

**THE CORRUPTION PREVENTION (SPECIAL
PROSECUTOR) ACT, 2011**

(Act of 2011)

ARRANGEMENT OF SECTIONS

PART I. *Preliminary*

1. Short title and commencement.
2. Interpretation.
3. Scope of Act not limited by definition of corrupt conduct.
4. Principal objects of Act.
5. Application of Act.
6. DPP's functions not affected by this Act.
7. Remedy under other provision of law unaffected, *etc.*

PART II. *Corrupt Conduct and Related Offences*

8. Offences of corrupt conduct.
9. Offences of undue advantage sought or promised to public official.
10. Offences relating to undue advantage to foreign public officials and officials of public international organizations.
11. Defence relating to undue advantage to foreign public officials, *etc.*
12. Offences relating to undue advantage in private sector.
13. Offence of illicit enrichment.
14. Defence to charge of illicit enrichment.
15. Offence of improperly using certain information or property belonging to the Government.
16. Offence of intermediary, *etc.*, illicitly obtaining benefit.
17. Offence of corrupt conduct by agent.
18. Offence of concealing property.
19. Offence of obstruction of justice.
20. Corruptly procuring or obtaining withdrawal of tenders.
21. Offence of making false or misleading statement or return in relation to Government property.

22. Offences relating to the reporting of corrupt conduct.
23. Interfering with duty to report corrupt conduct.
24. Offence *re* off-the-book dealings.
25. Offence of body corporate.

PART III. *The Office of the Special Prosecutor for Corruption
Establishment*

26. Establishment of Office and divisions.

Functions of Office

27. Functions of Office generally.
28. Administrative functions of Office.
29. Investigation functions of Office.
30. Legal and prosecution functions of Office.
31. Appointment of Special Prosecutor and staff.
32. Office to work in Divisions, *etc.*
33. Investigators to have police powers.

The Special Prosecutor

34. Eligibility for appointment as Special Prosecutor.
35. Tenure of Special Prosecutor and Acting Special Prosecutor.
36. Restriction on holding other office.
37. Removal of Special Prosecutor from office.
38. Filling of vacancy.
39. Remuneration of Special Prosecutor.
40. Pensions and gratuities of Special Prosecutor.

Administration

41. Oath of Secrecy.
42. Cooperation by Office and with Office.
43. Office to act impartially, *etc.*
44. Duty to notify Office of possible corrupt conduct.

Complaints

- 45. Complaint, *etc.* about possible corrupt conduct.
- 46. Complaint, *etc.* to be recorded.
- 47. Copies of complaints.
- 48. Evidence.
- 49. Restriction on disclosure of certain matters.

Powers of Entry, etc., Privilege and Confidentiality

- 50. Power to enter premises and retain documents.
- 51. Privilege.
- 52. Secrecy of information.

Reports

- 53. Report to Minister.

Part IV. Provision relating to Statutory Declarations

- 54. Duty of Parliamentarians and public officials to furnish statutory declaration.
- 55. Expenses incurred in preparation of declaration, *etc.*, tax deductible.
- 56. Office may require further information.
- 57. Offences relating to declaration.
- 58. Offences relating to obstruction.

Part V. Investigation Procedure

- 59. Hearings and enquiries of the Office.
- 60. Director of Administration may cause Investigation Division to conduct enquiries.
- 61. Issue of summons.
- 62. Witness may be examined on oath.
- 63. Duty and privileges of witness.

Part VI. Enforcement

Production and Inspection Order

- 64. Meaning of “legal profession privilege” and “excluded material”.
- 65. Production and inspection orders.

- 66. Scope of production order.
- 67. Evidential value of information.

Restraint Orders

- 68. Application for restraint order.
- 69. Restraint order.
- 70. Undertakings by Crown.
- 71. Notice of application for restraint order.
- 72. Service of restraint order.
- 73. Contravention of restraint order.
- 74. Notice and duration of restraint order.
- 75. Extension of restraint order.

Account Monitoring Orders

- 76. Monitoring order.
- 77. Monitoring orders not to be disclosed.

Certification of Copies of Documents

- 78. Certification of copies of documents.

Search Warrants

- 79. Search warrant to facilitate investigations.

Other Orders

- 80. Sections 109 to 114 of Proceeds of Crime Act apply.

