

Act No: No. 4 of 2003

Act Title: PUBLIC OFFICER ETHICS

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PART I – PRELIMINARY

1. Short title

This Act may be cited as the Public Officer Ethics Act, 2003.

2. Interpretation

In this Act, unless the context otherwise requires—

"Code of Conduct and Ethics" means, for a public officer, the Code of Conduct and Ethics established under Part II for that public officer;

"Commission" means a commission, committee or other body having functions under this Act by virtue of section 3;

"Minister" means the Minister responsible for integrity issues;

"public officer" means any officer, employee or member, including an unpaid, part-time or temporary officer, employee or member, of any of the following—

- (a) the Government or any department, service or undertaking of the Government;
- (b) the National Assembly or the Parliamentary Service;
- (c) a local authority;
- (d) any corporation, council, board, committee or other body which has power to act under and for the purposes of any written law relating to local government, public health or undertakings of public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any such law;
- (e) a co-operative society established under the Co-operative Societies Act (No. 12 of 1997):

Provided that this Act shall apply to an officer of a co-operative society within the meaning of that Act;

(f) a public university;

(g) any other body prescribed by regulation for the purposes of this paragraph;

"responsible Commission", in relation to a public officer, means the Commission determined under section 3 to be the responsible Commission in relation to that public officer.

3. Determination of responsible Commission

(1) This section determines what body is the responsible Commission for a public officer for the purposes of this Act.

(2) The committee of the National Assembly responsible for the ethics of members is the responsible Commission for—

(a) members of the National Assembly including, for greater certainty, the President, the Speaker and the Attorney-General;

(b) members of the Electoral Commission and the Public Service Commission;

(c) the Controller and Auditor-General; and

(d) Directors and Assistant Directors of the Kenya Anti-Corruption Commission.

(3) The Public Service Commission is the responsible Commission for the public officers in respect of which it exercises disciplinary control and for the public officers described in paragraphs (d) and (e) of section 107(4) of the Constitution and for public officers who are officers, employees or members of state corporations that are public bodies.

(4) The Judicial Service Commission is the responsible Commission for judges, magistrates and the public officers in respect of which it exercises disciplinary control.

(5) The Parliamentary Service Commission is the responsible Commission for the public officers in respect of which it exercises disciplinary control.

(6) The Electoral Commission is the responsible Commission for councillors of local authorities.

(7) The Teachers Service Commission established under the Teachers Service Commission Act (Cap. 212) is the responsible Commission for teachers registered under that Act.

(8) The Defence Council established under the Armed Forces Act (Cap. 199) is the responsible Commission for members of the armed forces, within the meaning of that Act.

(9) The National Security Intelligence Council established under the National Security Intelligence Service Act, 1998 (No. 11 of 1998) is the responsible Commission for members of the National Security Intelligence Service established under that Act.

(9A) The Witness Protection Advisory Board established under the Witness Protection Act, 2003 shall be the responsible commission for the members of the Witness Protection Agency established under that Act.

(10) The responsible Commission for a public officer for which no responsible Commission is otherwise specified under this section is the commission, committee or other body prescribed by regulation.

(11) A body that is the responsible Commission for a public officer by virtue of exercising disciplinary control over that public officer remains the responsible Commission notwithstanding the delegation of any disciplinary powers with respect to that public officer.

4. Certain delegations by Public Service Commission

(1) Subject to subsection (2), the Public Service Commission may, by notice in the Gazette delegate to another person or body any of its powers and functions under Part IV or Part V with respect to classes of public officers specified by the Public Service Commission and that person or body shall be deemed to be the responsible Commission with respect to such delegated powers and functions.

(2) The Public Service Commission may delegate powers and functions only with respect to public officers in a job group below job group "M" or its equivalent.

PART II – SPECIFIC CODES OF CONDUCT AND ETHICS

5. Establishment of specific Codes

(1) Each Commission shall establish a specific Code of Conduct and Ethics for the public officers for which it is the responsible Commission.

