

Conduct of Public Officers Bill, 2018

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SCHEDULES

FIRST SCHEDULE

Section 1

SECOND SCHEDULE

Declaration of Assets and Liabilities

A
BILL

ENTITLED

CONDUCT OF PUBLIC OFFICERS ACT, 2018

AN ACT to provide for the conduct of public officers in the performance of their functions and for related matters.

PASSED by Parliament and assented to by the President:

Qualification

Qualification for holding public office

1. (1) A person qualifies to hold a public office specified in the First Schedule if that person

- (a) has not been convicted of
 - (i) a serious offence,
 - (ii) an offence which involves fraud or dishonesty committed in this country or elsewhere;
- (b) has not been found by a commission of inquiry to be unsuitable to hold public office;
- (c) has not been found by a commission of inquiry to have
 - (i) acquired assets unlawfully,
 - (ii) defrauded the Republic or that person's employer,
 - (iii) misused or abused that person's office,during the course of service as a public officer or in a previous employment;

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- (d) has not acted in a manner prejudicial to the public interest or the interest of the employer of that person; or
- (e) is not under a death sentence.

Effective date of adverse finding

2. Where a commission of inquiry makes an adverse finding against a person in respect of paragraphs (b) and (c) of section 1, the finding shall not take effect unless

- (a) six months have passed since the finding was made and announced to the public, or
- (b) the Government issues a statement in the *Gazette* and in the national media that it does not intend to issue a White Paper on the report of the Commission

whichever is the earlier.

Dispensation

3. (1) Despite section 1, a person is qualified to hold a public office if

- (a) ten years or more have passed since the effective date of the adverse finding as specified in section 2; or
- (b) that person has been pardoned by the President.

(2) The dispensation granted under subsection (1) does not apply to a person seeking to hold office as President or Vice-President.

Declaration of Assets and Liabilities

Declaration of assets

4. (1) A public officer who holds an office specified in the First Schedule shall submit to the Auditor-General, a declaration of

- (a) assets owned directly or indirectly by the public officer, and
- (b) liabilities owed directly or indirectly by the public officer.

(2) The public officer shall submit the declaration to the Auditor-General in accordance with article 286 of the Constitution

- (a) before taking office,
- (b) at the end of each four year period, and
- (c) at the end of the term of office of that public officer.

(3) The public officer shall submit the declaration not later than thirty days after the occurrence of any of the events specified in paragraphs (b) and (c) of subsection (2).

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(4) In the case of the Auditor-General, the Auditor-General shall make a declaration of the assets and liabilities of the Auditor-General to the President.

(5) A written declaration made under this section shall be in the form set out in the Second Schedule.

Assets to be declared

5. (1) The assets to be declared by a public officer include
- (a) movable and immovable assets;
 - (b) trust or family property in respect of which the public officer has a beneficial interest;
 - (c) business interests;
 - (d) securities;
 - (e) bank balances;
 - (f) bonds and treasury bills;
 - (g) jewellery or objects of art of the value of ten thousand Ghana cedis or more;
 - (h) insurance policies; and
 - (i) any other assets of the value of ten thousand Ghana cedis or more.

(2) The Commissioner may, by legislative instrument, amend the value of the jewellery or object of art specified in subsection (1).

Assets acquired after declaration

6. Any property or assets acquired by a public officer after the initial declaration required by section 4 and which is not reasonably attributable to income, gift, loan, inheritance or any other reasonable source shall be deemed to have been acquired in contravention of this Act.

Accuracy of information

7. (1) A public officer shall not submit a declaration or clarification which the public officer knows to be false or misleading.

(2) A public officer who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of not less than one hundred penalty units and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than six months and not more than two years or to both.

Clarification

8. (1) A public officer who submits a declaration to the Auditor-General shall provide any clarification requested by the Auditor-General in writing.

(2) A request for clarification may include

- (a) a request for information that has or may have been omitted;
- (b) a request for verification of the ownership of any declared assets; or
- (c) a request that a discrepancy or inconsistency, including a discrepancy or inconsistency that results from information other than information included on the declaration, be explained or corrected.

(3) A public officer convicted for an offence under subsection (1) is in addition liable to have the appointment of that public officer terminated.

Failure to submit a declaration or clarification

9. (1) A public officer who

- (a) fails to submit a declaration or clarification as required under this Act, or
- (b) submits a declaration or clarification that contains information which the public officer knows, or ought to have known to be false or misleading

commits an offence and is liable on summary conviction to a fine of not less than one hundred penalty units and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than six months and not more than two years or to both.

Declaration as evidence

10. In furtherance of clause (3) of article 286 of the Constitution, a declaration made under this Act is admissible evidence before

- (a) a court,
- (b) a commission of inquiry appointed under article 278 of the Constitution, or
- (c) an investigator appointed by the Commissioner.

Complaints in respect of contravention

11. A person who alleges that a public officer has contravened a provision of this Act shall make a report in accordance with article 287 of the Constitution.

Confidentiality of information

12. (1) The Auditor-General shall keep information obtained under this Act confidential.

(2) Despite subsection (1), information obtained under this Act and held by the Auditor-General may be accessed by

- (a) authorised staff of the Commission where a public officer is under investigation,
- (b) the public officer who provided the information or the authorised representative of that public officer, or
- (c) a person authorised by law to have the information.

(3) A public officer shall not

- (a) except as provided in paragraph (b) of subsection (2), access information obtained under this Act and held by the Auditor-General's Office, or
- (b) in any case disclose or allow access to information held under this Act other than in accordance with subsection (2).

(4) A public officer who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than two years and not more than five years or to both.

Publication by Auditor-General

13. (1) The Auditor-General shall publish periodically in the *Gazette* a list of public officers who

- (a) hold an office specified in the First Schedule, and
- (b) have declared their assets, or
- (c) have defaulted in the declaration of their assets.

(2) The publication referred to in subsection (1) shall be made each year on

- (a) the 30th day of March, and
- (b) the 30th day of September.

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Retention of information

14. (1) The Auditor-General shall keep information in respect of the declaration of assets of a public officer obtained under this Act for not less than five years after the public officer ceases to be a public officer.

