

**THE MAJOR ORGANISED CRIME AND
ANTI-CORRUPTION AGENCY
ACT, 2018**

(Act 13 of 2018)

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JAMAICA

No. 13 – 2018

I assent,

[L.S.]

Sgd. P. L. Allen
Governor-General.

28th day of August 2018

AN ACT to Provide for the establishment of an Agency of Government to be known as the Major Organised Crime and Anti-Corruption Agency to investigate and prosecute serious crime and matters related thereto.

[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:—

PART I—*Preliminary*

1. This Act may be cited as the Major Organised Crime and Anti-Corruption Agency Act, 2018 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.

Interpreta-
tion

2. In this Act unless the context otherwise requires—

“act of corruption” means—

- (a) an offence under the *Corruption (Prevention) Act*;
- (b) an offence relating to the conduct of any person that constitutes an abuse or misuse of his office (whether or not within the public sector) for the purpose of conferring a benefit or an advantage to himself or another person being an offence arising under the common law or any enactment;

“Agency” means the Major Organised Crime and Anti-Corruption Agency established by section 5(1);

“appointed day” means the day on which this Act comes into operation;

“Committee” means the Major Organised Crime and Anti-Corruption Agency Oversight Committee established by section 32;

“complaint” means a complaint made under section 35;

“counter-terrorism function” means a function relating to the prevention or detection of terrorist activity or the investigation or prosecution of terrorism offences;

“Director-General” means the Director-General of the Agency appointed under section 12;

“document” means, in addition to a document in writing, any thing or manner in which information of any description is recorded or stored;

“existing Agency” means the entity in existence immediately before the appointed day and known as the Major Organised Crime and Anti-Corruption Agency;

“foreign intelligence department” means the body in a country, other than Jamaica, which performs in that country, functions similar to those of the Agency;

“functions” includes powers and duties;

“intelligence officer” means an officer who is involved in the collection, compilation, analysis, processing and dissemination of information relevant to activities to combat serious crime;

“law enforcement agency” means a person or authority with functions relating to the investigation and prosecution of criminal offences and includes a foreign intelligence department;

“officer” means an individual who is an employee or agent of the Agency;

“plan” means the plan referred to in section 25;

“serious crime” means an offence which is specified or falls within a description specified in the First Schedule, which the Director-General, considers to be sufficiently serious for the Agency to conduct an investigation under this Act, after considering any of the following factors—

First
Schedule.

(a) whether or not the crime is transnational in nature;
or

(b) whether or not the crime poses a significant threat to national security and public safety;

“strategic partners” means—

(a) the Director of Public Prosecutions;

(b) the Chief of Defence Staff;

(c) the Commissioner of Police;

(d) the Commissioner General of Tax Administration Jamaica;

(e) the Commissioner of Customs;

(f) the Chief Executive Officer of the Passport, Immigration and Citizenship Agency;

- (g) the Chief Technical Director of the Financial Investigations Division;
- (h) the Commissioner of the Revenue Protection Division;
- (i) the Integrity Commission;
- (j) the Registrar General of Births and Deaths in Jamaica within the meaning of the *Registration (Births and Deaths) Act*;
- (k) the Commissioner of Corrections; and
- (l) such other person or entity declared by the Minister by order, subject to affirmative resolution.

“terrorism offence” has the meaning assigned to it in section 2 of the *Terrorism Prevention Act*;

“terrorist activity” has the meaning assigned to it in section 2 of the *Terrorism Prevention Act*.

Principal
objects of
Act

3. The principal objects of this Act are to—

- (a) establish an Agency which will have operational independence and autonomy and be dedicated to combating serious crime, in collaboration with strategic partners and law enforcement agencies, whether in or outside Jamaica;
- (b) promote and strengthen measures for the prevention, detection, investigation and prosecution of serious crime;
- (c) enhance public confidence so that perpetrators of serious crime will be brought to justice without undue delay; and
- (d) promote and protect public safety and national security.

Savings for
mutual
assistance

4. Nothing in this Act shall affect the provision of assistance under the *Mutual Assistance (Criminal Matters) Act*.

PART II—*Major Organised Crime and Anti-Corruption Agency*

5.—(1) There is established, for the purposes of this Act, an Agency to be known as the Major Organised Crime and Anti-Corruption Agency. Establishment of the Agency

(2) The Agency shall be a body corporate to which section 28 of the *Interpretation Act* shall apply.

6.—(1) Subject to the provisions of this Act, the functions of the Agency shall be to— Functions of the Agency

- (a) carry out efficient and effective activities to combat serious crime, whether by itself or in collaboration with strategic partners and law enforcement agencies, whether in or outside Jamaica;
- (b) implement measures for the prevention, detection, reduction and mitigation of the consequences of serious crime;
- (c) receive complaints in relation to alleged or suspected acts involving serious crime;
- (d) investigate alleged or suspected acts involving serious crime;
- (e) prosecute offences relating to serious crime;
- (f) gather, store, process, analyze and disseminate information that is relevant to activities to combat serious crime;
- (g) collaborate, cooperate, and coordinate intelligence and other activities, with any other person or authority, whether in or outside Jamaica, in order to prevent, detect, reduce or investigate serious crime; and
- (h) carry out such other functions conferred on the Agency by this Act and any other enactment including the powers set out in the Seventh Schedule.

(2) The Agency shall carry out its functions through the Director-General and the other officers of the Agency.

Functions of prosecution and investigation to be performed separately

7. The same individual shall not perform the duties of investigation and prosecution under this Act.

Power of investigation not to affect exercise of investigative or prosecutorial functions of other law enforcement agency

8.—(1) Subject to section 9(1), the conferral of powers of investigation and prosecution upon the Agency by this Act shall not be construed as affecting the exercise of any function relating to the investigation or prosecution of offences conferred upon another law enforcement agency or any other person or authority, whether such functions are similar to these powers or not.

(2) If, either before or after the commencement of an investigation, the Commissioner of Police or the head of a law enforcement agency, other than the Director-General, forms a view that the investigation should be conducted by the Agency, the Commissioner of Police or the head of that law enforcement agency shall refer the investigation to the Agency and the Director-General shall determine whether or not to accept responsibility for the investigation and inform the Commissioner of Police or the head of the law enforcement agency, as the case may be, of his decision.

