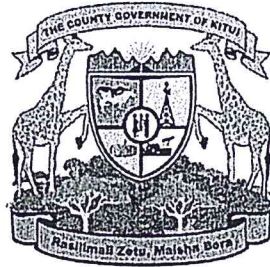


**REPUBLIC OF KENYA**



**COUNTY GOVERNMENT OF KITUI**

**THE COUNTY ASSEMBLY**

**SECOND ASSEMBLY- FIFTH SESSION (2021)**

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**COMMITTEE ON POWERS AND PRIVILEGES**

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**REPORT ON THE PROCEDURES FOR  
ADMINISTRATION OF PART IV OF THE PUBLIC  
OFFICER ETHICS ACT (PROCEDURES FOR  
DECLARATION OF INCOME, ASSETS AND  
LIABILITIES BY MEMBERS OF COUNTY  
ASSEMBLY).**

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**The Clerk's Chamber,  
County Assembly of Kitui,  
Assembly Buildings,  
Kitui, Kenya.**

**OCTOBER, 2021**

**TABLE OF CONTENTS**

**PREFACE**

Mandate of the Committee ..... 4  
Membership..... 4  
Legal Basis ..... 4  
Background and Justification ..... 5  
Sittings ..... 6

**LEGAL FRAMEWORK**

Governing laws ..... 7

**THE PROCEDURES** ..... 10

**COMMITTEE RESOLUTION** ..... 24

## **ABBREVIATIONS**

<b>CAPAA</b>	County Assemblies Powers and Privileges Act
<b>CASB</b>	County Assembly Service Board
<b>EACC</b>	Ethics and Anti- Corruption Commission
<b>MCA</b>	Member of County Assembly
<b>POEA</b>	Public Officer Ethics Act

## **LIST OF ANNEXURES**

<b>Annex 1-</b>	Signed list of Members adopting the Report
<b>Annex 2-</b>	Letter from EACC requesting the Committee to Develop Procedures on Declaration of Income, Assets and Liabilities
<b>Annex 3-</b>	Public Officer Ethics Act, 2019 (2003)
<b>Annex 4-</b>	Leadership and Integrity Act, 2012
<b>Annex 5-</b>	Public Officer Ethics (Management, Verification and Access to Financial Declarations) Regulations, 2011
<b>Annex 6-</b>	EACC Integrity Song: Tuangamize Ufisadi

## **PREFACE**

### **Honourable Members,**

On behalf of the Committee on Powers and Privileges, I wish to present to this House the Report on the Procedures for Administration of Part IV of the Public Officer Ethics Act (Procedures for Declaration of Income, Assets and Liabilities by Members of County Assembly).

### **Membership of the Committee**

The Committee is currently composed of the following Members:

- |                               |                          |
|-------------------------------|--------------------------|
| 1. Hon. George M. Ndotto      | The Speaker/ Chairperson |
| 2. Hon. Anthony Mbiti         | Vice Chairperson         |
| 3. Hon. Colleta Kimanzi       | Member                   |
| 4. Hon. Alex Mbili            | “                        |
| 5. Hon. Eliud Ndinguri        | “                        |
| 6. Hon. Jefason N. Kiruru     | “                        |
| 7. Hon. Anne M. Mumo          | “                        |
| 8. Hon. Fredrick Nthuri       | “                        |
| 9. Hon. Nicholas Mwalali      | “                        |
| 10. Hon. Sylvester M. Kitheka | “                        |
| 11. Hon. Charity Mwangangi    | “                        |

### **Establishment and Mandate of the Committee**

The County Assembly Committee on Powers and Privileges is established under section 15(1) of the County Assemblies Powers and Privileges Act, 2017 (CAPP). The Committee is mandated under this Act to check the conduct of Members of the County Assembly amongst other roles.

### **Legal Basis**

#### **Honourable Members,**

The Public Officer Ethics Act 2003 (POEA) requires that each public officer must adhere to a code of conduct and ethics for public officers and further requires financial declaration from certain public officers.

Under section 3 of the POEA, the law assigns different Commissions or Committees to be in charge of the implementation of the provisions of the said Act.

Section 3(2)(a) partly states that the Committee of the National Assembly responsible for the ethics of Members is the responsible Commission for Members of the National Assembly. This section applies to the County Assembly with necessary modifications.

Further, Section 3(11) provides that 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.

Section 33 of the POEA provides for Administrative procedures and states as follows:

(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.”

### **Background information and Justification**

#### **Honourable Members,**

The County Assembly Committee on Powers and Privileges is the responsible Commission/ Committee for purposes of implementing the POEA, pursuant to section 3(2) and (11) of the said Act as outlined above.

