)** The Director shall issue to every member of staff of the Agency on appointment, a certificate of identity and appointment in such form as the Agency may prescribe, which shall be evidence of the appointment for the purposes of this Act.

(2) A person appointed as a member of staff of the Agency and issued with an appointment certificate referred to under subsection (1) shall have authority to carry concealed official firearms and ammunition.

30. (1) Upon the commencement of this Part, the Witness Protection Unit existing immediately before the commencement, shall stand dissolved.

Dissolution of
Witness
Protection Unit,
savings.

(2) Notwithstanding the provisions of subsection (1) —

- (a) a person who, immediately before the commencement of this Part, was the Head of the Witness Protection Unit is, for the purposes of this Part, the Director of the Agency until a Director is appointed under this Act;
- (b) a valid contract entered into on behalf of the Witness Protection Unit before the commencement of this Part, shall continue to be in force to the extent that the terms and conditions thereof are not inconsistent with the provisions of the Act.
- (c) movable and immovable property and the rights and liabilities previously attaching to the Witness Protection Unit and property held by any person on behalf of the Witness Protection Unit before the commencement of this Part shall, upon such

commencement, vest in the Agency.

B. The Witness Protection Advisory Board

Establishment
and
membership.

3P.(1) There is established a board to be known as the Witness Protection Advisory Board.

(2) The Board shall be an unincorporated body consisting of-

- (a) the Minister as chairman;
- (b) the Minister responsible for matters relating to Justice;
- (c) the Minister responsible for matters relating to Finance;
- (d) the Director-General, National Security Intelligence Service;
- (e) the Commissioner of Police;
- (f) the Commissioner of Prisons;
- (g) the Director of Public Prosecutions; and
- (h) the Chairperson on the Kenya National Commission on Human Rights.

(3) The Director shall be the secretary of the Board.

3Q.(1) The principal function of the Board shall be to advise the Agency generally on the exercise of its powers and the performance of its functions under the Act and shall, in particular but without prejudice to the generality of the foregoing -

Functions and Powers.

- (a) advise on the formulation of witness protection policies in accordance with the current law and international best practices;
- (b) have general oversight on the administration of the Agency;
- (c) approve the budgetary estimates of the Agency; and
- (d) perform any other functions as may be conferred by this Act or any other law.

(2) The Board may establish committees consisting of members of the Board to carry out any of its functions.

3R. Members of the Board shall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance.

Allowances.

3S. (1) The Board shall meet at least four times in every financial year and not more than four months shall elapse between one meeting and the next meeting.

Meetings and procedure of the Board.

(2) Unless three quarters of the members otherwise agree, at least fourteen

days' notice of a meeting shall be given to every member.

(3) The quorum at the meeting of the Board is five members of the Board or a greater number determined by the Board in respect of an important matter.

(4) The chairman shall convene and preside at meetings of the Board or in the absence of the chairman, by the vice-chairman or in both their absence, by a member of the Board elected by the members present from among their number.

(5) Matters before the Board shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

(6) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members.

Disclosure of
interest, etc.

3T.(1) A member of the Board or a person present at a meeting of the Agency who has interest in a matter for consideration by the Board or by the Agency shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board or the Agency in respect of that matter unless the Board or the Agency decides otherwise.

(2) A member of the Board, the Director of the Agency or a member of staff of the Agency shall not transact any business or trade with the Agency.

(3) A member or a person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment to a term not exceeding three years or both.

B. The Witness Protection Appeals Tribunal

3U. (1) There is established a tribunal to be known as the Witness Protection Appeals Tribunal.

Establishment of
the Witness
Protection
Appeals
Tribunal.

(2) The Tribunal shall consist of-

- (a) a chairman who shall be a person qualified to hold or who has held the office of a Judge of the High Court of Kenya, who shall be appointed by the President on the recommendation of the Attorney-General; and
- (b) two other members appointed by the Minister, who shall be persons possessing, in the Minister's opinion, expert knowledge of the matters likely to come before the Tribunal.

(3) A member of the Tribunal shall hold office for a period not exceeding five years and is eligible for re-appointment for one further term.

(4) The Tribunal shall review and determine grievances by persons not satisfied with the decisions or orders of the Agency relating to admissions or terminations of placement into the programme.