PART VII. *General*

- 81. Provisions applicable where no Leader of the Opposition.
- 82. Review of Act.
- 83. Regulations.
- 84. Repeal of Corruption Prevention Act and Parliament (Integrity of Members) Act.

PART VIII. *Transitional Provisions*

- 85. Vesting of property.
- 86. Transfer of employees of Office.
- 87. Saving of actions and investigations.

SCHEDULES.

A BILL

ENTITLED

AN ACT to Promote and Strengthen Measures for the Detection, Prevention, Investigation and Prosecution of Corrupt Conduct; to provide for the offence of corrupt conduct and offences relating to corrupt conduct; to provide for the establishment of a department of Government to be known as the Office of the Special Prosecutor for Corruption with special responsibility for the detection, prevention, investigation and prosecution of corrupt conduct; to repeal the Corruption (Prevention) Act and the Parliament (Integrity of Members) Act; and for connected matters.

[]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Jamaica and by the authority of the same, as follows:—

PART I. *Preliminary*

1.—(1) This Act may be cited as the Corruption Prevention (Special Prosecutor) Act, 2011, and subject to subsection (2), shall

Short title
and com-
mencement.

come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

(2) Different days may be appointed for the coming into operation of this Act or, as the case may be, of different sections of this Act.

Interpreta-
tion.

2.—(1) In this Act, unless the context otherwise requires—

“advantage” includes—

- (a) any benefit, whether direct or indirect;
- (b) any act or omission at the request of another person, whether or not the nature or timing of the act or omission is then known or the making of the request is express or implied, direct or indirect;
- (c) any gift, loan, sponsorship, fee, reward or commission consisting of money, any valuable security, or any other property;
- (d) any office, employment or contract;
- (e) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (f) any service, or favour, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
- (g) the exercise of, or failure to exercise, any right, power or duty; and;
- (h) any offer, undertaking or promise, whether conditional or unconditional, within the meaning of paragraph (a), (b), (c), (d), (e), (f) or (g);

“agent” means any person employed by or acting for another and includes a parliamentarian, public official or public body, any political party or institution or officer thereof, a trustee, an

administrator or executor of the estate of a deceased person, a sub-contractor, and any person employed by or acting for such trustee, administrator, executor, or sub-contractor;

“appointed day” means the day on which this Act, or as the case may be a section of this Act, comes into operation;

“assets and liabilities” includes, in relation to assets any property whether in or outside of Jamaica and in relation to liabilities, any obligation to pay money whether in or outside of Jamaica;

“associate”, in relation to a person, includes an agent known to act subject to the directives or influence of the person;

“authorized officer” means a person so designated under section 27(1)(e);

“child” means a person under the age of eighteen years;

“complaint” includes any complaint, information or notification mentioned in section 45, and a referral under section 44, relating to a matter that involves or may involve corrupt conduct;

“consideration” means valuable consideration of any kind;

“corrupt conduct” includes the conduct specified in Part II and the First Schedule;

First
Schedule.

“Director of Administration” means the person appointed as the Director of Administration under section 31(c);

“Director of Investigations” means the person appointed as the Director of Investigations under section 31(e);

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

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

- (d) any film (including microfilm), negative; tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (e) a document in electronic form;

“financial institution” has the meaning assigned to it in the Financial Institutions Act;

“foreign public official” means any person—

- (a) holding a legislative, executive, administrative or judicial office of a country or territory other than Jamaica, whether appointed or elected;
- (b) performing a public function for a country or territory other than Jamaica, including for an enterprise or agency of that country or territory that is similar to a public body under this Act;

“functions” includes powers and duties;

“investigation” means any inquiry or investigation conducted under this Act;

“investigator”, in relation to an investigation under this Act, means any investigator, or any other person, who is assigned functions in relation to that investigation;

“judicial office” means any of the following offices—

- (a) Chief Justice;
- (b) Member of a tribunal appointed under the Constitution of Jamaica;
- (c) Judge of the Court of Appeal;
- (d) Registrar of the Court of Appeal;
- (e) Judge of the Supreme Court;

- (f) Registrar of the Supreme Court;
- (g) Member of a tribunal appointed under the Commissions of Enquiry Act;
- (h) Resident Magistrate; or
- (i) Justice of the Peace exercising summary jurisdiction;

“official of a public international organization” means an international civil servant or any person who is authorized by a public international organization to act on behalf of the organization;