In line with section 3(11) as read together with section 33 of the POEA, and the provisions of the CAPP, the Ethics and Anti- Corruption Commission (EACC) wrote to the Committee as the responsible Commission/ Committee through the Office of the Clerk vide a letter received on 23<sup>rd</sup> March, 2021 requesting the Committee to come up with the procedures in line with the template of the Procedures provided by the EACC in order to guide the County Assembly State Officers in complying with the POEA.

**Sittings**

The Committee held several sittings at Pride Inn Paradise Mombasa as from 12<sup>th</sup> to 17<sup>th</sup> April, 2021 to consider the draft administrative procedures and identified various gaps in the document. As a result, the Committee resolved to undertake a capacity building exercise to be facilitated by the Ethics and Anti- Corruption Commission (EACC) on the matter at hand and integrity compliance under Chapter Six of the Constitution. The capacity building exercise was held as from 11<sup>th</sup> to 16<sup>th</sup> October, 2021 at PrideInn Paradise Mombasa and the Committee subsequently came up with this Report for consideration and adoption by the House.

**Acknowledgement**

I wish to record the Committee’s gratitude to the House, for having entrusted it with this important task. The Committee is also thankful to the Office of the Speaker and Clerk of Assembly for the support accorded during consideration of the matter at hand.

It is therefore my pleasant duty and privilege on behalf of the Committee on Powers and Privileges, to table this Report for consideration and adoption by the House.

SIGNATURE: ..... *G.M. Ndotto* ..... DATE: *15/10/2021* .....

**HON. GEORGE M. NDOTTO,**

**SPEAKER/ CHAIRPERSON, COMMITTEE ON POWERS AND PRIVILEGES.**

**COUNTY ASSEMBLY OF KITUI.**

## LEGAL FRAMEWORK

### **Honourable Members,**

The relevant legal provisions governing the matter under consideration are as outlined below:

#### **1. The Public Officer Ethics Act 2003**

##### Section 26. Declaration required

- (1) Every public officer shall, once every two years as 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.

##### Section 27. When declarations must be made

- (1) The declaration shall be submitted in 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.

### Section 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.

### **2. The Public Officer Ethics (Management, Verification and Access to Financial Declarations) Regulations, 2011**

These regulations govern the management of declarations and access to declaration forms.

## **THE PROCEDURES FOR DECLARATION OF ASSETS, INCOME AND LIABILITIES**

### **Overview of the Procedures**

#### **Honourable Members,**

An overview of the document under consideration is as follows:

- i) Part I- Preliminary: provides for the citation, interpretation and scope of application.
- ii) Part II- Procedure in relation to declarations: provides for the administration of the procedures, the procedure to be followed in submitting declarations, the register of declarations, reports to the EACC on compliance.
- iii) Part III- Procedure in relation to clarifications: outlines procedure followed in requests for clarifications.



- iv) Part IV- Procedure for access or publication of information in a declaration: outlines procedure for access and publication of information in a declaration, access by a declarant, proof of identity, applicable regulations, etc.
- v) Part V- Procedure in relation to storage, retention and retrieval of declarations and clarifications: outlines the mechanisms for storage, retention and retrieval, and cessation of retention of information.
- vi) Part VI- General provisions: outlines the powers of the Committee, representations to the Committee, review of the Procedures, etc.
- vii) Appendix I- Form to be used to request access a declaration or clarification.
- viii) Appendix II- Form to be used in acknowledgment of request for access for a declaration or clarification.

The main text of the Procedures is as outlined below:

## **THE PUBLIC OFFICER ETHICS ACT (No. 4 of 2003)**

THE KITUI COUNTY ASSEMBLY POWERS AND PRIVILEGES COMMITTEE PROCEDURES FOR ADMINISTRATION OF PART IV OF THE ACT.

### **ARRANGEMENT OF PARAGRAPHS**

#### **PART I—PRELIMINARY**

1. Citation
2. Interpretation
3. Scope of Application

#### **PART II – PROCEDURE IN RELATION TO DECLARATIONS**

4. Administration of the Procedures
5. Procedure in Submitting Declarations
6. Completion and Submission of Declarations
7. Register of Declarations
8. Reports on Compliance

#### **PART III—PROCEDURE IN RELATION TO CLARIFICATIONS**

9. Requests for Clarifications

#### **PART IV— PROCEDURE FOR ACCESS OR PUBLICATION OF INFORMATION IN A DECLARATION**

10. Access and Publication of Information in a Declaration
11. Access by Declarant
12. Proof of Identity
13. Decision to be Final
14. Regulations to Apply to this Part.