Co-operation with other bodies

9.—(1) A law enforcement agency shall take reasonable steps to cooperate with the Agency in the exercise of its functions under this Act.

(2) The Agency shall take reasonable steps to cooperate with any strategic partner or law enforcement agency in the exercise of any function conferred on the strategic partner or law enforcement agency under this Act or any other enactment.

Agency subject to oversight by Committee

10. The Agency shall be subject to the oversight of the Committee.

Ministerial direction and approval of strategic plan

11.—(1) Subject to the provisions of this Act, the Minister may, after consultation with the Director-General, give to the Director-General such directions of a general character as to the policy to be followed by the Agency in the exercise of its functions as appear to the Minister to be necessary in the public interest, and the Director-General shall ensure that effect is given to those directions.

(2) Subject to subsection (3), the Minister shall approve the strategic plan for the Agency.

(3) In approving the strategic plan for the Agency, the Minister shall consult—

- (a) the Committee;
- (b) the Director-General;
- (c) the strategic partners; and
- (d) any other person whom the Minister considers it is appropriate to consult.

PART III—*Administration*

12.—(1) For the due administration of the Agency, there shall be appointed a Director-General.

Appointment of Director-General of the Agency

(2) The Director-General shall be appointed by the Governor-General, upon the recommendation of the Prime Minister, after consultation with the Leader of the Opposition.

(3) Subject to section 16, the Director-General shall be appointed for a period of five years and shall be eligible for reappointment.

13.—(1) Subject to section 20, a person shall not be qualified for appointment as Director-General if the person—

Disqualification for appointment

- (a) is a member of—
 - (i) the Senate;
 - (ii) the House of Representatives;
 - (iii) the Council of a Municipal Corporation, City Municipality or Town Municipality;
- (b) is bankrupt; or
- (c) has been convicted of an offence involving dishonesty or moral turpitude.

(2) The Director-General shall vacate his office if any circumstances arise that, if he were not Director-General, would, by

virtue of subsection (1), cause him to be disqualified for appointment as such.

Functions of
Director-
General.

14.—(1) The Director-General shall—

- (a) be responsible for the day to day administration and operation of the Agency and shall have the sole operational command and superintendence of the Agency;
- (b) determine the policy priorities of the Agency in accordance with the strategic plan and the annual plan;
- (c) determine the operational priorities for the Agency and those priorities may relate to—
 - (i) matters to which current strategic priorities also relate; or
 - (ii) other matters,

but operational priorities shall, in any event, be framed so as to be consistent with the current strategic priorities and strategic plan;

- (d) establish and implement practices for internal disciplinary procedures.

(2) The Director-General shall have the power to decide—

- (a) which operations are to be conducted by the Agency; and
- (b) how the operations are to be conducted.

(3) For the purposes of this Act, the Director-General shall have like powers, authorities and privileges as are given by law to a constable and may, in writing, designate an officer as a person having any of the like powers, authorities and privileges.

(4) The Director-General shall not designate an officer under subsection (3) unless the Director-General is satisfied that the officer—

- (a) is capable of effectively exercising the powers; and
- (b) has received adequate training in respect of the exercise of those powers.

(5) The Director-General may modify or withdraw a designation of an officer by giving notice in writing of the modification or withdrawal to the officer.

(6) For the purposes of the exercise of the powers under subsection (2)(b) by the Director-General or an officer designated by him, the Director-General may make arrangements for the Agency to use premises or facilities used in connection with those functions.

15.—(1) The Director-General may delegate, in writing, the exercise of any function conferred upon him by or under this Act, (other than the power of delegation) to such officer or officers of the Agency (hereinafter called “the delegate”) as he thinks fit. Delegation of functions

(2) A delegation under subsection (1) shall not affect—

- (a) the exercise of the delegated function by the Director-General; or
- (b) the responsibility of the Director-General in relation to acts of the delegate carried out in the lawful exercise of the delegated function.

(3) Any act done by or in relation to the delegate pursuant to the delegated function shall have the same effect as if done by or in relation to the Director-General.

(4) It is declared, in the interest of certainty, that a delegation under subsection (1) shall, in addition to conferring authority to exercise the delegated function, also subject the delegate to the same obligations as would apply under this Act to the Director-General’s exercise of such function, and accordingly, the delegate shall be liable for any wrongful act or omission of the delegate occurring in the exercise of that authority.

(5) A delegation of any function shall be revocable by the Director-General in writing.

16.—(1) The Governor-General may, acting upon the recommendation of the Prime Minister, after consultation with the Leader of the Removal of Director-General

Opposition, remove the Director-General from office, if he is satisfied that the Director-General—

- (a) is suffering from a mental disorder within the meaning of the *Mental Health Act*;
- (b) becomes incapable of satisfactorily discharging the functions of his office;
- (c) is bankrupt;
- (d) is convicted of any offence involving dishonesty or moral turpitude;
- (e) fails, without reasonable excuse, to carry out any of the functions conferred or imposed on him under this Act or requirements specified in his contract of employment, an annual plan, or a performance agreement; or
- (f) is proven to have brought disrepute to the Agency through misconduct.

(2) Where a recommendation is made to the Governor-General pursuant to subsection (1), the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, shall appoint a tribunal, which shall consist of a chairperson and not less than two other members, from among persons who hold or have held office as a Judge of a court having unlimited jurisdiction in civil and criminal matters in the Commonwealth.

(3) The tribunal appointed under subsection (2), shall enquire into the matter and report on the facts thereof to the Governor-General and advise the Governor-General as to whether the Director-General ought to be removed from office in accordance with this section.

(4) The provisions of sections 8 to 16 of the *Commissions of Enquiry Act* shall apply *mutatis mutandis* in relation to a tribunal appointed under subsection (2) or, as the context may require, to the members thereof, as they apply in relation to commissions or commissioners appointed under that Act.

(5) Where the question of removal of the Director-General has been referred to a tribunal appointed under subsection (2), and the tribunal has advised the Governor-General that the Director-General ought to be removed from office, the Governor-General shall, by instrument in writing, remove the Director-General from office.

