

THE CORRUPTION (PREVENTION) ACT

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SCHEDULE

THE CORRUPTION (PREVENTION) ACT

Acts
18 of 2000,
42 of 2002.

[1st May 2001.]

1. This Act may be cited as the Corruption (Prevention) Act.

Short title.

2.—(1) In this Act—

Interpre-
tation.

“appointed day” means the 1st day of May, 2001.

“Commission” means the Commission for the Prevention of Corruption established under section 3;

“document” includes, in addition to a document in writing—

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (d) any film (including microfilm), negative; tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

“government company” means a company registered under the Companies Act being a company whose policy the Government or an agency of Government, whether by the holding of shares or by financial input, is in a position to influence;

“public function” means any activity performed a single time or continually, whether or not payment is received therefor, which is carried out by—

- (a) a person for, or on behalf of or under the direction of a Ministry, Department of Government, a statutory body or authority, a Parish Council, the Kingston and St. Andrew Corporation or a government company;
- (b) a body, whether public or private, providing public services;
- (c) a Member of the House of Representatives or of the Senate in that capacity;

“public servant” means any person—

- (a) employed—
 - (i) in the public, municipal or parochial service of Jamaica;
 - (ii) in the service of a statutory body or authority or a government company;
- (b) who is an official of the State or any of its agencies;
- (c) appointed, elected, selected or otherwise engaged to perform a public function.

(2) For the purposes of paragraph (b) of the definition of “public function”, “public services” includes the provision of electricity, water and communication.

(3) References in this Act to an act of corruption shall be construed in accordance with section 14.

3.—(1) There is hereby established for the purposes of this Act, a body to be known as the Commission for the Prevention of Corruption.

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

Establishment
of Commission.

First
Schedule.

Duty of
public
servant to
furnish
statutory
declaration.
Second
Schedule
Form A.

4.—(1) Every person who, on or after the appointed day, is a public servant shall, subject to subsections (2), (3) and (4), furnish to the Commission a statutory declaration of his assets and liabilities and his income in the form set out as Form A in the Second Schedule.

(2) Every member of the Commission shall furnish a statutory declaration referred to in subsection (1) to the Integrity Commission established under section 3 of the Parliament (Integrity of Members) Act.

- (3) Subsection (1) shall not apply to a public servant—
- (a) to whom the Parliament (Integrity of Members) Act applies; or
 - (b) who is in receipt of total emoluments less than the prescribed amount.

(3A) Notwithstanding subsection (3)(b), regulations made under section 13 may contain provisions requiring public servants who occupy such posts as are prescribed to furnish a statutory declaration pursuant to subsection (1).

(4) A declaration pursuant to subsection (1) shall include such particulars as are known to the declarant of the assets, liabilities and income of the spouse and children, where applicable, of the declarant:

Provided that—

- (a) if the spouse was not living with the declarant at any time during the period in relation to which the declaration is made; or
- (b) if a child of a declarant—
 - (i) has attained the age of eighteen years; or
 - (ii) is married and under the age of eighteen years,

and was not living with the declarant at any time during the period in relation to which the declaration is made,

the particulars required to be furnished by this subsection shall

be limited to assets held by the spouse or child (as the case may be) in trust for, or as agent of, the declarant; so, however, that nothing in this subsection shall be construed as precluding the Commission from requiring from a declarant any additional particulars the Commission may think fit.

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S. 2.

(5) Subject to subsection (5A), a statutory declaration pursuant to subsection (1) shall be furnished—

- (a) within three months after the date of commencement of regulations made under section 13, in the case of a person who is a public servant on that date, including public servants referred to in subsection (3A);
- (b) within three months after the date of appointment of a person as a public servant; or
- (c) within three months after the date on which the emoluments of a public servant become equivalent to or in excess of the prescribed amount.

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S. 2.

(5A) The Commission may—

- (a) at any time in writing require a public servant to furnish a statutory declaration;
- (b) by notice published in the *Gazette*, require such categories of public servants as are specified in the notice, to furnish a statutory declaration within the period so specified, and the powers conferred by this paragraph may be exercised subject to such exceptions or conditions as the Commission may specify in the notice.

