



# IMPROVED ACCESS TO JUSTICE IN THE CARIBBEAN

IMPROVED ACCESS TO JUSTICE IN THE CARIBBEAN (IMPACT JUSTICE)

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## IMPACT JUSTICE PROJECT

# MODEL CARICOM MAJOR ORGANIZED CRIME AND ANTI-CORRUPTION AGENCY BILL

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## MEMORANDUM OF OBJECTS AND REASONS

At a meeting which IMPACT Justice held in 2014 to discuss how it could assist CARICOM Member States in which the Project is being implemented in terms of drafting legislation, issues relating to spiraling crime and corruption as the principal obstacles to a nation's growth and development were discussed. Organized crime and corruption, in particular, pose a serious threat to a nation's economic stability and sustainable development prospects, because of its pervasive and covert nature. The ability of organized crime to undermine government structures by corrupting public officials and threatening law and order also has a negative multiplier effect in that it limits the inflow of Foreign Direct Investment and bilateral aid that is essential to developing countries. The nature of organized crime requires sustained, focused, strong, cross-cutting investigations, and dedicated resources over longer periods of time to eliminate this threat.

IMPACT Justice agreed to produce a draft Bill, the main objective of which would be to provide for the establishment, by countries so minded, of a statutory law enforcement agency to deal specifically with organized crime. The Agency, to be known as "the Major Organised Crime and Anti-Corruption Agency", would have sufficient independence and authority and be dedicated to combatting major organized crime, serious economic or financial crime, acts of corruption and cybercrime, in collaboration with other local and foreign law enforcement agencies.

The Agency would have a dedicated, specialized team of investigators that would not be subject to the personnel shifts of task forces. It would therefore provide the continuity of focus by a sole dedicated entity that is needed to investigate and bring to prosecution the complex cases that are often characteristic of organized criminal networks.

In addition to the establishment and functions of the Agency, the Bill would provide for –

- (a) the role of the Minister in giving general policy directions and determining strategic priorities for the Agency;
- (b) the appointment and operational independence of the Director General of the Agency;
- (c) co-operation and collaboration between the Agency and other



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law enforcement agencies;

- (d) the protection of intelligence officers of the Agency;
- (e) a Code of Conduct for officers of the Agency and the disciplining of officers who violate the Code;
- (f) the creation of certain offences; and
- (g) the making of regulations to give effect to the Act.



# A BILL

## ENTITLED

AN ACT to provide for the establishment of an agency of Government to be known as the Major Organized Crime and Anti-Corruption Agency to investigate and prosecute major organized crime, serious economic or financial crime, acts of corruption and cybercrime and matters related thereto.

[ ]

[BE IT] ENACTED by [Name of Legislature] as follows:- Enactment.

### PART I PRELIMINARY

1. This Act may be cited as the Major Organized Crime and Anti-Corruption Agency Act, [Year] and shall come into operation on a day to be appointed by [Functionary] by [Type of Statutory Instrument]. Short title and commencement.

2. In this Act – Interpretation.

“Agency” means the Major Organized Crime and Anti-Corruption Agency established under **section 4**;

“annual plan” means the plan referred to in **section 12(1)**;

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

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

“Director General” means the Director General of the Agency appointed under **section 11(1)(a)**;



“foreign intelligence department” includes an association of foreign intelligence departments or an international association of intelligence departments;

“framework document” means the document referred to in **section 9(5)**;

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

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

“Minister” means the Minister to whom responsibility for national security is assigned;

“Permanent Secretary” means the Permanent Secretary of the Ministry with responsibility for national security;

“prescribed” means prescribed by regulations made under this Act;

“serious crime” means major organized crime, serious economic or financial crime, acts of corruption and cybercrime;

“strategic partners” means –

- (a) the Commissioner of Police;
- (b) [the Chief of Defence Staff];
- (c) [the Comptroller / Commissioner] of Customs;
- (d) [the Head of the Tax Authority];
- (e) [the Head of the Immigration Department];
- (f) [the Head of the Financial Investigations Body];



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- (g) [the Commissioner of the Revenue Protection Division];
- (h) [the Chairman of the Integrity Commission]; and
- (i) the Director of Public Prosecutions;

“terrorism offence” has the meaning assigned to it in [the Terrorism Prevention legislation];

“terrorist activity” has the meaning assigned to it in [the Terrorism Prevention legislation].

3. The principal objects of this Act are to –

Principal objects of Act.

- (a) establish an agency of Government which will have sufficient independence and authority and be dedicated to combatting serious crime, in collaboration with other law enforcement agencies, whether in or outside [Name of Country];
- (b) promote and strengthen measures for the prevention, detection, investigation and prosecution of serious crime; and
- (c) enhance public confidence that perpetrators of serious crime will be brought to justice without undue delay.

**PART II  
MAJOR ORGANIZED CRIME AND  
ANTI-CORRUPTION AGENCY**

4. There is established, for the purposes of this Act, an agency of Government to be known as “the Major Organized Crime and Anti-Corruption Agency”.

Establishment of Agency.

5. Subject to the provisions of this Act, the functions of the Agency shall be to –

Functions of the Agency.



- (a) carry out efficient and effective activities to combat serious crime, whether by itself or in collaboration with other law enforcement agencies, whether in or outside [Name of Country];
- (b) gather, store, process, analyze and disseminate information that is relevant to activities to combat serious crime;
- (c) receive complaints in relation to allegations or suspected cases involving serious crime;
- (d) investigate offences relating to serious crime;
- (e) prosecute offences relating to serious crime, subject to the fiat of the Director of Public Prosecutions;
- (f) take necessary and effective measures for the –
  - (i) prevention, detection and reduction; and
  - (ii) mitigation of the consequences, of serious crime; and
- (g) collaborate, co-operate, and co-ordinate intelligence and other activities, with any other person, body or authority, whether in or outside [Name of Country], in order to prevent, detect, reduce or investigate offences relating to serious crime.

