

**A BILL
ENTITLED**

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.

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

- Short title and commencement. 1. This Act may be cited as the Independent Commission of Investigations Act, 2008, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.
- Interpretation. 2. - (1) In this Act, unless the context otherwise requires –
- “Chairman” means the Chairman of the Commission;
 - “Chief Executive Officer” means the chief executive officer of the Commission;
 - “Commission” means the Independent Commission of Investigations constituted under section 3;
 - “Commissioner” means a person appointed as a Commissioner under section 3(2);
 - “complaint” means any complaint referred to in section 18, about the conduct of a member of the Security Forces or a specified official and includes a report under section 19;
 - “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;
- (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 the officer of the Commission who is responsible for ensuring that investigations are carried out under this Act;

“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 incident –

- (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,

which is the subject matter of a complaint;

“investigator” in relation to an investigation under this Act means an employee or apart 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 an office of the Commission that has responsibility for a region;

“relevant public body” means the public body in relation to which a complaint is made, or an investigation is carried out, under this Act;

“relevant Force” means any one of the Security Forces 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, when acting in support of the Jamaica Constabulary Force;
- (c) the Island Special Constabulary Force; and
- (d) the Rural Police.

“specified official” means –

- (a) a correctional officer;
- (b) an officer within the meaning of section 2 of the Customs Act;
- (c) 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*

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.

(2) Subject to subsection (3), the Commission shall consist of a chairman and five other persons as shall be appointed by the Governor-General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition by instrument under the Broad Seal from the following categories of persons, namely -

- (a) attorneys-at-law;

- (b) persons having experience in law enforcement, other than persons who have served as –
 - (i) members of any of the Security Forces;
 - (ii) specified officials,
 during the period of seven years immediately preceding the date of appointment;
- (c) persons appearing to be of high integrity who are able to exercise competence, diligence and sound judgment in fulfilling their responsibilities under this Act.

(3) The Governor-General shall, on the recommendation of the Prime Minister, after consultation with the Leader of the Opposition, appoint a person who holds or has held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court, to be the chairman of the Commission.

Functions of
Commission.

4. - (1) Subject to the provisions of this Act, the functions of the Commission shall be to –
- (a) conduct investigations into complaints made to it under section 18 and reports made to it under section 19;
 - (b) carry out such inspections of relevant public bodies as the Commission considers necessary or desirable, including records, weapons and buildings;
 - (c) carry out periodic reviews of the disciplinary procedures applicable to the Security Forces and specified officials;
 - (d) take the steps as are necessary to ensure that the responsible heads and responsible officers submit to the Commission, reports of all 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 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.

(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) In the exercise of its functions under this Act, the Commission shall be responsible for taking charge of and preserving the scene of any incident referred to in subsection (2).

(6) For the purpose of subsection (5), the Commissioner of Police shall ensure that an officer of the Jamaica Constabulary Force not below the rank of Inspector shall attend at the scene of any incident in order to ensure the preservation of that scene until the arrival of an investigator assigned to that scene by the Commission.

Independence of Commission. 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.

(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.

Regional
offices.
First
Schedule.

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

Tenure of
office.

7. - (1) Subject to the provisions of this Act, a person appointed as a Commissioner shall hold office for a period of three years and may be reappointed for periods not exceeding three years at a time.

(2) A person appointed as a Commissioner may, at his own request, be relieved of office by the Governor-General and shall in any case, subject to subsections (3) and (4), vacate office on attaining the age of -

- (a) in the case of the chairman, seventy years;
- (b) in the case of any other Commissioner, sixty-five years.

(3) The Governor-General may, on the recommendation of the Prime Minister, after consultation with the Leader of the Opposition, permit a Commissioner to continue in office until he has attained such later age, not exceeding -

- (a) in the case of the chairman, seventy-five years, as may (before he has attained the age of seventy years);
- (b) in the case of any other Commissioner, seventy years, as may (before he has attained the age of sixty-five years),

have been agreed between the Governor-General and the Commissioner.

(4) Notwithstanding that he has attained the age at which he is required by or under the provisions of this section to vacate his office, a Commissioner may continue in office for the period after attaining that age

as the Prime Minister, after consultation with the 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 a Commissioner shall be invalid by reason only that he has attained the age at which he is required by this section to vacate his office.

Disqualifi-
cation for
appointment.

8. - (1) No person shall be qualified to be appointed as a Commissioner who –

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

Removal from
office.

9. - (1) A 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 subsection (2),

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

(2) A 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.

(3) If the question of the removal from office of a Commissioner has been referred to a tribunal appointed under subsection (4) 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.

(4) If each House of Parliament by resolution decides that the question of removing a 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 subsection (1) (a), (b) or (c).