(6) Where the question of removal of the Director-General has been referred to a tribunal under subsection (2), the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may suspend the Director-General from performing any function relating to the Agency and any such suspension may at any time be revoked by the Governor-General and shall cease to have effect if the tribunal advises the Governor-General that the Director-General ought not to be removed from office.

17. The Director-General may at any time resign his office by instrument in writing addressed to the Governor-General and transmitted through the Minister, and the resignation shall take effect from the date on which the Minister receives the instrument or the date specified in the instrument, whichever is earlier. Resignation

18.—(1) Where a vacancy arises in the office of the Director-General, a suitable person may be appointed to act in the same manner in which an appointment is made under section 12, until the vacancy is filled. Filling of vacancy in office of Director-General

(2) Where, by reason of illness, absence from Jamaica or other sufficient cause, the Director-General is unable to perform his functions under this Act, he may, after consultation with the Committee, appoint an officer of the Agency to perform these functions for a period not exceeding two months.

(3) Pursuant to subsection (2), if the Director-General is unable, or fails to appoint a person under subsection (2) or it is necessary to make such an appointment for a period in excess of two months, the appointment shall be made in the same manner as specified in section 12.

Appointment
of other
officers of
the Agency
and functions
of investiga-
ting officer
and prosecu-
ting officer

19.—(1) Subject to section 7, the Director-General, shall appoint such officers as may be necessary for the efficient operation of the Agency, including—

- (a) investigating officers, who shall investigate, in the manner specified by or under this Act, any allegation that involves or may involve serious crime; and
- (b) prosecuting officers, who shall, subject to the powers conferred on the Director of Public Prosecutions by section 94 of the *Constitution*, institute, undertake and have the conduct of prosecution in respect of an offence relating to serious crime.

(2) Except as provided for in subsection (1)(b), any prosecuting officer appointed thereunder, shall not be subject to the direction or control of any person in relation to the conduct of his prosecutorial functions under this Act.

(3) No salary in excess of the prescribed rate shall be assigned to any post within the Agency without the prior approval of the Minister.

(4) No appointment shall be made to any post within the Agency to which salary in excess of the prescribed rate is assigned without the prior approval of the Minister.

(5) For the purposes of subsections (3) and (4), the “prescribed rate” means such rate as the Minister responsible for the public service may, by order, prescribe.

(6) The Governor-General may, subject to such conditions as he may impose, approve the appointment of any public officer in the service of the Government to any office within the Agency and any public officer so appointed shall, while so employed, in relation to any pension, gratuity or other allowance and in relation to any other rights as a public officer, be treated as continuing in the service of the Government.

(7) The Agency may, with the approval of the Minister —

- (a) enter into arrangements respecting schemes whether by way of insurance policies or otherwise; and

- (b) make regulations, for medical benefits, pensions, gratuities and other retiring benefits or disability or death benefits relating to employees of the Agency and such arrangements or regulations may include provisions for the grant of benefits to the dependants and the legal personal representatives of such officers.

20.—(1) The appointment of the Director-General and other officers of the Agency, and the members of the Committee shall be subject to positive vetting procedures. Procedures relating to appointment

(2) A person shall not be eligible to be appointed to the post of Director-General under section 12 or any other post under section 19 unless the person—

- (a) has received adequate training in respect of the performance of the duties of the post;
- (b) is capable of effectively performing the duties of the post; and
- (c) is a person of integrity, capable of exercising competence, diligence, sound judgment and impartiality in fulfilling his functions in accordance with the provisions of the Act.

21.—(1) Every person having an official duty or being employed or otherwise connected with the administration of this Act shall— Obligation of secrecy

- (a) regard and deal with as secret and confidential, all information or documents relating to the functions of the Agency; and
- (b) upon assuming such duty or employment, take and subscribe an oath in the form set out in the Second Schedule, to be administered— Second Schedule
 - (i) in the case of the Director-General, by the Governor-General;
 - (ii) in the case of any other officer, by the Director-General.

(2) Every person who had an official duty or was employed in the administration of this Act shall maintain, after such duty or

employment is terminated, the confidentiality of all information or documents relating to the functions of the Agency.

(3) Any person to whom information is communicated pursuant to this Act shall regard and deal with the information as secret and confidential.

(4) Every person referred to in subsection (1), (2) or (3) having possession of or control over any information or document, who at any time communicates or attempts to communicate any such information or any thing contained in the document to any person, otherwise than pursuant to—

- (a) his functions under this Act or any other enactment;
- (b) a court order; or
- (c) an arrangement entered into for the exchange of information under section 31,

commits an offence.

(5) For the purposes of this section, “information” includes information from which a person can be identified and which is acquired by the Agency in the course of carrying out its functions.

PART IV—*Financial Provisions, Plans and Reports*

Funds and
resources of
the Agency

22. The funds and the resources of the Agency shall consist of such funds as may be appropriated to the Agency by Parliament.

Accounts and
audits

23.—(1) The Agency shall keep proper accounts and other records in relation to its functions and shall prepare annually a statement of accounts in accordance with generally accepted accounting principles promulgated from time to time, by the Institute of Chartered Accountants of Jamaica, or such other body as the Minister may specify by order and such accounts shall be audited annually by an auditor appointed in each year by the Director-General with the approval of the Minister and a statement of the accounts so audited shall form part of the annual report submitted pursuant to section 29.

(2) An auditor appointed under subsection (1) shall be a registered public accountant within the meaning of section 2 of the *Public Accountancy Act*.

(3) The auditor shall be entitled at all reasonable times to examine the accounts of the Agency.

(4) The Auditor-General shall be entitled at all times to examine the accounts and other records in relation to the Agency.

(5) In this section, "Minister" means the Minister responsible for finance.

24. The expenses of the Agency, including the remuneration of the Director-General, officers and members of the Committee, shall be paid out of the funds of the Agency. *Expenses and remuneration.*

25.—(1) Before the beginning of each financial year, the Director-General shall submit an annual plan to the Minister setting out how the Director-General intends that the functions of the Agency are to be exercised during that year. *Annual plan*

(2) The annual plan for a financial year shall include—

- (a) a statement of the strategic priorities for the Agency;
- (b) a statement of the operational priorities for the Agency and in relation to each of the strategic and operational priorities, an explanation of how the Director-General intends that the priority will be given effect to;
- (c) ways in which the Agency is to operate, including—
 - (i) arrangements for publishing information about the exercise of the functions of the Agency and other matters relating to the Agency, including requirements about the type of information that should not be published; and
 - (ii) ways in which the Agency is to be administered, including with respect to governance and finance.

