

GUYANA
BILL No. 13 of 2017
WITNESS PROTECTION BILL 2017

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**A BILL
Intituled**

AN ACT to provide for the establishment of a Programme for the protection of certain witnesses and other persons; and to provide for related matters.

A.D.2017.

Enacted by the Parliament of Guyana:-

**PART I
PRELIMINARY**

Short title and commencement.

1. This Act may be cited as the Witness Protection Act 2017 and shall come into operation on a date the Minister may by order appoint.

Interpretation.

2. In this Act-

“Administrative Centre” or “Centre” means the Ministry charged with responsibility for the development, management and maintenance of the Witness Protection Programme;

“Agreement” means the Agreement Establishing the Regional Justice Protection Programme for CARICOM Member States 1999;

“approved authority” or “authority” means-

- (a) the President;
- (b) the Attorney General;
- (c) the Director of Public Prosecutions;
- (d) the Administrative Centre;
- (e) the Commissioner of Police;
- (f) any other person or body that the President may, from time to time, designate as an approved authority;

“associate” means a person including a family member of that person who, by virtue of his relationship or association with a participant or prospective participant, may be considered for protection or assistance or both, under the Witness Protection Programme;

“Contracting Party” means a Party to the Agreement;

“Investigative Agency” means the Agency charged with the functions set out in section 8;

“Minister” means the Minister responsible for Legal Affairs;

“participants” means witnesses, jurors, judicial officers, legal officers, law enforcement personnel, associates of such persons and any other persons to whom protection or assistance or both are given under the Witness Protection Programme;

“Protective Agency” means the Agency charged with the functions set out in section 10;

“risk assessment” means an evaluation of the risk or danger which a participant is likely to pose for the receiving community, having regard to the matters specified in paragraphs (a), (d) and (e) of the definition of “threat assessment” and any other factor considered relevant in a particular case;

“threat assessment” means an evaluation of the danger to a prospective participant based on, but not limited to information on-

- (a) persons who are the subject of judicial or administrative proceedings concerning the case, in relation to which the prospective participant has given evidence or is required to give evidence;
- (b) any criminal organisation interested in the relevant proceedings;
- (c) the nature of the threat to the prospective participant;
- (d) the names and other identifying data of all persons who are likely to pose a danger to the prospective participant;
- (e) where appropriate, the prospective participant’s association with persons referred to in paragraph (a) or his involvement in the illegal activity giving rise to the proceedings referred to in that paragraph;
- (f) the immediacy of the threat;

“witness” means a person who has given, is obliged to give or has agreed to give a statement or evidence or both-

- (a) in relation to a crime that has been committed or in respect of which there are reasonable grounds to believe has been committed or will be committed;
- (b) to an approved authority in relation to a crime that has been committed or in respect of which there are reasonable grounds to believe has been committed or will be committed;
- (c) in a criminal trial;
- (d) in a civil proceeding;

“Witness Protection Programme” or “Programme” means the Witness Protection Programme established under section 3.

PART II THE WITNESS PROTECTION PROGRAMME

Establishment of the
Witness Protection
Programme and
Agencies.

3. (1) There is established a Programme to be known as the Witness Protection Programme, for the purpose of providing to participants, subject to this Act, protection or assistance or both.

(2) For the purpose of administering the Programme, there are established the following Agencies –

- (a) the Administrative Centre, to be located on premises determined by the Minister, which may with the approval of the Minister make arrangements with and enter into memoranda of understanding and co-operate with -
 - (i) any Department of Government;
 - (ii) the Police Force;
 - (iii) the Defence Force; or

- (iv) any person, for the purposes of the Act, including a corporation but not a participant or a prospective participant in the Witness Protection Programme;
- (b) the Investigative Agency, the functions of which shall be performed by the Police Force or such other persons as may be determined by the Minister;
- (c) the Protective Agency, the functions of which shall be performed by the Police Force or such other persons as may be determined by the Minister.

Functions of the Administrative Centre.

4. (1) The Administrative Centre shall develop, manage and maintain the Witness Protection Programme and shall be responsible for deciding whether a prospective participant is to be afforded protection or assistance or both, under the Programme.