(5) 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 subsection (4) or, as the context may require, to the members thereof, as they apply in relation to the Commissions or Commissioners appointed under that Act.

(6) Where the question of removing a 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.

Restriction on employment. 10. A person appointed as a 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 a Commissioner.

Filling of vacancy. 11. - (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 to act in that office during the vacancy until an appointment is made.

(2) Where, by reason of illness, absence from Jamaica or other sufficient cause, a person appointed as a 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.

Remuneration of Commissioner. 12. - (1) Subject to subsection (2), a Commissioner shall receive the 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 a 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 a Commissioner by virtue of this Act shall be charged on and paid out of the Consolidated Fund.

Pensions and gratuities. 13. The provisions of the Second Schedule shall have effect with respect to the pension and other benefits to be paid to or in respect of a person who has held office as a Commissioner.

First Schedule.

Appointment of Chief Executive Officer. 14. - (1) There shall be a chief executive officer of the Commission who shall be known as the Chief Executive Officer.

(2) The Chief Executive Officer 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 15 (2) and stated in the letter of appointment.

Appointment 15. - (1) The Commission may appoint and employ for the purposes of

of employees, this Act, at such remuneration and on such terms and conditions as may
 etc. 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 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.

Functions of 16. - (1) The Chief Executive Officer shall be responsible for the
 Chief Executive day-to-day administration and management of the Commission, and
 Officer. perform such other functions as may be determined by the Commission.

(2) The Chief Executive Officer, unless otherwise directed by the
 Commission, shall attend every meeting of the Commission and may take
 part in its deliberation, but shall not have the right to vote.

Oath of 17. Every Commissioner and every person appointed to the staff of the
 secrecy. Commission shall, before he performs any function assigned to him under
 Second or by virtue of this Act, take and subscribe an oath in the form set out in
 Schedule. the Second Schedule, to be administered –

- (a) in the case of a Commissioner, by the Governor-General;

- (b) in the case of the Chief Executive Officer and all other employees, by any Commissioner.

PART III. *Complaints*

- Complaints. 18. - (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 –
- (a) resulted in the death of or injury to any person or was intended or likely to result in the death or injury;
 - (b) involved sexual assault;
 - (c) involved assault or battery by the member or official;
 - (d) resulted in damage to property or the taking of money or of other property.
- (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) establish procedures relating to the making of the complaint and the rights of the complainant;
 - (c) cause an investigation into the complaint to be made forthwith; and
 - (d) if it relates to a fatality, forward a copy of the complaint to the Director of Public Prosecutions forthwith.
- Reports to Commission. 19. - (1) The relevant Force and the responsible officer shall make a report to the Commission of any incident involving conduct referred to in section 18(1) -

- (a) where the conduct resulted in the death of or injury to any person, forthwith; and
- (b) in any other case, as soon as possible.

(2) The relevant Force or the responsible officer, as the case may be, shall make a report to the Commission of any incident which, because of its gravity or exceptional circumstances, is likely to have a significant impact on public confidence in the Security Forces or the relevant public body.

(3) 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 reports of incidents involving members of the relevant Force or relevant public body are duly made to the Commission.

(4) A member of the Security Forces or a specified official who is involved in any incident shall take the steps as are necessary to ensure that a report is made to the Commission in accordance with subsection (1).

Commission
may require
report in
exceptional
case.

20. 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 Force or the public body to make a report of that incident to the Commission in the form and containing the particulars as the Commission may specify.

Conduct of
investigation.

21. - (1) An investigation under this Act may be undertaken by the Commission on its own initiative or on receipt of a complaint made to it if, in its opinion, the investigation is warranted.

(2) The Commission shall, for the purpose of deciding the most appropriate method of investigation, make an assessment of –

- (a) the seriousness of the case;

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

(3) 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, complaint which, in the opinion of the Commission, is of the significance and likely to be of the public concern, that the Commission considers it necessary to direct and oversee that investigation.

(4) Where the Commission takes action under subsection (3), it shall give notice thereof to the responsible head or the responsible officer, as the case may require.

(5) An investigation into a complaint may be carried out solely by the Security Forces or a relevant public body in cases where the Commission is satisfied that the provisions of subsections (3) and (4) do not apply and that the Security Forces or the relevant public body have the necessary resources and experience to carry out that investigation.

Formal
handling of
complaints.

22. - (1) Where a complaint is not resolved in accordance with section 27 or 28, the Commission shall cause an investigation to be made forthwith into the complaint.