#### **PART V— PROCEDURE IN RELATION TO STORAGE, RETENTION AND RETRIEVAL OF DECLARATION AND CLARIFICATIONS**

15. Mechanisms for Storage, Retention and Retrieval
16. Cessation of Retention of Information

## **PART VI-GENERAL PROVISIONS**

17. Powers of the Committee
18. Matters not covered by these procedures
19. Representations to the Committee
20. Review
21. Speaker may delegate
22. Oath of secrecy
23. Final declaration

## **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 **KITUI COUNTY ASSEMBLY POWERS AND PRIVILEGES COMMITTEE** establishes the following administrative procedures:

### **THE KITUI COUNTY ASSEMBLY POWERS AND PRIVILEGES COMMITTEE PROCEDURES FOR ADMINISTRATION OF PART IV OF THE ACT.**

#### **PART I —PRELIMINARY**

##### **1. Citation**

These Procedures may be cited as the Kitui County Assembly Powers and Privileges Committee Procedures for Administration of Part IV of the Act.

##### **2. Interpretation**

In these Procedures, unless the context otherwise requires:-

“Act” means the Public Officer Ethics Act, 2003;

“Board” means the Kitui County Assembly Service Board established under section 12 of the County Governments Act.

“Commission” means the Ethics and Anti-Corruption Commission established under section 3 of the Ethics and Anti-Corruption Commission Act, 2011;

“Committee” means the Kitui County Assembly Powers and Privileges Committee established in accordance with section 15(1) County Assemblies Powers and Privileges Act as read together with the Kitui County Assembly Standing Orders.

“Declarant” means a person who has made a declaration under the Act;

"Declaration form" means the form set out in the Schedule to the Act in accordance with section 26(2) of the Act;

“Declaration year” means the year when the two-year declaration under the Act falls due;

“Designated Officer” means an officer of the Board assigned any duty on the administration of these procedures under these Procedures;

"Final declaration" means a declaration made in accordance with section 27(5) of the Act;

"Initial declaration" means a declaration made in accordance with section 27(3) of the Act;

“Public Officer” shall take the meaning assigned to it under Article 260 of the Constitution of Kenya, 2010;

“Regulations” means the Regulations made under the Act;

“State Officer” has the same meaning assigned to it under Article 260 of the Constitution of Kenya, 2010.

"Two-year declaration" means a declaration made in accordance with section 26(1) of the Act.

### **3. Scope of Application**

These Procedures shall apply to the administration of Part IV of the Act with respect to state officers serving in the County Assembly;

## **PART II – PROCEDURE IN RELATION TO DECLARATIONS**

### **4. Administration of the Procedures.**

- (1) The Speaker shall administer these Procedures on behalf of the Committee;
- (2) The Speaker may designate an officer(s) to administer the Procedures or any part thereof in respect to any specified category of state officers;
- (3) The designation under sub-paragraph (2) shall be in writing and shall outline the specific tasks to be performed by the designated officer(s).

## **5. Procedure in Submitting Declarations**

- (1) A state officer shall submit a declaration in the Form set out in the Schedule to the Act.
- (2) The Committee may use such measures as may be appropriate to facilitate a state officer to acquire the form referred to in subparagraph (1).
- (3) The Committee may publish the declaration form in a format that may permit the declaration form: -
  - (a) to be rendered in digital format; or
  - (b) to be downloaded from a website and printed out in paper format.
- (4) Where a state officer is required to make an initial, two-year or final declaration, the Speaker may issue a notification to the state officer not less than thirty (30) days before the due date for the declaration,
- (5) For avoidance of doubt, failure to provide a declaration form or to issue a notification under this paragraph shall not be construed as a waiver of the responsibility of the state officer to submit a declaration under the Act.

## **6. Completion and Submission of Declarations**

A state officer shall complete and submit the declaration form to the Speaker.

## **7. Register of Declarations.**

- (1) The Committee shall maintain a register containing details of each state officer who is required to make a declaration in accordance with the Act.
- (2) The register under (1) above shall include-
  - (a) Name, personal number and designation;
  - (b) Date the state officer submitted the declaration form;
  - (c) type of declaration (initial, two-year or final);
  - (d) Name and signature of the designated officer acknowledging receipt of the declaration;
  - (e) Total number of state officers who have submitted declarations as at the due date;
  - (f) Total number of state officers required to submit declarations; and
  - (g) Any remarks relating to the declarations.
- (3) A register under this part may be maintained in separate documents.

## 8. Reports on Compliance

(1) The Committee shall submit to the Commission a report containing the following information:

- a) In relation to two-year declaration;-
  - i. The number of state officers on the payroll as at 31st October of the year of declaration;
  - ii. A certified copy of the register maintained in accordance with paragraph 7;
  - iii. The total number of state officers who have complied with the requirement for declarations;
  - iv. The total number of state officers who have not complied with the requirement for declarations;
  - v. Action taken by the Committee in relation to any state officer who has not complied;
  - vi. Any relevant remarks on the submissions.