Functions of prosecution and investigation to be performed separately.

**6.** The same person shall not perform the functions of investigation and prosecution under this Act.



**7.** (1) Subject to subsection (3), the conferral of powers of investigation upon the Agency by this Act shall not be construed as affecting the exercise of any functions relating to the investigation or prosecution of offences conferred upon another law enforcement agency or any other person, body or authority, whether such functions are similar to these powers or not.

Co-operation with other bodies.

(2) If, either before or after the commencement of an investigation, the Commissioner of Police or the head of a law enforcement agency, other than the Director General, forms a view that the investigation should be conducted by the Agency, the Commissioner of Police or the head of that law enforcement agency may refer the investigation to the Agency and the Director General shall determine whether to accept responsibility for the investigation and inform the Commissioner of Police or the head of the law enforcement agency, as the case may be, of his decision.

(3) Subject to subsection (5), a law enforcement agency, other than the Agency, shall take reasonable steps to cooperate with the Agency in the exercise of the functions conferred on the Agency.

(4) Subject to subsection (5), the Agency shall take reasonable steps to cooperate with any other law enforcement agency in the exercise of any functions conferred on that law enforcement agency under this Act or any other enactment.

(5) Subsections (3) and (4) do not apply to a foreign intelligence department or any other law enforcement agency outside [Name of Country].

**8.** [The Agency shall be subject to the oversight of [Name of Civilian Oversight Authority].]

Agency subject to oversight.

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

Role of the Minister.

(2) The Minister may, by Order subject to affirmative resolution of Parliament, make –



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- (a) provision with respect to the counter-terrorism functions of the Agency, including, in particular, provision conferring, removing or otherwise modifying such functions; and
- (b) other provision which the Minister considers necessary in consequence of provision made under paragraph (a), including, in particular, provision with respect to the functions of any person other than the Agency and provision conferring or otherwise modifying, but not removing, such functions.

(3) Subject to subsection (4), the Minister shall determine strategic priorities for the Agency.

(4) In determining strategic priorities for the Agency, including whether there should be such priorities, the Minister shall consult –

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

(5) Subject to subsection (7), the Minister shall issue a framework document for the Agency.

(6) The framework document shall deal with ways in which the Agency is to operate, including –

- (a) ways in which the functions of the Agency are to be exercised;
- (b) arrangements for publishing information about the exercise of the functions of the Agency and other matters relating to the Agency, including requirements about what information shall not be published; and



- (c) ways in which the Agency is to be administered, including with respect to governance and finance.

(7) The Minister shall –

- (a) consult the Director General in preparing; and
- (b) obtain the consent of the Director General before issuing,

any framework document for the Agency, including a new framework document which may be wholly or partly different from the existing framework document.

(8) The Minister shall have regard to the framework document in exercising functions in relation to the Agency, the Director General or an officer of the Agency.

(9) The Permanent Secretary shall keep the framework document under review and may submit his recommendations with respect to the framework document to the Minister.

(10) If, after consultation with the Director General, it appears to the Minister that it is appropriate for the Agency to provide specified assistance to another law enforcement agency in [Name of Country], the Minister may direct the Director General to provide specified assistance to that law enforcement agency and the Director General shall take reasonable steps to comply with the directions of the Minister.

**10.** The Minister may call upon the Director General to resign or retire, or upon the Public Service Commission to remove the Director General from office –

Request by Minister for the resignation, retirement or removal of Director General.

- (a) in the interests of efficiency or effectiveness; or
- (b) because of misconduct by the Director General.

(2) Before taking any action under subsection (1), the Minister shall –



- [(a) consult the [Name of Civilian Oversight Authority];]
- (b) give the Director General a written explanation of the reasons why the Minister is proposing such action;
- (c) give the Director General the opportunity to make written representations about the proposed action; and
- (d) consider any written representations made by the Director General.

(3) The Director General may resign or, if applicable, retire if called upon to do so in accordance with this section.

**PART III  
ADMINISTRATION OF THE AGENCY**

Appointment of Director General and other officers and staff.

**11.** (1) For the due administration of the Agency, there shall be appointed –

- (a) a Director General, who shall be a public officer and shall –
  - (i) be responsible for the day-to-day administration and operation of the Agency; and
  - (ii) have the sole operational command and superintendence of the Agency;
- (b) a Deputy Director General, a Chief Prosecutor and other officers and members of staff, who shall be public officers; and
- (c) such –
  - (i) other officers and members of staff as may be necessary for the efficient operation of the Agency, who shall



be appointed by the Permanent Secretary, after consultation with the Director General; and

- (ii) consultants and experts, who shall be appointed by the Permanent Secretary, on the advice of the Director General,

on a contractual basis and shall be guided by any guidelines for contractual employment issued by the Chief Personnel Officer.

(2) The appointment of the Director General and other officers and members of staff of the Agency shall be subject to positive vetting procedures.

(3) A person shall not be appointed to a post under subsection (1) unless he –

- (a) is capable of effectively performing the duties of the post;
- (b) has received adequate training in respect of the performance of the duties of the post; and
- (c) is otherwise a suitable person to be appointed to the post.

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

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

- (a) a statement of any strategic priorities for the Agency;
- (b) a statement of the operational priorities for the Agency; and



- (c) in relation to each of the strategic and operational priorities, an explanation of how the Director General intends that the priority will be given effect to.