Director-
General to
consult in
preparing
annual plan

26. In preparing an annual plan, the Director-General shall consult with—

- (a) the strategic partners; and
- (b) any other person whom the Director-General considers it is appropriate to consult.

Submission of
estimates of
income and
expenditure

27. The Director-General shall submit to the Minister with responsibility for finance, at such time, within each year, as the Minister with responsibility for finance may direct—

- (a) a statement of accounts of the Agency in accordance with the provisions of section 23(1); and
- (b) the estimates of revenue and expenditure for the financial year.

Returns

28. The Agency shall furnish the Minister with such returns, accounts and other information as he may require with respect to the activities of the Agency, and shall afford him facilities for verifying such information in such manner and at such times as he may reasonable require.

Annual and
other
reports

29.—(1) Annual and other reports shall be prepared by the Agency in accordance with the provisions of the *Public Bodies Management and Accountability Act*.

(2) A copy of the annual report and audited financial statements of the Agency, shall be submitted, no later than four months after the end of each financial year, to the Minister.

(3) The Minister shall, within a reasonable time, cause a copy of the report together with the annual statement of accounts and the auditor's report thereon to be laid in the House of Representatives and of the Senate.

Report

30.—(1) The Director-General shall, not later than three months after the end of each financial year, submit to the Minister a report relating generally to the execution of the functions of the Agency during the preceding financial year, which shall contain the information set out in the Third Schedule.

Third
Schedule

(2) The Director-General may, at any time, submit a report relating to any particular matter which, in the opinion of the Director-General, requires the special attention of the Minister.

(3) The report submitted by the Director-General to the Minister shall exclude such matters that may, if included, prejudice proceedings in relation to any matter referenced therein.

(4) The Minister shall, not later than one month after receipt of a report submitted to him under subsection (1) or (2), cause the report to be laid in the House of Representatives and in the Senate.

PART V—*Agreements and Arrangements*

31.—(1) Subject to the provisions of this Act, the Director-General may, with the approval of the Minister, enter into a contract, memorandum of understanding or other agreement or arrangement with a strategic partner or a law enforcement agency, whether in or outside Jamaica, regarding the exchange of information with the agency relevant to the investigation or prosecution of offences relating to serious crime. Agreements and arrangements with other agencies, bodies, etc

(2) Subject to subsection (1), the Director-General may exchange with a foreign intelligence department outside Jamaica, information necessary to enable that department to exercise regulatory functions, including the conduct of civil, criminal or administrative investigations and proceedings to enforce laws, regulations and rules administered by the department.

(3) The Director-General may decline to facilitate the exchange of information unless the foreign intelligence department, undertakes to make such contribution towards the costs of the exercise as the Director-General considers appropriate.

(4) Nothing in subsections (1) to (3) authorizes a disclosure by the Director-General unless—

- (a) the Director-General is satisfied that the foreign intelligence department, the strategic partner or law enforcement agency

- (b) a retired officer of the Jamaica Constabulary Force not below the rank of Assistant Commissioner of Police;
- (c) a retired officer of the Jamaica Defence Force not below the rank of Colonel;
- (d) two other members nominated by the Minister responsible for national security with expertise in any one, or more of the following areas—
 - (i) financial sector;
 - (ii) anti-corruption;
 - (iii) public procurement.

(4) A person shall be eligible to be appointed as a member of the Committee and shall be eligible for reappointment for a further period of three years, if that person is, or continues to be, a person of integrity, capable of exercising competence, diligence, sound judgment and impartiality in fulfilling his functions pursuant to the provisions of this Act.

Provided that a person shall only be eligible once for reappointment as a member of the Committee.

(5) The following persons shall not be eligible to appointed as a member of the Committee, that is to say a person who—

- (a) is a member of—
 - (i) the Senate;
 - (ii) the House of Representatives;
 - (iii) the Council of a Municipal Corporation, City Municipality or Town Municipality;
- (b) is bankrupt; or
- (c) has been convicted of an offence involving dishonesty or moral turpitude.

(6) A person shall not continue to be a member of the Committee if any circumstances arise that, if he were not a member of the Committee,

would, by virtue of subsection (5), cause him to be disqualified from appointment as such.

(7) The provisions of the Fourth Schedule shall have effect as to the procedural and other matters relating to the Committee.

Fourth
Schedule

33. The functions of the Committee shall be to—

Functions of
the Commit-
tee

- (a) investigate any complaint relating to misconduct, abuse of power, breach of disciplinary procedures or unlawful conduct, in respect of any action or omission by the Director-General or any other officer in relation to their functions under this Act;
- (b) monitor and investigate operations affecting members of the public;
- (c) review generally the performance by the Agency of its functions and make recommendations to the Minister thereon; and
- (d) perform such other functions as may be necessary for promoting the objectives under section 32(2) for which the Committee is established.

34.—(1) The Committee—

Powers of
the Commit-
tee

- (a) may investigate any aspect of the operations of the Agency or any conduct of the Director-General or any other officer of the Agency in relation to their functions under this Act;
- (b) is entitled to take or have copies of any document in relation to a matter under investigation by the Committee;
- (c) may require the Director-General to supply information or provide documents in respect of any matter relating to the operations of the Agency or the conduct of an officer.

(2) Notwithstanding the provisions of any law to the contrary and subject to subsection (3), the Committee shall be the sole body responsible for receiving and investigating any complaint made pursuant to the provision of section 35 of this Act.

(3) Without prejudice to the provisions of subsection (2), the Minister, acting on the advice of the Committee, may, in such manner as he may deem appropriate, seek the assistance of any law enforcement agency, to assist the Committee in the investigation of a complaint made pursuant to section 35 or any other matter, which may be relevant to the investigation.

Making of
complaint
and conduct
of investiga-
tion

35.—(1) A person may make a complaint to the Committee in respect of any matter relating to the conduct of the Director-General or an officer in the carrying out of his functions under this Act.