- b) In relation to the initial and final declaration;
  - i. Number of state officers required to make a declaration;
  - ii. The number of state officers who have complied with the requirement for declaration;
  - iii. Number of state officers who have not complied with the requirement for declarations;
  - iv. Action taken in relation to any state officer who has not complied;
  - v. Any relevant remarks on the submissions.

(2) The report under this part shall;

- a) In relation to a two-year declaration, be submitted to the Commission, not later than 31<sup>st</sup> July, of the year following the declaration;
- b) In relation to initial and final declarations, be submitted to the Commission not later than 31<sup>st</sup> July, following the end of the financial year within which the declarations were made.

(3) a report prepared under this paragraph for transmission to the Commission shall be laid to the floor of the house for benefit of information of the state officers.

### **PART III—PROCEDURE IN RELATION TO CLARIFICATIONS**

#### **9. Requests for Clarification**

(1) The Speaker shall review each declaration to ascertain if any of the following conditions exist –

(a) on the face of the declaration, or in light of any other information the Committee may have, there is reason to suspect the declaration may be false or incomplete;

(b) the assets of the declarant appear disproportionate to the declarant's known income;

(c) the income, assets or liabilities of the declarant raise concerns of impropriety or conflict of interest.

(2) If it is suspected that any of the conditions in subparagraph (1) exist, the Speaker shall forward the issue with the noted concerns to the Committee.

(3) the Committee shall give the declarant an opportunity to make a clarification in accordance with section 28(1) of the Act.

(4) Request for a clarification shall be made in writing.

(5) The Speaker shall, in the register of declarations, document the particulars of clarification sought, the mode of communication, the time given to respond, the date and particulars of response, if any.

(6) If no explanation is given, or if after considering any explanation the declarant may give, the Speaker is of the opinion that the conditions in paragraph 9(1) still exist, the Speaker shall submit this report to the Committee.

(7) the Committee shall take any action contemplated under sections 35 and 36 of the Act.

### **PART IV— PROCEDURE FOR THE ACCESS OR PUBLICATION OF INFORMATION IN A DECLARATION.**

#### **10. Access and Publication of Information in a Declaration.**

(1) The Committee or any other person shall not disclose, access, acquire or publish the information in the declaration form except as may be provided in the Act, the Regulations, these Procedures, or any other written law.

(2) A person who wishes to gain access or to publish information in relation to a declaration under the Act shall:-

(a) apply to the Committee in the form set out in Appendix I; and

(b) demonstrate to the Committee that the applicant has a legitimate interest in the information; and



(c) demonstrate to the Committee that the access to or publication of that information shall be for a good cause and in furtherance of the objectives of the Act.

(3) Where the information is intended to be disclosed or publicized, the applicant shall expressly state so in the application.

(4) Where a person has made an application to the Committee in accordance with this paragraph;-

(a) the request for the information shall be received by the Speaker who shall then report to the Committee;

(b) the Committee shall issue the applicant with an acknowledgement in the form set out in Appendix II;

(c) the Committee shall inform the declarant of the application in writing;

(d) the Committee shall give the declarant an opportunity to make a representation in writing in relation to the application within 14 days; and

(e) the Committee shall take into consideration the representation by the state officer while determining the application.

(5) The Committee shall determine an application made in accordance with this paragraph and communicate its decision in writing to the applicant within thirty (30) days of receipt of the application.

(6) For the avoidance of doubt, the Committee shall not release or part with the original declaration made by any state officer in satisfying the requirement of this paragraph, unless required for investigation by a law enforcement agency or by any written law.

PROVIDED that where an original declaration is released under paragraph 10(4) the Committee shall always retain a certified copy of the declaration;

(7) The Committee shall maintain a register of applications and decisions made under this paragraph setting out:-

(a) the name of each applicant;

(b) the date each application was received;

(c) the name and personal number of the state officer who is the subject of the application;

(d) a brief description of the information applied for;

(e) whether the state officer accepts or opposes to the information applied for;

- (f) a brief description of the decision made in relation to the application including reasons for denial where applicable; and
- (g) date when the decision was communicated to the applicant.

#### **11. Access by Declarant**

An Application for access by a state officer to their declaration may be determined by the Speaker PROVIDED that, the state officer shall only be given access to a certified copy of his or her declaration.

#### **12. Proof of Identity**

The Committee shall not give access to the information in a declaration to: -

- (a) the state officer unless the state officer proves their identity; or
- (b) a representative of the state officer unless that representative: -
  - (i) Provides proof of his or her authority to act as a representative of the state officer; and
  - (ii) Provides proof of identity of the state officer.