(2) In performing its functions under this Act, the Centre shall-

- (a) liaise with other approved authorities and with Administrative Centres of other Contracting Parties;
- (b) liaise where necessary, with appropriate authorities in the territories of non-Contracting Parties;
- (c) determine the participants in the Witness Protection Programme;
- (d) determine after consultation with the Investigative Agency and the Director of Public Prosecutions, the level and duration of protection or assistance for a prospective participant, based on the assessments referred to in subsection (3)(a) and (b);
- (e) obtain such information as may be required to determine-
 - (i) the financial implications of admitting the prospective participant to the Programme; and
 - (ii) the actual or potential civil and criminal liability of the prospective participant;

- (f) require the prospective participant to conclude a Memorandum of Understanding with the Centre, detailing the terms and conditions of his participation in the Programme;
- (g) arrange for the provision of safe-houses on the written recommendations of the Investigative Agency or the Protective Agency on the basis of threat and risk assessments;
- (h) develop guidelines for the effective operation of the Programme;
- (i) establish budgetary requirements of the Programme;
- (j) make payments in connection with the protection and assistance provided under this Act;
- (k) take cognizance of the high cost and complexity of providing adequate protection for participants;
- (l) co-ordinate and relay to approved authorities of Contracting Parties, relevant information on threat and risk assessments and other related matters.

(3) In the performance of its functions in accordance with subsection (2)(c), the Administrative Centre shall-

- (a) in relation to criminal matters, make a determination on the basis of written assessments received from-
 - (i) the Investigative Agency;
 - (ii) the Director of Public Prosecutions; and
 - (iii) the Protective Agency;
- (b) in relation to civil matters and inquiries under the Commissions of Inquiry Act, make a determination on the basis of written assessments received from-
 - (i) the Investigative Agency;
 - (ii) the Attorney General; and
 - (iii) the Protective Agency.

Cap. 19:03.

(4) The Administrative Centre shall, in deciding whether to include a prospective participant in the Programme, have regard to-

- (a) any criminal record of the prospective participant, particularly in respect of crimes of violence, and whether that record indicates a risk to the public if he is included in the Programme;
- (b) the results of any medical, psychological or psychiatric examination or evaluation of the prospective participant, conducted to determine his suitability for inclusion in the Programme;
- (c) the seriousness of the offence to which any relevant evidence or statement relates;
- (d) the nature and importance of any relevant evidence or statement;
- (e) whether there are viable alternative methods of protecting or assisting the prospective participant;
- (f) the nature of the perceived danger to the prospective participant;
- (g) the nature of the prospective participant's relationship with other prospective participants being assessed for inclusion in the Programme;
- (h) the expected duration of the protection or assistance to be provided; and
- (i) any other matters that the Centre considers relevant.

(5) Action which may be taken by the Administrative Centre to facilitate the safety and security of participants may include the following-

- (a) providing any documents necessary-
 - (i) to establish a new identity for the participant; and
 - (ii) to protect the participant;

- (b) permitting a participant to use an assumed name in carrying out his duties in relation to the Programme and to carry documentation supporting the assumed name;
- (c) providing payments to or for the participant for the purpose of-
 - (i) meeting his reasonable living expenses including, where appropriate, living expenses of his family; and
 - (ii) providing, whether directly or indirectly, other reasonable financial assistance;
- (d) providing payments to the participant for the purpose of meeting costs associated with relocation;
- (e) providing assistance to the participant in obtaining employment, access to education and health care;
- (f) providing other assistance to the participant with a view to ensuring that the participant becomes self-sustaining.

Cases to be considered for protection.
First Schedule.

5. (1) The Administrative Centre may offer protection or assistance or both to prospective participants or participants under the Witness Protection Programme in respect of the offences set out in the First Schedule.

Second Schedule.

(2) The Minister may, by order, after consultation with the Director of Public Prosecutions and the Commissioner of Police, amend the First and Second Schedules.

Disclosure of certain information to the Administrative Centre.

6. (1) Notwithstanding section 4(3), the Administrative Centre shall not include a prospective participant in the Programme unless-

- (a) it is satisfied that the person has provided the Centre with the information required of him under subsection (2); and
- (b) it receives such other information as may be required in the case or under this Act.