(2) During the course of the investigation –

- (a) the Commission shall –
 - (i) unless it is satisfied as to the necessity for confidentiality, issue a press release at the commencement of the investigation and at the intervals thereafter as it considers appropriate;
 - (ii) 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 as the Commission may determine;

- (b) the Commission may hold public hearings into the complaint if it is satisfied that it is in the public interest to do so;
- (c) 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;
- (d) the Commission shall make such arrangements as may be necessary to facilitate drug testing and psychiatric evaluation of concerned officers and concerned officials.

(3) Where the investigator requires more time for the completion of any report than the applicable time under subsection (2)(c), he shall in writing to the Director of Complaints within the applicable time for submission of the report -

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

(4) On the completion of the investigation, the investigator shall submit a final investigation report and recommendations thereon to the Director of Complaints.

(5) The Commission shall furnish a copy of the report referred to in subsection (4) and the recommendations thereon to –

- (a) the complainant;
- (b) the concerned officer or the concerned official;
- (c) the responsible head or the responsible officer;

- (d) the Police Service Commission;
- (e) the Public Service Commission; and
- (f) the Director of Public Prosecutions.

Grant of
access to
final investi-
gation report.

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

Powers,
authorities and
privileges.

24. For the purpose of giving effect to sections 4 and 21, the Commissioners 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.

25. - (1) Subject to subsection (3), 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 (3), 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,

and the examination shall be deemed to be a judicial proceeding within the meaning of section 4 of the Perjury Act.

(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) Any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or paper or thing imposed on any person by or under an enactment referred to in subsection (8) shall not apply in relation to the disclosure of information or the production of any document or thing by that person to the Commission for the purpose of an investigation.

(6) No person shall be liable to prosecution for an offence under any enactment referred to in subsection (8) by reason only of his compliance with a requirement of the Commission under this Act.

(7) 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.

(8) The enactments referred to in subsections (5) and (6) are the Official Secrets Act, 1911 to 1939 (or any Act of the Parliament of Jamaica replacing the same in its application to Jamaica) or, subject to the provisions of this Act, any other law, including a rule of law.

Duty to preserve evidence. 26. Subject to any directions by the Commissioner of Police, it shall be the duty of the police officer in charge of a police division or a responsible officer promptly to take any steps which appear to him to be desirable for the purpose of obtaining or preserving the evidence as relates to a complaint under this Act.

Informal Resolution of 27. - (1) If the Director of Complaints is satisfied that –
 (a) a complaint relates to conduct which, even if proved, would not

complaints.

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) 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 21.

(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.

Dispute
Resolution.

28. - (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.

(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.

Obligation to comply with recommendations.

29. - (1) Where a report of the Commission under this Act contains recommendations relating to –

- (a) disciplinary proceedings and 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 necessary to ensure compliance with the recommendations; or
- (b) any other matters, if the responsible head or the responsible officer decides not to comply with the recommendations, he shall give reasons for the decision.

Review of Commission’s decision.

30. The Commission shall take such steps as are necessary to ensure that a complainant 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.

Provision of final investigation

31. Where, following an investigation into a complaint under this Act, the Director of Public Prosecutions decides not to prosecute a concerned officer or a concerned official in relation to the incident giving rise to the

report, etc. complaint, the Commission shall, on a request by the complainant, furnish the final investigation report to the complainant for the purpose of an application by the complainant to the court, under section 1(9) of the Constitution, for judicial review of the decision of the Director of Public Prosecutions.

Duty of investigators to provide support, etc. 32. 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*

Performance of functions of Commission by members staff. 33. - (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.

(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).

Privileges. 34. - (1) Except in the case of proceedings for an offence under section 40 (c), no proceedings shall lie against a 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.

(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.

Secrecy.

35. - (1) The Commissioners 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 –

- (a) made by the Commissioners or any such person in proceedings for an offence under section 40 of this Act or under the Perjury Act by virtue of section 25(3) of this Act; or
- (b) which the Commissioners think 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 Commissioners 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).

Accounts,
etc.

36. - (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 37.

(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.

37. - (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.

Power to
continue
investigation
despite legal
proceedings.

38. 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.

Register.

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

- (a) the name of the complainant or person making a report;
- (b) the subject matter of the complaint and the date thereof; and
- (c) 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.

Offences.

40. Every person who –

- (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
- (c) deals with documents, information or things mentioned in section 35 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 unaffected.

41. 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.

42. 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 formal 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 21, 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 27 or 28;
- (e) matters necessary for the operation of regional offices;
- (f) such other matters as may be required by this Act to be prescribed.

Provisions applicable where no Leader of the

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

- (a) after consultation with the Leader of the Opposition, and there is no person holding office of Leader of the Opposition; or

Opposition. (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.

Repeal. 44. The Police Public Complaints Act is repealed.

Transitional provisions relating to 45. – (1) Notwithstanding the repeal of the Police Public Complaints Act (hereinafter referred to as the “repealed Act”) -

Police Public Complaints Authority. (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.

