

**THE INDEPENDENT COMMISSION OF INVESTIGATIONS
ACT, 2010**

(Act 12 of 2010)

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SCHEDULES.

JAMAICA

No. 12 – 2010

I assent.

[L.S.]

(Sgd.) P. L. Allen
Governor-General.

April 15, 2010

AN ACT to repeal the Police Public Complaints Act; to make provision for the establishment of a Commission of Parliament to be known as the Independent Commission of Investigations to undertake investigations concerning actions by members of the Security Forces and other agents of the State that result in death or injury to persons or the abuse of the rights of persons; 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:—

PART I. *Preliminary*

1. This Act may be cited as the Independent Commission of Investigations Act, 2010, 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---

“Commission” means the Independent Commission of Investigations constituted under section 3;

“Commissioner” means the person appointed pursuant to section 3 as Commissioner;

“complaint” means any complaint referred to in section 11, about the conduct of a member of the Security Forces or a specified official and includes a report under section 12 or 13;

“concerned officer” means--

- (a) any member (of whatever rank) of the Jamaica Constabulary Force;
- (b) any member (of whatever rank) of the Jamaica Defence Force when acting in support of the Jamaica Constabulary Force;
- (c) any member (of whatever rank) of the Island Special Constabulary Force and any person appointed as a parish Special Constable under the Constables (Special) Act;
- (d) any member of the Rural Police,

about whom a complaint is made;

“concerned official” means the specified official about whom a complaint is made;

“Constitution” means the Constitution of Jamaica;

“correctional officer” has the same meaning as in the Corrections Act;

“Director of Complaints” means a person appointed pursuant to section 7 as a Director of Complaints of the Commission;

“document” means—

- (a) any written information relating (directly or indirectly) to a complaint;

- (b) any record generated in any manner whatsoever, including any record generated by an automated recording device or programme required to retrieve information in usable form;

“functions” includes powers and duties;

“incident” means any occurrence that involves misconduct of a member of the Security Forces or of a specified official—

- (a) resulting in the death of, or injury to, any person or that was intended or likely to result in the death of, or injury to, any person;
- (b) involving sexual assault;
- (c) involving assault or battery;
- (d) resulting in damage to property or the taking of money or other property;
- (e) although not falling within paragraphs (a) to (d), is, in the opinion of the Commission, an abuse of the rights of a citizen;

“investigation” means an investigation into any occurrence carried out by the Commission, for the purposes of this Act;

“investigator” in relation to an investigation under this Act means an employee or a part of the Commission assigned duties in relation to that investigation;

“public body” means—

- (a) a Ministry, department or agency of Government;
- (b) a Parish Council, the Kingston and St. Andrew Corporation;
- (c) a statutory body or authority;
- (d) a company registered under the Companies Act, being a company in which the Government or an agency of

Government, whether by the holding of shares or by financial means, is in a position to influence the policy of the company;

“region” means the area specified in a scheme established under section 6 as the area to be administered by a regional office;

“regional office” means a regional office of the Commission established pursuant to section 6, in relation to which a Director of Complaints may be given responsibility;

“relevant Force” means any one of the Security Forces—

- (a) involved in an incident; or
- (b) in relation to which a complaint is made, or an investigation is carried out, under this Act;

“relevant public body” means the public body—

- (a) involved in an incident; or
- (b) in relation to which a complaint is made, or an investigation is carried out, under this Act;

“responsible head” means the head of a relevant Force;

“responsible officer” means the officer in charge of a relevant public body;

“Security Forces” means—

- (a) the Jamaica Constabulary Force;
- (b) the Jamaica Defence Force;
- (c) the Island Special Constabulary Force;
- (d) the Rural Police; and
- (e) Parish Special Constables

“specified official” means—

- (a) a correctional officer;
- (b) such other public officer, as the Minister may by order specify, being a person upon whom is conferred any of the powers, authorities and privileges as are conferred by law on a member of the Jamaica Constabulary Force.

PART II. *The Independent Commission of Investigations*

3.—(1) For the purposes of this Act, there is hereby constituted a Commission of Parliament to be known as the Independent Commission of Investigations.

Independent
Commission
of Investiga-
tions

(2) The Commission shall consist of a Commissioner, who shall be appointed by the Governor-General by instrument under the Broad Seal, after consultation with the Prime Minister and the Leader of the Opposition, from persons of high integrity, who possess the qualifications to hold office as a Judge of the Supreme Court of Judicature of Jamaica.

(3) The provisions of the First Schedule shall have effect as to the constitution of the Commission and otherwise in relation thereto.

First
Schedule

4.—(1) Subject to the provisions of this Act, the functions of the Commission shall be to—

Functions of
Commission

- (a) conduct investigations, for the purposes of this Act;
- (b) carry out in furtherance of an investigation and as the Commission considers necessary or desirable—
 - (i) inspection of a relevant public body or relevant Force, including records, weapons and buildings;
 - (ii) periodic reviews of the disciplinary procedures applicable to the Security Forces and the specified officials;
- (c) take such steps as are necessary to ensure that the responsible heads and responsible officers submit to the

Commission, reports of incidents and complaints concerning the conduct of members of the Security Forces and specified officials.

(2) In the exercise of its functions under subsection (1) the Commission shall be entitled to—

- (a) have access to all reports, documents or other information regarding all incidents and all other evidence relating thereto, including any weapons, photographs and forensic data;
- (b) require the Security Forces and specified officials to furnish information relating to any matter specified in the request; or
- (c) make such recommendations as it considers necessary or desirable for—
 - (i) the review and reform of any relevant laws and procedures;
 - (ii) the protection of complainants against reprisal, discrimination and intimidation; or
 - (iii) ensuring that the system of making complaints is accessible to members of the public, the Security Forces and specified officials;
- (d) take charge of and preserve the scene of any incident.

