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Government Notices

MINISTRY OF JUSTICE

No. 340

2023

COMMENCEMENT OF WITNESS PROTECTION ACT: WITNESS PROTECTION ACT, 2017

Under section 85(1) of the Witness Protection Act, 2017 (Act No. 11 of 2017), I determine that the Act comes into operation on the date of publication of this notice in the *Gazette*.

Y. DAUSAB
MINISTER OF JUSTICE

Windhoek, 12 October 2023

MINISTRY OF JUSTICE

No. 341

2023

WITNESS PROTECTION REGULATIONS: WITNESS PROTECTION ACT, 2017

Under section 81(1) of the Witness Protection Act, 2017 (Act No. 11 of 2017), on the recommendation of the Director, I have made the regulations set out in the Schedule.

Y. DAUSAB
MINISTER OF JUSTICE

Windhoek, 12 October 2023

SCHEDULE**ARRANGEMENT OF REGULATIONS**

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Definitions

1. In these regulations a word or an expression to which a meaning has been assigned in the Act has the same meaning, and unless the context indicates otherwise –

“appropriate authority” means an entity mandated by a sending country or sending agency to deal with witness protection matters; and

“the Act” means the Witness Protection Act, 2017 (Act No. 11 of 2017).

Application for admission to Programme

2. (1) A witness, a related person, any interested person or an investigating officer may make an application for admission into the Programme, as contemplated in section 33(1)(b) of the Act, by submitting to the Director a completed and signed form which is obtainable from the Unit.

(2) Where an application for admission into the Programme is referred to a witness protection officer as contemplated in section 33(6) of the Act, the witness protection officer to whom the application is referred to must, after the Director makes a decision regarding the application in terms of section 37(5) of the Act, communicate the decision of the Director to the applicant within 24 hours of the witness protection officer receiving such decision from the Director.

Refusal to apply for admission to Programme

3. (1) Where a witness or a related person refuses to make an application for admission to the Programme after having been advised to make such an application as contemplated

in section 33(7) of the Act, the witness or related person must complete and sign a waiver form which is obtainable from the Unit.

(2) Where a parent or guardian refuses to make an application for admission to the Programme on behalf of a minor, after having been advised to make such an application, the parent or guardian must complete and sign a waiver form which is obtainable from the Unit.

Admission of minor to Programme in absence of parental consent

4. Where the Director admits a minor into the Programme in the circumstances contemplated in section 39(2) of the Act, the report that the Director must submit to a judge of the High Court for consideration of the admission in terms of section 39(3)(b)(i) of the Act must contain the following information:

- (a) the age of the minor;
- (b) the form completed in terms of regulation 3(2) setting out the reasons why the parents or guardian of the minor refused to give consent for the minor to be admitted to the Programme;
- (c) the nature and extend of the threat or danger towards the minor;
- (d) the weight and importance of the testimony or evidence that the minor will provide; and
- (e) any other relevant information that the Director considers necessary to bring to the attention of the judge.

Admission of witnesses from other countries

5. Where the Minister refers to the Director a request from an appropriate authority of a foreign country in terms of section 40(1) of the Act or an international court, tribunal, institution or organisation in terms of section 41(1) of the Act, such a referral must include –

- (a) a report by the appropriate authority in the foreign country setting out the risk faced by the witness and nature of the offence for which the witness is under protection;
- (b) a report by the prosecuting authority of that foreign country supporting the request; and
- (c) any other information and documents that the Director may need in order to make an appropriate recommendation in terms of sections 37 or 40(5) of the Act.

Notice of termination

6. For purposes of section 45(6) of the Act, where the Director is considering the termination of protection for a protected person in terms of section 45(2) and (3) of the Act, and before the Director gives final notice of termination as contemplated under regulation 7(b) the Director must –

- (a) give written notice to the protected person of the intended termination of protection; and
- (b) allow the protected person to make written representations, within five days of the protected person receiving the notice referred to in paragraph (a), concerning any matter regarding such termination.

Suspension or termination of protection

7. Where the Director –
- (a) suspends the protection provided to a protected person as contemplated under section 44 of the Act; or
 - (b) terminates the protection provided to a protected person as contemplated under section 45(1), (2) and (3) of the Act,

he or she must give notice to the person whose protection has been suspended or terminated on a form that is obtainable from the Unit.

Financial assistance to protected person

8. (1) A protected person is entitled to an allowance and the necessary support from the Unit to ensure that the dignity and basic human rights of that person are upheld.

(2) The Director must determine the allowances payable under subregulation (1) based on the needs of that person and the principle that the economic conditions of the protected person must be maintained to provide for reasonable living expenses.

(3) For purposes of subregulation (2), the Director may pay a minimum daily allowance of N\$260 to a protected person.

- (4) The Director may, where necessary, pay –
- (a) a subsistence or daily allowance above the daily standard referred to in subregulation (3) to enable the protected person to cater for basic living expenses;
 - (b) a situational allowance to allow for payment of any costs that are related to the specific needs of the protected person; or
 - (c) for any costs of the Programme that are related to the protection of the protected person.

(5) The financial assistance provided to a protected person may not exceed the amount necessary to cover costs of living and placement of the protected person into an unfamiliar environment, except if the Director authorises it after considering whether –

- (a) the protected person has forfeited income as a result of being admitted into the Programme; or
- (b) the admission into the Programme has resulted in financial loss to the protected person.

(6) Where a protected person receives witness fees under any other law, such witness fees will be deducted from any payment made to the protected person that exceeds the amount necessary to cover costs of living and placement of a protected person into an unfamiliar environment as contemplated in subregulation (5).

Access to places of safety and to protected person

9. (1) Where a protected person has been placed into a place of safety, only a judge of the High Court of Namibia, an officer in the service of the State who acts in his or her official

capacity authorised by the Director, a legal practitioner authorised by the Director or a medical practitioner at the request of a protected person and authorised by the Director has access to the protected person.

(2) A witness protection officer may, if the protected person wishes to receive a visitor and subject to the authorisation of the Director having regard to the safety of the protected person, give permission to any person to visit the protected person for any purpose.

(3) For authorisation to be granted by the Director as contemplated in subregulations (1) or (2) –

(a) a witness protection officer must conduct an assessment, to ensure that the safety of the protected person will not be compromised by virtue of granting access, and submit a report to the Director for consideration of the authorisation; and

(b) the Director may only grant such authorisation once a security clearance certificate has been issued to any person who may have access to a protected person.

Application for security clearance certificate

10. (1) An application for a security clearance certificate, as contemplated in section 76 of the Act, is made on a form which is obtainable from the Unit and such a form must be accompanied by the documents indicated on such a form.

(2) The Director must forward or cause to be forwarded the application made in terms of subregulation (1) to the Intelligence Services or any other authority for investigation and evaluation on the suitability of the applicant to be granted a security clearance certificate for purposes of the Act.

Relocation

11. (1) A protected person may request for relocation by submitting a written request to a witness protection officer or any authorised official for immediate processing.

(2) The witness protection officer who receives the written request in terms of subregulation (1), must without delay assess the request and provide a recommendation to the Director.

(3) The Director must assess the request received from the witness protection officer in terms of subregulation (2), and either grant or refuse the request or request for further information in order to make a decision.

(4) The staff of the Unit must treat a request for relocation as a matter of urgency.