(2) A complaint under subsection (1) may be made orally, subject to subsection (3), or in writing, or in such form and manner as may be prescribed and shall be lodged with the Secretary of the Committee.

(3) Where a complaint is made orally, it shall be reduced into writing by the Secretary not later than three days from the date on which the complaint was lodged.

(4) A complaint made under subsection (1) shall contain such particulars as may be prescribed.

(5) Upon receipt of a complaint, the Committee shall forthwith—

- (a) request information or reports regarding the complaint from the Agency within a specified period; or
- (b) without prejudice to paragraph (a), initiate such investigation as it may consider necessary, having regard to the nature of the complaint.

(6) For the purposes of an investigation under this section, the Committee shall have the powers, protection and immunities conferred upon a Commissioner under the *Commissions of Enquiry Act* and the provisions of that Act shall apply to any person summoned by or appearing before the Committee in the same manner as it applies to a person summoned or appearing before a Commission of Enquiry.

(7) Where the Committee considers a complaint to be vexatious or frivolous, it may refuse to conduct an investigation and shall, where practicable, state its refusal in writing to the complainant.

(8) The Committee may, upon receipt of new evidence, re-open any investigation which has been concluded, and may amend or withdraw any previous findings and recommendations.

36. After conducting an investigation into a complaint made under section 35, the Committee may—

- (a) where the investigation, in the opinion of the Committee, discloses evidence of a criminal offence by any officer of the Agency, reports its findings to the Director of Public Prosecutions;
- (b) where the investigation, in the opinion of the Committee, discloses misconduct, malfeasance or negligence by any officer, other than the Director-General, in the performance of a duty, report its findings to the Director-General so that the matter may be dealt with in accordance with the prescribed disciplinary procedures;
- (c) where the investigation, in the opinion of the Committee, discloses any of the grounds for removal specified in section 16(1), in relation to the Director-General in the performance of a duty, report its findings to the Minister who shall, forward said findings to the Prime Minister who shall, after consultation with the Leader of the Opposition, recommend to the Governor-General that the Director-General be removed in accordance with that section;
- (d) where the investigation discloses any shortcomings in the processes or procedures employed by the Agency, recommend improvement or rectification thereof to the Minister.

PART VII—*Protection of Intelligence Officers*

37. The Director-General may take such action as may be necessary to ensure the security, secrecy, safety, accommodation and financial requirements of an intelligence officer.

Protection of
intelligence
officers

PART VIII—Protection from Liability and Suit

Protection of
persons
exercising
functions
under this
Act

38.—(1) No civil or criminal action, suit or other proceedings for breach of confidentiality may be brought, nor any professional sanction for such breach may be taken against any person, who in good faith (under this Act or any other enactment) provides or transmits information requested by the Agency or submits a report to the Agency.

(2) No suit or other proceedings may be brought or instituted personally against any officer in respect of any lawful act done or omission made in good faith, in the course of carrying out the provisions of this Act.

PART IX—Offences

Offences

39.—(1) A person commits an offence if that person—

- (a) threatens or assaults an officer or any other person performing any function under this Act;
- (b) without lawful justification or excuse obstructs or hinders an officer or any other person performing any function under this Act;
- (c) makes any false statement to mislead or attempts to mislead an officer or any other person performing any function, under this Act;
- (d) knowingly makes any false declaration or false statement of a material nature in any information provided to an officer or any other person performing any function under this Act;
- (e) knowingly furnishes to any officer or any other person performing any function under this Act, a document that, to the knowledge of the first-mentioned person, contains information which is false or misleading in any material particular;
- (f) with intent to deceive—
 - (i) impersonates an officer;

- (ii) makes any statement or does any act calculated falsely to suggest that the person is an officer;
- (iii) makes any statement or does any act calculated falsely to suggest that the person has powers as an officer that exceed the powers the person actually has.

(2) The offences specified in the first column of the Fifth Schedule shall incur the penalties specified in relation thereto in the second column of that Schedule. Fifth
Schedule

(3) Every offence under this Act may be tried summarily before a Judge of a Parish Court.

(4) Where an offence under this Act is committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in that capacity; or
- (b) to be attributable to the failure of any such director, manager, secretary or other similar officer to exercise all such reasonable diligence as he ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his functions and all the circumstances,

such director, manager, secretary or other similar officer, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

PART X—*General*

40. The Director-General and other officers of the Agency shall comply with such Code of Conduct as may be prescribed and a person who fails to comply with the Code of Conduct shall be liable to such disciplinary proceedings as may be prescribed. Code of
Conduct

41. The Director-General may require any person to keep such documents relating to the functions of the Agency, as may be prescribed. Records

Regulations

42.—(1) The Minister may make regulations generally for the proper administration of and giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may make provision—

- (a) requiring equipment used by the Agency to satisfy specified requirements as to design and performance;
- (b) outlining the practices and procedures to be adopted in relation to the investigation or prosecution of serious crime under this Act;
- (c) prescribing a Code of Conduct for officers; and
- (d) relating to such other matters as may be required by this Act to be prescribed.

(3) For the purposes of subsection (2)(a), “equipment” includes—

- (a) vehicles; and
- (b) headgear and any other protective clothing.

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

Minister may
amend
monetary
penalties and
Schedules

43. The Minister may by order, subject to affirmative resolution, amend—

- (a) any monetary penalty specified in this Act; or
- (b) the Schedules, other than the custodial penalties.

Transitional
provisions
for perma-
nent and
contracted
employees

44.—(1) Subject to the provisions of this section, on the appointed day, a person holding an appointment or assigned to an office under the existing Agency shall be transferred on secondment to the services of the Agency for a period of six months or such longer period as the Director-General may, in special circumstances, determine.

(2) Pursuant to subsection (1), during the period of secondment to the Agency, an officer shall be employed on such terms and conditions as may be determined by the Director-General, being terms and

conditions that are not less favourable than those enjoyed by the officer in his substantive position, on the appointed day and any pension benefits which may have accrued to the officer prior to his secondment shall be preserved.

(3) An officer who is transferred on secondment pursuant to subsection (1) may be deployed in the public service on or before the period referred to in subsection (1) on terms and conditions that are not less favourable than those enjoyed by the officer in his substantive position.