(3) The Director General shall determine operational priorities for the Agency and those priorities may relate to –

- (a) matters to which current strategic priorities also relate; or
- (b) other matters,

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

(4) In preparing an annual plan, the Director General shall consult –

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

(5) Before issuing an annual plan, the Director General shall consult the Permanent Secretary.

Operational powers.

**13.** (1) In the exercise of his functions and powers, the Director General shall have regard to –

- (a) any strategic priorities of the Agency;
- (b) the framework document; and
- (c) the annual plan.

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

- (a) which particular operations are to be mounted by officers of the Agency; and
- (b) how such operations are to be conducted.



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(3) The Director General shall have –

- (a) the powers of a constable;
- (b) the powers of a tax officer;
- (c) the powers of a customs officer; and
- (d) the powers of an immigration officer,

and may, in writing, designate an officer of the Agency as a person having any of those powers.

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

- (a) is capable of effectively exercising the power;
- (b) has received adequate training in respect of the exercise of those powers; and
- (c) is otherwise a suitable person to exercise the power.

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

(6) For the purposes of the exercise of the powers of a customs officer or an immigration officer by the Director General or an officer designated by him, the Minister and the Director General may make arrangements for the Agency to use premises or facilities used in connection with the exercise of the functions of a customs officer or an immigration officer, as the case may be.

**14.** (1) The Director General may delegate, in writing, the exercise of any function conferred upon him by or under this Act to such officer or officers of the Agency (hereinafter called “the delegate”) as he thinks fit.

Delegation of  
functions.

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



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

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

(4) It is declared, in the interest of certainty, that a delegation under subsection (1) shall, in addition to conferring authority to exercise the delegated function, also subject the delegate to the same obligations as would apply under this Act to the Director General's exercise of such function.

Obligation for  
secrecy.

**15.** (1) Every person having an official duty or being employed in the administration of this Act shall –

- (a) regard and deal with as secret and confidential, all information, books, records or documents relating to the functions of the Agency; and
- (b) upon assuming such duty or employment, make and subscribe a declaration to that effect before a Justice of the Peace.

(2) Every person who had an official duty or was employed in the administration of this Act shall maintain, after such duty or employment is terminated, the confidentiality of all information, books, records or other documents relating to the functions of the Agency.

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

(4) Every person referred to in subsection (1), (2) or (3) having possession of or control over any information, book, record or other document, who at any time communicates or attempts to communicate any such information or anything contained in such



book, record or document to any person, otherwise than pursuant to –

- (a) functions under this Act or any other enactment;
- (b) a court order; or
- (c) an arrangement entered into for the exchange of information under **section 16**,

commits an offence.

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

**16.** (1) Subject to the provisions of this Act, the Director General may, with the approval of the Minister, enter into a contract, memorandum of understanding or other agreement or arrangement with a law enforcement agency or any other person, body or authority, whether in or outside [Name of Country], regarding the exchange of information with the Agency relevant to the investigation or prosecution of offences relating to serious crime.

Agreements and arrangements.

(2) Subject to subsection (1), the Director General may exchange with a foreign intelligence department or any other person, body or authority outside [Name of Country] information necessary to enable that department to exercise regulatory functions, including the conduct of civil, criminal or administrative investigations and proceedings to enforce laws, regulations and rules administered by the department.

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

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



- (a) the Director General is satisfied that the foreign intelligence department is subject to adequate legal restrictions on further disclosures, including the provision to the Director General of –
  - (i) an undertaking of confidentiality on the part of the foreign intelligence department; or
  - (ii) an undertaking by the foreign intelligence department not to disclose the information provided, without the consent of the Director General; or
- (b) the Director General is satisfied that the assistance requested by the foreign intelligence department is required for the purposes of that department's functions, including the conduct of civil, criminal or administrative investigations or proceedings to enforce laws, regulations and rules administered by the department.

(5) Where, in the opinion of the Director General, it appears necessary, in relation to any request for information received from a foreign intelligence department, to invoke the jurisdiction of a Supreme Court Judge, the Director General shall –

- (a) immediately notify the Attorney General of the particulars of the request; and
- (b) send the Attorney General copies of all documents relating to the requests,

and the Attorney General shall be entitled to appear or take part in any proceedings in [Name of Country], or in any appeal from such proceedings, arising directly or indirectly from any such request.

(6) Where, pursuant to a request for the exchange of information, the Director General in accordance with this Act, supplies information to a requesting party, the information supplied shall be deemed to be lawfully given under this Act; and



every person liable to be proceeded against on the ground that such information was unauthorized or unlawfully given, or that he was otherwise acting illegally or improperly, for any such reason only, is hereby acquitted, freed, discharged and indemnified against all persons whatsoever and whomsoever, from liability arising from the supply of that information.

(7) Subject to the provisions of this Act, the Minister may enter into any agreement or arrangement in writing with –

- (a) the Government of a foreign State;
- (b) an international organization; or
- (c) a foreign intelligence department,

regarding the exchange of information relevant to the investigation or prosecution of an offence relating to offences relating to serious crime.

(8) For the purpose of an agreement or arrangement under subsection (7), the Minister shall be satisfied (in relation to the entity party to such agreement or arrangement) as to the like matters as those which the Director General is required to be satisfied of in relation to an agreement or arrangement with a foreign intelligence department under subsection (4).

(9) The Minister may make regulations concerning the exchange of information relevant to the investigation or prosecution of an offence relating to serious crime.

**17.** Nothing in this Act shall affect the provision of assistance under [the Mutual Assistance in Criminal Matters legislation]. Savings for mutual assistance.