(5) The procedures for the conduct of the affairs of the Tribunal shall be in accordance with rules made by the Chief Justice.

(6) The President or the Minister, as the case may be, may remove the chairman or a member of the Tribunal if the chairman or the member-

- (a) becomes an undischarged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment for a term of not less than six months without the option of a fine;
- (c) is incapacitated by prolonged physical or mental illness, or is otherwise unfit to discharge the functions of his office.

(7) The Attorney-General shall designate a public servant to be the secretary to the Tribunal.

(8) The members of the Tribunal shall be paid such allowances and be reimbursed for such expenses as may be determined by the Minister.

(9) The expenses of the Tribunal, including the allowances of the members of the Tribunal shall be paid from the Consolidated Fund.

(10) The decision of the Tribunal shall be final.

6. The principal Act is amended by repealing section 4 and replacing it with the following new section-

Repeal and Replacement of section 4 of No. 16 of 2006.

Protective
Action.

4.(1) The Agency shall establish and maintain a witness protection programme and shall take such action as may be necessary and reasonable to protect the safety and welfare of the protected persons.

(2) Without prejudice to the generality of subsection (1), the action taken under subsection (1) may include but not be limited to-

- (a) physical and armed protection;
- (b) relocation;
- (c) change of identity; or
- (d) any other measure necessary to ensure the safety of a protected person.

(3) The Agency may request the courts, in support of the programme, to implement protection measures during court proceedings which measures may include but not be limited to-

- (a) holding *in camera* or closed sessions;
- (b) the use of pseudonyms;
- (c) the reduction of identifying information;
- (d) the use of video link; or
- (e) employing measures to obscure or distort the identity of the witness.

(4) The Agency shall put in place support measures to facilitate the integration of the protected person.

Repeal and replacement of section 5 of No. 16 of 2006.

7. The principal Act is amended by repealing section 5 and replacing it with the following new section-

Inclusion
witness
Protection
Programme.

in

5. (1) The decision to admit into or exclude any person from the programme, shall be the responsibility of the Director.

(2) A person may be included in the programme only if-

- (a) the Director has decided that the witness be so included;
- (b) the person agrees to be included; and
- (c) a memorandum of understanding in accordance with section 7 is signed by the witness or by-
 - (i) a parent or guardian of the person if the person is under the age of eighteen years; or
 - (ii) a guardian or other person who is usually responsible for the care and control of the person, if the person otherwise lacks legal capacity to sign it.

(3) Where a person has not been offered protection under the programme, a written request for his inclusion in the programme may be made to the Director by-

- (a) the witness;
- (b) a law enforcement agency;
- (c) a public prosecutor; or
- (d) a legal representative or any other intermediary.

(4) An application for the protection of a person below the age of eighteen may, in

circumstances as the Minister may specify in Regulations, be made without the consent of the person's parent or guardian.

(5) The Agency shall process the request under subsection (3) without undue delay.

(6) Where-

(a) a parent or guardian of a witness signs a memorandum of understanding because the witness was under the age of eighteen; and

(b) the memorandum is still operating after the witness turns eighteen,

the Agency may require the witness to sign the memorandum.

(7) The inclusion of a witness or protected person in the programme shall not be treated as a reward or a means of persuading or encouraging the witness to give evidence or to make a statement.

Amendment of
section 6 of No.
16 of 2006.

8. Section 6 of the principal Act is amended-

(a) in subsection (1)-

(i) by deleting the word "Attorney-General" wherever it appears and substituting therefor the word "Director".

(ii) by deleting paragraphs (d), (e) and (g);

(b) in subsection (2), by deleting the word "Attorney-General" wherever it appears and

substituting therefor the word “Director”.

9. Section 7 of the principal Act is amended-

Amendment of
section 7 of No.
16 of 2006.

(a) in subsection (3)-

- (i) by deleting the word “Attorney-General” and substituting therefor the word “Director”;
- (ii) by deleting the word “officer” and substituting therefor the words “member of staff”.