#### **13. Decision to be final.**

(1) Except as provided under the Act, Regulations and these Procedures, the decisions of the Committee in relation to a declaration by a state officer shall be final and it shall be forwarded to the Commission.

(2) Any person dissatisfied with the decision may appeal in accordance with the procedures set out in the Public Officer Ethics (Management, Verification, and Access to Financial Declarations) Regulations, 2011.

#### **14. Regulations to apply to this Part**

This part shall be read and construed together with the Public Officer Ethics (Management, Verification, and Access to Financial Declarations) Regulations, 2011.

### **PART V— PROCEDURE IN RELATION TO STORAGE AND RETENTION OF DECLARATION FORMS.**

#### **15. Mechanisms for Storage, Retention and Retrieval.**

(1) The Committee shall ensure that appropriate mechanisms are put in place for the safe and secure storage, retention and easy retrieval of the declarations

(2) The mechanisms established under sub-paragraph (1) may include manual, electronic, microfilm or any other form as the Committee may consider appropriate.

#### **16. Cessation of Retention of Information.**

(1) Where the period for retaining information obtained in accordance with Part IV of the Act has lapsed, the Committee shall determine the action to be taken in relation to that information.

(2) The Speaker may make a written proposal to the Committee in relation to the action to be taken by the Committee in accordance with sub-paragraph (1).

### **PART VI-GENERAL PROVISIONS**

#### **17. Powers of the Committee.**

(1) Notwithstanding delegation of any function or power by the Committee for the purposes of these Procedures, the Committee may:-

- (a) exercise the delegated power or perform the delegated function; or
- (b) on its own motion or request by any person, revise a decision of the Speaker made for the purposes of these Procedures.

#### **18. Matters not covered by these Procedures**

The Committee may issue written instructions in relation to any matter that has not been provided for in these procedures.

#### **19. Representations to the Committee**

The Committee may consider representations from any person in the application of these Procedures.

#### **20. Review**

(1) The Committee may from time to time review the operational procedures put in place by the Speaker in the application of these Procedures.

(2) The Committee may review these Procedures from time to time as may be necessary.

#### **21. Speaker may delegate.**

The Speaker may delegate any of his or her functions as stipulated under these Procedures and such delegation shall be in writing.

**22. Oath of secrecy.**

For purposes of these Procedures, the Committee and any other person serving in the Committee shall be required to take an oath of secrecy for the protection of the personal information the committee shall be handling.

**23. Final declaration.**

(1) No state officer shall be granted clearance by the county assembly unless that state officer has submitted their final declaration to the office of the Speaker.

(2) For avoidance of doubt, every state officer shall be required to submit their final declarations on or before 31<sup>st</sup> May of every election year.

APPENDIX I REQUEST TO ACCESS A DECLARATION OR CLARIFICATION.

*Note: A separate form to be completed in respect of a request for information for each declarant.*

Part I: Information on Applicant

1. Name.....
2. National Identity Card/Passport Number.....
3. Postal Address.....
4. Physical Address.....
5. E-mail Address.....
6. Occupation.....

Part II: Particulars of Information Applied for

a) Nature of Information (please tick )

1. Declaration ( )
2. Clarification ( )
3. Declaration and Clarification ( )

b) Declaration period -----

Part III: Information on the Person whose declaration is sought to be obtained:

- (a) Name.....
- (b) Directorate/Department (if known).....
- (c) Work Station.....
- (d) Reason for requiring the information:-
  - (i) Official.....
  - (ii) Other reason.....

(e) State precisely the purpose for which the declaration sought will be used

.....  
.....  
.....  
.....  
.....

Part IV: Additional Information

Give any other information you may consider relevant and useful to your request

.....  
.....  
.....  
.....  
.....  
.....

Part V: Declaration by Applicant

I, ....., solemnly declare that the information I have given above is true, complete and correct to the best of my knowledge.

Date: .....

Signature of Applicant.....

**APPENDIX II**

**ACKNOWLEDGEMENT OF REQUEST FOR ACCESS FOR A  
DECLARATION OR CLARIFICATION.**

Name of Applicant.....  
National Identity Card/Passport Number.....  
Name of Organization (where applicable).....  
Postal Address.....  
Date of Application.....  
Delivered by.....  
Signature.....

A response on this request will be communicated within thirty (30) days from the date of this acknowledgement.

Name of Receiving Officer:.....  
Signature .....

---

Date .....