(2) The specific Code established by a Commission shall include all the requirements in the general Code of Conduct and Ethics under Part III and may—

(a) include requirements beyond what is required under the general Code of Conduct and Ethics under Part III; and

(b) set out how any requirements of the specific or general Code may be satisfied.

(3) No requirement shall be included in a specific Code that would infringe any independence of a public officer provided for by the Constitution or an Act and any requirement of the specific Code or in the general Code of Conduct and Ethics under Part III is of no effect to the extent that it would do so.

(4) Until a Commission has established a specific Code under this section, the general Code of Conduct and Ethics under Part III shall apply as though it were the specific Code established by the Commission.

6. Publication of specific Codes

(1) Each Commission shall publish the specific Code of Conduct and Ethics established by it in the Gazette within ninety days after the Commencement of this Act.

(2) In relation to a Commission that is prescribed by regulation under section 3(10) as a responsible Commission, this section shall apply as though the reference in subsection (1) to the commencement of this Act were a reference to the commencement of the regulation.

PART III – GENERAL CODE OF CONDUCT AND ETHICS

7. Part sets out general Code

- (1) This Part sets out a general Code of Conduct and Ethics for public officers.

8. Performance of duties, general

A public officer shall, to the best of his ability, carry out his duties and ensure that the services that he provides are provided efficiently and honestly.

9. Professionalism

A public officer shall—

- (a) carry out his duties in a way that maintains public confidence in the integrity of his office;
- (b) treat the public and his fellow public officers with courtesy and respect;
- (c) to the extent appropriate to his office, seek to improve the standards of performance and level of professionalism in his organisation;
- (d) if a member of a professional body, observe the ethical and professional requirements of that body;
- (e) observe official working hours and not be absent without proper authorisation or reasonable cause;
- (f) maintain an appropriate standard of dress and personal hygiene; and
- (g) discharge any professional responsibilities in a professional manner.

10. Rule of law

- (1) A public officer shall carry out his duties in accordance with the law.

(2) In carrying out his duties, a public officer shall not violate the rights and freedoms of any person under Part V of the Constitution.

11. No improper enrichment

(1) A public officer shall not use his office to improperly enrich himself or others.

(2) Without limiting the generality of subsection (1), a public officer shall not—

(a) except as allowed under subsection (3) or (4), accept or request gifts or favours from a person who—

(i) has an interest that may be affected by the carrying out, or not carrying out, of the public officer's duties;

(ii) carries on regulated activities with respect to which the public officer's organisation has a role; or

(iii) has a contractual or similar relationship with the public officer's organisation;

(b) improperly use his office to acquire land or other property for himself or another person, whether or not the land or property is paid for; or

(c) for the personal benefit of himself or another, use or allow the use of information that is acquired in connection with the public officer's duties and that is not public.

(3) A public officer may accept a gift given to him in his official capacity but, unless the gift is a non-monetary gift that does not exceed the value prescribed by regulation, such a gift shall be deemed to be a gift to the public officer's organisation.

(4) Subsection (2)(a) does not prevent a public officer from accepting a gift from a relative or friend given on a special occasion recognised by custom.

(5) Subsection (2)(c) does not apply to the use of information for educational or literacy purposes, research purposes or other similar purposes.

12. Conflict of interest

(1) A public officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties.

(2) Without limiting the generality of subsection (1), a public officer shall not hold shares or have any other interest in a corporation, partnership or other body, directly or through another person, if holding those shares or having that interest would result in the public officer's personal interests conflicting with his official duties.

(3) A public officer whose personal interests conflict with his official duties shall—

(a) declare the personal interests to his superior or other appropriate body and comply with any directions to avoid the conflict; and

(b) refrain from participating in any deliberations with respect to the matter.

(4) Notwithstanding any directions to the contrary under subsection (3)(a), a public officer shall not award a contract, or influence the award of a contract, to—

(a) himself;

(b) a spouse or relative;

(c) a business associate; or

(d) a corporation, partnership or other body in which the officer has an interest.