(6) Where a person ceases to be a public servant, he shall furnish a statutory declaration at the end of twelve months from the date on which he so ceases.

(7) A statutory declaration required to be made on the 31st day of December in any year shall be deemed to comply with the requirements of this section if it is made on or before the 31st March next following that date.

(8) A statutory declaration furnished pursuant to subsection (1) may, if the declarant so desires, be accompanied by a statement of affairs certified by a registered public accountant.

(9) In subsection (1) “assets” does not include such gifts as may be prescribed, received by a public servant from such relatives of that public servant as may be prescribed.

5.—(1) The functions of the Commission shall be—

Functions
and powers
of Commis-
sion.

- (a) to receive and keep on record statutory declarations furnished by public servants pursuant to this Act;
- (b) to examine such statutory declarations and to request from a public servant any information relevant to a statutory declaration made by him, which in its opinion would assist it in its examination;
- (c) to make such independent enquires and investigations relating to a statutory declaration as it thinks necessary;
- (d) to receive and investigate any complaint regarding an act of corruption;
- (e) to conduct an investigation into an act of corruption on its own initiative, if it is satisfied that there are reasonable grounds for such investigation.

(2) The Commission shall have power to summon witnesses, require the production of documents and to do all such things as it considers necessary or expedient for the purpose of carrying out its functions.

6.—(1) Every public servant and every other person having official duty under this Act, or being employed in the administration of this Act, shall regard and deal with as secret and confidential, all information, declarations, letters and other documents, and all other matters relating to a statutory declaration, and shall make and subscribe a declaration to that effect before a Justice of the Peace.

Duty as to
secrecy and
to make
declaration.

(2) Every person required under subsection (1) to deal with matters specified therein as secret and confidential who at any time communicates or attempts to communicate such information or anything contained in such declarations, letters, or other documents to any person—

- (a) other than a person to whom he is authorized under this Act to communicate it; or
- (b) otherwise than for the purposes of this Act,

shall be guilty of an offence and be liable on conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Commission may require further information and conduct enquiries.

7.—(1) Where the Commission, upon examination of a statutory declaration furnished pursuant to section 4, is of the opinion that further information or investigation is necessary, it may, in writing—

- (a) request the public servant concerned to furnish such other documents, information, or otherwise as may be specified, within such time as may be specified; or
- (b) require the public servant to attend on the Commission at such time as may be specified by the Commission to be heard by the Commission on any matter relating to the declaration.

(2) A public servant required to attend on the Commission pursuant to subsection (1), may—

- (a) be accompanied and represented by an attorney-at-law and a registered public accountant; and
- (b) require the Commission to summon such witnesses as he thinks necessary.

Issue of summons.

8.—(1) Any summons to attend, to give evidence or to produce documents before the Commission shall be served on the person required to attend or to produce the documents and shall be issued under the hand of the secretary or any member of the Commission.

Second Schedule Form B.

(2) A summons under this section shall be in the form set out as Form B in the Second Schedule and shall be served on the person mentioned therein either by delivering to him a copy thereof or by substituted service as may be ordered by the Commission.

(3) A summons under this section may be served by any person deputed by the Commission or by a constable.

Witness may be examined on oath.

9. The Commission may—

- (a) require that any facts, matters or things relating to the subject of enquiry be verified or otherwise ascertained by the oral examination of witnesses; and

- (b) cause any such witnesses to be examined upon oath which the Chairman or the secretary is hereby authorized to administer.

10.—(1) All persons summoned to attend and give evidence or to produce any paper, book, record or document before the Commission—

Duty and
privileges of
witnesses.

- (a) shall be bound to obey the summons served upon them;
- (b) shall be entitled, in respect of such evidence or the disclosure of any communication or the production of any such paper, book, record or document, to the same right or privilege as before a court of law;
- (c) shall be entitled, on attending, to be paid their expenses, including travelling expenses, at the rates prescribed by the Witnesses' Expenses Act for witnesses who are entitled to have their expenses paid from public funds:

Provided that the Commission may disallow the whole or any part of such expenses in any case, if it thinks fit.