(2) The Auditor-General shall keep the information at the Public Record and Archives Administration Department after the expiration of the five years.

Code of Conduct

Provision of Code of Conduct

15. (1) The Commission shall provide a Code of Conduct for public officers.

(2) The Code of Conduct shall

(a) be consistent with the Constitution and the provisions of this Act, and

(b) provide requirements as to how the guiding principles in the Code of Conduct may be satisfied.

(3) A requirement of the Code of Conduct shall not infringe the rights of a public officer as provided in the Constitution, an Act of Parliament or other rules and regulations related to the rights of public officers.

(4) A public office may develop its Code of Conduct which shall conform to the Code of Conduct developed by the Commission.

Publication of Code of Conduct

16. The Commission shall publish the Code of Conduct for public officers in the *Gazette*.

Performance of functions

17. A public officer shall

(a) discharge the duty of that public officer and behave in other respects in a professional manner,

(b) perform the functions of the public officer in a manner that maintains public confidence in the integrity of the office of the public officer,

(c) treat members of the public and other public officers with courtesy and respect and in an impartial, efficient and decisive manner,

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- (a) to the extent appropriate to the office of that public officer, seek to maintain, and where reasonably practicable, improve the standards of performance and level of professionalism in the organisation of that public officer,
- (e) observe the ethics and professional requirements of a professional body in accordance with the Code of Conduct of the office of that public officer if the public officer is a member of a professional body,
- (j) not be absent from official duty without proper authorisation or reasonable cause, and
- (g) observe the dress code of that public office.

Use of office for personal gain

18. (1) A public officer shall not use the office of that public officer for the profit of the public officer or for the profit of any other person.

(2) A public officer shall not

- (a) use the office of that public officer to improperly acquire property personally or for another person, whether or not the property is paid for,
- (b) use or allow information that is acquired in connection with the functions of that public officer where that information is not available to the public, to be used for personal benefit or to benefit
 - (i) another individual, or
 - (ii) a company owned by or under the control of the public officer.

Sexual harassment

19. A public officer shall not sexually harass another person.

Solicitation and acceptance of gifts

20. A public officer shall not

- (a) solicit a gift, favour or an advantage that has the potential to influence the proper discharge of the duties or judgment of that public officer,
- (b) accept a gift, favour or an advantage that has the potential to influence the proper discharge of the duties or judgment of that public officer, or
- (c) accept a gift of any value for the discharge of a duty.

Acceptable gifts

21. A public officer may accept any of the following gifts where the gift does not reasonably appear to influence or result in the influence of the performance of the functions of that public officer:

- (a) an unsolicited souvenir that does not exceed the value prescribed by Regulations;
- (b) a gift from a relative on the basis only of that relationship;
- (c) a reduced membership or other fee for being a member of a professional body, where that reduction is offered generally to the members of that body and made known to the public;
- (d) a gift or benefit from the business employment of a spouse if that gift or benefit is extended to other families and has not been offered on the basis of the functions of that public officer;
- (e) a social invitation from a person other than a person whom the public officer comes into contact with in relation to the functions of the public officer;
- (f) an award, honorary degree or honorarium, if that award, honorary degree or honorarium
 - (i) is given in good faith or is incidental to a genuine award, honorary degree or honorarium given for meritorious public service or professional achievement by the public officer, and
 - (ii) is made as part of an established programme of recognition and funded wholly or in part to ensure its continuation on a regular basis and the selection of recipients is made in accordance with a transparent criterion.

Duty to check gifts

22. (1) Where a gift, favour or advantage under section 21 is offered to a public officer, that public officer shall consider whether

- (a) the gift, favour or advantage is in appreciation of an official duty or is intended to seek favour or special treatment from the public officer in respect of the performance of the functions of the public officer;

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- (b) acceptance of the gift will influence the discharge of an official duty or the performance of an official function in favour of the donor;
 - (c) there is an implied obligation to return the favour in an official capacity in favour of the donor, the family of the donor or associates of the donor or the family or associates of the public officer;
 - (d) the public officer is prepared to declare the gift and the source of the gift to the organisation that the public officer belongs to and the clients of that organisation and to the Ghana Revenue Authority;
 - (e) there is an attempt to influence the public officer to contravene
 - (i) the law,
 - (ii) Regulations,
 - (iii) the Code of Conduct, or
 - (iv) the policy of the organisation that the public officer belongs to; or
 - (f) there is an attempt to gain an unfair advantage by influencing the discretionary decisions of the public officer.
- (2) A gift, favour or advantage which falls within paragraphs (a) to (f) of subsection (1) is a prohibited gift.

Conflict of Interest

Avoidance of conflict of interest

23. (1) A public officer shall not act in a manner that puts that public officer in a position where the personal interest of the public officer conflicts or is likely to conflict with the official functions of the public officer.

(2) A public officer whose personal interest conflicts with the official functions of that public officer shall

- (a) declare the personal interest to the head of the public body in which that public officer is employed, the Commission or another appropriate body in writing, orally or in any other manner prescribed by law and the public officer shall comply with any directions to avoid or resolve the conflict; and
- (b) not be present at or participate in any deliberations in connection with that matter.

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(3) A public officer who complies with subsection (2)(a) is not liable for a matter that arises from the declaration.

Duty to report

24. (1) A public officer shall report to the head of the public body in which that public officer is employed, the Commission or another appropriate body where

- (a) there is a situation which gives rise to, or is likely to give rise to a conflict of interest, or
- (b) the public officer is in doubt about whether a situation gives rise to, or is likely to give rise to a conflict of interest.

(2) The report of the public officer shall be in accordance with paragraph (a) of subsection (2) of section 23.

Business interests

25. A public officer shall not hold shares or have an interest in a corporation, partnership or other body, directly or through another person, if holding the shares or having that interest will give rise to, or may reasonably appear to give rise to a conflict between the personal interest of that public officer and the functions of that public officer.

Award of contract

26. A public officer shall not award, or seek to award a contract or influence or seek to influence the award of a contract to

- (a) the public officer;
- (b) the spouse or other relative of the public officer; or
- (c) a corporation, partnership or other body in which the public officer has a personal interest.