Stamp:

## COMMITTEE RESOLUTIONS

**Honourable Members,**

Noting the provisions of section 33 of the Public Officers Ethics Act 2003 which requires each Commission to establish procedures for declaration of income, assets and liabilities, the Committee resolved that:



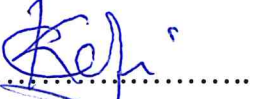



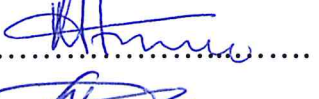




1. The House Adopts the Report on Procedures for Administration of Part IV of the Public Officer Ethics Act (Procedures for Declaration of Income, Assets and Liabilities).
2. The Procedures be published in the Kenya Gazette with immediate effect upon adoption by the House and thereafter be forwarded to the EACC as a matter of priority.
3. The Kitui County Assembly Service Board (CASB) to organize for MCAs training facilitated by the EACC on these Administrative Procedures as adopted by the House.



**ANNEX 1**

**CONSIDERATION AND ADOPTION OF THE REPORT BY THE COMMITTEE**

We, the undersigned Members of the Committee on Powers and Privileges, having considered this Report, do hereby affix our signatures to confirm our agreement with the contents of the Report:

<b>NAME</b>	<b>DESIGNATION</b>	<b>SIGNATURE</b>
1. Hon. George M. Ndotto	Speaker/ Chairperson	
2. Hon. Anthony Mbiti	Vice Chairperson	
3. Hon. Colleta Kimanzi	"	
4. Hon. Alex Mbili	"	
5. Hon. Eliud Ndinguri	"	
6. Hon. Jefason N. Kiruru	"	
7. Hon. Anne M. Mumo	"	
8. Hon. Fredrick Nthuri	"	
9. Hon. Nicholas Mwalali	"	
10. Hon. Sylvester M. Munyalo	"	
11. Hon. Charity Mwangangi	"	

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**ETHICS AND ANTI-CORRUPTION COMMISSION**  
INTEGRITY CENTRE (Jakaya Kikwete/Valley Road Junction) P.O. Box 81130 - 00200, NAIROBI, Kenya  
TEL.: 254 (020) 4997000, MOBILE: 0709 781000; 0730 997000  
FAX: 254 (020) 2240954 EMAIL: [eacc@integrity.go.ke](mailto:eacc@integrity.go.ke) WEBSITE: [www.eacc.go.ke](http://www.eacc.go.ke)



When replying please quote:

Our Ref: EACC.7/10/4 VOL VI (68)

23rd June, 2020

Hon. James Ndegwa Wahome, MBS  
Chairperson Speakers' Forum and  
Speaker Nyandarua County Assembly  
County Assemblies Forum  
Flamingo Towers, Upper Hill  
Off Mara Road, 5th Floor  
P O Box 75332 -00200  
**NAIROBI**

*S.K.C*  
*Kindly ensure this is done*  
*sooner - and received.*  
*Off 23/03/2021*

Dear Hon Wahome

**RE: NOTICE TO COUNTY ASSEMBLY COMMITTEES OF POWERS AND PRIVILEGES TO DEVELOP PROCEDURES ON DECLARATION OF INCOME, ASSETS AND LIABILITIES (DIALS) PURSUANT TO SECTION 33 (1&2) OF THE PUBLIC OFFICER ETHICS ACT, 2003**

The Commission is mandated to oversee and enforce compliance with Chapter Six of the Constitution and its enabling statutory frameworks that prescribe standards of ethics, integrity and accountability for all state and public officers. These statutes include the Leadership and Integrity Act, 2012 (LIA) and the Public Officer Ethics Act, 2003 (POEA).

Section 6(3) of the Leadership and Integrity Act, 2012 (LIA) incorporates, by reference, all the provisions of the Public Officer Ethics Act, 2003 (POEA) to form part of LIA. Under section 52(2) of LIA, the body designated by section 3 of POEA to be the "responsible Commission" for the purposes of implementation of POEA is enjoined to implement the requirements of LIA in their respective entities.

For the purposes of compliance by Members of County Assemblies (MCAs) with the ethics and integrity requirements set out in law, the Committees responsible for ethics of MCAs, namely the Committee of Powers and Privileges established pursuant to

Section 15 of the County Assemblies Powers and Privileges Act, 2017 and relevant County Assembly Standing Orders are mandated to be the "responsible Commissions". This means that in addition to their mandates under the County Assemblies Powers and Privileges Act, 2017, the Committees are further empowered to be the first point of call on implementation and enforcement of Chapter Six of the Constitution and its enabling statutes, including LIA and POEA.

For more clarity, the exercise of the above jurisdiction by the Committees of Powers and Privileges in respect to MCAs is at the same pedestal with the disciplinary power vested in County Assembly Service Boards over public officers serving in the County Assemblies. Such power is also similar to the disciplinary control mandate of County Public Service Boards over the public officers serving in the County Executive.