(b) in subsection (4) –

- (i) by deleting the words “Attorney-General” wherever it appears and substituting therefor the word “Director”;
- (ii) by deleting the words “ an officer” and substituting therefor the words “a member of staff”;

(c) in subsection (5) –

- (i) by deleting the word “Attorney-General” and substituting therefor the word “Director”;
- (ii) by deleting the words “ an officer” and substituting therefor the words “a member of staff”;

(d) in subsection (6), by deleting the word “Attorney-General” and substituting therefor the word “Director”.

10. Section 8 of the principal Act is amended by deleting the word “Attorney-General” and substituting therefor the word “Director”.

Amendment of
section 8 of No.
16 of 2006.

Amendment of
section 9 of No.
16 of 2006.

11. Section 9 of the principal Act is amended-

- (a) in subsection (1), by deleting the word “Attorney-General” and substituting therefor the word “Director”;
- (b) in subsection (2), by deleting the word “Attorney-General” and substituting therefor the word “Director”.

Amendment of
section 10 of
No. 16 of 2006.

12. Section 10 of the principal Act is amended-

- (a) in subsection (1), by deleting the word “Attorney-General” and substituting therefor the word “Director”;
- (b) in subsection (2), by deleting the word “Attorney-General” whenever it appears and substituting therefor the word “Director”;

Amendment of
section 11 of
No. 16 of 2006.

13. Section 11 of the principal Act is amended by deleting the word “Attorney-General” wherever it appears and substituting therefor the word “Director”.

Amendment of
section 12 of
No. 16 of 2006.

14. Section 12 of the principal Act is amended by deleting the word “Attorney-General” and substituting therefor the word “Director”.

Amendment of
section 13 of
No. 16 of 2006.

15. Sections 13 of the principal Act is amended by deleting the word “Attorney-General” and substituting therefor the word “Director”.

Amendment of
section 14 of
No. 16 of 2006.

16. Section 14 of the principal Act is amended-

- (a) in subsection (1), by deleting the word “Attorney-General” and substituting therefor the word “Agency”;
- (b) in subsection (2), by deleting the word

“Attorney-General” and substituting therefor the word “Agency”.

17. Section 17 of the principal Act is amended in paragraph (c) by deleting the word “Attorney-General” and substituting therefor the word “Agency”. Amendment of section 17 of No. 16 of 2006.

18. Section 18 of the principal Act is amended in subsection (2), by deleting the word “Attorney-General” and substituting therefor the word “Agency”. Amendment of section 18 of No. 16 of 2006.

19. Section 19 of the principal Act is amended in subsection (1) by deleting the word “Attorney-General” wherever it appears in paragraph (a), (b), and (c) and substituting therefor the word “Agency”; Amendment of section 19 of No. 16 of 2006.

20. Section 20 of the principal Act is amended by deleting the word “Attorney-General” and substituting therefor the word “Agency”; Amendment of section 20 of No. 16 of 2006.

21. Section 22 of the principal Act is amended in subsection (2) by deleting the word “Attorney-General” and substituting therefor the word “Agency”. Amendment of section 22 of No. 16 of 2006.

22. Section 23 of the principal Act is amended- Amendment to section 23 of No. 16 of 2006.

(a) in subsection (1) (b), by deleting the word “Attorney-General” and substituting therefor the word “Director”;

(b) in subsection (3), by deleting the word “Attorney-General” and substituting therefor the word “Director”.

23. Section 25 of the principal Act is amended by deleting the word “Attorney-General” and substituting therefor the word “Agency”. Amendment of section 25 of No. 16 of 2006.

Amendment of
section 26 of
No. 16 of 2006.

24. Sections 26 of the principal Act is amended by deleting the word “Attorney-General” and substituting therefor the word “Agency”.

Amendment of
section 27 of
No. 16 of 2006.

25. Section 27 of the principal Act is amended in subsection (1)-

(a) in subsection (1) by deleting the word “Attorney-General” and substituting therefor the word “Agency”;

(b) in subsection (2) by deleting the word “Attorney-General” wherever it appears and substituting therefor the word “Agency”.

Amendment of
section 28 of
No. 16 of 2006.

26. Sections 28 of the principal Act is amended-

(a) in subsection (1), by deleting the word “Attorney-General” wherever it appears and substituting therefor the word “Director”;

(b) in subsection (2), by deleting the word “Attorney-General” and substituting therefor the word “Director”.

Amendment of
section 29 of
No. 16 of 2006.