Financial interest

27. A public officer shall not participate in an official capacity in a matter in which

- (a) the public officer has a financial interest, or
- (b) a spouse or other relative of the public officer has a financial interest.

Self-dealing

28. A public officer shall not, in the performance of an official function, act in a manner which involves the use of the position of that public officer for the personal benefit of that public officer.

Sale or gift of assets of Government to public officer

29. (1) A person shall not sell or make a gift of a vehicle, building or other valuable asset of the Government to a serving public officer or a retired public officer except in accordance with the disposal of assets as provided in sections 83, 83A and 84 of the Public Procurement Act, 2003 (Act 663).

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of not less than one thousand penalty units and not more than five thousand penalty units or to a term of imprisonment of not less than four years and not more than ten years or to both.

Care of public property

30. (1) A public officer shall take reasonable steps to ensure that cash or property that is entrusted to the care of that public officer is adequately protected and not lost, damaged, misused or misappropriated.

(2) A public officer who contravenes subsection (1) is personally liable for any loss that may result from the contravention.

Political neutrality

31. (1) A public officer shall not, in the performance of an official function,

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

(b) indicate support for or opposition to a political party or a candidate in a public election.

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

Offer of advice

32. A public officer who offers official advice to a person shall do so honestly and impartially, without fear or favour.

Misleading the public

33. A public officer shall not, knowingly give false or misleading information to anyone in the performance of an official function.

Conduct of private affairs

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

(2) A public officer shall attend to the financial obligations of that public officer so as to preserve public confidence in the integrity of the office of the public officer.

Selection of public officers

35. A public officer shall follow prescribed procedure as regards the selection of another public officer for any public office or purpose.

Agency

36. (1) A public officer shall not

- (a) cause anything to be done through another person that would, if done by the public officer contravene this Act; or
- (b) allow or direct a person under the supervision or control of the public officer to do anything that is a contravention of this Act.

(2) A public officer who acts under the permission or direction of a superior officer is not in contravention of this Act if the public officer did not know or was not in a position to know that the permission or direction contravened this Act.

(3) A public officer shall not act as an agent of a foreign or local person or company where doing so would create a situation of conflict of interest or compromise the position of the public officer.

Reporting improper directives

37. Where a public officer considers that an action required of the public officer

- (a) is a contravention of this Act or any other law or code of conduct, or
- (b) is otherwise improper or unethical,

that public officer shall report the matter to the Commission or other appropriate authority as soon as is practicable.

Consumption of alcoholic beverage and psychotropic substances

38. (1) A public officer shall not be under the influence of any alcoholic beverage or psychotropic substance while performing or purporting to perform the functions of a public officer.

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(2) A public officer who contravenes subsection (1) commits a misconduct and is subject to the disciplinary rules of the public service concerned.

Vindication of acts and character by a public officer

39. (1) A public officer shall not have recourse to any court or to the media for the vindication of an official act that is the subject matter of adverse criticism or attack, whether or not of a defamatory nature, without the written consent of the head of the institution to which the public officer belongs.

(2) Where the public officer is the head of the institution, the public officer shall seek consent from

- (a) the Minister of the respective Ministry, Department or Agency if the public officer is in the Public Service; or
- (b) the Chairperson of the Board of the public corporation if the public officer is in a public corporation.

(3) Subsection (1) does not prevent a public officer from seeking to vindicate the private character of that public officer and does not apply to an act done by the public officer in a private capacity.

(4) Despite subsection (1), a public officer may have recourse to a court or the media to vindicate an official act which is the subject matter of adverse criticism or attack without the consent of the head of institution to which the public officer belongs if no adverse directive is received by the public officer from the head of the institution to which the public officer belongs within ten working days after the date of the request for consent.

Publication in the media

40. (1) A public officer may in the discharge of an official duty, publish a book, contribute to or participate in discussions in the media after the public officer obtains approval from the superior officer of that public officer.

(2) A public officer who publishes a book, contributes to or participates in discussions in the media and expresses a personal opinion shall make it clear that the opinion is personal and not an official opinion.

Communication of information

41. A public officer shall communicate information related to official duties and official documents in accordance with law and the directives of the institution to which the public officer belongs.

Enforcement of Code of Conduct

Investigations

42. (1) A complaint that a public officer has contravened this Act shall be made to the Commissioner for Human Rights and Administrative Justice.

(2) Where the complaint relates to the Commissioner for Human Rights and Administrative Justice the complaint shall be made to the Chief Justice who shall, unless the Commissioner makes a written admission of the contravention or non-compliance, cause the matter to be investigated.

(3) The Commission may refer a matter to an investigating body for investigation and that investigating body shall investigate the matter within the time specified by the Commission and submit a report on its findings to the Commissioner.

(4) The report shall be submitted within thirty days after the completion of the investigation.

(5) An investigation may be conducted even after the public officer alleged to have contravened this Act has ceased to be a public officer.

Action after investigations

43. (1) Where an investigation discloses that a public officer has contravened this Act, the Commission shall take the action that the Commission considers appropriate against the public officer, including

(a) taking disciplinary action which is within the power of the Commission, or

(b) referring the matter to an appropriate body or person if the Commission does not have the power to take the disciplinary action that the Commission considers appropriate.

(2) The Commission shall inform the public officer of the action the Commission intends to take.

Referral for criminal proceedings

44. If, in the course or at the end of an investigation, the Commission is of the view that criminal proceedings ought to be instituted, the Commission shall refer the matter to the Attorney-General.

Publication of actions

45. (1) The Commission shall publish any action it takes in furtherance of this Act in accordance with administrative procedure under section 48.

- (2) For the purposes of subsection (1), the Commission shall give
- (a) a description of the contravention of the Code of Conduct by the public officer,
 - (b) the circumstances of the contravention,
 - (c) the extent of the culpability of the public officer,
 - (d) a summary of the evidence upon which the contravention was determined, and
 - (e) a description of the action the Commission took against the public officer or, if the Commission referred the matter to another body or person, the action taken by that other body or person.

(3) The Commission shall not publish the identity or any other details of a person other than the public officer, if in the opinion of the Commission, the publication would be unfair or otherwise inappropriate.

