

THE EXECUTIVE AGENCIES ACT, 2002

(Act 4 of 2002)

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SCHEDULE.

JAMAICA

No. 4—2002

I assent,

[L.S.]

H. F. COOKE,
Governor-General

20th day of February, 2002.

AN ACT to Make provisions for the establishment and operations of Executive Agencies and for connected matters.

[The date notified by the Minister
bringing the Act into operation]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Executive Agencies Act, 2002, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title
and com-
mencement.

PART I. *Preliminary*Interpre-
tation.

2. In this Act, unless the context otherwise requires—

“Advisory Board” means a board with advisory functions only, which is appointed by the responsible Minister;

“appointed day” means the date of commencement of this Act;

“Chief Executive Officer” means the person charged with responsibility for the management of an Executive Agency;

“Executive Agency” and “Agency” means a public body which is designated an Executive Agency pursuant to this Act;

“Framework Document” means the document establishing the legal framework between the Agency and the responsible Minister, stating the terms on which the Executive Agency will operate, including the matters specified in the Schedule hereto;

Schedule

“functions” includes duties and powers;

“generally accepted accounting practice” means such financial reporting standards as are—

(a) set out from time to time in the Handbook of the Institute of Chartered Accountants of Jamaica; and

(b) approved by the Minister responsible for Finance, in accordance with the provisions of the Financial Administration and Audit Act;

“Minister” means Minister responsible for the public services;

“Performance Agreement” means an agreement to be entered into between the responsible Minister and Chief Executive Officer of an Executive Agency, providing the basis for the specification, assessment and review of the Chief Executive Officer’s performance;

“public body” means—

- (a) a Department of Government;
- (b) a statutory body or authority; or
- (c) a company which is owned by Government;

“relevant Act” means an Act which provides for the establishment and functions of a statutory body or authority which is designated under this Act as an Executive Agency;

“responsible Minister” as respects an Executive Agency or other public body, means the Minister having portfolio responsibility for that Agency or body, and “responsible Ministry” shall be construed accordingly.

3. The principal objects of this Act are—

Object of Act.

- (a) the establishment of Executive Agencies;
- (b) the promotion of prudent, effective and efficient management in Executive Agencies;
- (c) the provision of appropriate mechanisms for proper management, accountability and transparency in the operations of Executive Agencies;
- (d) the enhancement of the effective and efficient delivery of goods and services to the public.

PART II. *Designation of Executive Agencies*

Designation
of public
body as
Executive
Agency.

4.—(1) Subject to the provisions of this section, the Minister may by order designate one or more public bodies as Executive Agency with effect from such date as shall be specified in the order.

(2) Before making an order under subsection (1) the Minister shall—

- (a) cause to be carried out, an assessment of the functions and operations of the body or bodies concerned for the purpose specified in subsection (3);
- (b) determine if the assessment shall extend to the functions and operations of any other body or bodies;
- (c) approve a scheme of management for the operations of the Executive Agency.

(3) An assessment shall be carried out under subsection (2) for the purpose of—

- (a) identifying—
 - (i) the most effective and efficient options for undertaking the functions of the public body or bodies; and
 - (ii) the advantages and disadvantages of each option; and
- (b) recommending, with accompanying reasons—
 - (i) the preferred option or combination of options, or such other options as may be necessary; and
 - (ii) the form of organization.

(4) Where, based on the final report of an assessment carried out pursuant to subsection (2), the Minister determines that the public body or bodies concerned should

be designated as an Executive Agency he shall, in writing notify the responsible Minister who shall cause a draft scheme of management to be prepared in accordance with section 5 and submitted to the Minister for approval.

5.—(1) Every scheme of management shall provide for—

Schemes of establishment and management of Executive Agencies.

- (a) the functions of the Executive Agency;
- (b) the establishment and functions of an Advisory Board and the appointment and tenure of office of its members;
- (c) the appointment and tenure of office of the Chief Executive Officer;
- (d) the application of the funds of the Agency;
- (e) the modernization of the Agency, including—
 - (i) the preparation of a Framework Document and Performance Agreement; and
 - (ii) such other matters relating to strategic and operational plans as are necessary for its modernization and medium-term financing;
- (f) the timely preparation and provision of documents, including multi-year corporate plans, annual business plans, quarterly and annual reports and performance agreements that are designed to promote and contribute to effective and efficient management and accountability of the Agency;
- (g) the numbers of any particular office, levels of emoluments and other elements of remuneration for positions required for the modernization of the Executive Agency and to meet the performance targets and indicators agreed by the responsible Minister in the Framework Document; and

(h) such other matters as the responsible Minister may consider expedient or necessary for giving effect to the purposes of this section.