(3) For the purpose of the discharge of its functions under this Act, the Commission shall, subject to the provisions of this Act, be entitled—

- (a) upon the authority of a warrant issued in that behalf by a Justice of the Peace—
 - (i) to have access to all records, documents or other information relevant to any complaint or other matter being investigated under this Act;
 - (ii) to have access to any premises or other location where the Commission has reason to believe that there may be found any records, documents or

other information referred to in sub-paragraph (i) or any property which is relevant to an investigation under this Act; and

(iii) to enter any premises occupied by any person in order to make such enquiries or to inspect the documents, records, information or property as the Commission considers relevant to any matter being investigated under this Act; and

(b) to retain any records, documents or other property if, and for so long as, its retention is reasonably necessary for the purposes of this Act.

(4) For the purposes of subsection (3), the Commission shall have power to require any person to furnish in the manner and at such times as may be specified by the Commission, information which, in the opinion of the Commission, is relevant to any matter being investigated under this Act.

5.—(1) Subject to the provisions of the Constitution, in the exercise of the powers conferred upon it by this Act, the Commission shall not be subject to the direction or control of any other person or authority.

Independence of Commission.

(2) Nothing in subsection (1) shall be construed as preventing the assignment to a Minister of responsibility for such aspects of the administration of this Act as are necessary or desirable to facilitate liaison between Parliament and the Commission.

6. The Commission shall, from time to time, prepare a scheme in accordance with the Second Schedule for the establishment and management of regional offices.

Regional Offices Second Schedule.

7.—(1) There shall be five Directors of Complaints, each of whom shall be responsible for a regional office and for ensuring that investigations in relation to the relevant region are carried out under this Act; and any reference in this Act to a Director of Complaints, in

Appointment of Directors of Complaints

relation to an incident or an investigation shall, unless the context otherwise requires, be construed as a reference to the Director of Complaints for the relevant region.

(2) The Directors of Complaints shall be appointed by the Commission, at such remuneration and on such other terms and conditions as may be approved by the Committee constituted under section 8(2) and stated in their letters of appointment.

Appointment
of employ-
ees, etc.

8.—(1) The Commission may appoint and employ for the purposes of this Act, at such remuneration and on such terms and conditions as may be approved by the Committee constituted under subsection (2), such other employees and agents as it considers necessary to assist it in the proper performance of its functions under this Act.

(2) The Committee referred to in subsection (1) shall consist of—

- (a) the Speaker, as chairman;
- (b) the President of the Senate;
- (c) the person designated by the Prime Minister as Leader of Government business in the House of Representatives;
- (d) the person designated by the Leader of the Opposition as Leader of Opposition Business in the House of Representatives; and
- (e) the person designated by the Prime Minister as Leader of Government business in the Senate;
- (f) the person designated by the Leader of the Opposition as Leader of Opposition business in the Senate; and
- (g) the Minister responsible for the public service.

(3) The Governor-General may, subject to such conditions as he may impose, approve the appointment to the staff of the Commission, of any officer in the service of the Government, provided that in relation to pension, gratuity and other rights as a public officer, the officer shall be deemed to be in the service of the Government.

(4) The Commission shall ensure that in its appointment of employees, due regard is had to the desirability that such employees be able to function in an independent, impartial and objective manner, and without unduly close association with any of the Security Forces or public body likely to be the subject of investigation under this Act.

9. The Commissioner and every person appointed to the staff of the Commission shall, before he performs any function assigned to him under or by virtue of this Act, take and subscribe an oath in the form set out in the Third Schedule, to be administered—

Oath of secrecy

Third Schedule.

- (a) in the case of the Commissioner, by the Governor-General;
- (b) in the case of all other employees, by the Commissioner.

PART III. *Complaints*

10.—(1) A complaint may be made to the Commission by a person who alleges that the conduct of a member of the Security Forces or any specified official—

Complaints, limitation period

- (a) resulted in the death of or injury to any person or was intended or likely to result in such death or injury;
- (b) involved sexual assault;
- (c) involved assault (including threats of harm, reprisal or other intimidatory acts) or battery by the member or official;
- (d) resulted in damage to property or the taking of money or of other property;
- (e) although not falling within paragraphs (a) to (d), is, in the opinion of the Commission an abuse of the rights of a citizen.

(2) A complaint may be made in the prescribed manner at the office of the Commission or at a regional office.

(3) On receipt of a complaint under subsection (1), the Director of Complaints shall—

- (a) record it in the prescribed form and furnish to the complainant a copy of that record signed by the person receiving the complaint;
- (b) cause an investigation into the complaint to be made forthwith; and
- (c) if in the opinion of the Commission the conduct complained of constitutes an offence, forward a copy of the complaint to the Director of Public Prosecutions forthwith.

(4) Subject to section 40(1)(b), and subsection (5), a complaint may not be acted upon by the Commission unless it is made not later than twelve months from the day on which the complainant had notice of the conduct alleged (hereinafter called the limitation period).

(5) The Commission may act upon a complaint made outside of the limitation period if, in its discretion, it considers that the circumstances make it just to do so.

Reports to
Commission.

11.—(1) The responsible head or the responsible officer, having been made aware of an incident which involves the relevant public body or the relevant Force, shall make a report to the Commission of the incident—

- (a) forthwith, where the incident involves conduct that resulted in the death of or injury to any person; and
- (b) not later than twenty-four hours, in any other case.