(5) The regulations may govern when the personal interests of a public officer conflict with his official duties for the purposes of this section.

(6) In this section, "personal interest" includes the interest of a spouse, relative or business associate.

13. Collections and harambees

(1) A public officer shall not—

(a) use his office or place of work as a venue for soliciting or collecting harambees; or

(b) either as a collector or promoter of a public collection, obtain money or other property from a person by using his official position in any way to exert pressure.

(2) In this section, "collection", "collector" and "promoter" have the same meanings as in section 2 of the Public Collections Act (Cap. 106).

14. Acting for foreigners

(1) No public officer shall, in a manner that may be detrimental to the security interests of Kenya, be an agent for, or further the interests of, a foreign government, organisation or individual.

(2) For the purposes of this section—

(a) an individual is foreign if the individual is not a citizen of Kenya;

(b) an organisation is foreign if it is established outside Kenya or if it is owned or controlled by foreign governments, organisations or individuals.

15. Care of property

(1) A public officer shall take all reasonable steps to ensure that property that is entrusted to his care is adequately protected and not misused or misappropriated.

(2) A person who contravenes subsection (1) shall be personally liable for losses resulting from the contravention.

16. Political neutrality

(1) A public officer shall not, in or in connection with the performance of his duties as such—

(a) act as an agent for, or so as to further the interest of, a political party; or

(b) indicate support for or opposition to any political party or candidate in an election.

(2) A public officer shall not engage in political activity that may compromise or be seen to compromise the political neutrality of his office.

(3) This section does not apply to a member of the National Assembly or a councillor of a local authority.

17. Nepotism, etc

A public officer shall not practice nepotism or favouritism.

18. Giving of advice

A public officer who has a duty to give advice shall give honest and impartial advice without fear or favour.

19. Misleading the public, etc

A public officer shall not knowingly give false or misleading information to members of the public or to any other public officer.

20. Conduct of private affairs

(1) A public officer shall conduct his private affairs in a way that maintains public confidence in the integrity of his office.

(2) A public officer shall not evade taxes.

(3) A public officer shall not neglect his financial obligations or neglect to settle them.

21. Sexual harassment

(1) A public officer shall not sexually harass a member of the public or a fellow public officer.

(2) In subsection (1), "sexually harass" includes doing any of the following, if the person doing it knows or ought to know that it is unwelcome—

(a) making a request or exerting pressure for sexual activity or favours;

(b) making intentional or careless physical contact that is sexual in nature; and

(c) making gestures, noises, jokes or comments, including innuendoes, regarding another person's sexuality.

22. Selection, etc. of public officers

A public officer shall practice and promote the principle that public officers should be—

(a) selected on the basis of integrity, competence and suitability; or

(b) elected in fair elections.

23. Submitting of declarations, etc

A public officer shall submit any declaration or clarification required under Part IV to be submitted or made by him.

24. Acting through others

(1) A public officer contravenes the Code of Conduct and Ethics if—

(a) he causes anything to be done through another person that would, if the public officer did it, be a contravention of the Code of Conduct and Ethics; or

(b) he allows or directs a person under his supervision or control to do anything that is a contravention of the Code of Conduct and Ethics.

(2) Subsection (1)(b) does not apply with respect to anything done without the public officer's knowledge or consent if the public officer took reasonable steps to prevent it.

25. Reporting improper orders

If a public officer considers that anything required of him is a contravention of the Code of Conduct and Ethics or is otherwise improper or unethical, he shall report the matter to an appropriate authority.

PART IV – DECLARATIONS OF INCOME, ASSETS AND LIABILITIES

26. Declaration required

(1) Every public officer shall, once every two years prescribed by section 27, submit to the responsible Commission for the public officer a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of 18 years.

(2) The declaration shall be in the form set out in the Schedule and shall include the information required by the form.

27. When declarations must be made

(1) The declaration shall be submitted in the December of every second year.