**18.** (1) Action which may be taken by the Director General to ensure the safety and security of any of its intelligence officers may include the following: Protection of intelligence officers.

- (a) permitting the officer to use an assumed name in carrying out his duties and to carry documentation supporting the assumed name;



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- (b) providing any documents necessary to establish a new identity for the officer or otherwise to protect the officer;
- (c) relocating the officer and his property, if any;
- (d) providing accommodation for the officer;
- (e) providing payments to or for the officer for the purpose of –
  - (i) meeting his reasonable living expenses including, where appropriate, living expenses of his family; and
  - (ii) providing, whether directly or indirectly, other reasonable financial assistance; or
- (f) providing payments to the officer for the purpose of meeting costs associated with relocation.

(2) The Agency shall maintain a register of its intelligence officers who are permitted to use an assumed name or are provided with a new identity pursuant to subsection (1).

(3) The register shall be accorded a security classification not below “Top Secret”.

(4) The register may be maintained by electronic means and, if it is so maintained, it shall be appropriately backed up by alternative means.

(5) The Agency shall include in the register, the following details in respect of each intelligence officer referred to in subsection (2):

- (a) the officer’s name and assumed names, if any;



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- (b) the officer's new name where he has been provided with a new identity;
- (c) the officer's address;
- (d) the date on which the officer begins or ceases to use an assumed name or a new identity; and
- (e) the matter giving rise to the use of an assumed name or a new identity by the officer.

(6) The Agency shall keep the following documents (hereinafter called "ancillary documents") along with the register:

- (a) in respect of assumed names and new identities, copies of each new document issued;
- (b) any documents returned to the Agency pursuant to subsection (12).

(7) An intelligence officer who is provided with a new identity shall, in any proceeding, be entitled to claim that his new identity is his only identity.

(8) If, in any proceedings in any court, the former identity of an intelligence officer is in issue or may be disclosed, the court shall, unless it considers that the interests of justice require otherwise –

- (a) hold that part of the proceedings that relates to the identity of the officer in private; or
- (b) make such order restricting the publication of evidence given before the court as, in its opinion, will ensure that the former identity of the officer is not disclosed.

(9) A court may, in the interest of securing the safety and security of an intelligence officer who is a witness in criminal proceedings, direct that –



- (a) the identity of the officer shall be protected in the manner specified by the court;
- (b) the name, identity, and address of the officer and such other particulars concerning the officer, as in the opinion of the court shall be kept confidential, shall not be published; or
- (c) no particulars of the trial other than the name of the accused, the offence charged and the verdict and sentence shall be published without the prior written approval of the court.

(10) A person who publishes information in contravention of a direction under subsection (9), commits an offence.

(11) Where an intelligence officer is provided with a new identity and the Director General is, after consultation with the officer, of the opinion that the former identity of the officer should be restored, the Director General may cause the Agency to take such action as is necessary to restore the officer's former identity and shall inform the officer in writing of his decision.

(12) Where the Director General decides to restore the former identity of an intelligence officer, the officer shall return to the Agency all documents provided to him pursuant to subsection (1)(b).

(13) Documents which are returned under subsection (12) shall be retained by the Agency for at least [XX] years and shall subsequently be destroyed as determined by the Director General.

Protection of persons exercising functions under this Act.

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



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

#### **PART IV DISCIPLINE**

**20.** An officer or member of staff of the Agency (hereinafter in this Part called “an officer”) shall comply with the Code of Conduct set out in Schedule 1.

Code of  
Conduct.  
Schedule 1

**21.** (1) An officer who fails to comply with **section 20** commits a disciplinary offence and is, in consequence of disciplinary proceedings conducted by –

Disciplinary  
proceedings.

- (a) the appropriate Service Commission, in the case of a public officer; or
- (b) the Permanent Secretary, in the case of a person employed on a contractual basis,

liable to the penalties specified in subsection (2).

(2) The penalties referred to in subsection (1) are –

- (a) dismissal, that is, termination of appointment;
- (b) reduction in an office, that is, removal to another grade with an immediate reduction in pay;
- (c) reduction of remuneration, that is, an immediate adjustment of remuneration to a lower point on the scale of remuneration attached to the particular office;
- (d) deferment of increment, that is, a postponement of the date on which the next increment is due, with corresponding postponements in subsequent years;



- (e) stoppage of increment, that is, no payment for a specified period of an increment otherwise due;
- (f) fine; or
- (g) reprimand.

(3) Where a fine is imposed the amount of such fine shall be deducted from the pay of the officer in such manner as may be determined by the Service Commission or the Permanent Secretary, as the case may be.

(4) A decision of a Service Commission or the Permanent Secretary under this Part shall be subject to judicial review.

Suspension.

**22.** (1) Where a report or allegation is received by the Director General from which it appears that an officer may have committed a disciplinary offence, the Director General shall, after giving the officer an opportunity to be heard, notify the Service Commission or the Permanent Secretary, as the case may be (hereinafter in this Part called “the competent authority”), in writing, of the report or allegation, and if the Director General is of the opinion that the public interest or the repute of the Agency requires it, the Director General shall, in writing, recommend to the competent authority that the officer be directed to cease to report for duty until further notice and give his reasons.

(2) A competent authority may, after due consideration of a recommendation under subsection (1) and after giving the officer an opportunity to be heard, in writing direct the officer to cease to report for duty until further notice and give its reasons, and an officer so directed shall cease to perform the functions of his office immediately.

(3) An officer who is directed to cease to perform the duties of his office in accordance with subsection (2) shall continue to receive full pay until such date as is specified by the competent authority.

Interdiction.