(2) A prospective participant shall disclose to the Centre-

- (a) details of all of his outstanding legal obligations;

- (b) details of all of his outstanding debts including amounts outstanding in respect of any tax;
- (c) details of his criminal history;
- (d) details of any civil proceedings that have been instituted by or against him;
- (e) details of-
 - (i) any cash balances in bank accounts; and
 - (ii) property, movable or immovable, held anywhere by him in his own name or jointly or severally with any other person or persons as the case may be;
- (f) whether any of his property, movable or immovable, is liable to forfeiture or confiscation under any other law;
- (g) details of any enterprise whatsoever, in which he is involved, that may yield him a monetary return;
- (h) details of receivables and all sources of income;
- (i) details of his general medical condition;
- (j) details of any dependants and related obligations;
- (k) details of any court order relating to sentences imposed on him or to which he is subject in relation to criminal prosecutions;
- (l) details of any relevant court orders or arrangements relating to his custody of or access to children; and
- (m) details of any arrangements that he has made for-
 - (i) the service of documents on him;
 - (ii) representation in proceedings in any court;
 - (iii) enforcement of judgments in his favour; or
 - (iv) compliance with the enforcement of judgments against him.

(3) The Centre shall make other inquiries and investigations as it considers necessary for the purpose of assessing whether the prospective participant should be included in the Programme.

Inclusion of prospective participants in Programme.

7. The Administrative Centre shall not include a prospective participant in the Programme unless-

- (a) subject to section 9, he applies in the prescribed form to be included;
- (b) the Centre is satisfied that he understands the implications of being included in the Programme;
- (c) he understands and signs a Memorandum of Understanding in accordance with the provisions of this Act or if he is under eighteen years of age or otherwise lacks legal capacity to sign the Memorandum-
 - (i) it is signed by a parent or guardian; or
 - (ii) if there is no such parent or guardian, it is signed by a person appointed by the High Court to be his guardian.

Functions of the Investigative Agency.

8. In relation to the possible inclusion of a prospective participant in the Witness Protection Programme, the Investigative Agency-

- (a) shall on receipt of the application referred to in section 7(a) conduct investigations and submit to the Administrative Centre the said application, accompanied by the following documents prepared by the Investigative Agency-
 - (i) an assessment of that application;
 - (ii) a threat assessment including a prison report where the prospective participant is in prison; and
 - (iii) a risk assessment;
- (b) may, in a case of emergency, apply to the Administrative Centre for provisional entry into the Programme by the prospective participant prior to the determination referred to in section 4(3) (a) and (b).

Director of
Public
Prosecutions to
submit
application.

9. (1) In relation to criminal matters, the Director of Public Prosecutions shall, where he is satisfied that the circumstances so warrant, prepare and submit an application in the prescribed form to the Administrative Centre for a prospective applicant's entry into the Witness Protection Programme.

(2) An application referred to in subsection (1) shall be made after the Director of Public Prosecutions has-

- (a) in the case of a prospective participant who is likely to be a witness-
 - (i) determined that the testimony of the prospective participant is credible and essential; and
 - (ii) formed the opinion that the prospective participant can be relied upon to give the testimony;
- (b) determined that a juror, judicial officer, legal officer, law enforcement officer or any of their associates, is in need of protection or assistance or both.

(3) An application under this section shall be accompanied by detailed information on-

- (a) the significance of the case;
- (b) the prospective defendant;
- (c) the testimony of the prospective participant; and
- (d) the anticipated benefits of a successful prosecution.

(4) For the purposes of subsection (2)(b), "legal officer" includes an attorney-at-law in private practice.

Functions of
the Protective
Agency.

10. (1) For the purposes of this Act, the Protective Agency shall-

- (a) submit a report to the Centre on the suitability of a prospective participant for entry into the Witness Protection Programme and for that purpose shall-
 - (i) interview the prospective participant with a view to establishing his suitability for entry into the Programme;

- (ii) examine the threat and risk assessments submitted to the Administrative Centre pursuant to section 8(a); and
- (iii) require a prospective participant or a participant, as the case may be, to undergo, for the purpose of determining his physical and mental health, medical tests or examinations and psychological or psychiatric evaluations and to authorise the results to be made available to the Protective Agency;
- (b) protect participants and persons accorded provisional entry pursuant to section 8(c);
- (c) relocate participants where necessary; and
- (d) carry out periodic reviews of threat and risk assessments.

**PART III
MEMORANDUM OF UNDERSTANDING**

Memorandum of Understanding.

Second Schedule.

11. (1) The Administrative Centre shall, subject to the approval of the Minister, prepare a Memorandum of Understanding which shall, subject to subsection (2), contain the matters set out in the Second Schedule.

(2) The Administrative Centre may, where it considers necessary in a particular case, include any other matter in a Memorandum of Understanding.