(2) The statement date of a declaration under subsection (1) shall be the first day of November of the year in which the declaration is required.

(3) Within thirty days after becoming a public officer, the public officer shall submit an initial declaration.

(4) The statement date of an initial declaration under subsection (3) shall be the date the public officer became a public officer.

(5) Within thirty days after ceasing to be a public officer, the former public officer shall submit a final declaration.

(6) The statement date of a final declaration under subsection (5) shall be the date the public officer ceased to be a public officer.

(7) The following shall apply with respect to a person who is a public officer on the day the administrative procedures relevant to that public officer are first published under section 33—

(a) the public officer shall submit an initial declaration within sixty days after the administrative procedures are published; and

(b) the statement date of an initial declaration under paragraph (a) shall be the date the administrative procedures are published.

28. Clarifications

(1) A person who has submitted a declaration to a Commission shall provide, without undue delay, any clarification requested by the Commission if the request is in writing and is made within six months after the declaration was submitted to the Commission.

(2) Without limiting what a request for clarification may include, such a request may include—

(a) a request that any information that may have been omitted be provided; or

(b) a request that any discrepancy or inconsistency, including a discrepancy or inconsistency arising because of information other than information included on the declaration, be explained or corrected.

29. Information to be correct

A person submitting a declaration or providing a clarification shall ensure that the declaration or clarification is correct, to the best of his knowledge.

30. Access to declarations

(1) The contents of a declaration or clarification under this Act shall be accessible to any person upon application to the responsible Commission in the prescribed manner if the applicant shows to the satisfaction of the responsible Commission that he or she has a legitimate interest and good cause in furtherance of the objectives of this Act, in such declaration or clarification:

Provided that prior to the responsible Commission making an affirmative decision under this section, it shall grant the opportunity to the affected party to make representations on the matter.

(2) No information obtained pursuant to subsection (1) shall be published or in any way made public except with prior written authority of the responsible Commission.

(3) Any person who—

(a) publishes or in any way makes public any information obtained under the foregoing sections without prior permission of the responsible Commission;

(b) knowingly republishes or otherwise disseminates or discloses to another person information to which this section relates where—

(i) such information was disclosed to himself or to some other person; or

(ii) such information was obtained in contravention of this Act,

shall be guilty of an offence and liable on conviction to imprisonment for five years or to a fine not exceeding five hundred thousand shillings, or to both.

31. Retention of information

A Commission shall keep information collected under this Part concerning a person for at least five years after the person ceased to be a public officer.

32. Offences

A person who fails to submit a declaration or clarification as required under this Part or who submits, in such a declaration or clarification, information that he knows, or ought to know, is false or misleading, is

guilty of an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

33. Administrative procedures

(1) Each Commission shall establish procedures for the administration of this Part with respect to the public officers for which it is the responsible Commission.

(2) The administrative procedures shall be established and published in the Gazette within ninety days after the commencement of this Act.

(3) In relation to a Commission that is prescribed by regulation under section 3(10) to be a responsible Commission, subsection (2) shall apply as though the reference in that subsection to the commencement of this Act were a reference to the commencement of the regulation.

(4) Nothing in section 27 requires a public officer to submit a declaration before publication, under this section, of the relevant administrative procedures by the responsible Commission.

34. Amendment of Schedule

(1) Subject to subsection (2), the Minister may, by notice in the Gazette, amend the Schedule to this Act.

(2) The Minister may not amend the Schedule to this Act unless a draft of the amendment has been laid before, and has been approved by resolution of, the National Assembly.

PART V – ENFORCEMENT OF CODE OF CONDUCT AND ETHICS

35. Investigations

(1) The responsible Commission for a public officer may investigate to determine whether the public officer has contravened the Code of Conduct and Ethics.

(2) An investigation may be made on the Commission's own initiative or pursuant to a complaint by any person.

(3) The Commission may refer a matter to another appropriate body for investigation and that body shall investigate the matter within a reasonable time and submit a report to the Commission on its findings.