**23.** (1) Where disciplinary proceedings for the dismissal of an officer are instituted or criminal proceedings are instituted



against an officer and the Director General is, after giving the officer an opportunity to be heard, of the opinion that the public interest or the repute of the Agency requires that the officer should immediately cease to perform the functions of his office, the Director General shall, in writing, notify the competent authority of the circumstances, recommend to the competent authority that the officer be interdicted and give his reasons.

(2) A competent authority may, after due consideration of a recommendation under subsection (1) and after giving the officer an opportunity to be heard, in writing interdict the officer and give its reasons, and an officer so interdicted shall cease to perform the functions of his office immediately.

(3) An officer interdicted under subsection (2) shall receive such proportion of the pay of his office, not being less than one-half, as the competent authority may determine after taking into consideration the officer's monthly deductions.

(4) Where an officer is interdicted and criminal or disciplinary proceedings are determined in his favour, and notwithstanding an appeal is filed by the [Crown / State] in relation to the criminal proceedings, he is entitled to the full amount of the remuneration which he would have received if he had not been interdicted.

(5) Where a decision is given in favour of an officer interdicted under subsection (2), the interdiction order shall immediately cease to have effect.

(6) If disciplinary proceedings against an officer result in any punishment other than dismissal, the officer shall be allowed such pay as the competent authority may in the circumstances determine.

(7) Where an officer is interdicted and criminal or disciplinary proceedings are not determined in his favour, and he files an application for review or an appeal, as the case may be, the interdiction order shall continue to have effect until the completion of the review or appellate process.

(8) Notwithstanding subsections (3) to (7), a competent authority may quash any of its interdiction orders at any time and



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the officer is entitled to the full amount of the remuneration that he would have received if he had not been interdicted.

Reporting in person.

**24.** (1) Where an officer is suspended under **section 22** or interdicted under **section 23**, he shall report in person once per month to a senior officer designated in writing by the competent authority, and the senior officer shall report that fact in writing to the competent authority and the Director General.

Non-payment of remuneration on conviction for a criminal offence.

**25.** (1) An officer convicted of a criminal charge and sentenced to imprisonment without the option of a fine or convicted of a criminal charge involving dishonesty or fraud shall not receive any pay or allowance after the date of conviction.

(2) A competent authority may direct that an officer convicted of a criminal charge shall cease to perform the duties of his office immediately.

(3) Notwithstanding that an officer referred to in subsection (1) has appealed against his conviction, he shall not receive any pay or allowance after the date of conviction.

Delegation of disciplinary functions.

**26.** (1) A competent authority may delegate, in writing, the exercise of any function conferred upon it by or under this Part to the Director General as it thinks fit.

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

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

(3) Subject to subsection (5), any act done by or in relation to the Director General pursuant to a delegated function shall have the same effect as if done by or in relation to a competent authority.

(4) It is declared, in the interest of certainty, that a delegation under subsection (1) shall, in addition to conferring authority to exercise the delegated function, also subject the



Director General to the same obligations as would apply to a competent authority's exercise of such function.

(5) A person who is aggrieved by a decision of the Director General made in the exercise of a delegated function pursuant to this section, may appeal to the relevant competent authority.

## **PART V OFFENCES**

**27.** (1) A person commits an offence if that person – Offences.

- (a) willfully threatens, assaults, or uses abusive language to, an officer of the Agency or any other person performing any duty in relation to this Act or any regulations made hereunder;
- (b) without lawful justification or excuse –
  - (i) obstructs, hinders or resists the Agency, the Director General, an officer of the Agency or any other person in the execution of functions under this Act or any regulations made hereunder;
  - (ii) fails to comply with any lawful requirement of the Agency, the Director General, an officer of the Agency or any other person in the execution of functions under this Act or any regulations made hereunder; or
  - (iii) willfully refuses or neglects to carry out any duty required to be performed by him under this Act or any regulations made hereunder;
- (c) willfully makes any false statement to mislead or attempts to mislead the Agency,



the Director General, an officer of the Agency or any other person performing any duty in relation to this Act or any regulations made hereunder;

- (d) knowingly makes any false declaration or false statement of a material nature in any information provided to the Agency, the Director General, an officer of the Agency or any other person performing any duty in relation to this Act or any regulations made hereunder;
- (e) knowingly furnishes to the Agency, the Director General, an officer of the Agency or any other person performing any duty in relation to this Act or any regulations made hereunder, a document that to the knowledge of the first-mentioned person contains information which is false or misleading in any material particular;
- (f) without reasonable excuse, fails to keep any record or other document required by this Act or any regulations made hereunder; or
- (g) with intent to deceive –
  - (i) impersonates an officer of the Agency;
  - (ii) makes any statement or does any act calculated falsely to suggest that the person is an officer of the Agency; or
  - (iii) makes any statement or does any act calculated falsely to suggest that the person has powers as an officer of the Agency that exceed the powers the person actually has.

Schedule 2

(2) The offences specified in the First and Second Columns of Schedule 2 shall incur the penalties specified in relation thereto in the Third Column of that Schedule.



(3) The Minister may amend Schedule 2 by Order subject to affirmative resolution of [Name of Legislature].

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

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

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

(5) For the purposes of this section, a person shall be deemed to be a director of a body corporate if he occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions (not being directions or instructions in a professional capacity only) the directors and the body corporate or any of them act.

## PART VI MISCELLANEOUS

**28.** The Director General may require any officer or member of staff of the Agency to keep such books, records, documents or things, relating to the functions of the Agency, as the Director General thinks fit. Records.

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



(2) Regulations made under this section may provide for the imposition of penalties on summary conviction of a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX months] or of both such fine and imprisonment.

(3) Regulations made under this section shall be subject to negative resolution of [Name of Legislature].