(3) The Memorandum of Understanding shall be signed-

- (a) by the prospective participant; or
- (b) where the circumstances so require, by the person referred to in section 7(c) (i) or (ii),

in the presence of two witnesses, one of whom may be the participant's attorney at-law.

(4) A prospective participant is included in the Witness Protection Programme when the Memorandum of Understanding is countersigned by the person authorised by the President for that purpose.

(5) The Memorandum of Understanding may be varied by the President-

- (a) after consultation with the Administrative Centre and with the participant's consent; or
- (b) upon application by the participant for a variation.

(6) The variation referred to in subsection (5) shall take effect on the day on which the participant receives written notice thereof.

(7) Where a participant remains in the Programme upon attaining the age of eighteen years, the Administrative Centre shall require him to sign a new Memorandum of Understanding on his own behalf.

PART IV REGISTER OF PARTICIPANTS

Register of participants.

12. (1) The Administrative Centre shall maintain a register of participants which shall be accorded a security classification determined by the Minister.

(2) The register may be maintained by electronic means.

(3) The Centre shall include in the register, the following details in respect of each participant-

- (a) the participant's name and assumed names, if any;
- (b) the participant's new name where he has been provided with a new identity under the Witness Protection Programme;
- (c) the participant's address;
- (d) details of any offences for which the participant has been convicted;
- (e) the dates on which the participant entered and left the Programme;
- (f) the matter giving rise to his entry into the Programme; and
- (g) details of any approval or refusal pursuant to section 15(1).

(4) The Centre shall keep the following documents (hereinafter referred to as "ancillary documents") along with the register-

- (a) the original of each Memorandum of Understanding;
- (b) in respect of new identities, copies of each new document issued under the Programme;
- (c) the original of each approval granted by the Centre pursuant to section 15(1); and
- (d) any documents returned to the Centre pursuant to section 17(5).

Access to register.

13. (1) The Administrative Centre shall be the only approved authority that shall have access to the register and to the ancillary documents referred to in section 12.

(2) The Centre may, if it is of the opinion that it is in the interest of the due administration of justice to do so, allow another approved authority to have access to the register and the ancillary documents.

(3) Where the Centre allows an approved authority access to the register and the ancillary documents, the Centre shall notify the other approved authorities of-

- (a) the identity of the authority to whom the access was allowed;
- (b) the information to which the authority was allowed access;
- (c) the reasons for allowing access; and
- (d) the date and time of access.

PART V PROTECTION UNDER THE WITNESS PROTECTION PROGRAMME

Rights and obligations.

14. (1) Where a participant who is entitled to exercise a right is under an obligation or is subject to any restriction, the appropriate approved authority shall take steps reasonably practicable to ensure that-

- (a) the right or obligation is dealt with according to law; and
- (b) the participant complies with the restriction.

(2) The steps referred to in subsection (1) may include-

- (a) providing protection for the participant while the participant is attending court; and
- (b) notifying a party or possible party to legal proceedings, that the authority shall accept process issued by a court or tribunal on behalf of the participant, and nominating one of its officers for the purpose.

(3) Where the authority is satisfied that a participant who has been provided with a new identity under the Witness Protection Programme is using the new identity to-

- (a) avoid obligations that were incurred before the new identity was established; and
- (b) avoid complying with restrictions that were imposed on the participant before the new identity was established,

the authority shall give notice in writing to the participant stating that unless he satisfies the authority that the obligations are dealt with according to law or the restrictions be complied with, the authority shall take such action as it considers necessary to ensure performance of the obligations or compliance with the restrictions.

(4) The action referred to in subsection (3) may include informing a person who is seeking to enforce rights against the participant, of the details of any property, movable or immovable, owned by the participant under his former identity.

(5) A participant shall be accorded secrecy and confidentiality by the Witness Protection Programme in all his dealings with the Programme and in particular, the Programme shall set down the necessary measures including the appointment of staff of integrity and the provision of secure premises so that the participants' dealings and disclosures with the Programme are kept secret and confidential.

Non-disclosure
of former
identity.

15. (1) A participant who has been provided with a new identity under the Witness Protection Programme shall not disclose his former identity unless he has obtained the prior written approval of the Administrative Centre.

(2) Notwithstanding subsection (1) and any other written law, the participant shall in any proceedings, be entitled to claim that his new identity is his only identity.

(3) In this section, “participant” includes a person who is no longer participating in the Programme but retains his new identity.

