

THE PUBLIC DEFENDER (INTERIM) ACT
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PUBLIC DEFENDER (INTERIM) ACT

Acts
33 of 1999,
25 of 2002
S. 26.

[16th April, 2000.]

PART I. *Preliminary*

1. This Act may be cited as the Public Defender (Interim) Act. Short title.

2. In this Act—

Interpreta-
tion.

“authority” means—

- (a) a Ministry, department or agency of Government;
- (b) a Parish Council or 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 holds not less than fifty-one *per centum* of the ordinary shares;

“Service Commission” means—

- (a) the Judicial Service Commission established under section 111 of the Constitution;
- (b) the Municipal Service Commission established under section 3 of the Municipal Service Commission Act;
- (c) the Parish Councils Services Commission established under section 3 of the Parish Councils (Unified Service) Act;
- (d) the Police Service Commission established under section 129 of the Constitution;

- (e) the Public Service Commission established under section 124 of the Constitution; or
- (f) the Teachers Service Commission established under section 5 of the Education Act.

Duration of
this Act.

3. This Act shall continue in force until provision is made in the Constitution of Jamaica for the establishment of a Public Defender in terms which preclude the alteration of that provision otherwise than in accordance with the procedures prescribed by or in relation to section 49 (2) of that Constitution and shall then expire.

PART II. *The Public Defender*

Public
Defender
commission.

4.—(1) For the purpose of protecting and enforcing the rights of citizens, there is hereby established a commission of Parliament which shall be known as the Public Defender.

(2) The Public Defender shall be appointed by the Governor-General by instrument under the Board Seal after consultation with the Prime Minister and the Leader of the Opposition.

Tenure of
office of
Public
Defender.

5.—(1) Subject to the provisions of subsections (4) to (7), the Public Defender shall hold office until he attains the age of seventy years.

(2) Nothing done by the Public Defender shall be invalid by reason only that he has attained the age at which he is required by this section to vacate his office.

(3) Where by reason of illness, absence from the Island or other sufficient cause a person appointed Public Defender is unable to perform his functions under this Act, he may appoint a member of his staff to perform those functions for a period not exceeding two months, but if the Public Defender is unable or fails to appoint such a person or if it is necessary that such a person be appointed for a period in excess of two months, the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition may appoint such person as he thinks fit to perform those functions.

(4) The Public Defender may be removed from his office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

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

- (a) the Governor-General, acting after consultation with the Prime Minister and the Leader of the Opposition, shall appoint a tribunal which shall consist of a chairman and not less than two other members, from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in 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 advise the Governor-General whether the Public Defender ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) The provisions of sections 8 to 16 of the Commissions of Enquiry Act shall, apply *mutatis mutandis* in relation to tribunals appointed under subsection (5) or, as the context may require, to the members thereof as they apply in relation to Commissions or Commissioners appointed under that Act.

(7) Where the question of removing the Public Defender from office has been referred to a tribunal appointed under subsection (5) and the tribunal has advised the Governor-General that the Public Defender ought to be removed from office, the Governor-General shall by instrument under the Board Seal, remove the Public Defender from office.

(8) Where the question of removing the Public Defender from office has been referred to a tribunal under subsection (5), the Governor-General, acting after consultation with the Prime Minister and the Leader of the Opposition, may suspend the Public Defender from performing the functions of his office, and any such suspension may at any time be revoked by the Governor-General acting as aforesaid, and shall in any case cease to have effect if the tribunal advises the Governor-General that the Public Defender ought not to be removed from office.

Disqualifi-
cation for
appointment,
etc.

6.—(1) No person shall be qualified for appointment to the office of Public Defender if he—

- (a) is a member of the Senate or the House of Representatives; or
- (b) is an undischarged bankrupt; or
- (c) has at any time been convicted of any offence involving dishonesty or moral turpitude.

(2) The Public Defender shall vacate office if any circumstances arise that, if he were not Public Defender, would cause him to be disqualified for appointment as such, by virtue of subsection (1).

Restric-
tion on
employment.

7. A person appointed Public Defender shall be a full-time officer and—

- (a) 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 Public Defender; and
- (b) shall not, at any time after he has ceased to hold office as Public Defender, be eligible for appointment in the public service.