(2) It shall be the duty of the responsible head or the responsible officer, as the case may require, to take such steps as are necessary to ensure that measures are implemented so that reports of incidents involving members of the relevant Force or relevant public body are duly made to the Commission.

(3) A member of the Security Forces or a specified official who, in the course of his duties—

- (a) becomes aware of;
- (b) is involved in,

any incident, shall take the steps as are necessary (including reporting the facts thereof to the responsible head or the responsible officer) to ensure that a report is made to the Commission in accordance with subsection (1).

12. Where the Commission is satisfied that an incident is of such an exceptional nature, that it is likely to have a significant impact on public confidence in the Security Forces or a public body, the Commission shall require the relevant Force or the relevant public body to make a report of that incident to the Commission, in the form and containing such particulars as the Commission may specify.

Report required where public confidence affected.

13. An investigation under this Act may be undertaken by the Commission on its own initiative.

Commission may initiate investigation.

14.—(1) The Commission shall, for the purpose of deciding the most appropriate method of investigation, make an assessment of—

Conduct of investigation.

- (a) the seriousness of the case;
- (b) the importance of the investigations;
- (c) public interest considerations;
- (d) the particular circumstances in which the incident occurred.

(2) The Commission may manage, supervise, direct and control an investigation carried out by the Security Forces or the relevant public body in relation to an incident, where, in the opinion of the Commission, it is necessary to direct and oversee that investigation.

(3) Where the Commission takes action under subsection (2), it shall notify the responsible head or the responsible officer, as the case may be, and direct that no action shall be taken until the Commission has completed its investigation.

15.—(1) If the Director of Complaints is satisfied that---

Informal Resolution of complaints.

- (a) a complaint relates to conduct which, even if proved, would not justify a criminal or disciplinary charge; and
- (b) the complainant and the concerned officer or the concerned official, as the case may be, have given consent for that purpose.

the Director of Complaints shall, subject to the directions of the Commission, consider whether the complaint can be resolved informally and may attempt to achieve the resolution.

(2) For the purposes of subsection (1), the Director of Complaints may, if he considers it expedient to do so, request the assistance of an officer of—

- (a) the relevant Force, being an officer of at least the rank of Deputy Superintendent or of at least the rank of the concerned officer; or
- (b) the relevant public body, being an officer of at least the Grade of the concerned official.

(3) Where a complaint is resolved informally—

- (a) a record shall be made of the manner in which it was resolved;
- (b) the person who made the complaint and the concerned officer or concerned official shall each signify in writing his agreement to the resolution; and
- (c) a copy of the record shall be furnished forthwith to the Commission, the person who made the complaint and the concerned officer or concerned official.

(4) Unless the Commission otherwise directs in a particular case, no reference shall be made in the personal record of a concerned officer or concerned official to a complaint resolved under this section.

(5) No answer or statement made, in the course of attempting to dispose of a complaint informally, by the complainant or the concerned officer or concerned official shall be used or receivable in any criminal or civil proceedings except, with consent of the complainant, that member or official, at a hearing under this Act.

(6) A complaint may be resolved informally under subsection (1) in accordance with such procedures as may be prescribed, at any time during the course of or after an investigation under section 14.

(7) Notwithstanding subsections (1) to (6), where the Director of Complaints or the Commission is of the opinion that the informal resolution was obtained as a result of a misunderstanding, threat or other improper pressure—

- (a) the Director of Complaints may order that the complaint shall continue to be investigated and give reasons therefor in writing to the concerned officer or the concerned official and the complainant; and

- (b) the complaint shall continue to be treated as a complaint under this Act.

16.—(1) The Commission may, after consultation with the Director of Public Prosecutions and with the consent of all the parties to whom a complaint relates, determine, having regard to all the circumstances, whether the matter can be dealt with by mediation or other alternative dispute resolution proceedings.

Dispute
Resolution.

(2) Where the Commission is satisfied that—

- (a) the matter has been resolved by mediation or other alternative dispute resolution proceedings, the Commission shall take no further action in relation to the complaint;
- (b) the matter has not been resolved by mediation or other alternative dispute resolution proceedings, the Commission shall order that an investigation into the complaint be carried out.

(3) The following provisions shall apply to any admission made or information disclosed as a result of a mediation or other alternative dispute resolution proceedings (hereinafter referred to as “protected information”)—

- (a) protected information shall be treated as confidential;
- (b) protected information shall not be admissible in any proceedings before a court, tribunal or committee and no person shall be compellable in any such proceedings to disclose the information or to produce any document that contains the information; and
- (c) a party to mediation or other alternative dispute resolution proceedings shall be taken to have authorized the provision of protected information to the person conducting the proceedings and his staff, in accordance with the provisions of this Act.

17.—(1) Subject to subsection (2), where a complaint is not resolved in accordance with section 15 or 16, the Commission shall cause an investigation to be made forthwith into the complaint.

Formal
handling of
complaints

(2) The Commission is not required to conduct an investigation where it is satisfied that in the circumstances of any particular case, the complaint may be justly and adequately resolved otherwise than by an investigation.

(3) During the course of the investigation the Commission shall—

- (a) unless it is satisfied as to the necessity for confidentiality, issue a press release at the commencement of the investigation and at intervals thereafter as it considers appropriate;
- (b) subject to subsection (4), take such steps as are necessary to inform the complainant, the concerned officer or concerned official and the members of the public of the status of the investigation, at such intervals of not more than sixty days as the Commission may determine;
- (c) at intervals of not more than six months, submit to Parliament a report on the investigation.