Cessation of
protection and
assistance.

16. (1) Protection or assistance provided under the Witness Protection Programme to a participant-

- (a) shall be terminated by the Centre if the participant requests in writing that it be terminated; or
- (b) may be terminated by the Centre if-
 - (i) the participant deliberately breaches a term of the Memorandum of Understanding;
 - (ii) the Centre discovers that the participant had knowingly given information to the Centre that was false or misleading in a material particular;
 - (iii) the participant’s conduct is, in the opinion of the Centre, likely to compromise the integrity of the Programme;
 - (iv) the circumstances that gave rise to the need for protection or assistance for the participant, cease to exist;
 - (v) the participant deliberately breaches an undertaking, including an undertaking to give evidence, in relation to a matter, material and relevant to the Programme;

- (vi) the participant refuses or fails to sign a new Memorandum of Understanding when required to do so under section 11(7); or
- (vii) there is, in the opinion of the Centre, no reasonable justification for the participant to remain in the Programme.

(2) Where the Centre decides under subsection (1) (b) to terminate protection or assistance or both under the Programme, the Centre shall-

- (a) take reasonable steps to notify the participant of the decision; and
- (b) notify the other approved authorities of the decision.

(3) A participant who receives such a notification may, within twenty-eight days after receiving the notice, apply in writing to the President for a review of the decision of the Centre.

(4) Where a participant applies for a review of the decision of the Centre, the President shall-

- (a) allow the participant a reasonable opportunity to state his case;
- (b) review the decision of the Centre and-
 - (i) confirm or reverse it; or
 - (ii) vary it with the consent of the participant; and
- (c) inform the participant, in writing, of the decision.

(5) A decision of the Centre pursuant to subsection (1) (b) to terminate protection or assistance or both, shall be effected as follows-

- (a) where the participant's whereabouts are unknown and the Centre has taken reasonable steps to notify the participant of the decision but has been unable to do so or where, in the opinion of the President, the participant is avoiding notification, the protection shall be terminated at the end of the period of twenty-eight days after those steps were commenced;

- (b) where the participant does not apply for a review of the decision in accordance with subsection (3), termination shall take effect at the end of the period of twenty-eight days after the participant receives the notification; or
- (c) if the participant applies for a review of the decision in accordance with subsection (3) and the President notifies the participant that the decision of the Centre is confirmed, termination shall take effect from the date of receipt of the notification.

Restoration of
former identity.

17. (1) Where a participant has been provided with a new identity under the Witness Protection Programme and protection or assistance to the participant is terminated, the Administrative Centre, if it considers it appropriate to do so, may take such action as is necessary to restore the former participant's former identity.

(2) The Centre shall take reasonable steps to notify the former participant of its decision under subsection (1).

(3) Where the Centre proposes to take action to restore the identity of the former participant, he may, within twenty-eight days after receiving the notification, apply in writing to the President for a review of the decision of the Centre.

(4) Where an application is made, the President shall-

- (a) before making a decision, give the former participant a reasonable opportunity to state his case;
- (b) review the decision of the Centre and confirm or reverse it; and
- (c) inform the former participant, in writing, of the decision.

(5) Where the Centre takes action under this section to restore the identity of the former participant and the Centre requests the return of all documents that were provided in relation to the new identity, the former

participant shall return those documents to the Centre within seven days of his receipt of the request.

Provision of information to an approved authority.

18. Where another approved authority notifies the Administrative Centre that a participant who has been provided with a new identity or has been relocated, is under investigation for, or has been arrested or charged with an offence, the maximum penalty for which is or includes imprisonment for a period of more than one year, the Centre may-

- (a) provide the appropriate approved authority with-
 - (i) the participant's new identity;
 - (ii) the participant's criminal record and fingerprints; and
 - (iii) such other information relating to the Witness Protection Programme as the Centre considers appropriate in the circumstances; and
- (b) cause the participant to appear before the appropriate authority.

PART VI MISCELLANEOUS

Officers protected from suit in respect of decisions made under this Act.

19. Officers of the Administrative Centre performing functions in relation to the Programme, shall not be liable to any action, suit or other proceedings in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of a power conferred by this Act.

Offences.

20. (1) A person who, without lawful authority, discloses information-

- (a) about the identity or location of a person who is or has been a participant;
- (b) that compromises the safety or security of a participant or the integrity of the Programme,

commits an offence.