(4) A person who has served in an office established under the existing Agency and would have, but for the establishment of the Agency, been eligible to receive a pension thereunder, shall be paid a pension where such service, together with the person's service under this Act, amount in the aggregate to not less than seven years.

45. The enactments specified in the first column of the Sixth Schedule are amended to the extent specified in the second column of that Schedule.

Consequen-
tial amend-
ments
Sixth
Schedule

46.—(1) This Act shall be reviewed from time to time by a committee of both Houses of Parliament appointed for that purpose.

Review of
Act

(2) The first review shall be conducted not later than three years after the appointed day in the first instance and a further review of the Act shall be conducted not later than five years after the date of the first review.

FIRST SCHEDULE

(Section 2)

Serious Crime

1. Any offence under the following provision of the *Child Care and Protection Act*, that is to say, section 10 (Prohibition against sale or trafficking of children).

2. Any offence under the following provisions of the *Child Pornography (Prevention) Act*, namely—

- (a) section 3 (Using or involving a child in the production of child pornography);
- (b) section 4 (Producing, distributing, *etc.*, child pornography);
- (c) section 6 (Offences by bodies corporate);
- (d) section 7 (Offences where profit is derived).

3. Any offence under the following provisions of the *Coinage Offences Act*, namely—

- (a) section 3 (Counterfeiting the gold or silver coin);
- (b) section 4 (Colouring counterfeit coin or any pieces of metal with intent to make them pass for gold or silver coin);
- (c) section 5 (Impairing the gold or silver coin with intent, *etc.*);
- (d) section 6 (Unlawful possession of filings or clippings of gold or silver coin);
- (e) section 7 (Buying or selling, *etc.*, counterfeit gold or silver coin for a lower value than its denomination);
- (f) section 8 (Importing counterfeit coins from beyond seas);
- (g) section 9 (Exporting counterfeit coin);
- (h) section 10 (Uttering counterfeit gold or silver coin);
- (i) section 11 (Uttering accompanied by possession of other counterfeit coin, or followed by a second uttering);
- (j) section 12 (Having three or more pieces of counterfeit gold or silver coin in possession, *etc.*, with intent, *etc.*);
- (k) section 13 (Every second offence of uttering, *etc.*, after a previous conviction shall be felony);
- (l) section 19 (Making, mending or having possession of any coining tools, felony).

4. Any offence under the following provisions of the *Copyright Act*, namely—
 - (a) section 46 (Penalties in respect of dealings which infringe copyright);
 - (b) section 134 (Criminal liability for making, dealing with or using illicit recordings).
5. Any offence under the following provision of the *Corruption (Prevention) Act*, that is to say, section 14 (Acts of corruption)
6. Any offence under the *Cybercrimes Act*.
7. Any offence under the following provisions of the *Dangerous Drugs Act*, namely—
 - (a) section 3 (Import and export of raw opium and coca leaves);
 - (b) section 5 (Cultivation of opium or coca leaves),
 - (c) section 6 (Export or import of prepared opium);
 - (d) section 7 (Manufacturing, selling, using, *etc.*, prepared opium an offence);
 - (e) section 7A (Export or import of ganja),
 - (f) section 7B (Cultivating, selling or dealing in, or transporting ganja);
 - (g) section 8 (Import and export of cocaine, *etc.*);
 - (h) section 8A (Cultivating, selling or dealing in, or transporting cocaine, *etc.*),
 - (i) section 11 (Trade, *etc.*, in new drugs, and power to apply Part IV to certain drugs),
 - (j) section 21A (Offence of using the postal services for drugs);
 - (k) section 22 (Offence and penalties).
8. Any offences under the following provisions of the *Endangered Species (Protection, Conservation and Regulation of Trade) Act*, namely—
 - (a) section 18 (Restriction on trade in endangered species),
 - (b) section 40 (Unlawful trade in specimen, *etc.*),
 - (c) section 41 (Offence of using postal service for transporting endangered species)
9. Any offence under the *Firearms Act*.

[No.] *The Major Organised Crime and Anti-Corruption
Agency Act, 2018*

- (b) section 5 (Offences by bodies corporate);
- (c) section 15 (Offence of threatening, obstructing, *etc.*, constable).

28. Any offence under the following provisions of the *Treason Felony Act*, namely—

- (a) section 2 (Punishment for intending to depose the Queen, or levy war against her, *etc.*);
- (b) section 3 (Punishment for intending to levy war or excite insurrection, *etc.*);
- (c) section 4 (Punishment for inciting to insurrection or rebellion, *etc.*).

29. Perverting the course of justice.

30. Any offence under the *Criminal Justice (Suppression of Criminal Organizations) Act*

SECOND SCHEDULE (Section 21)

Oath to be taken by Director-General and officers.

I _____ do swear that I will faithfully perform any functions assigned to me under the *Major Organised Crime and Anti-Corruption Agency Act* and I will not, on any account, at any time whatsoever, except in so far as provisions of the Act authorize, directly or indirectly reveal any information or the nature or contents of any information or documents communicated to me in the performance of any functions assigned by me by virtue of the Act

So help me God

THIRD SCHEDULE

(Section 30)

Contents of Report of Agency

1. A general description of the matters that were referred to the Agency.
2. Subject to section 30(2) a general description of the matters investigated by the Agency.
3. The following details with respect to matters investigated by the Agency—
 - (a) the number of investigations commenced but not finally dealt with during the financial year in question;
 - (b) the average time taken to deal with complaints and the actual time taken to investigate any matter in respect of which a report is made.
4. Any recommendations for changes in the laws of Jamaica, or for administrative action, that the Agency considers should be made as a result of the exercise of its functions.
5. The general nature and extent of any information submitted under this Act by the Agency during the year to any other public body.
6. The number of matters investigated by the Agency which have resulted in prosecutions or disciplinary action in that year
7. A description of its activities during that year in relation to any of its functions.
8. The number of convictions and acquittals, and where a charge is laid, the time taken to dispose of each matter.
9. Such other information as the Agency thinks relevant, however, no details shall be provided by the Agency in relation to any matter under investigation by the Agency, or for which criminal proceedings have been instituted by the prosecuting officer.