Public Officers and Legal Proceedings

Immunity from actions

46. (1) An action does not lie against a public officer in the execution of the duty of that public officer

- (a) on a promise, express or implied, to repay money paid or advanced to the public officer or to another person at the request of the public officer;
- (b) on a promise, express or implied, to be answerable for the debt or default of another person; or
- (c) on a bond, bill of exchange, other than a cheque drawn on a bank, promissory note, or any other personal security made, drawn, accepted, endorsed, or given by the public officer.

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- (2) Subsection (1) does not apply to an action which is
 - (a) brought against a person in respect of liability incurred before the date on which that person became a public officer; or
 - (b) brought by the holder of a security other than those specified in paragraph (c) of subsection (1) to realise that security.

Actions against a public officer

47. (1) Where an action, a prosecution or any other proceeding is commenced against a public officer

- (a) for discharge of a public duty or exercise of an authority, or
- (b) in respect of an alleged neglect or a default in the execution of a duty or authority

the action, prosecution or proceedings shall not be instituted unless it is commenced within three months of the act, neglect or default complained of, or in the case of a continuance of the injury or damage, within three months after the cessation of the injury or damage.

(2) Where proceedings involving a public officer consist of an action for damages, an offer to pay a sum of money by way of satisfaction for the wrong alleged to have been committed may be pleaded before the action is commenced, instead of or in addition to any other plea.

(3) Where an action is commenced after the offer or is proceeded with after payment into court of a sum of money in satisfaction of the plaintiff's claim and the plaintiff does not recover more than the sum offered or paid, the plaintiff shall not recover the costs incurred after the offer or payment and the defendant is entitled to costs to be taxed as between lawyer and client from the time of the offer or payment but this provision does not affect the costs of an injunction in the action.

(4) Where the court thinks the plaintiff has not given the defendant sufficient opportunity to offer to pay a sum of money by way of satisfaction for the wrong alleged to have been committed before the commencement of the proceeding, the court may award costs to the defendant to be taxed as between lawyer and client.

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Miscellaneous Provisions

Administrative procedure

48. (1) The Commission shall establish procedures for the administration of this Act.

(2) The administrative procedures shall be published in

(a) the *Gazette*, and

(b) the electronic and print media.

Instructions to a public officer

49. (1) Where a public officer is required to act on the instruction of a superior officer, the instruction of the superior officer shall be given in writing.

(2) An oral instruction by a superior officer shall be confirmed in writing.

(3) A public officer who receives an oral instruction from a superior officer shall seek written confirmation of the oral instruction as soon as possible.

General sanction for contravention of Act

50. A public officer who contravenes a provision in this Act for which a sanction is not provided shall be subject to the disciplinary rules of the public body concerned.

Public officers' oath

51. Each public officer shall take and subscribe to the oath of office required under the Oaths Act, 1972 (N.R.C.D. 6) before the public officer takes office or performs official functions.

Signing of Code of Conduct

52. A person who at the commencement of this Act holds a public office shall within three months after the commencement of this Act

(a) be given a copy of the Code of Conduct; and

(b) sign the register of the Code of Conduct

of the public body in which that person holds office.

Post employment

53. (1) A public officer shall not take improper advantage of the previous office of that public officer on termination of employment.

(2) A public officer shall not assist or represent any person in a business transaction with the former office of that public officer or the government if that public officer participated personally or supervised

the subject matter of the transaction during the term of office or employment of the public officer.

(3) Subsection (2) applies for a minimum of three years after the termination of the term of office or employment of that public officer.

Provision of salaries by Fair Wages and Salaries Commission

54. The Fair Wages and Salaries Commission shall provide the Commission with information on the salaries earned by the persons designated in paragraph 33 of the First Schedule.

Regulations

55. (1) The Commissioner may, by legislative instrument, make Regulations for

- (a) the forfeiture and disposal of prohibited gifts;
- (b) the conduct of public officers; and
- (c) any other matter for the effective implementation of this Act.

(2) The Auditor-General may, by legislative instrument, make Regulations for

- (a) the declaration of assets and liabilities;
- (b) the verification of assets for the purpose of judicial proceeding
 - (i) before a court;
 - (ii) before a commission of inquiry appointed under article 278 of the Constitution; or
 - (iii) before an investigator appointed by the Commissioner for Human Rights and Administrative Justice; and
- (c) the access to the declaration by the person who made the declaration and any other lawfully authorised person.

Interpretation

- 56.** In this Act, unless the context otherwise requires,
- “appropriate body” means the agency responsible for the discipline of a public officer;
 - “Auditor-General” means the person appointed to that office under paragraph (b) of clause (1) of article 70 of the Constitution and includes a Deputy Auditor-General;

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“Commission” means the Commission on Human Rights and Administrative Justice established under the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456);

“Commissioner” means the Commissioner for Human Rights and Administrative Justice appointed to that office under paragraph (a) of clause (1) of article 70 of the Constitution and includes a Deputy Commissioner;

“commission of inquiry” includes a committee of inquiry;

“conflict of interest” includes

- (a) an interest or benefit, financial or otherwise, direct or indirect;
- (b) participation in any business transaction or professional activity other than the official duty of a public officer;
- (c) incurring a personal obligation of any nature; or
- (d) an act or omission

which has, or may reasonably appear to have the potential to be contrary to the functions of the officer;

“court” means a court of competent jurisdiction;

“extended family” means a group of people who trace their lineage from a common ancestor”;

“family” includes extended family;

“family property” includes any property whether movable or immovable, which belongs to the members collectively of a particular family or is held for the benefit of those members and any receipts or proceeds from that property;

“foreign person” means

- (a) a person who is not a citizen of this country,
- (b) an organisation
 - (i) established outside the country, or
 - (ii) owned or controlled by a foreign government, organisation or individual;

“gift” means cash or an item of value given without payment which in the circumstances specified in sections 20 and 22 may be reasonably likely to influence or result in the influence of the performance of the functions of a public officer;

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“honorarium” means a payment made or something of economic value given to a public officer in exchange for service where custom or propriety prevents the setting of a price;

“institution” means an entity that uses public funds;