(4) The Director of Complaints may advise the Commission (in writing with reasons therefor) against informing any or all of the persons mentioned in subsection (3) (b), where in his opinion, to do so might adversely affect the investigation or where there are no new matters to report, and the Commission shall act in accordance with the advice unless in its discretion, it decides to act otherwise.

(5) The investigator shall submit to the Director of Complaints an initial report on the investigation not later than thirty days after the Commission has initiated the investigation and subsequent reports thereon at intervals of thirty days or at such other intervals as the Commission may determine.

(6) Where the investigator requires more time for the completion of any report than the applicable time under subsection (5), he shall in writing to the Commission, transmitted through the Director of Complaints within the applicable time for submission of the report—

- (a) inform the Commission of the status of the investigation;
- (b) request an extension of time within which to submit the report.

(7) On the completion of the investigation, the investigator shall submit a final investigation report and proposed recommendations thereon to the Director of Complaints who shall submit it to the Commission.

(8) After receiving and considering a final investigation report submitted under subsection (7), the Commission shall make its own assessment of the investigation and form its own opinion as to the matter under investigation.

(9) The Commission shall then prepare a report on the investigation including its recommendations arising therefrom (whether or not confirming any of the proposed recommendations) as are to be acted upon (hereinafter referred to as “recommendations for action”).

(10) The Commission shall furnish a copy of the report of the Commission to—

- (a) the complainant;
- (b) the concerned officer or the concerned official;
- (c) the responsible head or the responsible officer;
- (d) the Director of Public Prosecutions;
- (e) the Office of the Special Coroner (where the incident involves the death of any person);
- (f) the Police Service Commission (where the incident involves the misconduct of a member of the Jamaica Constabulary Force, the Island Special Constabulary Force, the Rural Police and the Parish Special Constables);
- (g) the Public Service Commission (where the incident involves the misconduct of a specified official); and
- (h) the Chief of Defence Staff (where the incident involves the misconduct of a member of the Jamaica Defence Force);

(11) The Commission may furnish a copy of the report to the Solicitor General as it considers appropriate in any particular case.

(12) In this section “the Office of the Special Coroner” means the Office established as such under the Coroners Act.

18.—(1) The Commission may, where it considers it appropriate Hearings. in the circumstances, hold hearings during the course of an investigation.

(2) A hearing may be held in public or in private, or partly in public and partly in private.

(3) Where the Commission proposes to hold a hearing in public or partly in public and partly in private, it shall not proceed to conduct the hearing except after prior consultation with the Director of Public Prosecutions and such other person or authority as it may in its discretion consider appropriate.

Grant of
access to
final investi-
gation report.

19. The Commission shall, on the application of a person to obtain access to the report of the Commission, grant such access if the Commission is satisfied that there are no compelling reasons for denying the access.

Powers,
authorities
and
privileges.

20. For the purpose of giving effect to sections 4, 13 and 14, the Commissioner and the investigative staff of the Commission shall, in the exercise of their duty under this Act have the like powers, authorities and privileges as are given by law to a constable.

Evidence

21.—(1) Subject to subsection (5), the Commission may at any time require any member of the Security Forces, a specified official or any other person who, in its opinion, is able to give assistance in relation to an investigation under this Act, to furnish a statement of such information and produce any document or thing in connection with the investigation that may be in the possession or under the control of that member, official or other person.

(2) The statements referred to in subsection (1) shall be signed before a Justice of the Peace.

(3) Subject to subsection (4), the Commission may summon before it and examine on oath—

- (a) any complainant; or
- (b) any member of the Security Forces, any specified official or any other person who, in the opinion of the Commission, is able to furnish information relating to the investigation.

(4) For the purposes of an investigation under this Act, the Commission shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents.

(5) A person shall not, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law.

(6) Section 4 of the Perjury Act shall apply to proceedings under this section in relation to an investigation as it applies to judicial proceedings under that section.

22.—(1) Notwithstanding anything to the contrary in any other law, the Commission shall have primary responsibility for the preservation of the scene of an incident or alleged incident and may issue directions to the Commissioner of Police or any other authority for the purposes of this section.

Duty to
preserve
evidence

(2) The Commissioner of Police shall implement measures in accordance with directions issued under subsection (1) to ensure that members of the Jamaica Constabulary Force shall, as soon as practicable after being notified of an incident, attend at the scene of the incident in order to ensure the preservation of the scene until the arrival of an investigator assigned to that scene by the Commission and thereafter, each member shall be under a duty, until the investigator is satisfied that it is no longer necessary to do so, to continue to take steps for the purposes of preserving the scene.

(3) It shall be:---

- (a) the duty of any member of the Security Forces, who is at the scene of an incident, or in any case where there is more than one such member, the member senior in rank and command;
- (b) without prejudice to the provisions of paragraph (a), the duty of the police officer in charge of the police division in which the incident occurred.

to take such steps in accordance with directions issued under subsection (1), as are lawful and necessary for the purpose of obtaining or

preserving the evidence and facilitating the making of reports to the Commission in relation to the incident.

Obligation to
comply with
recom-
mendations.

23. –(1) Subject to subsection (2), where a report of the Commission under this Act contains recommendations for action to be carried out by the relevant force or the relevant public body these shall be complied with in the manner and within the time specified (if any) and the responsible head or responsible officer, as the case may be, shall report to the Commission on the compliance with the recommendations, within such period after being furnished with a report, as the Commission may notify to the relevant force or relevant public body.