FOURTH SCHEDULE (Section 32(7))

Procedure of Committee

- | | |
|--|---|
| 1. The Minister shall cause the names of the Chairman and other members of the Committee to be published in the <i>Gazette</i> | Names of members of the Committee to be published in the <i>Gazette</i> |
| 2. The Minister shall appoint the Chairman from among the members of the Committee. | Appointment of Chairman |
| 3. If the Chairman is absent or unable to act, the Minister may appoint another person to act temporarily as Chairman. | Chairman is unable to act |
| 4.—(1) The Committee shall appoint a secretary whose duties shall be—
(a) to receive complaints pursuant to section 35 of the Act;
(b) to attend the meetings of the Committee;
(c) to record the proceedings of the Committee and keep the minutes of such meeting in proper form;
(d) generally to perform such duties connected with the work of the Committee as the Committee may require. | Appointment of secretary and staffing arrangements |
| (2) The Committee may employ such staff as it deems necessary for the performance of its functions. | |
| 5. The Chairman and other members of the Committee shall be removed from office by the Governor-General upon the recommendation of the Prime Minister after consultation with the Leader of the Opposition, if any of them—
(a) is absent from three consecutive meetings of the Committee without the leave of—
(i) the Governor-General, in the case of the Chairman;
(ii) the Chairman, in the case of any other member and, without reasonable excuse;
(b) become incapable of satisfactorily discharging the functions of their office; or
(c) suffering from a mental disorder within the meaning of the <i>Mental Health Act</i> . | Removal of Chairman or members of Committee |

Resignation of members of the Committee	6 A member may resign by giving a written notice of resignation to the Chairman. and in the case of the Chairman, by giving written notice to the Governor-General.
Authentica- tion of documents	7. All documents made by, and all decisions of the Committee, may be signed under the hand of the Chairman or any member of the Committee authorized to act in that behalf.
Procedure	8.—(1) The Committee shall meet as often as it considers necessary for the proper conduct of the affairs of the Committee: However the Committee shall meet not less than once per month. (2) The Chairman or any other person appointed to act temporarily as Chairman shall preside at a sitting of the Committee. (3) A quorum of the Committee shall be three. (4) Decisions of the Committee shall be by a majority of votes of the members. In addition to an original vote, the Chairman shall have a casting vote in any case in which the voting is equal. (5) The Committee is not bound by rules of evidence and may inform itself in a way it considers appropriate but must observe the rules of natural justice. (6) Proper records of all proceedings of the Committee shall be kept.
Protection of members	9. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Committee in respect of an act done <i>bona fide</i> in pursuance, or execution, or intended execution of the provisions of this Act.
Disclosure of interest	10. Any member of the Committee who has any interest, directly or indirectly, in any matter brought before the Committee shall— (a) as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a sitting of the Committee; and (b) not be present during the deliberations of the Committee on the matter or take part in the decision of the Committee with respect thereto.
Remunera- tion	11. There shall be paid from the funds of the Agency to the Chairman and other members of the Committee, such remuneration, whether by way of honorarium, salary or fees and such allowances the Minister with responsibility for the public service may determine.

Part III SCHEDULE

(Section 39(2))

Offences and Penalties

Brief Description of Offences	Relevant Section	Penalty
Communicating or attempting to communicate information otherwise for the purposes of this Act or any other enactment or otherwise than pursuant to a court order or an arrangement entered into under section 21	21(4)	<p>On summary conviction before a Judge of a Parish Court—</p> <p>(a) in the case of an individual, to a fine not exceeding one million dollars or imprisonment for a term not exceeding one year,</p> <p>(b) in the case of a body corporate, to a fine not exceeding three million dollars</p>
Wilfully threatening or assaulting an officer or other person performing a duty	39(1)(a)	<p>On conviction on indictment in the Circuit Court to a fine or imprisonment or to both such fine and imprisonment</p> <p>On summary conviction before a Judge of a Parish Court to a fine not exceeding one million dollars or imprisonment for a term not exceeding one year</p>
Without lawful justification or excuse obstructing or hindering an officer or other person in the execution of his functions	39(1)(b)	<p>On summary conviction before a Judge of a Parish Court—</p> <p>(a) in the case of an individual, to a</p>

Offences and Penalties

Brief Description of Offences	Relevant Section	Penalty
Wilfully making a false statement to mislead or attempt to mislead the Agency, the Director-General, an officer or other person performing a duty.	39(l)(c)	<p>fine not exceeding one million dollars or imprisonment for a term not exceeding one year;</p> <p>(b) in the case of a body corporate, to a fine not exceeding three million dollars.</p>
Knowingly making a false declaration or statement of a material nature in information provided to the Agency, the Director-General, an officer or other person performing a duty.	39(l)(d)	<p>On summary conviction before a Judge of a Parish Court—</p> <p>(a) in the case of an individual, to a fine not exceeding three million dollars or imprisonment for a term not exceeding three years;</p> <p>(b) in the case of a body corporate, to a fine not exceeding three million dollars.</p> <p>(a) in the case of an individual, to a fine not exceeding three million</p>

Offences and Penalties

Brief Description of Offences	Relevant Section	Penalty
Knowingly furnishing to the Agency, the Director-General, or other person performing a duty, a document known to contain information which is false or misleading in any material particular	39(l)(e)	<p>dollars or imprisonment for a term not exceeding three years,</p> <p>(b) in the case of a body corporate, to a fine not exceeding three million dollars</p> <p>On summary conviction before a Judge of a Parish Court—</p>
With intent to deceive, impersonating an officer of the Agency, making a statement or doing an act to suggest that one is an officer of the agency, or making a statement or doing an act calculated falsely to suggest that	39(l)(f)	<p>(a) in the case of an individual, to a fine not exceeding three million dollars or imprisonment for a term not exceeding three years,</p> <p>(b) in the case of a body corporate to a fine not exceeding three million dollars</p> <p>On summary conviction before a Judge of a Parish Court—</p> <p>(a) in the case of an individual, to a fine not</p>

Consequential Amendments

First Column

Second Column

Enactment

Amendments

made it (hereinafter referred to as "the maker")

However, in the case of a person who is suffering from a physical disability, physical disorder or a mental disorder within the meaning of the *Mental Health Act* which renders it impracticable for him to be communicated with in the absence of special assistance or equipment, the statement may be communicated in any other effective manner,