“personal interest” includes the interest of a spouse or a member of the extended family of a public officer;

“psychotropic substance” means a substance that has a mind-altering property and that may be in the nature of a narcotic drug;

“public interest” includes a right or advantage that enures or is intended to enure to the benefit generally of the whole of the people of the Republic;

“public office” includes an office the emoluments attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament and an office in a public corporation established entirely out of public funds or moneys provided by Parliament;

“public officer” means a person who holds a public office;

“Public Records and Archives Administration Department” means the department established by the Public Records and Archives Administration Department (Establishment) Instrument, 1996 (L.I. 1628);

“record” means data generated, sent, received or stored;

“serious offence” includes

(a) participation in an organised criminal group, terrorism and terrorist financing, money laundering, human trafficking, people smuggling, sexual exploitation, illicit trafficking in narcotic drugs, illicit arms trafficking, trafficking in stolen goods or other goods, corruption and bribery, serious fraud, counterfeiting and piracy of products, smuggling, extortion, forgery, insider trading and market manipulation,

(b) murder, grievous bodily harm, armed robbery or theft where these are predicate offences for a serious offence, and

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- (c) any other offence punishable with imprisonment for a period of not less than twelve months;
“sexual harassment” includes an unwelcome physical, verbal or non-verbal conduct of a sexual nature; and
“spouse” includes multiple wives and former wife.

Repeals and savings

57. (1) The Public Officers Act, 1962 (Act 114) is repealed.

(2) The Public Office Holder’s (Declaration of Assets and Disqualification) Act, 1998 (Act 550) is repealed.

(3) Despite subsections (1) and (2), regulations, notices, orders or directions or any other act lawfully made, given or done under the repealed Acts and in force immediately before the commencement of this Act, shall be considered to have been made or done under this Act and shall upon the commencement of this Act continue in force until amended or revoked in accordance with this Act.

Transitional provisions

58. Section 52 shall come into force within six months after the commencement of this Act.

FIRST SCHEDULE

(Sections 1 and 54)

1. President of the Republic.
2. Vice-President of the Republic.
3. Speaker, Deputy Speaker and a Member of Parliament.
4. Minister of State or Deputy Minister.
5. Chief Justice.
6. Justice of the Superior Court of Judicature.
7. Commissioner and Deputy Commissioners for Human Rights and Administrative Justice.
8. Judicial officer.
9. Ambassador or High Commissioner.
10. Secretary to the Cabinet.
11. Head, Office of the Civil Service.
12. Head of Ministry or a government department or equivalent office in the Civil Service.
13. Chairperson, chief executive officer, managing director, secretary, general manager and departmental head of a public corporation or company in which the Republic has a controlling interest.
14. Governor and Deputy Governors of Bank of Ghana.
15. Chairman, Deputy Chairman and members of the Electoral Commission.
16. Chairman, Deputy Chairmen and members of the National Commission on Civic Education.
17. Chairman and members of the National Media Commission.
18. Chairman, Vice-Chairman and members of the Public Services Commission.
19. The District Assemblies Common Fund Administrator.
20. Head of Chancery of Ghana Embassy or High Commission.
21. Heads of departments of Bank of Ghana.
22. An officer in the Armed Forces on secondment to civilian establishments.
23. Member of a Tender Board at the Central, Regional and District Assembly levels and other public entities.
24. Officials of the Driver and Vehicle Licensing Authority not below the rank of a clerical officer.

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25. Presidential staffer or aide.
26. An officer of the Ghana National Fire Service.
27. An officer of the Ghana Immigration Service.
28. An officer of the Ghana Revenue Authority.
29. An officer of the Police Service.
30. An officer of the Prisons Service.
31. Regional Coordinating Directors, District Chief Executives, Presiding member and District Coordinating Director of Metropolitan, Municipal or District Assembly.
32. Persons who are
 - (a) heads of,
 - (b) accountants in,
 - (c) internal auditors in,
 - (d) procurement officers in, and
 - (e) planning and budget officers infinance and procurement departments of Government Ministries, Departments and Agencies, Districts, Municipal and Metropolitan Assemblies.
33. An officer in any other public office or public institution other than the Armed Forces, the salary attached to which is equivalent to or above the salary of a Director in the Civil Service.

SECOND SCHEDULE

(Section 4 (5))

Declaration of Assets and Liabilities Form

(Foolscap sheets can be used if the space provided for the answers is not sufficient. The number of the question must be clearly shown and a line drawn to separate the number from the beginning of another question. All answers must cover assets in and outside the Republic).

1. Personal particulars

(a) Surname

(b) Other Names.....

(c) Date of Birth.....

(a) Place of Birth.....

(e) Present Appointment

(j) Date of Appointment.....

(g) Address (Residential)

(h) Address (Postal)

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2. Assets

(a) Movable and immovable assets

Land, houses and other buildings (including fixtures)	Address and location of property	Nature of interest in land	Mode of acquisition-inheritance, assignment, gift, purchase	Cost of land or property as at time of acquisition	Value of land or property as at date of declaration	R e n t e a r n e d from the property per annum (gross)

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(l) Trust or family property in respect of which the public officer has beneficial interest

Nature of trust property or family property	Address and location of asset or property	Estimated value of asset as at date of acquisition	Estimated value of asset as at date of declaration

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(c) Business interests

Name and Nature of business, profession, (sole proprietor, partnership, shares in companies, poultry farming, transport, fishing and shops)	Place of employment or address of business	Date of creation or acquisition of business	Value of business as at date of creation or acquisition of business	Value of business as at date of declaration

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(d) Securities

Name and nature of security or investment	Account number, location and address of security holding company or investment fund manager	Date of acquisition of security or investment	Cost of security or investment	Value of security or investment as at date of declaration

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(e) Bank balances

Name of account holder	Name and address of Bank	Branch	Name and type of account	Balance

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(f) Bonds and treasury bills

Name of bank, Investment Company	Date of purchase or acquisition of bonds or treasury bills	Value of bond or treasury bill as at date of purchase or acquisition	Value of bond or treasury bill as at date of declaration

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(g) Jewellery or object of art values at more than ten thousand Ghana Cedis