Filling of
vacancy.

8. When a vacancy arises in the office of Public Defender the Governor-General, after consultation with the Prime Minister and

the Leader of the Opposition, may designate someone to act in that office during such vacancy, until an appointment is made.

9.—(1) The Public Defender shall receive such emoluments and be subject to such other 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, such emoluments being not less than the emoluments which may, from time to time, be payable to a Puisne Judge.

Remuneration of Public Defender.

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

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

10. The provisions of the First 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 Public Defender.

Pensions, etc.
First Schedule.

11.—(1) The Public Defender may appoint and employ for the purposes of this Act, at such remuneration and on such terms and conditions as may be approved by the Commission constituted under subsection (2), such officers and agents as may be considered necessary to assist him in the proper performance of his functions under this Act.

Appointment of staff.

(2) The Commission 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;
- (e) the person designated by the Leader of the Opposition as Leader of Opposition Business in the Senate; and
- (f) the Minister responsible for finance.

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

Oath of
secrecy.

12. Every person appointed to the staff of the Public Defender shall, before he performs any function assigned to him under or by virtue of this Act, take and subscribe an oath to be administered by the Public Defender, in the form set out in the Second Schedule.

Second
Schedule.

PART III. *Functions of Public Defender*

Actions which
Public
Defender may
investigate.

13.—(1) Subject to this section, the Public Defender shall investigate any action taken where he is of the opinion—

- (a) that any person or body of persons—
 - (i) has sustained injustice as a result of any action taken by an authority or an officer or member of such authority, in the exercise of the administrative functions of that authority; or
 - (ii) has suffered, is suffering or is likely to suffer an infringement of his constitutional rights as a result of any action taken by an authority or an officer or member of that authority; or

(b) [*Deleted by Act 25 of 2002, S. 26.*]

(2) Subject to subsection (3), the Public Defender shall not investigate—

(a) any action referred to in subsection (1) (a) (i) in respect of which the complainant has or had a remedy by way of proceedings in any court or in any tribunal constituted by or under any other Act; or

(b) any of the following actions or matters—

(i) the commencement or conduct of civil or criminal proceedings in any court of law in Jamaica or before any international court or tribunal;

(ii) any action done with respect to orders or directions to the Jamaica Defence Force or members thereof, or any proceedings under the Defence Act;

(iii) action taken in relation to the extradition of any person by the Minister responsible for extradition;

(iv) any decision or action of a Service Commission relating to the appointment, removal and disciplinary control of any person;

(v) the grant of honours, awards and privileges under the National Honours and Awards Act;

(c) the exercise of the powers conferred on the Governor-General by section 90 of the Constitution (which relates to the prerogative of mercy); or

- (d) any action taken by the Director of Public Prosecutions in the exercise of his constitutional functions;
- (e) any action which, by virtue of any provision of the Constitution, may not be enquired into by any court of law.

(3) The Public Defender may conduct an investigation into—

- (a) any such action as is mentioned in paragraph (a) of subsection (2), if he is satisfied that in the particular circumstances it is not reasonable to expect the complainant to take or have taken proceedings as referred to in that paragraph;
- (b) any reports or complaint made to a Service Commission in respect of the appointment, removal, promotion, disciplinary control or other personnel matters in relation to any person.

(4) The Public Defender shall not be precluded from conducting an investigation in respect of any matter by reason only that it is open to the complainant to apply to a court for redress under section 25 of the Constitution.

(5) If any question arises as to whether the Public Defender has jurisdiction to investigate any case or class of case under this Act, the Public Defender may apply to the Supreme Court for a declaration determining that question.

(6) The fact that an action is commenced in any court in connection with a matter under investigation by the Public Defender shall not preclude such investigation unless the court otherwise directs.

(7) [Deleted by Act 25 of 2002, S. 26.]

(8) [Deleted by Act 25 of 2002, S. 26.]

14.—(1) A complaint to the Public Defender may be made by any person or body of persons, whether incorporated or not, who claims—

Who may
make com-
plaint.