(2) The primary functions of the Advisory Board are to advise the Chief Executive Officer in the strategic and business planning responsibilities of the Executive Agency.

(3) Members of the Advisory Board shall be appointed from among suitably qualified persons in the public and private sectors and non-governmental organizations.

Schedule.

(4) The Minister may from time to time by order amend the Schedule by adding to or removing from it any matter to be included in a Framework Document.

PART III. *Administration*

Appoint-
ment of
Chief
Executive
Officer.

6.—(1) The Chief Executive Officer shall be appointed by the Governor-General by instrument in writing on the advice of the Public Service Commission.

(2) Where the appointment of a Chief Executive Officer relates to an Executive Agency that has jurisdiction in relation to a public body established by a relevant Act which specifies the designation of the officer responsible for the operations of that body, the Chief Executive Officer, if appointed to that position, shall be known by that designation.

(3) Subject to section 8, a Chief Executive Officer shall be appointed for a period not exceeding five years and shall be eligible for reappointment.

(4) The conditions of employment of a Chief Executive Officer shall be as such as are specified in a Performance Agreement approved by the responsible Minister and signed by the responsible Minister and the Chief Executive Officer.

7.—(1) The Chief Executive Officer shall report directly to the responsible Minister and be responsible for—

Functions
of Chief
Executive
Officer.

- (a) the Executive Agency's performance, operations and functions;
- (b) giving advice to the responsible Minister on the matters referred to in paragraph (a);
- (c) the delivery of goods and services by the Agency, in the quantity, and in accordance with the quality, costs and standards specified in any plan or document referred to in the scheme of management;
- (d) the general conduct of the Agency;
- (e) the efficient and effective management of the Agency (including its human resources) and prudent financial management of its financial resources;
- (f) timely reporting in the prescribed manner to the responsible Minister on the Agency's performance.

(2) In relation to an Executive Agency referred to in section 6(2), the functions specified in subsection (1) of this section are in addition to those specified in the relevant Act or any other enactment.

8. A Chief Executive Officer may be removed from office if such Officer—

Removal
from office.

- (a) becomes of unsound mind or becomes permanently unable to perform the functions of office by reason of ill health;
- (b) becomes bankrupt or, without good and sufficient reason, compounds with or suspends payment to, his creditors;
- (c) is convicted and sentenced to a term of imprisonment or death;
- (d) is convicted of any offence involving dishonesty;

7.—(1) The Chief Executive Officer shall report directly to the responsible Minister and be responsible for—

Functions of Chief Executive Officer.

- (a) the Executive Agency's performance, operations and functions;
- (b) giving advice to the responsible Minister on the matters referred to in paragraph (a);
- (c) the delivery of goods and services by the Agency, in the quantity, and in accordance with the quality, costs and standards specified in any plan or document referred to in the scheme of management;
- (d) the general conduct of the Agency;
- (e) the efficient and effective management of the Agency (including its human resources) and prudent financial management of its financial resources;
- (f) timely reporting in the prescribed manner to the responsible Minister on the Agency's performance.

(2) In relation to an Executive Agency referred to in section 6(2), the functions specified in subsection (1) of this section are in addition to those specified in the relevant Act or any other enactment.

8. A Chief Executive Officer may be removed from office if such Officer—

Removal from office.

- (a) becomes of unsound mind or becomes permanently unable to perform the functions of office by reason of ill health;
- (b) becomes bankrupt or, without good and sufficient reason, compounds with or suspends payment to, his creditors;
- (c) is convicted and sentenced to a term of imprisonment or death;
- (d) is convicted of any offence involving dishonesty;

Executive Officer is fulfilling all of the requirements imposed upon that Chief Executive Officer by the Performance Agreement or under this Act, the relevant Act or any other enactment.

11.—(1) Subject to subsection (2), a Chief Executive Officer may from time to time, in accordance with an instrument of delegation issued under section 127 of the Constitution—

Appoint-
ment of
staff.

