

L.N. 316 of 2011**EQUALITY FOR MEN AND WOMEN ACT
(CAP. 456)****Procedure for Investigation Regulations, 2011**

IN exercise of the powers conferred by article 18(3) of the Equality for Men and Women Act, the Minister of Education, Employment and the Family, has made the following regulations:-

1. The title of these regulations is the Procedure for Investigation Regulations, 2011. Citation.

2. (1) In these regulations unless the context otherwise requires:- Interpretation.

“the Act” means the Equality for Men and Women Act; Cap. 456.

“the Commission” means the National Commission for the Promotion of Equality established in terms of article 11 of the Act and includes any officer of the Commission duly authorised by it to act on its behalf for a specific purpose or class of purposes under the Act;

“the Commissioner” means the Commissioner for the Promotion of Equality appointed under article 11 of the Act;

“wrongful act” means an act which allegedly is in breach of any provision of the Act.

(2) Words and phrases used in these regulations shall have the same meaning given to them in the Act.

3. (1) In carrying out investigations, whether upon receipt of a complaint or in general investigations, the Commissioner shall be assisted by a member of the Commission and by a person holding a degree in law, who need not be an employee of the Commission. Assistance to the Commissioner.

(2) Both persons referred to in sub-regulation (1) shall be appointed by the Commission to assist the Commissioner in a particular investigation, but a member of the Commission or person holding a degree in law may be appointed to assist the Commissioner on two or more investigations at the same time:

Provided that the Commission may, if in the circumstances it deems it proper to do so, appoint a panel consisting of members of the Commission and a panel consisting of persons holding a degree in law, from which respective panels one member of the Commission and one person holding a degree in law shall be assigned to assist the Commissioner in any particular investigation.

(3) The persons so appointed, or their substitutes, under the provisions of this regulation to assist the Commissioner, shall be present for each meeting of the investigation for which they are appointed.

Exclusion of the public.

4. No person other than the persons referred to in regulation 3, the parties to the investigation and their legal counsel, if any, and witnesses called by the Commissioner or other persons whom the Commissioner considers to be directly concerned in the investigation shall be present at any meeting of the investigation:

Provided that the Commissioner may, at his own discretion, exclude any person referred to in this sub-regulation from attending the meeting, or any part thereof, without prejudice to the right of such person to have access to the minutes of the meeting.

Notice of commencement of investigation and request for report.

5. (1) Without prejudice to the provisions of article 5 of the Act, when commencing an investigation in exercise of the functions referred to in article 12 (g) and (h) of the Act, the Commissioner shall with the assistance of the Commission, notify by means of a registered letter all the parties concerned that he intends to carry out an investigation.

(2) In the notice of commencement of an investigation to the person who is allegedly responsible for the wrongful act, the Commissioner shall inform such person of the allegations made in his regard and shall moreover have the right to request such person to provide, within ten working days, a report on the allegations made:

Provided that the Commissioner shall have the right to commence, and proceed with, the investigation whether the report is submitted, by the person so requested, within the stipulated time or not.

(3) In the notice of commencement of an investigation, the Commissioner shall moreover formally request the parties concerned whether they accept to be bound by the findings of the Commissioner in accordance with article 18 (2) of the Act.

6. (1) The Commissioner, with the assistance of the Commission, may request from any person any information as may be deemed by the Commissioner to be required for the carrying out of the investigation.

Information required for the investigation.

(2) The Commissioner may, by registered written notice and with the assistance of the Commission, request any person:

(a) to provide any information that may be described in the notice within such time as is therein indicated;

(b) to attend and give oral information about the matter specified in the notice and to produce all documents in his possession or control relating to any such matter at a meeting scheduled for such purpose:

Provided that, a person shall not be obliged to give information or produce a document requested in the notice, if that person is deemed to be exempt from providing that information or producing that document before a court in civil proceedings.

(3) Where a person so requested, in accordance with the provisions of this regulation, fails to abide by the request of the Commissioner within the stipulated time, the Commissioner may request, by means of an application, the Civil Court, First Hall, to order such person to comply with the notice issued to him in terms of sub-regulations (1) and (2); the court may also be requested to give any other order which it may consider appropriate and required according to the specific circumstances of the case.

7. (1) An investigation commenced upon receipt of a complaint, shall be discontinued upon the withdrawal of the complaint:

Withdrawal of complaint.

Provided that this shall not prohibit the Commissioner, with the assistance of the Commission, from initiating a general investigation on the basis of any information already collected during that investigation initiated on a complaint.

(2) Where the investigation upon receipt of a complaint is discontinued according to sub-regulation (1), the Commissioner shall inform in writing the complainant and the person against whom the complaint is directed that the investigation has been discontinued.

Mediation.

8. Where the Commissioner mediates between the complainant and the person against whom the complaint is directed, in terms of Article 18 (1)(b)(ii) of the Act, and the person against whom the complaint is directed, or the complainant, fails to abide by the terms negotiated during the mediation, the Commissioner may, by means of an application, request the Civil Court, First Hall, to order such person failing to abide by the terms of the mediation to undertake all necessary remedial action as may be ordered by the court.

Proceedings.

9. (1) In the case of an alleged discrimination by one person against another and where the Commission considers it so appropriate in terms of article 18 (4) of the Act, the Commission may refer the matter to the competent court or to the Industrial Tribunal for redress.

(2) In the case of an alleged discrimination as referred to in sub-regulation (1), the Commission may, if it deems it appropriate, join in and become a party to the suit.