- (a) to have sustained an injustice referred to in paragraph (a) (i) of subsection (1) of section 13;
- (b) to have suffered, to be suffering or to be likely to suffer an infringement referred to in paragraph (a) (ii) of that subsection; or
- (c) [Deleted by Act 25 of 2002, S. 26.]

but such complaint shall not be made by a local authority or a body constituted for the purposes of the public service or a local authority.

(2) Where the complainant—

- (a) is a minor, the complaint may be made by his parent, guardian, next friend or person in *loco parentis*;
- (b) is unable to act for himself by reason of infirmity, or for any other cause or has died, the complaint may be made by his personal representative, or a member of his family, or any other suitable person.

(3) Every complaint to the Public Defender shall be made in writing.

(4) Notwithstanding anything provided by or under any law where a complaint addressed to the Public Defender is made by a person who is an inmate of a Government institution or is detained therein—

- (a) it shall be forwarded to the Public Defender by the person for the time being in charge of the institution; and

(b) if such complaint is contained in a sealed envelope, the envelope shall be forwarded unopened.

(5) Regulations made under section 27 may make provisions for ensuring confidentiality of communication between any such person as is mentioned in subsection (4) and the Public Defender.

Investigation
by Public
Defender.

15.—(1) An investigation pursuant to—

(a) subsections (1) (a) (i), (3) and (4) of section 13 may be undertaken by the Public Defender on his own initiative or on a complaint made to him pursuant to section 14; or

(b) subsection (1)(a)(ii) of section 13 may be undertaken by the Public Defender on a complaint made to him pursuant to section 14.

(2) The Public Defender may, in his absolute discretion, determine whether to undertake or continue an investigation and in particular, but without prejudice to the generality of the foregoing, may refuse to undertake or continue any investigation if he is of the opinion that—

(a) the subject-matter of the complaint is trivial;

(b) the complaint is frivolous or vexatious or not made in good faith;

(c) the complainant has deferred for too long the making of his complaint to the Public Defender;

(d) the complainant does not have sufficient interest in the subject-matter of the complaint; or

- (e) having regard to all the circumstances of the case, no investigation or further investigation is necessary.

(3) Where the Public Defender decides not to undertake or continue the investigation of a complaint, the Public Defender shall inform the complainant in writing of his decision and give reasons therefor.

(4) The Public Defender in the discharge of his functions, shall determine whether there is a *prima facie* case in respect of which the complainant can institute proceedings but shall not represent any complainant in any court or in any tribunal.

(5) The Public Defender shall ensure that any person who alleges that his constitutional rights have been or are likely to be infringed is provided with ready access to professional advice and where necessary to legal representation.

(6) For the purposes of subsection (5), the Public Defender shall—

- (a) determine whether the complainant is in need of legal aid;
- (b) authorize payment of such legal aid out of funds provided by Parliament to the Public Defender for that purpose;
- (c) compile a list of attorneys-at-law who in his opinion, are experienced in constitutional matters; and
- (d) invite the complainant to select an attorney-at-law from that list or if no such selection is made, the Public Defender may recommend an attorney-at-law whose name is on that list.

PART IV *Process of Investigation*

Procedure in
respect of
investigation.

16.—(1) Where the Public Defender proposes to conduct any investigation under this Act, he shall give to the specified officers an opportunity to comment in writing on any allegations relating to such action; and for the purposes of this subsection “specified officers” means—

(a) in relation to an allegation concerning an action mentioned in section 13 (1) (a)—

(i) the principal officer of the authority to which the investigation relates; and

(ii) any other officer thereof who is alleged to have done or authorized any such action; and

(b) [*Deleted by Act 25 of 2002, S. 26.*]

(2) The Public Defender may adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of this Act, may obtain information from such persons and in such manner, and make such enquiries as he thinks fit.

(3) Nothing in this Act shall be construed as requiring the Public Defender to hold any hearing, and except as provided by subsections (1) and (5) of this section, no person shall be entitled

as of right to comment on any allegations or to be heard by the Public Defender.

(4) Regulations made under this Act may prescribe the procedure to be adopted at any hearing and such procedure may include provision to ensure that any such communication as is mentioned in section 23 (5) is not disclosed at that hearing.