(2) A person who is or has been a participant or a person who has undergone assessment for inclusion in the Witness Protection Programme and discloses-

- (a) the fact of such participation or assessment;
- (b) information as to the way in which the Programme operates;
- (c) information about any officer of the Administrative Centre who is or has been involved in the Programme;
- (d) the fact that he has signed a Memorandum of Understanding; or
- (e) any details of a Memorandum of Understanding that he has signed,

commits an offence unless he has been authorised by the Centre to make the disclosure.

(3) A person who-

- (a) offers a bribe or other inducement to any person employed in the administration of this Act, for the purpose of obtaining information which could prejudice the safety or security of a participant or the integrity of the Programme; or
- (b) being a person employed in the administration of this Act, accepts any bribe or other inducement in exchange for the information referred to in paragraph (a),

commits an offence.

(4) A person who commits an offence under subsection (1), (2) or (3) is liable on summary conviction to a fine of one million dollars and to imprisonment for ten years.

(5) A person who, without reasonable excuse fails to return the documents referred to in section 17(5) in accordance with that section, commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars and to imprisonment for five years.

Officers not required to disclose information.

21. (1) Subject to subsection (2), an officer of the Administrative Centre shall not be required to-

- (a) produce in any court or to another approved authority, any document that has come into the custody or control of the Centre in the course of or because of the performance of functions or duties under this Act; or
- (b) divulge, communicate or produce to or before such a body, any matter or thing that has come to the notice of the officer in the performance of functions or duties under this Act,

except where it is necessary to do so for the purpose of giving effect to the provisions of this Act.

(2) Where, in the determination of legal proceedings, it becomes necessary for the Judge or magistrate presiding, to be advised of a participant's location and circumstances, the officer referred to in subsection (1) shall disclose the relevant information to the Judge or magistrate in chambers but the officer shall not disclose the information if any person other than the Judge or magistrate is present.

(3) The Judge or magistrate shall not disclose any information received under subsection (2) otherwise than in accordance with this Act.

Requirements where participant becomes a witness in criminal proceedings.

22. (1) Where-

- (a) a person is provided with a new identity under the Witness Protection Programme;
- (b) the person retains that identity, whether or not he remains a participant; and
- (c) the person is to appear as a witness in criminal proceedings under that identity,

the person shall notify the Administrative Centre that he is to appear as a witness in such proceedings.

(2) After being notified under subsection (1), the Centre may take any action it considers appropriate in the circumstances, except where the person has a criminal record, the Centre shall disclose that criminal record to the court, the prosecutor and the accused person or the accused person's legal representative.

Identity of participant not to be disclosed.

23. If in any proceedings in any court, the new identity of a person who is a participant is in issue or may be disclosed, the court shall, unless it considers that the interests of justice require otherwise-

- (a) hold that part of the proceedings that relate to the identity of the participant *in camera*; and
- (b) make such order restricting the publication of evidence given before the court as in its opinion will ensure that the identity of the participant is not disclosed.

Annual reports to Board.

24. (1) Subject to subsection (2), the Administrative Centre shall submit to the Board, annual reports on the general operation, performance and effectiveness of the Witness Protection Programme.

(2) A report under subsection (1) shall not contain any matter which in the opinion of the Centre is likely to prejudice the effectiveness or security of the Programme.

(3) In subsection (1), "Board" means the Board of Governors referred to in Article 5 of the Agreement.

Regulations.

25. (1) The Minister may make regulations prescribing all matters which are required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations respecting the establishment of new identities for participants.

(3) Regulations made under this section are subject to negative resolution of the National Assembly.

Transitional.

26. Any Memorandum of Understanding or any arrangement with any person in relation to protection or assistance that existed at the commencement of this Act shall continue in force on the same terms and conditions until it is replaced by a Memorandum of Understanding under this Act.