(b) the statement purports to be signed by the maker and the recorder and in the presence of—

(i) the Justice of the Peace (and has been sworn to by the maker before the Justice of the Peace), or as the case may be,

(ii) a senior officer of the Major Organised Crime and Anti-Corruption Agency,

(iii) the senior members of the Jamaica Constabulary Force "

Consequential Amendments

First Column	Second Column
Enactment	Amendments
<p><i>The Criminal Justice (Administration) Act</i> Section 2</p>	<p>In subsection (2), insert immediately after the words "<i>Integrity Commission Act</i>", the following—</p> <p style="padding-left: 40px;">"or a prosecuting officer appointed under the <i>Major Organised Crime and Anti-Corruption Agency Act</i>, in relation to an indictment for an offence under that Act".</p>
<p><i>The Criminal Justice (Suppression of Criminal Organizations) Act, 2014</i> Section 2</p>	<p>In the definition of "law enforcement officer", renumber paragraphs (f) and (g) as paragraphs (g) and (h), respectively, and insert after paragraph (e), the following as paragraph (f)—</p> <p style="padding-left: 40px;">“(f) an officer of the Major Organised Crime and Anti-Corruption Agency.”.</p>
<p><i>The Financial Investigations Division Act</i> Section 5</p>	<p>In subsection (1)(d)(ii), delete the words "or the Director of Public Prosecutions" and substitute therefor the words "the Director of Public Prosecutions or the Director-General of the Major Organised Crime and Anti-Corruption Agency appointed under section 12 of the <i>Major Organised Crime and Anti-Corruption Agency Act</i>".</p>

Consequential Amendments

First Column	Second Column
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Enactment	Amendments
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<p><i>The Maritime Drug Trafficking (Suppression) Act</i> Section 2</p>	<p>In the definition of “law enforcement officials”—</p> <p>(a) in paragraph (a), delete the word “or” at the end thereof;</p> <p>(b) in paragraph (b), insert after the semi-colon, the word “or”;</p> <p>(c) insert next after paragraph (b), the following as paragraph (c)—</p> <p style="padding-left: 40px;">“(c) the officers of the Major Organised Crime and Anti-Corruption Agency appointed under the <i>Major Organised Crime and Anti-Corruption Agency Act</i>.”.</p>
<p><i>The Proceeds of Crime Act</i> Section 2</p>	<p>1. In the definition of “authorized financial investigator”—</p> <p>(a) delete the “or” after paragraph (b);</p> <p>(b) insert next after paragraph (b) the following new paragraph as paragraph (c)—</p> <p style="padding-left: 40px;">“(c) the Director-General of the</p>

Consequential Amendments

First Column

Second Column

Enactment

Amendments

M a j o r
O r g a n i s e d
C r i m e a n d A n t i -
C o r r u p t i o n
A g e n c y ,
a p p o i n t e d
u n d e r t h e *Major
O r g a n i s e d
C r i m e a n d A n t i -
C o r r u p t i o n
A g e n c y A c t*,
o r” ,

(c) re-letter the current paragraph (c) as paragraph (d)

2 In the definition of “enforcing authority”, insert next after paragraph (b), the following new paragraph as paragraph (c)—

“(c) the Director-General of the Major Organised Crime and Anti-Corruption Agency, appointed under the *Major Organised Crime and Anti-Corruption Agency Act*, or”,

Section 5

In subsection (1) delete the words “or the Director of Public Prosecutions” and substitute therefor the words “, the Director of Public Prosecutions or the Director-General of the Major Organised Crime and Anti-Corruption Agency”

- (c) seize any thing which the officer of the Agency may find on the premises or in the place, or on any such person, in respect of which or in connection with which he has reasonable grounds for suspecting is being, has been or is about to be used in the commission of a serious crime and to retain such thing for so long as may be necessary for the purpose of any investigation in relation thereto, and where such investigation results in legal proceedings against any person for any such offence, until such legal proceedings are finally disposed of.

(3) A warrant issued under this section shall be issued subject to conditions and shall include—

- (a) a statement of the purpose for which the warrant is issued and a description of the offence;
- (b) a description of the thing to be seized;
- (c) a reference to the time, not being later than thirty days upon the expiration of which the warrant ceases to have effect; and
- (d) a statement as to whether entry is authorized to be made at any time of the day or night, or during the hours of the day or night specified in the warrant.

Power to stop and search specified equipment without warrant.

4. Where an officer of the Agency, has reasonable cause to suspect that any vehicle, aircraft, vessel, article, enclosure, container or other storage facility, device or apparatus (hereinafter referred to as "specified equipment") is being used or is about to be used in the commission of a serious crime, the officer of the Agency may, without a warrant, search the specified equipment and any person found therein and if the search reveals evidence that the specified equipment is being used or has been used in the commission of a serious crime, the officer of the Agency may seize the specified equipment.

Power to stop and search specified equipment with a warrant.

5. Where an officer of the Agency has reasonable cause to suspect that any vehicle, aircraft, vessel, article, enclosure, container or other storage facility, device or apparatus (hereinafter referred to as "specified equipment") has been used in the commission of a serious crime, the officer of the Agency may, with a warrant obtained from a Judge of the Parish Court, search the specified equipment, and any person found therein and if the search

reveals evidence that the specified equipment has been used for the commission of a serious crime, the officer of the Agency may seize the specified equipment

6 For the avoidance of doubt, the provisions of Part II of the *Proceeds of Crime Act* shall apply *mutatis mutandis* in relation to anything that is seized in accordance with this Act and references to the Asset Recovery Agency under Part II of the *Proceeds of Crime Act* shall be construed as a reference to the Agency under this Act

Application
of *Proceeds
of Crime Act*

Passed in the House of Representatives this 30th day of January, 2018 with sixty-one (61) amendments.

PEARNEL CHARLES, CD, MP, JP
Speaker.

Passed in the Senate this 8th day of June, 2018 with seventy-seven (77) amendments.

THOMAS TAVARES-FINSON, CD, QC, JP
President.

On the 10th day of July, 2018 the House of Representatives agreed to the amendments made by the Senate.

PEARNEL CHARLES, CD, MP, JP
Speaker

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act

Sgd Valerie A Curtis
Jr Clerk to the Houses of Parliament

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