(5) If it appears to the Public Defender during the course of an investigation that there are sufficient grounds for making a report or recommendation that may adversely affect any person, he shall give that person an opportunity to be heard and that person may, if he wishes, be represented at that hearing by an attorney-at-law or any other person.

(6) Where, for the purposes of an investigation, the Public Defender requires a person to attend before him, that person shall be entitled to be paid, according to the scale laid down in the First Schedule to the Witnesses' Expenses Act, expenses incurred by him by reason of such attendance and by way of compensation for the trouble and loss of time suffered by him.

(7) After conducting an investigation under this Act, the Public Defender shall inform the principal officer of the authority concerned of the result of that investigation, and if the Public Defender is of the opinion that—

- (a) the complainant has sustained injustice in consequence of a fault in the administration of that authority; or
- (b) the complainant's constitutional rights have been, are being or are likely to be infringed as a result of any action taken by the authority,

he shall inform such officer aforesaid of the reason for that opinion and may, as he thinks fit, make recommendations for action to be taken by that authority within a specified time.

(8) Where the Public Defender has made a recommendation under subsection (7) and within the time specified

or a reasonable time thereafter, he is of the opinion that no adequate action has been taken to remedy the injustice or infringement, he shall lay before Parliament a special report on the case.

(9) The Public Defender shall not, in any report under subsection (8), comment adversely on any person unless he has given that person an opportunity to be heard.

(10) Where the Public Defender is of the opinion that—

- (a) the complainant has sustained such injustice or suffered such infringement as mentioned in section 13 (1) (a), he shall inform the complainant of that opinion, the nature of the injustice or the infringement and the recommendations (if any) which have been made to remedy the injustice or infringement, and may make such comments in relation to the case as he thinks fit;
- (b) the complainant has suffered no such injustice or infringement he shall inform the complainant of that opinion and the reasons therefor and may make such comments in relation to the case as he thinks fit.

(11) On the conclusion of an investigation, the Public Defender may make to the authority concerned such recommendations as he thinks fit and in particular, but without prejudice to the generality of the foregoing, may recommend any or all of the following—

- (a) that the action which was the subject-matter of the complaint be reviewed;
- (b) the alteration of an enactment, rule or regulation which causes or may cause injustice or infringement of constitutional rights;
- (c) that compensation be made to the complainant.

(12) If the Public Defender finds, during the conduct of his investigations or on the conclusion thereof, that there is evidence of a breach of duty, or misconduct, or criminal offence on the part

of an officer or member of any authority, he shall refer the matter to the person or body of persons competent to take such disciplinary or other proceedings as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.

17.—(1) Subject to the provisions of subsection (5) and section 18 (1), the Public Defender may at any time require any officer or member of an authority, or any other person who, in his opinion, is able to give any assistance in relation to the investigation of any matter, to furnish such information and produce any document or thing in connection with such matter and which may be in the possession or under the control of that officer or member or other person. Evidence.

(2) Subject as aforesaid, the Public Defender may summon before him and examine on oath—

(a) any complainant; or

(b) any officer, member or employee of an authority, or any other person who, in the opinion of the Public Defender, is able to furnish information relating to the investigation, and such examination shall be deemed to be a judicial proceeding within the meaning of section 4 of the Perjury Act.

(3) For the purposes of an investigation under this Act, the Public Defender 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.

(4) 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 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, by any other law (including a rule of law)

shall not apply in relation to the disclosure of information or the production of any document or thing by that person to the Public Defender for the purpose of an investigation; and accordingly, no person shall be liable to prosecution for an offence under the Official Secrets Acts, 1911 to 1939 or such Act of Parliament of Jamaica or any other law aforesaid, by reason only of his compliance with a requirement of the Public Defender under this Act.

(5) No person shall, 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.

Restriction on disclosure of certain matters.