One of the mandatory responsibilities of the said Committees in the execution of the above mandate is to develop the administrative procedures required under section 33(1) of POEA to facilitate effective management of Declaration of Income Assets and Liabilities (DIALs) made by MCAs in accordance with sections 26 and 27 of POEA. Compliance involves development of the procedures, publication of the same in the Kenya Gazette, and submission of a copy of the gazetted procedures to the Commission.

Pursuant to its oversight and enforcement mandate under section 4(2) of LIA, the Commission has established that majority of the Committees have not developed the said procedures to-date. Such non-compliance is a serious breach of the law that could expose the Committees to the applicable legal consequences.

Notwithstanding the above, the Commission notes that there may have been constraints that have occasioned the delayed compliance as expressed by some Committees. Consequently, the Commission now requires **ALL** County Assembly Powers and Privileges Committees that have not developed and published their administrative procedures under section 33(1) & (2) of POEA to promptly do so. Each Committee should submit a copy of the gazetted procedures to the Commission so as to reach the undersigned **not later than 30<sup>th</sup> September 2020**.

Please find uploaded on our website, [www.eacc.go.ke](http://www.eacc.go.ke), a template of the requisite procedures that each Committee could customize in developing theirs. Hard copy is hereby attached for your reference.

The Commission will be available to, on request of any Committee, provide such further advice/ technical support as may be required to facilitate prompt compliance.

For more information and/ or clarifications, our contact person is **Mr. Kairichi Marimba** or **Mr. Eric Ngumbi** on email addresses [kmarimba@integrity.go.ke](mailto:kmarimba@integrity.go.ke) and [engumbi@integrity.go.ke](mailto:engumbi@integrity.go.ke) respectively, or Tel. No. **0709781164/0781981000**.

I would appreciate if you kindly, through your office, circulate this Notice to all County Speakers/ Chairpersons of the County Assembly Powers and Privileges Committees.

Yours

*Sincerely,*



**TWALIB MBARAK, CBS**  
**SECRETARY/CHIEF EXECUTIVE OFFICER**

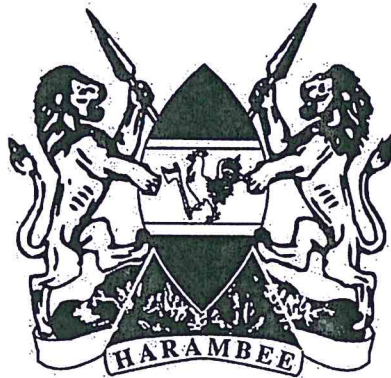
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**Copy to: Chief Executive Officer**  
**County Assemblies Forum**  
**Flamingo Towers, Upper Hill,**  
**Off Mara Road, 5<sup>th</sup> Floor**  
**P O Box 75332 -00200**  
**NAIROBI**