- (a) appoint such other officers and employees as the Chief Executive Officer thinks necessary for the efficient exercise of the functions of the Executive Agency; and
- (b) subject to subsection (4)(b) of that section, remove from office or exercise disciplinary control over any such officer or employee.

(2) In exercising powers under subsection (1)(b), the Chief Executive Officer shall act in accordance with regulations made under section 18(1)(b).

(3) In making an appointment under this section, a Chief Executive Officer shall give preference to the person who is best suited to the position.

(4) Where a Chief Executive Officer intends to fill a vacant post in the Executive Agency, the Chief Executive Officer shall give public notice of such vacancy in a manner sufficient to enable suitably qualified persons to apply for employment in the post.

(5) Appointments under this section shall be by instrument in writing signed by or on behalf of the Chief Executive Officer.

(6) A certificate signed by the Chief Executive Officer that any person named in the certificate was appointed to any office in the Executive Agency from the

date stated in the certificate shall be sufficient evidence that the person was duly so appointed and continues to hold the office unless the contrary is proved.

PART IV. *Financial*

Funds and
resources.

12.—(1) The funds and resources of each Executive Agency shall consist of—

- (a) such sums as may be provided by Parliament annually for the purpose in the Estimates of Revenue and Expenditure;
- (b) such sums as may be allocated from time to time to the Executive Agency from loan funds;
- (c) subject to subsections (2) and (3), moneys earned by the Agency from charges imposed by it in respect of the goods or services provided by it in its operations; and
- (d) all other sums or property which may become payable to or vested in the Agency in respect of any matter incidental to its functions.

(2) The Minister responsible for finance may by order specify the percentage of moneys referred to in subsection (1)(c) which may be lodged into a bank account operated by an Agency.

(3) The accountable officer of an Agency shall cause the difference between the moneys earned and the percentage paid into a bank account to be paid into or accrued to the Consolidated Fund.

(4) The provisions of section 17 of the Financial Administration and Audit Act shall apply to a bank account referred to in subsections (2) and (3).

Fees and
charges.

13.—(1) Subject to subsection (2), an Executive Agency may, in accordance with regulations made under section

18, impose fees or charges in respect of the services rendered by it.

(2) Where such fees or charges are prescribed by or under a relevant Act, the Executive Agency shall act in accordance with the provisions of that Act in relation to those fees or charges.

(3) Subject to the provisions of any relevant Act, all fees or charges arising from the provision of services by an Executive Agency may be recovered without limit of amount, as a civil debt in a Resident Magistrate's Court.

14.—(1) Every Chief Executive Officer shall cause to be kept—

Accounts
and Audit.

(a) accounts of the transactions of the Executive Agency in accordance with generally accepted accounting practice; and

(b) a record of the Agency's performance in accordance with its approved corporate and annual business plans,

and such accounts and performance shall be audited annually by an auditor appointed by the Chief Executive Officer and approved by the Auditor-General.

(2) The Chief Executive Officer and other officers and employees of the Executive Agency shall give to the auditor appointed under subsection (1)—

(a) access to all books, documents, cash and securities of the Agency; and

(b) on his request, all such information as may be within their knowledge in relation to the activities of the Agency.

(3) The Auditor-General shall be entitled at all times to examine the records of performance and the accounts of every Agency.

(4) The auditor's fees and any expenses of the audit shall be paid by the Agency.

Plans,
reports, etc.

15.—(1) Every Chief Executive Officer shall prepare and submit to the responsible Minister—

(a) a corporate plan in relation to a period of at least three years; and

(b) an annual business plan,

containing such particulars as may be prescribed.

(2) Every Chief Executive Officer shall, in each year prepare and forward to the responsible Minister quarterly reports of the activities of the Executive Agency during the preceding quarter.

(3) Every Chief Executive Officer shall, within three months after the end of each financial year, prepare and forward to the responsible Minister, an annual report of the activities of the Executive Agency during that financial year, including a statement of its accounts audited in accordance with section 14.

(4) A copy of the annual report together with the auditor's report shall be laid on the Table of the House of Representatives and the Senate within four months after the end of the financial year.

PART V. *Pension Schemes and other Benefits*

Pensions
and other
benefits.