“Office” means the Office of the Special Prosecutor for Corruption established by section 26;

“parliamentarian” means a member of the House of Representatives or a member of the Senate;

“performing a function” includes exercising or failing to exercise the function irrespective of whether the function—

- (a) is or is not within the competence of the person exercising it; or
- (b) is exercised in Jamaica, or any part of Jamaica, or elsewhere;

“principal” includes—

- (a) an employer;
- (b) a beneficiary under a trust;
- (c) a trust estate as though it were a person;
- (d) any person beneficially interested in the estate of a deceased person;
- (e) the estate of a deceased person as though it were a person; and
- (f) in the case of an employee of a public body, the public body;

“private sector” includes any—

- (a) natural person who, or group of two or more natural persons that, carries on a business;

- (b) syndicate, agency, trust, partnership, fund, association, organization or institution;
- (c) company registered under the Companies Act;
- (d) body of persons corporate or unincorporated; or
- (e) other legal person,

but does not include a public official or a public body;

“property” means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

“public body” means—

- (a) a Ministry, department, Executive Agency or Agency of Government;
- (b) a Parish Council, the Kingston and St. Andrew Corporation, a Municipal Council or Municipality established under the Municipalities Act, a statutory body or authority; and
- (c) a company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by financial input, is in a position to influence the policy of the company;
- (d) any person that performs a public function and specified by the Minister, by order subject to affirmative resolution, as a public body for purposes of this Act;

“public function” means any public service or function in the discharge of which Jamaica, or the public has an interest, whether or not payment is received therefor, which is carried out by—

- (a) a person for, or on behalf of, or under the direction of, a public body;

- (b) a body, whether public or private, certain of whose functions are functions of a public nature or in whose decision making the Government has or potentially has an interest;
- (c) a parliamentarian, acting in such capacity;

“public international organization” means—

- (a) an organization—
 - (i) of which two or more countries are members; or
 - (ii) that is constituted by persons representing two or more countries;
- (b) an organization established by, or a group of organizations constituted by—
 - (i) organizations of which two or more countries are members; or
 - (ii) organizations that are constituted by the representatives of two or more countries; or

(c) an organization that is—

- (i) an organ of or office within an organization described in paragraph (a) or (b)—
- (ii) a commission, council or other body established by an organization or organ referred to in sub-paragraph (i); or
- (iii) a committee or a subcommittee of a committee of an organization referred to in paragraph (a) or (b) or of an organ, council or body referred to in sub-paragraph (i) or (ii);

“public official” means—

- (a) any person holding an executive, legislative, judicial or administrative office, whether appointed or elected,

whether permanent or temporary, or whether paid or unpaid;

- (b) any other person who performs a public function; and
- (c) any member of the Security Forces;

but does not include a parliamentarian or a person who holds a judicial office;

“relevant public body” means the public body to which a matter that involves or may involve corrupt conduct relates;

“Security Forces” means—

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

“single man” or “single woman”, used with reference to the definition of “spouse”, includes a widow or widower, as the case may be, and a divorcee;

“Special Prosecutor” means the person appointed as the Special Prosecutor under section 31;

“spouse” includes—

- (a) in relation to a single man, a single woman who, for a period of not less than five years, has cohabited with the single man as if she were in law his wife; and
- (b) in relation to a single woman, a single man who, for a period of not less than five years, has cohabited with the single woman as if he were in law her husband;

“statutory declaration” means a statutory declaration made under section 56;

“valuable security” means any document—

- (a) creating, transferring, surrendering or releasing any right to, in or over property;

- (b) authorizing the payment of money or delivery of any property; or
- (c) evidencing the creation, transfer, surrender or release of any such right, the payment of money or delivery of any property or the satisfaction of any obligation.

(2) For the purpose of the definition of “public function”, the term “public service” includes the provision of electricity, water and communication.

(3) For the purposes of this Act—

- (a) a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or for the benefit of or in trust for any other person;
- (b) a person solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and
- (c) a person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.

3. The mention of a particular kind of conduct in the First Schedule shall not be regarded as limiting the scope of any provision of Part II.

Scope of Act not limited by definition of corrupt conduct.
First Schedule.

4. The principal objects of this Act are to—

- (a) promote and strengthen measures for the detection, prevention, investigation and prosecution of corrupt conduct;
- (b) promote integrity, accountability and proper management of public affairs and public property; and

Principal objects of Act.