(2) Where the recommendations relate to—

- (a) disciplinary proceedings or the production of documents, by the relevant Force or relevant public body, the responsible head or the responsible officer shall take such steps as are lawful and necessary to ensure compliance with the recommendations: or
- (b) any other matters, and the responsible head or the responsible officer decides not to comply with the recommendations, he shall give reasons for the decision.

(3) Where the relevant force or the relevant public body does not comply with the recommendations of the Commission, the Commission shall after being made aware of the non-compliance, cause a report thereon to be laid on the Table of each House of Parliament.

Review of
Commission's
decision

24. The Commission shall take such steps as are necessary to ensure that a complainant, concerned officer or concerned official, as the case may be, who is not satisfied with a decision of the Commission in relation to an investigation, is advised of the right to seek judicial review of that decision.

Duty of
investigators
to provide
support, etc.

25. An investigator shall, on a request by the Director of Public Prosecutions, in relation to a prosecution arising out of an incident, attend court and provide such other support as the Director of Public Prosecutions may require, in relation to the proceedings instituted against the concerned member or the concerned official under this Act.

PART IV. *General*

26.—(1) The functions of the Commission may be performed by any member of its staff or by any other person (not being a member of the Security Forces or a specified official) authorized for that purpose by the Commission.

Performance of functions of Commission by members of staff.

(2) Nothing in subsection (1) shall be construed as affecting the responsibility of the Commission for any functions performed on its behalf under subsection (1).

27.—(1) Except in the case of proceedings for an offence under section 34(c), no proceedings shall lie against the Commissioner or any person concerned with the administration of this Act for anything he may do or say in the performance of his functions under this Act.

Privileges.

(2) Anything said or any information supplied or document or thing produced by any person for the purpose or in the course of, any investigation carried out under this Act shall be absolutely privileged in the same manner as if the investigation were proceedings in a court of law.

(3) For the purposes of the Defamation Act, any report made by the Commission under this Act and any fair and accurate report thereon shall be deemed to be privileged.

28.—(1) The Commissioner and every person concerned with the administration of this Act shall regard as secret and confidential all documents, information and things disclosed to them in the execution of any of the provisions of this Act, except that no disclosure—

Secrecy.

- (a) made by the Commissioner or any such person in proceedings for an offence under section 33 of this Act or under the Perjury Act by virtue of section 21(3) of this Act; or
- (b) which the Commissioner or any such person thinks necessary to make in the discharge of their functions, and which would not prejudice the security, defence or international relations of Jamaica, shall be deemed inconsistent with any duty imposed by this section.

(2) Neither the Commissioner nor any of the persons aforesaid shall be called upon to give evidence in respect of, or produce any such document, information or thing in any proceedings, other than proceedings mentioned in subsection (1) or section 25.

Accounts,
etc.

29.—(1) The accounts and financial transactions of the Commission shall be audited annually by the Auditor-General and a statement of accounts so audited shall form part of the annual report under section 31.

(2) The Commission shall, at such time within each year as the Minister may direct—

- (a) submit to the Minister a statement of the accounts of the Commission audited in accordance with the provisions of subsection (1);
- (b) submit to the Minister for approval the estimates of revenue and expenditure for the financial year commencing on the 1st day of April next following.

(3) In this section “Minister” means the Minister responsible for finance.

Reports

30.—(1) The Commission may, at any time, be required by Parliament to submit thereto a report in respect of any matter under investigation by the Commission.

(2) The Commission shall submit to Parliament an annual report relating generally to the execution of its functions and may at any time submit a report relating to any particular incident investigated by it which in its opinion, requires the special attention of Parliament.

(3) Reports under this section shall be submitted to the Speaker of the House of Representatives and the President of the Senate, who shall, as soon as possible, have them laid on the Table of the respective Houses.

(4) The Commission may, in the public interest, from time to time, publish in such manner as it thinks fit, reports relating to matters referred to in subsection (2), but no such report shall be published until after it has been laid under subsection (3).

(5) The Commission shall not, in any report furnished under this section, disclose or act upon any communication—

- (a) between a medical practitioner and his patient in their professional relationship;
- (b) between a minister of religion and any person consulting him in his capacity; or
- (c) between an attorney-at-law and his client in their professional relationship.

where the communication came to the Commission's knowledge during the course of an investigation under this Act.

31. The Commission may initiate or continue any investigation and report thereon under this Act notwithstanding any civil legal proceedings relating to the subject matter of the investigation.

Power to continue investigation despite legal proceedings

32.—(1) The Commission shall, in respect of every investigation carried out by it, cause to be recorded in a register kept for the purpose—

Register

- (a) the subject matter of the complaint and the date thereof; and
- (b) on the conclusion of the investigation, the Commission's decision respecting the complaint.

(2) Any person may, on payment of such fees as may be prescribed, inspect, during the hours and on the days of business of the Commission, any register kept under this Act.

33. Every person who—

Offences

- (a) willfully makes any false statement to mislead or misleads or attempts to mislead the Commission, an investigator or any other person in the execution of functions under this Act;
- (b) without lawful justification or excuse—
 - (i) obstructs, hinders or resists the Commission or any other person in the exercise of functions under this Act; or
 - (ii) fails to comply with any lawful requirement of the Commission or any other person under this Act; or

- (iii) wilfully refuses or neglects to carry out any duty required to be performed by him under this Act; or
- (c) deals with documents, information or things mentioned in section 28 in a manner inconsistent with his duty under that section.

commits an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Remedy
under other
provision of
law unaf-
fected

34. Nothing in this Act shall be construed as limiting or affecting any remedy or right of appeal, objection or procedure given to any person by any other provision of law.