16.—(1) The Minister may, after consultation with persons likely to be affected thereby, make schemes for the award of pensions, gratuities or other retiring or disability benefits to persons in the employment of Executive Agencies

including provisions for the grant of benefits to the dependants and legal personal representatives of such employees.

(2) A pension scheme under this section may contain provisions as to—

- (a) contributions to be made by the employer and employee or other means of funding of the scheme;
- (b) the management of the funds under the scheme;
- (c) the nature and levels of the benefits to be received under the scheme and the terms and conditions for eligibility;
- (d) whether participation in the scheme would be compulsory;
- (e) the applicability of a scheme to one or more Executive Agencies;
- (f) provisions which would enable the transfer of benefits, assets and contributions between Executive Agencies and other specified bodies;
- (g) circumstances in which pension may be granted on retirement;
- (h) the eligibility for refunds or other payments on termination of employment in circumstances in which no retirement benefits are payable; and
- (i) to provide for benefits in respect of persons engaged in specified employment prior to the appointed day.

(3) A scheme for benefits other than for the award of pensions may contain provisions as to—

- (a) contributions to be made by the employer and employee or other means of funding of the scheme;
- (b) the management of the funds under the scheme;
- (c) the nature of the benefits to be received under the scheme and the terms and conditions for eligibility;

- (d) whether participation in the scheme would be compulsory;
- (e) the applicability of a scheme to one or more Executive Agencies;
- (f) provisions which would enable the transfer of benefits, contributions or assets between Executive Agencies and other specified bodies; and
- (g) the eligibility for refunds or other payments on maturity of the benefits.

(4) A scheme made under this section shall be subject to affirmative resolution.

(5) For the purposes of subsection (3) "schemes for benefits other than for the award of pensions" includes schemes in relation to Group Life and Group Health Insurance.

Election re
pension
benefits.

17.—(1) A public officer who immediately before the appointed day, was employed in the service of an Executive Agency shall, within twelve months after that date, elect to have the terms and conditions of his pension regulated either by the pensions legislation which would have been applicable to him prior to that date or by the relevant provisions of this Act.

(2) An election under subsection (1) shall be made by memorandum in writing to the Governor-General and shall be irrevocable.

(3) Where a public officer referred to in subsection (1) has not made an election pursuant to that subsection, he shall be treated as if he had elected to have the terms and conditions of his pension regulated by the provisions of this Act.

PART VI. *General*

18.—(1) The Minister may make regulations generally for giving effect to the provisions and purposes of this Act and, without prejudice to the generality of the foregoing, may make regulations—

Regulations.

- (a) prescribing the particulars to be included in a modernization plan, Framework Document, medium-term financing plan, corporate plan, business plan or Performance Agreement;
- (b) prescribing a Code of Conduct for the officers and employees of Executive Agencies, including matters constituting breaches of discipline;
- (c) prescribing the fees and charges to be imposed by an Executive Agency with the responsible Minister's approval, in respect of any services rendered by it; and
- (d) giving effect to the provisions of any pension or other scheme created under Part V;
- (e) providing for any other matter relevant to the operation of Executive Agencies.

(2) Regulations made under this section shall be subject to affirmative resolution and may relate generally to all Executive Agencies or to any particular Executive Agency.

SCHEDULE

(Sections 2 and 5(4);

Matters to be included in a Framework Document

- (a) The mission and strategic objectives of the Executive Agency.
- (b) The fundamental principles which are applicable in the conduct of its operations.
- (c) The appointment and powers of the Chief Executive Officer and provisions for the termination of such appointment.
- (d) The relationship between the Chief Executive Officer and the responsible Minister
- (e) The accountability of the Agency and the Chief Executive Officer.
- (f) The arrangements for the management of the Agency, including the powers of the Chief Executive Officer relating to appointment, dismissal and disciplinary control of employees.
- (g) The planning, monitoring and reporting requirements in respect of the Agency.
- (h) Specific outputs to be achieved by the management of the Agency.
- (i) The resources available to the Agency for the performance of its functions.
- (j) The extent and nature of the Agency's managerial, operational, financial and human resources.
- (k) The financial framework for the Agency's performance and accountability.
- (l) Performance indicators and the method of performance measurement and evaluation in respect of the Agency.
- (m) Rewards and sanctions arising from performance evaluation.
- (n) Provisions for review of the Framework Document.
- (o) The manner in which the status of the Executive Agency can be terminated.