## **SCHEDULE 1**

(Section 20)

### **CODE OF CONDUCT FOR OFFICERS OF THE MAJOR ORGANIZED CRIME AND ANTI- CORRUPTION AGENCY**

#### **PART I PRELIMINARY**

##### **Citation**

1. This Code may be cited as the Code of Conduct for Officers of the Major Organized Crime and Anti-Corruption Agency.

##### **Interpretation**

2. In this Code –

“Agency” means the Major Organized Crime and Anti-Corruption Agency established under the Major Organized Crime and Anti-Corruption Agency Act, [Year];

“Director General” means the Director General of the Agency;

“officer” means an officer or member of staff of the Agency.



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## **PART II CONDUCT**

### **Duties of an officer**

**3.** (1) An officer's whole time shall be at the disposal of the Agency.

(2) An officer who is in charge of a Department or Unit of the Agency shall be responsible for the state of his Department or Unit as well as and for the conduct and efficiency of all the officers under his supervision.

(3) In the absence of an officer referred to in subclause (2), the authority and responsibility of that officer shall devolve upon the next in seniority unless the Director General otherwise specifically directs.

### **Absence without leave**

**4.** (1) Subject to subclause (2), an officer shall not leave the country without the permission in writing of the Director General or such other officer as the Director General may authorize in writing.

(2) An officer who has been granted permission to go abroad shall supply the Director General or the officer who grants such permission, as the case may be, with both a local and foreign address, to which any correspondence may be sent by registered mail and any correspondence sent to either address is deemed to have been received by him.

### **Activities outside the service of the Agency**

**5.** An officer—

- (a) shall not engage in any activity, occupation or undertaking which would impair his usefulness as an officer or in any way conflict with the interest of the Agency;
- (b) shall not without the consent of the Director General, accept any paid employment or engage in any trade or any professional, commercial, agricultural or industrial undertaking, or undertake private work for



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remuneration, whether in or outside of [Name of Country]; or

- (c) who invests in or acquires shares in any company carrying on business in or outside of [Name of Country] or who acquires any interest in any professional, commercial, agricultural or industrial undertaking in or outside of [Name of Country] shall, within thirty days after his investment or acquisition, inform the Director General of the fact in writing.

#### **Officer not to call or participate in certain public meetings**

6. (1) An officer shall not call a public meeting to consider any action of the Government or actively participate in the proceedings of a meeting called for such purpose or procure signatures to any public petition regarding the actions of the Government.

(2) Nothing in this Code shall affect an officer's right to participate actively in any meeting called or sign any petition prepared by his appropriate recognised association on matters affecting the Agency.

#### **Participation in demonstration etc. prohibited**

7. An officer shall not institute or take part in any processions, demonstrations or public meetings other than religious functions unless the permission of the Director General is first obtained.

#### **Officer not to publish information**

8. An officer shall not make public or communicate to the press or to any person, or make private copies of documents, papers or information of which he may have become possessed in his official capacity, unless his duties require him to do so.

#### **Officer not to allow interview on question of public policy**

9. An officer, whether on duty or on leave of absence, shall not allow himself to be interviewed on questions of public policy or on matters affecting the law enforcement, defence or military resources of [Name of Country] or of any other country unless his official duties require him to do so.



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### **Officer not to publish comment on national or local matter**

**10.** (1) An officer shall not, without the written permission of the Director General, broadcast on the radio, television, Internet or by any other means or publish in any manner any statement which is in the nature of a personal comment on any national or local political or administrative matter unless his official duties require him to do so.

(2) An officer may, with the written permission of the Director General, publish in his own name articles relating to other subjects of general interest, or give a lecture or presentation on the radio, television or Internet on such subjects.

### **Partisanship**

**11.** An officer shall not make any public expression of political and sectarian opinions, and shall bear himself with strict impartiality in all matters.

### **Officer not to contribute to, edit or manage newspaper**

**12.** An officer shall not act as editor of a newspaper or take part directly or indirectly in the management of a newspaper, or contribute thereto any statement or article which may reasonably be regarded as a commentary on the politics of the country or the administration of the Government or that of any other Government.

### **Rules relating to lecture or presentation**

**13.** (1) A lecture or presentation by an officer shall be governed by the following rules:

- (a) no question of payment either to the officer employed in the preparation or delivery of the lecture or presentation, or to the Agency, shall arise in connection with the lecture or presentation that is necessary or desirable in order to enable the Agency to carry out its recognised duties to the community; and
- (b) a lecture or presentation which is not necessary for official purposes may be given by an officer who is an expert in a particular subject, whether or not he has specialised in this subject in his official capacity.



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(2) In the case of a lecture or presentation referred to in subclause (1), if the subject matter is related to the work or the policy of the Agency, or if the officer giving the lecture or presentation is to be announced by his official title, the prior written permission of the Director General is required with the object of ensuring—

- (a) that there is nothing in the lecture or presentation contrary to the public interest or inconsistent with the status of an officer; and
- (b) that the standing of the officer is sufficient to justify the delivery by him of a lecture or presentation under his official title.

(3) Subject to subclauses (1) and (2), and to the due observance of any professional rule that may be in force as to the acceptance of remuneration for the preparation or delivery of a lecture or presentation, an officer is entitled to make his own terms with the broadcasting authority, but in these cases the work involved in the preparation and delivery of the lecture or presentation shall be done outside official hours.

#### **Reprimand of officer**

**14.** A senior officer shall not berate an officer junior in rank in the presence or hearing of an officer junior to the officer being berated or in the presence or hearing of any member of the public.