(2) Any person who—

- (a) without sufficient cause, fails or refuses to attend before the Commission in obedience to summons issued under this Act, or fails or refuses to produce any paper, book, record or document which he was required by such summons to produce;
- (b) being a witness, leaves a meeting of the Commission without the permission of the Commission; or
- (c) being a witness, refuses without sufficient cause, to answer any question put to him by or with the permission of the Commission; or
- (d) wilfully obstructs or interrupts the proceedings of the Commission,

shall be liable on conviction before a Resident Magistrate to a fine not exceeding one hundred thousand dollars or in default of payment thereof to imprisonment for a term not exceeding six months.

Protection of disclosures to the Commission.

11. The records of the Commission and any information revealed by the evidence of a witness before the Commission shall not be produced or disclosed to any court other than to such extent as may be necessary for the purposes of proceedings relating to a charge under section 6, 10 or 14 of this Act or under the Perjury Act.

Commission to make report.

12.—(1) Where—

- (a) any person fails to furnish the Commission with a statutory declaration which he is required to furnish in accordance with this Act; or
- (b) the Commission examines a statutory declaration and any related information or documents, or conducts an enquiry into any such statutory declaration, and is not satisfied with any aspect thereof,

the Commission shall report the matter to the appropriate Service Commission, Board, Body or other Authority and the Director of Public Prosecutions, setting out such details and particulars as it thinks fit.

(2) The Commission shall report any act of corruption to the appropriate Service Commission, Board, Body or other Authority and to the Director of Public Prosecutions.

(3) The appropriate Service Commission, Board or other Authority may take such disciplinary action in relation to a report made pursuant to subsection (1) as it thinks appropriate in any particular case.

(4) The Director of Public Prosecutions may take such action in relation to a report made pursuant to subsection (1) as

he thinks appropriate in any particular case and without prejudice to the generality of the foregoing, may authorize any person having an official duty under this Act or being employed in the administration of this Act to furnish information to any officer of the court, the police or any other person specified by the Director of Public Prosecutions.

13.—(1) The Minister, after consultation with the Regulations.
Commission, may make regulations prescribing any matter or thing in respect of which it may be expedient to make regulations for the purpose of carrying this Act into effect and without prejudice to the generality of the foregoing may make regulations—

- (a) prescribing the amount of total emoluments for the purposes of section 4 (3) (b);
- (b) prescribing the manner in which enquiries may be carried out and matters incidental to or consequential on such enquiries;
- (c) amending the form specified in the Second Schedule. Second Schedule;
- (d) prescribing the period within which any information required by the Commission should be furnished;
- (e) prescribing the types of gifts and the categories of relatives for the purposes of section 4 (9).

(2) Regulations made under subsection (1) shall be subject to affirmative resolution.

14.—(1) A public servant commits an act of corruption if Acts of corruption.
he—

- (a) corruptly solicits or accepts, whether directly or indirectly, any article or money or other benefit, being a gift, favour, promise or advantage for himself or another person for doing any act or omitting to do any act in the performance of his public functions;

CORRUPTION (PREVENTION)

- (b) in the performance of his public functions does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person;
- (c) fraudulently uses or conceals any property derived from any such act or omission to act.

(2) A person commits an act of corruption if he offers or grants, directly or indirectly, to a public servant any article, money or other benefit, being a gift, favour, promise or advantage to the public servant or another person, for doing any act or omitting to do any act in the performance of the public servant's public function.

(3) A person commits an act of corruption if he instigates, aids, abets or is an accessory after the fact or participates in whatsoever manner in the commission or attempted commission of or conspires to commit any act of corruption referred to in subsection (1) or (2).

(4) Any citizen or resident of Jamaica or any corporation, either aggregate or sole, any club, society or other body of one or more persons, who offers or grants, directly or indirectly, to a person performing a public function in a foreign state, any article or money or other benefit, being a gift, favour, promise or advantage in connection with any economic or commercial transaction for any act to be performed by or for the omitting to do any act by that person in the performance of that person's public functions, commits an act of corruption.

(5) Where a public servant—

- (a) owns assets disproportionate to his lawful earnings; and
- (b) upon being requested by the Commission or any person duly authorized to investigate an allegation of corruption against him, to provide an explanation as to how he came by such assets, he—
 - (i) fails to do so; or