Regulations

35. The Commission may make regulations generally for giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, may make regulations prescribing: -

- (a) the practice and procedure to be adopted in relation to the making and investigation of complaints;
- (b) the practice and procedure to be adopted at any hearing by the Commission under this Act;
- (c) without prejudice to the generality of section 14, the circumstances in which direct investigations shall be carried out by the Commission;
- (d) procedures to be followed in the resolution of complaints under section 15 or 16;
- (e) matters necessary for the operation of regional offices;
- (f) the records to be kept, returns to be furnished and forms to be used for the purposes of this Act;
- (g) the circumstances in which the Commission may redact a final investigation report by deleting any confidential, privileged or otherwise sensitive material;
- (h) such other matters as may be required by this Act to be prescribed.

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

(a) any Schedule to this Act; or

(b) any monetary penalty imposed by this Act.

Power of Minister to amend Schedules and penalties.

37.—(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 such review shall be conducted not later than three years after the date of commencement of this Act.

38.—(1) Where under any provision of this Act, the Governor-General is required to act after consultation with the Leader of the Opposition and—

Provisions applicable where no Leader of the Opposition

- (a) there is no person holding office of Leader of the Opposition; or
- (b) the holder of that office is unwilling or by reason of his illness or absence from Jamaica, unable to perform his functions in that regard.

the Governor-General shall act as if the reference in the provision to the Leader of the Opposition were a reference to such person as the Governor-General, in his discretion, considers appropriate.

(2) Where under any provision of this Act, the Governor-General is required to act on the recommendation of the Prime Minister after consultation with the Leader of the Opposition; and—

- (a) there is no person holding office of Leader of the Opposition; or
- (b) the holder of that office is unwilling, or by reason of his illness or absence from Jamaica, unable to perform his functions in that regard,

the Governor-General shall act in accordance with the advice of the Prime Minister.

39. The Police Public Complaints Act is repealed.

Repeal

Transitional provisions relating to Police Public Complaints Authority.

40.—(1) Notwithstanding the repeal of the Police Public Complaints Act (hereinafter referred to as the “repealed Act”)—

- (a) any property purchased by, belonging to or vested in the Police Public Complaints Authority under the repealed Act and all interests, rights and easements into or out of that property shall, without any conveyance, assignment or transfer, belong to and be vested in the Commission of Parliament established under this Act, subject to all and any trusts and to all debts, liabilities and obligations affecting the same and to any enactment regulating the management, maintenance, control, supervision and dealing with the property;
- (b) any complaint which immediately before the date of commencement of this Act, is pending before or otherwise being dealt with by the Authority, may as from that date be continued by the Commission.

(2) In this section “complaint” has the meaning assigned to it under the repealed Act.

FIRST SCHEDULE

(Section 3)

PART I

Tenure of Office, etc.

1.—(1) Subject to the provisions of this Act, a person appointed as Commissioner shall hold office for a period of five years, and on such terms as may be specified in the instrument of appointment, and may be re-appointed for periods not exceeding five years at a time.

Tenure of Office.

(2) The Commissioner, as the case may be, may, by instrument in writing, addressed to the Governor-General resign his office as such.

(3) The Commissioner shall, subject to paragraph (6), vacate office on attaining the age of seventy-five years.

(4) Notwithstanding that he has attained that age at which he is required by or under the provisions of this paragraph to vacate his office, the Commissioner may continue in office for such period after attaining that age as the Governor-General, after consultation with the Prime Minister and Leader of the Opposition, may specify, in order to enable the Commissioner to give his decision or to do any other thing in relation to any investigation he was conducting before he attained that age.

(5) Nothing done by the Commissioner shall be invalid by reason only that he has attained the age at which he is required by this paragraph to vacate his office.

2.—(1) No person shall be qualified to be appointed as Commissioner who

Disqualification for appointment

- (a) is a member of the Senate or of the House of Representatives;
- (b) has been adjudged or otherwise declared a bankrupt under any law in force in any part of the Commonwealth and has not been discharged;
- (c) has been convicted of any offence involving dishonesty or moral turpitude; or
- (d) is a party to, or a partner in a firm, or a director or manager of a company which, to his knowledge, is a party to any contract with the Government of Jamaica for or on account of the public service

unless, prior to his appointment, he has previously disclosed to the Governor-General the nature of the contract and his interest or the interest of such firm or company therein.

(2) The Commissioner shall be deemed to have vacated his office if any circumstances arise that, if he were not the Commissioner would have, by virtue of sub-paragraph (1), caused him to be disqualified for appointment.

Removal
from
office

3. - (1) The Commissioner may be removed from office on the following grounds -

- (a) inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause);
- (b) failure to discharge the functions of his office in a competent manner;
- (c) misbehaviour;
- (d) trading with the Government of Jamaica contrary to sub-paragraph (2).

and shall not be so removed except in accordance with the provisions of this paragraph.

(2) Subject to sub-paragraph (3), the Commissioner shall not, while holding office as Commissioner become a party to, or a partner in a firm or a director or manager of a company which to his knowledge, is or becomes a party to, any contract with the Government of Jamaica for or on account of the public service.

(3) Sub-paragraph (2) shall not apply in any case where—

- (a) the Commissioner, as the case may be, before becoming a party to a contract referred to in that sub-paragraph, had disclosed to the Committee constituted under section 8 the nature of the contract and his interest therein; and
- (b) the Committee had determined that, in the circumstances, the Commissioner should be exempt from any liability for removal under this paragraph.

(4) If the question of the removal from office of the Commissioner has been referred to a tribunal appointed under sub-paragraph (5) and the tribunal has recommended to the Governor-General that the Commissioner ought to be removed from office, the Governor-General shall, by instrument under the Broad Seal, remove the Commissioner from office.