#### **Appearance and turnout**

**15.** An officer shall always appear in the public view properly dressed, cleanly and smartly turned out, smart in his movements, and respectful in his bearing and manner.

#### **Indebtedness**

**16.** (1) An officer shall not incur a debt that he knows or ought to know he is unable to discharge or which is likely to impair his efficiency or to bring the Agency into disrepute.

(2) The Director General may require an officer to authorise deductions from his pay for the repayment of any debt to the Government.



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(3) An officer who finds himself unable to discharge a debt he has incurred shall inform the Director General as soon as possible in such form as the Director General may approve.

(4) Where the Director General has reasonable grounds to believe that an officer is unable to discharge a debt which he has incurred, the Director General shall direct the officer to complete and submit the form referred to in subclause (3) within a specified period.

### **Bankruptcy**

**17.** An officer who has been declared a bankrupt or against whom bankruptcy proceedings have been taken or who becomes insolvent shall within seven days of the occurrence of the fact report the fact in writing to the Director General.

### **Gift or reward**

**18.** Except with the written permission of the Director General, an officer shall not accept a gift or reward from a member of the public or an organisation.

### **Exception to gift**

**19.** Notwithstanding clause 18 or 20, an officer may accept a gift offered by—

- (a) a representative of a foreign government on the occasion of an official visit to that country or on the visit of a representative of a foreign government to this country;
- (b) a community organisation, on a social occasion where the gift represents the appreciation of the organisation for his contribution to the work or achievement of the organisation; or
- (c) any person on a celebratory occasion.

### **Officer not to accept present from junior officer**

**20.** An officer shall not receive a gift or reward from a junior officer except with the written permission of the Director General.



### **Legal proceedings**

**21.** An officer who—

- (a) desires to initiate legal proceedings against any person; or
- (b) is charged with a criminal offence and is brought before a court,

shall promptly inform the Director General, in writing.

### **Other disciplinary offences**

**22.** An officer shall not commit any of the following:

- (a) *Discreditable conduct*, that is to say, if an officer acts in a disorderly manner prejudicial to discipline or reasonably likely to bring discredit to the Agency;
- (b) *Insubordinate or oppressive conduct*, that is to say, if an officer—
  - (i) is insubordinate by word, act or demeanour;
  - (ii) is oppressive or tyrannical in his conduct towards a junior officer;
  - (iii) uses obscene, abusive or insulting language to another officer; or
  - (iv) assaults another officer;
- (c) *Disobedience to orders*, that is to say, if an officer disobeys or without good and sufficient cause omits or neglects to carry out a lawful order, written or otherwise;
- (d) *Neglect of duty*, that is to say, if an officer—
  - (i) neglects, or without good and sufficient cause omits, promptly and diligently to attend to or carry out



- anything which is his duty as an officer;
- (ii) withholds a report or allegation against another officer;
  - (iii) is not alert while on duty;
  - (iv) fails to report a matter which is his duty to report;
  - (v) fails to report anything which he knows concerning a criminal charge, or fails to disclose any evidence which he, or any person within his knowledge, can give for or against any prisoner or defendant to a criminal charge;
  - (vi) omits to make any necessary entry in any official document or book; or
  - (vii) while absent from duty on account of sickness, does any act or conduct calculated to retard his return to duty;
- (e) *Falsehood or prevarication*, that is to say, if an officer—
- (i) knowingly makes or signs a false statement in an official document or book;
  - (ii) willfully or negligently makes any false, misleading or inaccurate statement; or
  - (iii) without good and sufficient cause destroys or mutilates any official document or record, or alters or erases any entry therein;



- (f) *Breach of confidence*, that is to say, if an officer—
  - (i) divulges any matter which it is his duty to keep secret;
  - (ii) gives notice, directly or indirectly, to a person against whom a warrant or summons has been or is about to be issued, except in the lawful execution of such warrant or service of such summons;
  - (iii) without proper authority communicates by any means to the public, press, or to any unauthorized person, any matter connected with the Agency;
  - (iv) without proper authority shows to any person outside the Agency any book or written or printed document which is the property of the Agency;
  - (v) makes any anonymous communication to the Agency, the Director General or a senior officer;
  - (vi) signs or circulates any petition or statement with regard to any matter concerning the Agency, except through the proper channel; or
  - (vii) calls or attends any unauthorized meeting to discuss any matter concerning the Agency;
- (g) *Corrupt practice*, that is to say, if an officer—
  - (i) fails to account for or to make a prompt and correct return of any money or property received by him in his official capacity;



- (ii) directly or indirectly solicits any gratuity, gift or reward, subscription or testimonial without the consent of the Director General; or
  - (iii) improperly uses his position as an officer for his private advantage;
- (h) *Unlawful or unnecessary exercise of force*, that is to say, if an officer—
  - (i) uses unnecessary force or violence to a person with whom he may be brought into contact in the execution of his duty; or
  - (ii) is uncivil to a member of the public;
- (i) *Malingering*, that is to say, if an officer feigns or exaggerates any sickness or injury with a view to evading duty;
- (j) *Absence without leave or being late for duty*, that is to say, if an officer, without reasonable excuse, is absent without leave or is late for any duty;
- (k) *Loss or damage to clothing or other property supplied*, that is to say, if an officer—
  - (i) willfully or by carelessness abandons, or causes any loss or damage to, any book, document, equipment or other property of the Agency supplied to him, used by him or entrusted to his care; or
  - (ii) fails to report any loss or damage as mentioned in subparagraph (i);
- (l) *Drunkenness, or drug taking*, that is to say, if an officer, while on or required for duty, is