18.—(1) Where the Secretary to the Cabinet at the direction of Cabinet—

(a) gives notice that the disclosure by the Public Defender of any document or information specified in the notice, or any class of document or information so specified, would—

(i) involve the disclosure or the deliberations or proceedings of the Cabinet or any committee thereof, relating to matters of a secret or confidential nature and is likely to be injurious to the public interest; or

(ii) prejudice the relations of Jamaica with the government of any other country, or with any international organization; or

(iii) prejudice the detection of offences,

the Public Defender or any member of his staff shall not communicate to any person for any purpose any document or information specified in the notice, or any document or information of a class so specified;

- (b) certifies that the giving of any information or the answering of any question or production of any documents or thing would prejudice the security or defence of Jamaica, the Public Defender shall not further require such information or answer to be given or such document or thing to be produced.

(2) Except as provided under subsection (1), no law which authorizes or requires the refusal to answer any question or the withholding of any information or document or thing on the ground that the answering of the question or the disclosure of the information, document or thing would be injurious to the public interest, shall apply in respect of any investigation by or proceedings before the Public Defender.

19. The Public Defender may, for the purpose of preventing or detecting crime or protecting the right or freedoms of any person, enter any premises occupied by any authority in order to inspect any document or record therein in respect of any matter under investigation and may, without prejudice to the provisions of sections 17 and 18, make such enquiries and retain such document or record, as he considers necessary to such investigation.

Power to enter premises and retain documents.

20.—(1) Except in the case of proceedings for an offence under section 25 (c), no proceedings whatsoever shall lie against the Public Defender or any person concerned with the administration of this Act for anything he may do or report or say in the performance of his functions under this Act.

Privilege.

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

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

PART V. *General*

Secrecy of
information.

21.—(1) The Public Defender 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 Public Defender or any person aforesaid in proceedings for an offence under section 25 of this Act or under the Perjury Act, by virtue of section 17 (2) of this Act;
- (b) which the Public Defender thinks it necessary to make in the discharge of his functions and for the purpose of executing the provisions of section 16 and section 23, subject as provided in subsection (5) thereof,

shall be deemed inconsistent with any duty imposed by this subsection.

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

Accounts,
etc.

22.—(1) The accounts and financial transactions of the office of Public Defender shall be audited annually by the Auditor-General and a statement of accounts so audited shall form part of the annual report mentioned in section 23.

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

- (a) submit to the Minister a statement of the accounts of the Public Defender 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.

23.—(1) The Public Defender may at any time be required by Parliament to submit thereto a report in respect of any matter under investigation by him. Reports.

(2) The Public Defender shall submit to Parliament an annual report relating generally to the execution of his functions and may at any time submit a report relating to any particular case or cases investigated by him which, in his opinion, require 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 Public Defender may, in the public interest, from time to time publish in such manner as he thinks fit, reports relating to such matters as are mentioned in subsection (2) and any case which is the subject of a special report under section 16 (8) and (12), provided that no such reports shall be published until after it has been laid pursuant to subsection (3).

(5) The Public Defender 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; or
- (b) between a minister of religion and any person consulting him in his capacity as such; or
- (c) between an Attorney-at-law and his client in their professional relationship,

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

Register.

24. Where the Public Defender decides to investigate a complaint he shall cause to be recorded in a register kept for the purpose—

- (a) the name of the complainant;
- (b) the subject-matter of the complaint and the date thereof; and
- (c) on the conclusion of the investigation, the Public Defender's decision respecting the complaint,

and any person may, on payment of such fees as may be prescribed, inspect, during the hours and on the days of business of the Public Defender, any register kept pursuant to this subsection.

Offences.

25. Every person who—

- (a) wilfully—
 - (i) makes any false statement to or misleads or attempts to mislead the Public Defender or any other person in the execution of his functions under this Act; or
 - (ii) fails to comply with any lawful requirement of the Public Defender or any other person under this Act; or
- (b) without lawful justification or excuse—
 - (i) obstructs, hinders or resists the Public Defender or any other person in the execution of his functions under this Act; or
 - (ii) fails to comply with any lawful requirement of the Public Defender or any other person under this Act; or
 - (iii) contravenes the provisions of section 14 (4); or
- (c) in a manner inconsistent with his duty under section 21(1), deals with documents, information or things mentioned in that subsection,

shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding fifty thousand dollars or to imprisonment not exceeding twelve months, or to both such fine and imprisonment.

26. 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.

Remedy under any provision of law unaffected.