Transfer of employees of Police Public Complaints Authority.

46. Every person, other than a member of the Police Public Complaints Authority who, immediately before the appointed day was employed by the Authority under the repealed Act shall, with effect from that date, be deemed to be transferred to the Independent Commission of Investigations on the same terms and conditions as those on which that person was employed immediately before that date.

FIRST 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 a Commissioner 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) the other matters as the Commission considers expedient or necessary for giving effect to the purposes of this section.

SECOND SCHEDULE **(Section 17)**

Pensions and Gratuities

- | | |
|---|---|
| Interpretation. | 1. In this Schedule “pensionable emoluments” has the same meaning as in the Pensions Act. |
| Entitlement to pensions and gratuities in respect of service as Commissioner. | 2. - (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 and paragraph 4, a person retires in pensionable circumstances if –

- (a) he retires –
 - (i) on or after attaining the age of sixty-five years; or
 - (ii) by reason of ill health prior to the attainment; or
- (b) he has a minimum of ten years service.

(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 section 7(3) for inability arising from infirmity of mind or body, to perform the functions of his office.

(5) A person who, under section 7 (3) is removed from the office of Commissioner for misbehaviour or for 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 subparagraph (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 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.

Rate of Pension.	3. The rate of pension payable under paragraph 2 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-three hundred and sixtieth of the pensionable emoluments in respect of each month of service as a Commissioner.
Special provision	4. Where, in accordance with paragraph 2(3) a person retires in pensionable circumstances before he has

- where attained the age of sixty-five years –
- Com- (a) the date with effect from which any pension
missioner due to him under this Act shall be payable
retires before shall be the date on which he attains that
attaining age, but, if he elects under paragraph 5
age sixty-five. to take a reduced pension and commuted
pension and commuted pension gratuity,
nothing in this paragraph shall prevent
payment of the commuted pension gratuity at
any time prior to the attainment of that age;
and
- (b) if he dies before attaining that age and he has
not made an election to receive a reduced
pension and commuted pension gratuity as
aforesaid, he shall for the purposes of
paragraph 6 be deemed to have died while
holding the office of Commissioner.
- Reduced 5. - (1) Any person to whom a pension (in this paragraph
pension referred to as “the original pension”) is payable under
and paragraph 2 may, at his option exercisable at his retirement
gratuity. 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.

6. - (1) Where a person dies while holding office as a 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 5 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 2, 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 injuries received or disease contracted

7. Where a person holding office as an Independent Review Commissioner dies as a result of injuries received –

- (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

- in discharge of duties. (c) misconduct; and 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.
- Pension, etc., not to be assigned. 8. A pension or gratuity payable under this Act shall not be assignable or transferable except for the purpose of satisfying –
- (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.
- Family Benefits pension. 9. - (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.
- (2) Where a person dies while holding the office of Commissioner or while entitled to a pension under paragraph 2, 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 2, 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 7 and sub-paragraphs (2) and (3) of this paragraph, references to a widow shall, in the case of a female appointed as a 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.

Gratuities

10. Where a person retires without a minimum of ten

where years service, he shall be granted in respect of his length of service, the commuted pension gratuity for which the service person had a right to opt under paragraph 5 if he does not had retired in pensionable circumstances. qualify for pension.

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.

MEMORANDUM OF OBJECTS AND REASONS

The existing system of investigations into public complaints concerning misconduct by members of the Security Forces has been found to be ineffective and lacking in integrity. Under the current system, the Police Public Complaints Act applies only to members of the Jamaica Constabulary Force.

In response to the recurrent complaints from members of the public regarding the shortcomings of the present system, the Government has decided to replace the existing system with a new Independent Commission which will be empowered to hold the Security Forces accountable to the public and ensure that human rights are respected.

This Bill, therefore, seeks to repeal the Police Public Complaints Act and to provide for the establishment of a Commission of Parliament with a specific mandate to investigate all shootings and other abuses by the Security Forces.

The Bill also provides *inter alia* for –

- (a) the appointment of an Independent Commission of Investigations;
- (b) the establishment of regional offices of the Commission which will be headed by an Independent Commissioner;
- (c) procedures for members of the public to make complaints to the Commission regarding incidents of misconduct by the Security Forces;
- (d) the procedures necessary for conducting investigations into complaints;
- (e) methods of handling complaints, including informal resolution and dispute resolution;
- (f) the appointment of investigators to carry out investigations into complaints;
- (g) the obligation of members of the Security Forces involved in

incidents of abuse to ensure that the necessary reports of the incidents are submitted to the commission.

Dorothy Lightbourne, Q.C.,
Minister of Justice

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