**Encl.**

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**THE REPUBLIC OF KENYA**

LAWS OF KENYA

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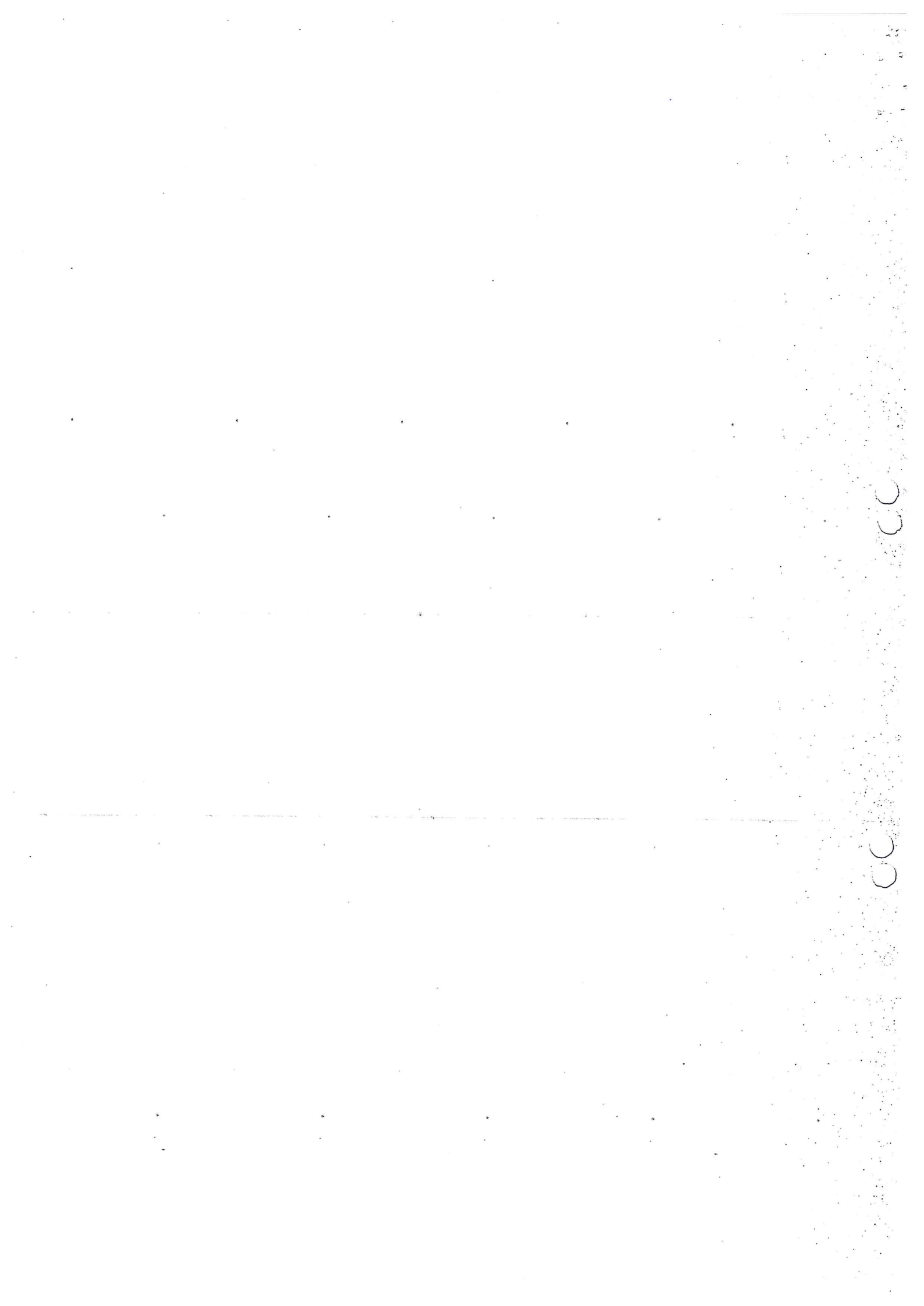
**PUBLIC OFFICER ETHICS ACT**

NO. 4 OF 2003

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**NO. 4 OF 2003**

**PUBLIC OFFICER ETHICS ACT**

**ARRANGEMENT OF SECTIONS**

**PART I – PRELIMINARY**

*Section*

1. Short title.
2. Interpretation.
3. Determination of responsible Commission.
4. Certain delegations by Public Service Commission.

**PART II – SPECIFIC CODES OF CONDUCT AND ETHICS**

5. Establishment of specific Codes.
6. Publication of specific Codes.

**PART III – GENERAL CODE OF CONDUCT AND ETHICS**

7. Part sets out general Code.
8. Performance of duties, general.
9. Professionalism.
10. Rule of law.
11. No improper enrichment.
12. Conflict of interest.
13. Collections and harambees.
14. Acting for foreigners.
15. Care of property.
16. Political neutrality.
17. Nepotism, etc.
18. Giving of advice.
19. Misleading the public, etc.
20. Conduct of private affairs.
21. Sexual harassment.
22. Selection, etc., of public officers.
23. Submitting of declarations, etc.
24. Acting through others.
25. Reporting improper orders.

**PART IV – DECLARATIONS OF INCOME, ASSETS AND LIABILITIES**

26. Declaration required.
27. When declarations must be made.
28. Clarifications.
29. Information to be correct.
30. Access to declarations.
31. Retention of information.
32. Offences.
33. Administrative procedures.
34. Amendment of Schedule.

*Public Officer Ethics*

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PART V – ENFORCEMENT OF CODE OF CONDUCT AND ETHICS

- 35. Investigations.
- 36. Disciplinary action.
- 37. Publication of actions.
- 38. Referral for possible civil or criminal proceedings.
- 39. Exceptions.

PART VI – GENERAL

- 40. Obstruction or hindering persons under Act.
- 41. Divulging information acquired under Act.
- 42. Regulations.

SCHEDULE —

DECLARATION OF INCOME, ASSETS AND  
LIABILITIES

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**NO. 4 OF 2003**  
**PUBLIC OFFICER ETHICS ACT**

[Date of assent: 30th April, 2003.]

[Date of commencement: 2nd May, 2003.]

**An Act of Parliament to advance the ethics of public officers by providing for a Code of Conduct and Ethics for public officers and requiring financial declarations from certain public officers and to provide for connected purposes**

[Act No. 4 of 2003, Act No. 7 of 2007, Act No. 31 of 2016, Act No. 11 of 2017.]

**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.

[Act No. 7 of 2007, Sch.]

### **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; and
- (c) the Controller and Auditor-General;
- (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.