27. The Public Defender may make regulations to provide for any matter which is or may be prescribed by this Act and for any other matter in respect of which it may be necessary or desirable to make regulations for the better carrying into effect of the provisions of this Act.

Regulations.

28. Where pursuant to any provision of this Act, the Governor-General is required to act after consultation with the Leader of the Opposition and—

Provisions applicable where no Leader of the Opposition.

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

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

29. Notwithstanding the repeal of the Ombudsman Act, hereinafter referred to as the repealed Act, any property purchased by, belonging to or vested in the Ombudsman under the repealed Act and all interests, rights and easements into or out of the said 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 such property.

Vesting of property.

Transfer of
employees of
Ombuds-
man.

30. Every person, other than an Ombudsman, who, immediately before the 16th April, 2000 was employed by the Ombudsman pursuant to the repealed Act shall, with effect from that date, be deemed to be transferred to the Public Defender on the same terms and conditions as those on which that person was employed immediately before that date.

FIRST SCHEDULE

(Section 10)

Pensions and Gratuities

Interpreta-
tion.

1. In this Schedule "pensionable emoluments" has the same meaning as in the Pensions Act.

Entitlement
to pensions
and gratui-
ties in
respect of
service as
Public
Defender.

2.—(1) Where a person holding the office of Public Defender 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 pursuant to the Pensions Act or the Judiciary Act.

(2) A person entitled to pension or gratuity pursuant to subparagraph (1) or who is eligible for a grant of pension or gratuity pursuant to 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 pursuant to section 5 of the Judiciary Act, such award as would be payable under that Act if the office of Public Defender were an office to which that Act applied; or
- (b) in any other case, such award under the Pensions Act as would be payable under that Act if the office of Public Defender 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 such 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 Public Defender 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 such infirmity is likely to be permanent; or
- (b) he is removed from office, in accordance with section 5 (7), for inability arising from infirmity of mind or body, to perform the functions of his office.

(5) A person who, pursuant to section 5 (7) is removed from the office of Public Defender 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 pursuant to the Pensions Act or the Judiciary Act, such 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 such office and, for the purposes of subparagraph (6), the date of such 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; and
- (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.

3. The rate of pension payable pursuant to 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 such pensionable emoluments in respect of each month of service as the Public Defender.

4. Where in accordance with paragraph 2 (3) a person retires in pensionable circumstances before he has attained the age of sixty-five years—

- (a) the date with effect from which any pension due to him under this Act shall be payable shall be the date on which he attains that age, but, if he elects pursuant to paragraph 5 to take a reduced 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

Special provision where Public Defender retires before attaining age sixty-five.

- (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 Public Defender.

Reduced
pension and
gratuity.

5.—(1) Any person to whom a pension (in this paragraph referred to as ("the original pension")) is payable pursuant to paragraph 2 may, at his option exercisable at his retirement in pensionable circumstances or within such 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 such terms as he considers reasonable, otherwise permits.

Gratuity on
death.

6.—(1) Where a person dies while holding the office of Public Defender 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 pursuant to 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 pursuant to 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 Pensions Act or under the Judiciary Act.

Pensions to
dependants
where
injuries
received or
disease con-
tracted in
discharge
of duties.

7. Where a person holding the office of Public Defender 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 seriously aggravated by his own serious and culpable negligence or misconduct; and

- (c) on account of circumstances specifically attributable to the nature of his duty,

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

8. A pension or gratuity payable under this Act shall not be assignable or transferable except for the purpose of satisfying—

Pensions, etc.
not to be
assigned.

- (a) a debt due to the Government; or
- (b) on order of any court for the payment of periodical 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.

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

Family
Benefits
pensions.

(2) Where a person dies while holding the office of Public Defender 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 pursuant to 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 pursuant to 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 pursuant to 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 Public Defender, 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 where length of service does not qualify for pension.

10. Where a person retires without a minimum of ten years service, he shall be granted in respect of his service, the commuted pension gratuity for which the person had a right to opt pursuant to paragraph 5 if he had retired in pensionable circumstances.

SECOND SCHEDULE

(Section 12)

Oath to be taken by persons appointed to assist the Public Defender

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

So help me God.