Object of art (sculpture, cultural pieces, heirloom)	Location of object of art	Date of acquisition of object of art	Value of object of art as at date of acquisition of object of art	Value of object of art as date of declaration

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(h) Insurance policies

Name and type of insurance policy	Registered office address of insurance company	Insurance policy number	Value of insurance policy	Maturity date of insurance policy

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(i) Other assets valued at ten thousand Ghana Cedis or more

Name and type of asset	Location, address of asset if asset is immovable, or security holding	Cost of asset as at date of acquisition	Value of asset as at date of declaration	Income or rent earned from the asset

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3. Liabilities

(a) Mortgage, loan, judgment debt

Nature or type of liability (mortgage, loan, judgment debt)	Name and address of creditor	Date of creation of liability	Extent or total sum of liability	Date of maturity of liability

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MEMORANDUM

The purpose of the Bill is to give effect to Chapter 24 of the 1992 Constitution, domesticate the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption and to provide for other purposes. The two anti-corruption Conventions were ratified by Parliament on 14th December, 2005. The provisions of these Conventions provide the international template for anti-corruption.

Each public officer occupies a position of trust to serve the best interest of the general public. Public office is defined in article 295 of the Constitution to include an office the emoluments attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament. It also includes an office in a public corporation established entirely out of public funds or moneys provided by Parliament. Increasingly, the populace expects and demands that public officials perform their functions with integrity and in a fair and unbiased manner. Public officers are therefore not expected to allow their private interests and affiliations to compromise official decision-making and public management. When public officials breach the duty of trust, a conflict of interest situation arises.

Chapter 24, articles 284 to 288, of the 1992 Constitution provides a Code of Conduct for Public Officials. Article 284 of the Constitution provides that

“A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.”

Article 285 provides that

“No person shall be appointed or act as the Chairman of the governing body of a public corporation or authority while he holds a position in the service of that corporation or authority.”

Article 286 requires some public officials to submit written declarations of their assets, property owned and liabilities owed, whether directly or

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indirectly to the Auditor-General. This is to be done within three months of assumption of office, after each four year period and at the end of the public officer's term of office.

Legislation on corruption in this country is scattered in a number of laws. The Criminal Offences Act, 1960 (Act 29) contains provisions on corruption but these are inadequate to deal with public office accountability.

The present state of the law does not provide the necessary deterrence to achieve zero tolerance for corruption in public office. Although there are public finance laws namely the Public Financial Management Act, 2016 (Act 921), Public Procurement Act, 2003 (Act 663), Internal Audit Agency Act, 2003 (Act 658) and the Audit Service Act, 2000 (Act 584), intended to regulate the financial management in the country and curb the leakage of resources, they do not adequately deal with the problem of corruption of a public officer.

Article 287 of the Constitution mandates the Commission on Human Rights and Administrative Justice to investigate allegations of contravention of, or non-compliance with, the code of conduct for public officers, including conflict of interest, non-declaration of assets and illegal acquisition of wealth.

The Constitution does not however define in detail the situations that constitute conflict of interest neither is there a legal framework which the Commission can rely on to determine complaints made against public officers. The absence of a definition of conflict of interest and a unified code of conduct for public officers makes the process of the investigation of allegations of conflict of interest difficult for the Commission and the public officer against whom the allegation has been made.

It has been found that a number of corruption allegations handled by the Commission emanate from conflicts between the public interest and private, professional or commercial interest of a public officer. A strategy to combat corruption will therefore require an understanding, identification and management of conflicts of interest.

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In 2006, the Commission produced Guidelines on Conflict of Interest to assist public officials to identify, manage and resolve conflicts of interest. This document, though very useful and informative, did not contain provisions that are justiciable. Public officers in conflict of interest situations should be prosecuted. The Bill is intended to add to the justiciable provisions already in the statute book to combat corruption.

Furthermore, the Inter-Governmental Action Force against Money Laundering in West Africa (GIABA) has also recommended the enactment of this legislation to plug loopholes as far as the legal framework on anti-corruption for public officers is concerned.

The Anti-Money Laundering Act, 2008 (Act 749) and the Economic and Organised Crime Act, 2010 (Act 804) deal with money laundering and the proceeds of crime respectively. The approach in those enactments has been to use the threshold approach based on the Financial Action Task Force 40 + 9 Recommendations which is that the offence should be one that is punishable by a maximum penalty of more than one year imprisonment. In consequence of this, a serious offence in Act 749 is defined to mean an offence for which the maximum penalty is death or imprisonment for a period of not less than twelve months. In Act 804, the threshold is combined with predicate offences which have been listed. It is thought that this approach provides a more reliable means of disqualification to hold public office where there has been a conviction. This is however subject to a ten year limitation period and a Presidential pardon.

As public officials may have legitimate interests which arise from their status as private citizens, conflicts of interest cannot be avoided or prohibited altogether. It is therefore important that conflict of interest is clearly defined, identified and managed.

The lack of clarity in matters of conflict of interest and lack of an extensive code of conduct for public officers have contributed to lowering the trust that people have in public institutions in the country, hence the need for the enactment of this Bill.

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Clauses 1 to 3 deal with qualification. *Clause 1* provides the qualifications in respect of holding public office. A person is qualified to hold public office if the person has not been convicted of a serious offence or an offence which involves fraud or dishonesty committed in this country or elsewhere, or has not acted in a manner prejudicial to the public interest or the interest of the employer or is not under a death sentence. The absence of adverse findings by a committee of inquiry in respect of the unlawful acquisition of assets, fraud against the Republic or misuse or abuse of office are also qualifications to be met.

The effective date of an adverse finding made by a commission of inquiry is provided in *clause 2*. In instances where a commission of inquiry makes an adverse finding, the finding does not take effect unless six months have elapsed after the finding is made and announced to the public or the Government issues a statement in the *Gazette* and in the national media of its intention of not issuing a White Paper on the report of the commission of inquiry, whichever is earlier.

Clause 3 permits a person to hold a public office if ten years or more have elapsed since the effective date of adverse finding or the person has been pardoned by the President. This dispensation, which is in accordance with paragraph (c) of article 62 of the Constitution, however does not apply to a person seeking to hold office as President or Vice-President.