(5) If each House of Parliament by resolution decides that the question of removing the Commissioner from office ought to be investigated, then—

- (a) the Governor-General shall appoint a tribunal, which shall consist of a chairman and not less than two nor more than five other members, from among persons who hold or have held the office of a Judge of a court having unlimited jurisdiction in civil and criminal matters or a court having jurisdiction to hear appeals from any such court; and
- (b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend whether the Commissioner ought to be removed from office on any of the grounds specified in sub-paragraph (1).

(6) The provisions of sections 8 to 16 (inclusive) of the Commissions of Enquiry Act shall apply *mutatis mutandis* in like manner in relation to tribunals appointed under sub-paragraph (5) or, as the context may require, to the members thereof, as they apply in relation to the Commissions or Chairman or Deputy Chairman appointed under that Act.

(7) Where the question of removing the Commissioner from office has been referred to a tribunal the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may suspend the Commissioner from performing the functions of his office and any suspension—

- (a) may, at any time, be revoked by the Governor-General after consultation as aforesaid; and
- (b) shall, in any case, cease to have effect if the tribunal advises the Governor-General that the Commissioner ought not to be removed from office.

4. A person appointed as Commissioner shall be a full-time officer and except with the approval of the Governor-General, acting in his discretion, shall not be employed in any other capacity during any period in which he holds office as Commissioner. Restriction on employment

5.—(1) Where a vacancy arises in the office of Commissioner, the Governor-General may, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, designate a person being a person qualified under this Act, to act in that office during the vacancy until an appointment is made. Filling of vacancy.

(2) Where, by reason of illness, absence from Jamaica or other sufficient cause, a person appointed as the Commissioner is unable to perform his functions

as such, the Governor-General may, after consultation with the Prime Minister and the Leader of the Opposition, appoint such person as he thinks fit, being a person qualified under this Act, to perform those functions.

Remu-
neration
of
Commis-
sioner

6.—(1) Subject to sub-paragraph (2), the Commissioner shall receive emoluments and be subject to the terms and conditions of service as may from time to time be prescribed by or under any law or by a resolution of the House of Representatives, the emoluments being not less than the emoluments which may, from time to time, be payable to a Judge of the Supreme Court.

(2) The emoluments and terms and conditions of service of the Commissioner, other than allowances that are not taken into account in computing pensions, shall not be altered to his disadvantage during the period of his appointment or reappointment, as the case may be.

(3) The emoluments for the time being payable to the Commissioner by virtue of this Act shall be charged on and paid out of the Consolidated Fund.

PART II

Pensions and Gratuities

Interpre-
tation.

7. In this Part “pensionable emoluments” has the same meaning as in the Pensions Act.

Entitle-
ment to
pensions
and
gratuities
in respect
of service
as
Commis-
sioner.

8.—(1) Where a person holding the office of Commissioner retires in pensionable circumstances he shall, subject to the provisions of this Schedule, be paid pension and gratuity in accordance with this Act in lieu of any pension, allowance or gratuity for which he may have been eligible or which he may have been granted under the Pensions Act or the Judiciary Act.

(2) A person entitled to pension or gratuity under sub-paragraph (1) or who is eligible for a grant of pension or gratuity under sub-paragraph (5) may, by memorandum in writing to the Governor-General, elect to forego his entitlement under this Act and be granted instead—

- (a) if he is, otherwise than under this Schedule, eligible for pension under section 5 of the Judiciary Act, the award as would be payable under that Act if the office of Commissioner were an office to which that Act applied; or
- (b) in any other case, the award under the Pensions Act as would be payable under that Act if the office of Commissioner were a pensionable office under that Act.

(3) For the purposes of this paragraph, the Commissioner retires in pensionable circumstances if he retires from such office—

- (a) with a minimum of ten years of service; or
- (b) by reason of ill health prior to attaining the period of service specified in clause (a).

(4) For the purposes of this Act, a person retires from the office of Commissioner on the ground of ill health if —

- (a) he retires on medical evidence, to the satisfaction of the Governor-General, that he is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that the infirmity is likely to be permanent; or
- (b) he is removed from office, in accordance with paragraph 3, for inability arising from infirmity of mind or body, to perform the functions of his office.

(5) A person who, under paragraph 3, is removed from the office of Commissioner for misbehaviour or from any cause other than inability arising from infirmity of mind or body or who retired otherwise than in pensionable circumstances may, subject to sub-paragraph (2), be granted by the Governor-General, in lieu of any pension, allowance or gratuity for which he may have been eligible under the Pensions Act or the Judiciary Act, the pension and gratuity as the Governor-General thinks fit, not exceeding the pension and gratuity to which he would have been entitled had he retired in pensionable circumstances from the office and, for the purposes of sub-paragraph (6), the date of the removal from office or retirement shall be deemed to be the date of retirement in pensionable circumstances.

(6) Pension payable in accordance with this paragraph shall—

- (a) be charged on and payable out of the Consolidated Fund;
- (b) be paid monthly in arrears with effect, subject to sub-paragraph (4), from the date of retirement in pensionable circumstances and shall, subject to the provisions of this Act, continue to be paid during the lifetime of the person entitled thereto.

9. The rate of pension payable under paragraph 8 to any person shall be an annual rate equivalent to the sum of one-half of his pensionable emoluments at the date of retirement and one-third hundred and sixtieth of the pensionable emoluments in respect of each month of service as the Commissioner.

Rate of Pension.

Reduced pension and gratuity.