- unfit for duty through the taking of intoxicating liquor or dangerous drugs;
- (m) *Drinking on duty or soliciting drink*, that is to say, if an officer—
- (i) drinks intoxicating liquor while he is on duty;
  - (ii) demands, or endeavours to persuade any other person to give him, or to purchase or obtain for him, any intoxicating liquor while he is on duty; or
  - (iii) reports for duty under the influence of intoxicating liquor or with the odour of intoxicating liquor on his breath;
- (n) *Entering licensed premises*, that is to say, if without permission or reasonable excuse an officer enters while on duty, any premises licensed under any enactment or any other premises where intoxicating liquor is stored or distributed;
- (o) *Lending, borrowing or accepting money*, that is to say, where an officer compromises his ability to discharge his responsibility by lending, borrowing or accepting money from another officer;
- (p) *Being an accessory to a disciplinary offence*, that is to say, if an officer connives at or is knowingly an accessory to a disciplinary offence;
- (q) *Using any property or facility of the Agency without the written consent of the Director General* for a purpose not connected with his official duties.



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### SCHEDULE 2

(Section 27(2))

#### *Offences and Penalties*

<u>First Column</u>	<u>Second Column</u>	<u>Third Column</u>
<b>Brief Description of Offence</b>	<b>Relevant Section</b>	<b>Penalty</b>
Communicating or attempting to communicate information otherwise than for the purposes of this Act or any other enactment, or otherwise than pursuant to a court order or an arrangement entered into under section 14.	15(4)	On summary conviction –  (a) in the case of an individual, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment; or  (b) in the case of a body corporate, to a fine not exceeding [XX] dollars.  On conviction on indictment, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment.
Publishing information in contravention of the direction of a court.	18(10)	On summary conviction–  (a) in the case of an individual, to a fine not exceeding [XX]



		<p>dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment; or</p> <p>(b) in the case of a body corporate, to a fine not exceeding [XX] dollars.</p> <p>On conviction on indictment, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment.</p>
<p>Willfully threatening, assaulting or using abusive language to an officer or other person performing a duty.</p>	<p>27(1)(a)</p>	<p>On summary conviction—</p> <p>(a) in the case of an individual, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment; or</p> <p>(b) in the case of a body corporate, to a fine not exceeding [XX] dollars.</p> <p>On conviction on indictment, to a fine not exceeding [XX] dollars or imprisonment for a</p>



		<p>term not exceeding [XX] or to both such fine and imprisonment.</p>
<p>Without lawful justification or excuse, obstructing, hindering or resisting the Agency, the Director General, an officer or other person in the execution of his functions.</p>	27(1)(b)(i)	<p>On summary conviction–</p> <p>(a) in the case of an individual, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment; or</p> <p>(b) in the case of a body corporate, to a fine not exceeding [XX] dollars.</p> <p>On conviction on indictment, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment.</p>
<p>Without lawful justification or excuse, failing to comply with a lawful requirement of the Agency, the Director General, an officer or other person in the execution of his functions.</p>	27(1)(b)(ii)	<p>On summary conviction–</p> <p>(a) in the case of an individual, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment; or</p>



		<p>(b) in the case of a body corporate, to a fine not exceeding [XX] dollars.</p> <p>On conviction on indictment, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment.</p>
<p>Without lawful justification or excuse, willfully refusing or neglecting to carry out a duty required to be performed.</p>	<p>27(1)(b)(iii)</p>	<p>On summary conviction—</p> <p>(a) in the case of an individual, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment; or</p> <p>(b) in the case of a body corporate, to a fine not exceeding [XX] dollars.</p> <p>On conviction on indictment, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment.</p>



<p>Willfully making a false statement to mislead or attempt to mislead the Agency, the Director General, an officer or other person performing a duty.</p>	<p>27(1)(c)</p>	<p>On summary conviction–</p> <p>(a) in the case of an individual, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment; or</p> <p>(b) in the case of a body corporate, to a fine not exceeding [XX] dollars.</p> <p>On conviction on indictment, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment.</p>
<p>Knowingly making a false declaration or statement of a material nature in information provided to the Agency, the Director General, an officer or other person performing a duty.</p>	<p>27(1)(d)</p>	<p>On summary conviction–</p> <p>(a) in the case of an individual, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment; or</p> <p>(b) in the case of a body corporate, to a fine not exceeding [XX] dollars.</p>



		On conviction on indictment, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment.
Knowingly furnishing to the Agency, the Director General, an officer or other person performing a duty, a document known to contain information which is false or misleading in any material particular.	27(1)(e)	On summary conviction—  (a) in the case of an individual, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment; or  (b) in the case of a body corporate, to a fine not exceeding [XX] dollars.  On conviction on indictment, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment.
Failure to keep any record or other document required by this Act or regulations.	27(1)(f)	On summary conviction—  (a) in the case of an individual, to a fine not exceeding [XX] dollars or imprisonment for a



		<p>term not exceeding [XX] or to both such fine and imprisonment; or</p> <p>(b) in the case of a body corporate, to a fine not exceeding [XX] dollars.</p> <p>On conviction on indictment, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment.</p>
<p>With intent to deceive, impersonating an officer of the Agency, making a statement or doing an act to suggest that one is an officer of the Agency, or making a statement or doing an act calculated falsely to suggest that one has powers as an officer of the Agency that exceed one's actual powers.</p>	<p>27(1)(g)</p>	<p>On summary conviction—</p> <p>(a) in the case of an individual, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such fine and imprisonment; or</p> <p>(b) in the case of a body corporate, to a fine not exceeding [XX] dollars.</p> <p>On conviction on indictment, to a fine not exceeding [XX] dollars or imprisonment for a term not exceeding [XX] or to both such</p>