Clauses 4 to 14 deal with declaration of assets and liabilities. *Clause 4* requires a person who holds public office to submit to the Auditor-General a declaration of assets owned directly or indirectly and liabilities owed directly or indirectly by that person. The public officer is to submit the declaration to the Auditor-General in accordance with article 286 of the Constitution, before the person takes office, at the end of each four year period and at the end of the public officer's term of office. The public officer is to submit the declaration not later than thirty days after the occurrence of any of the events specified in the clause.

The Auditor-General is required to make a declaration of his or her assets and liabilities to the President in accordance with good governance principles.

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The assets to be declared by a public officer are stated in *clause 5*. These include movable and immovable assets, trust or family property in respect of which the public officer has a beneficial interest, business interests, securities, bank balances, bonds and treasury bills, jewellery or objects of art of the value of ten thousand Ghana cedis or more. Insurance policies and any other assets specified on the declaration form of the value of ten thousand Ghana cedis or more are also to be declared.

Clause 6 deals with assets which a public officer acquires after making a declaration where the assets would have been included in the declaration if they had been acquired before the declaration was made. These assets are to be considered to have been acquired unlawfully unless they can reasonably be regarded as income, acceptable gifts, loans, inheritance or otherwise lawful.

Under *clause 7*, a public officer who submits a declaration or provides clarification as required under the Act is to ensure that the declaration or clarification is not false or misleading. A contravention of this clause is an offence punishable by a fine of not less than one hundred penalty units and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than six months and not more than two years or to both.

Clause 8 requires a public officer who submits a declaration to the Auditor-General to provide any clarification requested by the Auditor-General in writing. A request for clarification may include a request for information that has or may have been omitted. It also includes a request that a discrepancy or inconsistency be explained or corrected.

Under *clause 9*, a public officer who fails to submit a declaration or clarification as required under the Act or submits a declaration or clarification that contains information which the public officer knows, or ought to have known to be false or misleading, commits an offence. The public officer is liable on summary conviction to a fine of not less than one hundred penalty units and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than six months and not more than two years or to both and in addition the appointment of that public officer may be terminated.

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Clause 3 of article 286 of the Constitution is replicated in *clause 10*. It provides that a declaration made under the Act is admissible evidence before a court of competent jurisdiction, a commission of inquiry appointed under article 278 of the Constitution or an investigator appointed by the Commission on Human Rights and Administrative Justice.

Clause 11 requires a person who alleges that a public officer has contravened a provision of the Act to make a report in accordance with article 287 of the Constitution.

Clause 12 requires the Auditor-General to keep information obtained under the Act confidential. However, authorised staff of the Commission may access the information where a public officer is under investigation. The public officer who provided the information, the authorised representative of that public officer or a person authorised by law may also access the information. Contravention of this provision is an offence.

The Auditor-General is also required under *clause 13* to publish in the *Gazette*, a list of public officers who hold an office specified in the First Schedule and have declared their assets or defaulted in the declaration of their assets. The publication is to be made each year on the 30th day of March and the 30th day of September.

Clause 14 mandates the Auditor-General to keep information that concerns the declaration of assets of a public officer obtained under the Act for not less than five years after the public officer ceases to be a public officer. The repository for the information obtained under the Act is the Public Records and Archives Administration Department.

Clauses 15 to 22 deal with the Code of Conduct of a public officer. *Clause 15* empowers the Commission to provide a Code of Conduct for public officers. The Code of Conduct is required to be consistent with the Constitution and the provisions of the Act and to provide requirements as to how the guiding principles in the Code of Conduct may be satisfied. A requirement of the Code of Conduct is not to infringe the rights of a public officer as provided in the Constitution, an Act of Parliament or other rules and regulations.

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Under *clause 16*, the Commission is to publish the Code of Conduct for public officers in the *Gazette*.

Clause 17 requires a public officer to act with professionalism at all times. This clause also requires a public officer, among other things, to perform the functions of that officer in a manner that maintains public confidence in the integrity of the office of that public officer.

Use of office for personal gain is dealt with in *clause 18*. A public officer is prohibited from using the office of the public officer for personal gain or for the profit of any other person.

A public officer is prohibited from sexually harassing another person, *clause 19*.

The acceptance or solicitation of gifts, advantages or other favours from a person who has an interest that may be affected by the performance or non-performance of the duties of the public officer is prohibited, *clause 20*.

Acceptable gifts are provided for in *clause 21*. A gift is acceptable where it will not reasonably influence or result in the influence of the performance of the functions of the public officer. The Act does not however prevent the payment of an honorarium to a public officer on the basis of exceptional commitment to duty.

Clause 22 contains guidelines for the determination as to whether a gift is acceptable.

Clauses 23 to 40 deal with conflict of interest. *Clause 23* requires a public officer to endeavour to avoid being in a position in which personal interest conflicts with the official functions of the public officer. A public officer whose personal interest conflicts with official functions is to declare the personal interest to the head of the public body in which the public officer is employed, the Commission or another appropriate body and comply with any directions to avoid or resolve the conflict. The circumstances under which a report is required to be made are provided in *clause 24*.

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Clause 25 on business interests prohibits a public officer from holding shares or having an interest in a corporation, partnership or other body, directly or through another person, if holding the shares or having that interest will give rise to, or may reasonably appear to give rise to a conflict between the personal interest of that public officer and the functions of that public officer.

Clause 26 provides that a public officer is not to award or seek to award a contract or influence or seek to influence the award of a contract to the public officer or other persons related to the public officer.

Clause 27 prohibits a public officer from official participation in a matter in which the public officer has a financial interest or a spouse or other relative of the public officer has a financial interest.

Clause 28 requires a public officer not to act in a manner which involves the use of the position of that public officer for the personal benefit of that public officer.

Clause 29 prohibits the sale or gift of the assets of the Government to a serving public officer or a retired public officer except in accordance with the disposal of assets as provided in the Public Procurement Act, 2003 (Act 663). A contravention of this clause is an offence punishable by a fine of not less than one thousand penalty units and not more than five thousand penalty units or a term of imprisonment of not less than four years and not more than ten years or both.