FIRST SCHEDULE

(Section 5)

OFFENCES WHICH MAY GIVE RISE TO PROTECTION UNDER THE
WITNESS PROTECTION PROGRAMME

Murder

Manslaughter

Treason

Sedition

Piracy or hijacking

Possession or use of firearms and ammunition with intent to injure

Possession or use of firearms in furtherance of any criminal offence

Trafficking in firearms and ammunition

Aggravated assault

Shooting or wounding with intent to do grievous bodily harm

Robbery

Robbery with aggravation

Armed robbery

Arson

Any sexual offence

Any drug trafficking offence

Any domestic violence offence

Any trafficking in persons offence

Any offence relating to cyber crime

Kidnapping

Offences under the Anti-Money Laundering and Countering the Financing of
Terrorism Act (Cap 10:11)

Offences under the Criminal Law (Offences) Act (Cap. 8:01)

Offences under the Anti-Terrorism and Terrorist Related Activities Act, No 15 of
2015

SECOND SCHEDULE

(Sections 5 (2) and 11)

CONTENTS OF MEMORANDUM OF UNDERSTANDING

The basis on which a prospective participant is to be included in the Witness Protection Programme.

The details of the protection or assistance that is to be provided.

The terms and conditions upon which protection or assistance shall be provided to the prospective participant.

An undertaking that the participant will not compromise, directly or indirectly, the security of, or any other aspect of the protection or assistance, or both, being provided.

An undertaking that the participant will comply with all reasonable directions of the Centre in relation to the protection or assistance, or both, provided to him.

An undertaking that the prospective participant or participants, as the case may be, shall, if required to do so by the Administrative Centre-

- (a) undergo medical tests or examinations and psychological or psychiatric evaluations by medical officers approved by the Centre for those purposes;
- (b) undergo drug or alcohol counselling or treatment,

and authorise that the results be made available to the Centre.

A list of all outstanding legal obligations and a statement by the prospective participant, of the arrangements which have been made to meet those obligations.

A financial support arrangement.

An undertaking by the prospective participant to disclose to the Centre, details of any criminal charges that are made against him, and any civil or bankruptcy proceedings that are instituted against him after his inclusion in the Programme.

A provision to the effect that protection or assistance under the Programme may be terminated if the prospective participant breaches a term of the Memorandum of Understanding.

EXPLANATORY MEMORANDUM

This Bill seeks to introduce legislation for the establishment of a Programme for the protection of certain witnesses and other persons.

PART II provides for the establishment of the Witness Protection Programme and three agencies (an Administrative Centre, an Investigative Agency and a Protective Agency) to administer the Programme. It lays out the functions of the three agencies and their interdependence on each other for the effective and proper administration of the Programme. It requires the disclosure of certain information to the Administrative Centre by the prospective participant, the prospective participant's application to be in the prescribed form, that the participant understands the implications of being included in the Programme and that he understands and signs the Memorandum of Understanding. In relation to criminal matters, the Director of Public Prosecution, where satisfied that the circumstances so warrant, shall prepare and submit the application in the prescribed form.

PART III identifies the agency that will prepare the Memorandum of Understanding, the persons who will be eligible to sign (the prospective participant or where the circumstances so require, the person referred to in clause 7 (c) (i) and (ii)) and countersign (the person authorised by the President for the purpose), and how the Memorandum of Understanding may be varied.

PART IV provides for a register of participants which shall contain detailed information in respect of each participant. It makes mandatory that all ancillary documents (the original of each Memorandum of Understanding, new identities issued under the Programme, the original of each approval granted by the Centre, identity documents returned to the Centre) and the register shall be kept by the Centre. This Part further gives access to these documents and the register, only to the Centre. However, in the interest of the due administration of justice, the Centre may allow another approved authority (defined in clause 2) to have access to the ancillary documents and the register. Where the Centre allows another approved authority access, the Centre shall notify the approved authorities of such access.

PART V provides for the protection of the participant and in instances where the participant has been provided with a new identity he must obtain written approval from the Administrative Centre before he discloses his former identity. Further, protection and assistance under the Programme may be terminated by the participant or the Centre and where the Centre considers it appropriate it may restore the participant's former identity. It also provides that the participant has twenty-eight days after receiving notification from the Centre, in regard to either the termination of protection or assistance or both or where there is a decision to restore the participant's former identity, to apply to the President for a review of the decision and the President shall allow him a reasonable opportunity to state his case.

PART VI makes it an offence, for a person without lawful authority, a person who has been a participant or a person who has undergone assessment for inclusion in the Programme, to disclose any information about the Programme. It is also an offence for a person to offer a bribe to a person employed in the administration of this Act or being a person employed in the administration of this Act, to accept a bribe.

The First Schedule lists the offences which may give rise to protection under the Witness Protection Programme.

The Second Schedule sets out the contents of the Memorandum of Understanding.

**Hon. Basil Williams, SC, MP
Attorney General and
Minister of Legal Affairs**