10.—(1) Any person to whom a pension (in this paragraph referred to as “the original pension”) is payable under paragraph 8 may, at his option exercisable at his retirement in pensionable circumstances or within the period prior or subsequent to his retirement as the Governor-General may allow, be paid, in lieu of the original pension, a reduced pension at the rate of three-fourths of the annual rate of the original pension together with a gratuity (in this Act referred to as a “commuted pension gratuity”) equal to twelve and one-half times one-quarter of the annual rate of the original pension.

(2) The option referred to in sub-paragraph (1) shall be irrevocable unless the Governor-General, on the terms as he considers reasonable, otherwise permits.

Gratuity on death.

11.—(1) Where a person dies while holding the office of Commissioner there shall be paid to his legal personal representative, a gratuity of an amount equivalent to

- (a) one year’s pensionable emoluments; or
- (b) the commuted pension gratuity for which the person aforesaid had a right to opt under paragraph 10 of this Schedule on the assumption that he retired in pensionable circumstances at the date of his death,

whichever is the greater.

(2) Where a person dies while in receipt of a pension under paragraph 8, there shall be paid to his legal personal representative a gratuity of an amount equivalent to one year’s pensionable emoluments of that person at the date of his retirement or removal from office, from which gratuity shall be deducted any pension or gratuity already paid to that person under this Act or under the Judiciary Act.

Pensions to dependants where received injuries or disease contracted in discharge of duties.

12. Where a person holding the office of Commissioner dies as a result of injuries

- (a) in the actual discharge of his duties;
- (b) in circumstances in which the injury is not wholly or mainly due to or aggravated by his own and culpable negligence or misconduct; and
- (c) on account of circumstances specifically attributable to the nature of his duty.

while in that office, it shall be lawful for the Governor-General to grant to the deceased Commissioner’s widow, children, parents or other dependants the award as would have been made under the Pensions Act if the office of Commissioner were a pensionable office for the purposes of that Act.

13. A pension or gratuity payable under this Act shall not to be assignable or transferable except for the purpose of satisfying -- Pension, etc., not to be assigned

- (a) a debt due to the Government; or
- (b) an order of any court for the payment of periodic sums of money towards the maintenance of the wife or former wife or minor children, of the person to whom the pension or gratuity is payable.

and shall not be liable to be attached, sequestered or levied upon, for or in respect of any debt due or claim whatever except a debt due to the Government.

14.—(1) For the purposes of the Pensions (Civil Service Family Benefits) Act, the office of Commissioner shall be deemed to be a pensionable office in the service of the Island. Family Benefits pension.

(2) Where a person dies while holding the office of Commissioner or while entitled to a pension under paragraph 8, there shall be paid to his widow a pension at an annual rate equivalent to one-fifth of the pensionable emoluments of the person aforesaid at the date of his death or, if at that date he was entitled to receive a pension under paragraph 8, at the date of his retirement or, as the case may be, removal from office in accordance with this Act.

(3) Pension payable to a widow under sub-paragraph (2) shall---

- (a) be charged on and payable out of the Consolidated Fund; and
- (b) be paid monthly in arrears with effect from the date of her husband's death and shall, subject to the provisions of this Act, continue to be paid during her lifetime.

(4) Pension payable to a widow under sub-paragraph (2) shall be without prejudice to any pension to which she may be entitled under the Pensions (Civil Service Family Benefits) Act but shall be in lieu of any pension to which she may be entitled under section 9 of the Judiciary Act.

(5) In paragraph 13 and sub-paragraphs (2) and (3) of this paragraph, references to a widow shall, in the case of a female appointed as the Commissioner, be deemed to include references to a widower and cognate expressions shall be construed accordingly and similarly, references to a husband shall be deemed to include references to a wife.

15. Where a person retires without a minimum of ten years service, he shall be granted in respect of his service, the commuted pension gratuity for which the person had a right to opt under paragraph 10 if he had retired in pensionable circumstances. Gratuities where length of service does not qualify for pension

SECOND SCHEDULE

(Section 6)

Schemes for Management of Regional Offices

Each scheme shall

- (a) provide for the management and functions of the regional offices;
- (b) define the parishes or parts thereof which comprise the region to be administered by a regional office;
- (c) charge the Director of Complaints with responsibility for the operation of the regional office;
- (d) provide for -
 - (i) the application of the funds allocated to each regional office;
 - (ii) the employment, duties and responsibilities of the staff of each regional office;
 - (iii) the emoluments and other terms and conditions of employment of the staff of each regional office;
 - (iv) such other matters as the Commission considers expedient or necessary for giving effect to the purposes of this section.

THIRD SCHEDULE

(Section 14)

Oath to be taken by persons appointed to staff of the Commission

I, do swear that I will faithfully perform any functions assigned to me under the Independent Commission of Investigations Act, and I will not, on any account, at any time whatsoever, except in so far as provisions of this Act authorize, directly or indirectly reveal any information or the nature or contents of any documents communicated to me in the performance of any functions assigned to me by virtue of this Act.

So help me God.

Passed in the Senate this 15th day of May, 2009, with sixty-seven (67) amendments.

OSWALD HARDING, OJ, CD, QC
President.

Passed in the House of Representatives this 9th day of March, 2010, with thirty-three (33) amendments.

DELROY CHUCK
Speaker.

On the 19th day of March, 2010 the Senate agreed to the amendments made by the House of Representatives.

OSWALD HARDING, OJ, CD, QC
President.

This printed impression has been carefully compared by me with the Bill which has passed the House of Representatives and Senate, and has been found by me to be a true and correct printed copy of the said Bill.

Clerk to the Houses of Parliament.