Under *clause 30*, a public officer is to take reasonable steps to ensure that cash or property that is entrusted to the care of that public officer is adequately protected and not lost, damaged, misused or misappropriated. A public officer who contravenes this provision is personally liable for any losses that may result from the contravention.

Under *clause 31*, a public officer in the performance of an official function, is not to act as an agent for or further the interest of a political party or indicate support for or opposition to a political party or candidate in a public election. Engagement in political activity that may compromise or be seen to compromise the political neutrality of the office of the public officer is also prohibited.

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Clause 32 mandates a public officer who offers official advice to a person to provide the information honestly and impartially without fear or favour.

Clause 33 prohibits a public officer from knowingly giving false or misleading information to anyone in the performance of an official function.

Clause 34 requires a public officer to conduct the private and financial affairs of the public officer in a manner that maintains public confidence in the integrity of the office of that public officer.

Clause 35 proscribes favouritism as regards the selection of a public officer by another public officer for anything connected with public office. The selection is required to be in accordance with the prescribed procedure.

Under *clause 36*, a public officer shall not cause anything to be done through another person that would, if done by the public officer, contravene the Act. A public officer who acts under the permission or direction of a superior officer is not in contravention of the Act if the public officer did not know or was not in a position to know that the permission or direction contravened the Act. The clause further prohibits a public officer from acting as an agent of a foreign or local person or company. For the purpose of the Bill, a person is foreign if that person is not a citizen of Ghana, is an organisation established outside the country or owned or controlled by a foreign government, organisation or individual.

Clause 37 requires a public officer to report to the Commission or other appropriate authority, any action required of the public officer that the officer considers a contravention of the Act, any other law or code of conduct or that is otherwise improper or unethical.

Clause 38 prohibits a public officer from being under the influence of an alcoholic beverage or psychotropic substance during the performance of official functions. A contravention of this provision makes the officer subject to disciplinary action.

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Clause 39 requires a public officer to obtain the written consent of the head of the institution to which the public officer belongs in order to have recourse to any court or to the media for the vindication of an official act which is the subject matter of adverse criticism or attack, whether or not of a defamatory nature. However, the public officer may have recourse to a court or the media to vindicate an official act which is the subject matter of adverse criticism or attack without the consent of the head of the institution to which the public officer belongs, if the officer does not receive an adverse directive from the head of the institution within ten working days after the date of submission of the request for consent.

Clause 40 grants a public officer a right to publish a book, contribute to or participate in discussions in the media in the discharge of an official duty after the public officer obtains prior approval from the superior officer of that public officer. The officer is allowed to express a personal opinion but must make it clear that the opinion is personal and not official.

Clause 41 requires a public officer to communicate official information related to official duties in accordance with law and directives of the institution to which the public officer belongs.

Clauses 42 to 45 deal with enforcement of the Code of Conduct. *Clause 42* requires the Commission to investigate a complaint made to the Commission. The Commission may refer a matter to an investigating body for investigation. The investigating body is to investigate the matter within the time specified by the Commission and submit a report on its findings to the Commission. Where the complaint relates to the Commissioner for Human Rights and Administrative Justice, the complaint is to be made to the Chief Justice who is to cause the complaint to be investigated.

Clause 43 mandates the Commission to take appropriate disciplinary action after investigation where an investigation discloses that a public officer has contravened the Code of Conduct. The Commission may refer the matter to an appropriate body or person if the Commission does not have the power to take the disciplinary action it considers appropriate.

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If at any time during an investigation under the Act, the Commission is of the view that criminal proceedings ought to be instituted, the Commission is to suspend the investigation and refer the matter to the Attorney-General, *clause 44*.

Clause 45 requires the Commission to publish any action it takes in furtherance of the Act in accordance with its administrative procedure. The Commission is to provide a description of the contravention of the Code of Conduct by the public officer, the circumstances of the contravention, the extent of the culpability of the public officer, a summary of the evidence upon which the contravention was determined and a description of the action the Commission took against the public officer among other requirements.

Clauses 46 and 47 provide for public officers and legal proceedings. These clauses replicate the provisions in the Public Officers Act, 1962 (Act 114). Essentially, they deal with the protection of public officers from legal proceedings in respect of certain liabilities. The clauses also provide protection for persons acting in the execution of public duties.

Clauses 48 to 58 deal with miscellaneous provisions. *Clause 48* mandates the Commission on Human Rights and Administrative Justice to establish procedures for the administration of the Act.

Clause 49 requires a superior officer of a public officer to issue written instructions. A superior officer is to immediately confirm an oral instruction as a written record. A public officer who receives an oral instruction from a superior officer is to seek confirmation in writing as soon as possible.

Clause 50 provides for the application of disciplinary rules of the public service in which a public officer works if the public officer contravenes a section of the Act for which a specific sanction is not provided.

Clause 51 requires each public officer to take and subscribe the oath of office required under the Oaths Act, 1972 (N.R.C.D. 6) before the public officer takes office or performs official functions.

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Clause 52 requires that each public officer is given a copy of the Code of Conduct for the public office in which that person holds office and signs the register of the Code of Conduct.

Clause 53 provides that a public officer shall, for a minimum of three years after the termination of the term of office or employment of the public officer, not take improper advantage of the previous office of that public officer on termination of employment. This applies to representation of or assistance to a person in any business transaction with the former office of that public officer or the Government if the public officer participated personally or supervised the subject matter of the transaction during the term of office or employment of the public officer.

The Fair Wages and Salaries Commission is mandated under *clause 54* to provide the Commission on Human Rights and Administrative Justice with information on the salaries earned by the persons designated in paragraph 33 of the First Schedule.

Clauses 55 and 56 deal with Regulations and interpretation. *Clause 57* repeals the Public Officers Act, 1962 (Act 114) and the Public Office Holder's (Declaration of Assets and Disqualification) Act, 1998 (Act 550) but saves any Regulations and other matters made or done under the repealed enactments.

Clause 58 deals with transitional provisions.

GLORIA AFUA AKUFFO (MISS)
Attorney-General and Minister for Justice

Date: 20th April, 2018.