27. Section 29 of the principal Act is amended by deleting the word “Attorney-General” and substituting therefor the word “Director”.

Insertion of
new sections
30A, 30B, 30C,
30D and 30E in
No. 16 of 2006.

28. The principal Act is amended by inserting the following new section immediately after section 30 –

Prohibition of
false
representation.

30A. A person who, without prior written approval of the Agency, in connection with an activity carried on by him takes, assumes, uses or in any manner publishes a name, description, title or

symbol conveying or purporting to indicate or convey or which is calculated or is likely to lead other persons to believe or infer that the activity is carried on under or by virtue of the provisions of this Act or on behalf of the Agency, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or both.

30B. A person, who-

- (a) not being the Director or a member staff of the Agency, by words, conduct or demeanour falsely represents himself to be the Director or member of staff of the Agency;
- (b) exercises or attempts to exercise undue influence over the Director or staff of the Agency which is calculated to prevent the Director or staff from carrying out their duties or encouraging them to perform an act which is in conflict with their duties; or
- (c) is an accomplice to the commission of an act whereby a lawful order given to a member of staff or a regulation or directive or other rule may be evaded,

commits an offence and is liable

Offences in connection with staff of the Agency.

on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or both.

Obstruction of the staff of the Agency.

30C. A person who assaults, resists or willfully obstructs a member of staff of the Agency or a person acting under the direction of that member of staff in the due execution of his duties under this Act, commits an offence and is liable on conviction-

- (a) for a first offence, to a fine not exceeding one million shillings; and
- (b) for a second or subsequent offence, to imprisonment for a term not exceeding five years.

Prohibition of access to premises of the Agency.

30D. (1) The Minister responsible for internal security may, on the request of the Director, by notice in the Gazette or in any other manner as it may be necessary in the circumstances, prohibit or restrict access to land or premises under the control of the Agency.

(2) The Agency may take or cause to be taken measures as it may consider necessary for the security of, or the application of, a prohibition of or a restriction on access to land or premises referred to in subsection (1), and may in connection with measures taken cause notices to be published or warning notices to be erected as it may, in each particular case, consider necessary.

(3) A person who enters upon or is on land or premises in contravention of a prohibition or restriction under subsection (1) commits an offence and is liable on conviction to a fine of not less than five hundred thousand shillings, or to imprisonment for a term not exceeding three years or to both.

30E. (1) Subject to section 31(2), a person shall not, without the written consent given by or on behalf of the Agency, publish or disclose to another person the contents of a document, communication or information which the Agency itself has not made public and which has come to the persons knowledge in the course of his duty or association with the Agency under this Act, or, having information which has been published or disclosed without the authority, publish or communicate that information to another person.

Prohibition on disclosure without consent.

(2) The limitation on disclosure in this section shall not be construed to prevent the disclosure of criminal activity by the Director or staff of the Agency.

(3) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to imprisonment for a term of not less than ten years.

Amendment to
section 31 of No.
16 of 2006.

29. Section 31 of the principal Act is amended-

(a) in subsection (1)-

- (i) by deleting the word“
Attorney-General”
appearing in paragraph
(c) and substituting
therefor the word
‘Director’
- (ii) by deleting the words“
not exceeding seven
years” and substituting
therefor the words
“not exceeding ten
years”;

(b) in subsection (2) –

- (i) by deleting the word
“Attorney-General”
appearing in paragraph
(a) and substituting
therefor the word
“Agency”.
- (ii) by deleting paragraph
(b) and substituting
therefor the following
new paragraph—

“(b) which has been
determined by the
Agency for purposes
of investigation; or,”

(c) in subsection (3), by deleting
the word “Attorney-
General” appearing in

paragraph (a) and substituting therefor the word "Director".

30. The principal Act is amended by repealing section 32 and replacing it with the following new section -

Repeal and replacement of Section 32 of No. 16/2006.

Non-compellability of witnesses.

32. Except as otherwise provided by an order of the High Court, a person who acquires knowledge or information as a result of association or connection, duty or service with the programme or the Agency shall not be compellable, in proceedings in a court, tribunal or commission of inquiry, to produce any document or to divulge or communicate a matter or a thing related to the exercise of functions under this Act or the protection of witnesses included in the programme.