(4) An investigation may be conducted even if the subject of the investigation has ceased to be a public officer.

36. Disciplinary action

(1) If an investigation discloses that the public officer has contravened the Code of Conduct and Ethics, the responsible Commission shall, within the time period prescribed by subsection (2)—

(a) take the appropriate disciplinary action; or

(b) if the responsible Commission does not have the power to take the appropriate disciplinary action, refer the matter to a body or person who does have that power.

(2) The time period referred to in subsection (1) is—

(a) within thirty days after the completion of the investigation; or

(b) if another body investigated the matter under section 35(3), within thirty days after the responsible Commission receives the report of that body.

(3) The responsible Commission shall inform the public officer concerned of any action it takes or intends to take under subsection (1) either before it takes the action or within thirty days after it does so.

(4) Subsection (3) does not affect any legal requirement to inform a public officer earlier than is required under that subsection.

(5) The regulations made under section 42 may govern what disciplinary action is appropriate for the purposes of subsection (1).

37. Publication of actions

(1) A Commission shall ensure that any action it takes under section 36(1) is made public in the manner prescribed.

(2) In making its action public the Commission shall ensure that at least the following is made public—

(a) a description of the public officer's contravention of the Code of Conduct and Ethics including the circumstances of the contravention and the degree of the public officer's culpability;

(b) a summary of the evidence upon which the finding that there was a contravention was based; and

(c) a description of the disciplinary action the Commission took against the public officer or, if the Commission referred the matter to another body or person, the disciplinary action the Commission considered appropriate and the disciplinary action taken by that other body or person.

38. Referral for possible civil or criminal proceedings

If, as a result of an investigation under this Part, the Commission is of the view that civil or criminal proceedings ought to be considered, the Commission shall refer the matter to the Attorney-General or other appropriate authority.

39. Exceptions

This Part (section 35 excepted) does not apply with respect to offices for which the Constitution provides a procedure for removal for misbehaviour.

PART VI – GENERAL

40. Obstruction or hindering persons under Act

A person who, without lawful excuse, obstructs or hinders a person acting under this Act is guilty of an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

41. Divulging information acquired under Act

A person who, without lawful excuse, divulges information acquired in the course of acting under this Act is guilty of an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

Provided that the provision of this section as to divulging of information without lawful excuse shall only apply to exempt information provided for in section 6.

42. Regulations

The Minister may make regulations for the better carrying out of the provisions of this Act.

Schedule

[s. 26]

Declaration of Income, Assets and Liabilities

1. Name of public officer

(Surname)

(First name)

(Other names)

2. Birth information:

(a) Date of birth _____

(b) Place of birth _____

3. Marital status _____

4. Address:

(a) Postal address _____

(b) Physical address _____

5. Employment information:

(a) Designation . _____

(b) Name of employer _____

(c) Nature of employment (permanent, temporary, contract, etc.) _____

6. Names of spouse or spouses:

(Surname)

(First name)

(Other names)

7. Names of dependent children under the age of 18 years:

(Surname)

(First name)

(Other names)

8. Financial statement for _____

(A separate statement is required for the officer and each spouse and dependent child under the age of 18 years. Additional sheets should be added as required.)

(a) Statement date _____

(b) Income, including emoluments, for periods from _____ to _____

(Including, but not limited to, salary and emoluments and income from investments. The period is from the previous statement date to the current statement date. For an initial declaration, the period is the year ending on the statement date.)

Description

Approximate amount

(c) Assets (as of the statement date)

(Including, but not limited to, land, buildings, vehicles, investments and financial obligations owed to the person for whom the statement is made.)

Description (include location of asset where applicable)

Approximate value

(d) Liabilities (as of the statement date)

Description

Approximate amount

9. Other information that may be useful or relevant:

I solemnly declare that the information I have given in this declaration is, to the best of my knowledge, true and complete.

Signature of officer: _____

Date: _____

WITNESS:

Signature: _____

Name: _____

Address: _____