- (c) provide for the establishment of a department of Government to be known as the Office of the Special Prosecutor for Corruption with special responsibility for the detection, prevention, investigation and prosecution of corrupt conduct.

Application of Act.

5.—(1) Conduct may amount to corrupt conduct under this Act even though it occurred outside Jamaica, and such conduct refers to matters arising outside Jamaica or matters arising under the laws of Jamaica.

(2) Where a citizen of Jamaica engages in corrupt conduct or commits an offence under Part II in another State, he shall be liable to be prosecuted and tried for the offence as if he had committed the offence in Jamaica.

DPP's functions not affected by this Act.

6. For the avoidance of doubt it is hereby declared that nothing in this Act affects the functions of the Director of Public Prosecutions under section 94 of the Constitution of Jamaica.

Remedy under other provision of law unaffected, etc.

7.—(1) 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.

(2) Nothing in this Act shall prevent a member of the Jamaica Constabulary Force from commencing or continuing a police investigation into any complaint, information or notification or other matter.

(3) If, either before or after the commencement of a police investigation, the Commissioner of Police forms a view that the complaint, information or notification should be investigated by the Office, the Commissioner may request the Office to do so.”

PART II. Corrupt Conduct and Related Offences

General

Offences of corrupt conduct.

8. A person who, directly or indirectly, engages in corrupt conduct commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrate’s Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or

- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

9.—(1) A public official commits an offence if he, directly or indirectly, for himself or another person—

Offences of undue advantage sought by or promised to public official.

- (a) in the performance of his public functions, corruptly solicits or accepts an undue advantage; or
- (b) performs or refrains from performing his public functions for the purpose of obtaining an undue advantage.

(2) A person commits an offence if he, directly or indirectly, promises, offers or gives to a public official, any undue advantage in order that the public official in the performance of his functions—

- (a) abuses his real or supposed influence; or
- (b) performs or refrains from performing an act.

(3) A public official or person who contravenes subsection (1) or (2) is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

10.—(1) A person shall not, directly or indirectly, promise, offer or give to a foreign public official or an official of a public international organization, any undue advantage in order that the official performs or refrain from performing his official functions.

Offences relating to undue advantage to foreign public officials and officials of public international organizations.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or

- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Defence relating to undue advantage to foreign public officials, *etc.*

11. It shall be a defence to a person charged with an offence under section 10 to show the court that the advantage—

- (a) is permitted or required under the laws of the foreign state or laws governing the public international organization for which the foreign public official performs functions; or
- (b) was made to pay the reasonable expenses incurred in good faith by or on behalf of the foreign public official, that are directly related to—
 - (i) the promotion, demonstration or explanation of the person's products and services; or
 - (ii) the execution or performance of a contract between the person and the foreign state for which the official performs functions.

Offences relating to undue advantage in private sector.

12.—(1) A person shall not, directly or indirectly, in the course of economic, financial or commercial activities—

- (a) promise, offer or give, any undue advantage to any person who directs or works, in any capacity, for a member of the private sector; or
- (b) solicit or accept, any undue advantage from any person who directs or works, in any capacity, for a member of the private sector, in order that the person who directs or works for the member breaches his function.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or

- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

13.—(1) Where a public official—

Offence of
illicit enrichment.

- (a) owns assets disproportionate to his lawful earnings; and
- (b) upon being requested, by the Office or any person duly authorized to investigate an allegation of corrupt conduct against him, to provide an explanation as to how he came by the assets—
 - (i) fails to do so; or
 - (ii) gives an explanation which is not considered to be satisfactory,

he shall be liable to prosecution for the offence of illicit enrichment.

(2) A person who commits the offence of illicit enrichment shall be liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

14.—(1) It shall be a defence to a person charged with an offence of illicit enrichment to show the court that he came by the assets by lawful means.

Defence to
charge of
illicit
enrichment.

(2) Resources or property shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused in the circumstances set out in subsection (3).

(3) Subsection (2) applies where a court is satisfied in proceedings for an offence under section 13 that, having regard to the

closeness of the relationship between the accused and another person and to other circumstances, there is reason to believe that the other person—

- (a) was holding pecuniary resources or property in trust for or otherwise on behalf of the accused; or
- (b) acquired such resources or property as a gift from the accused.

Offence of improperly using certain information or property belonging to the Government.

15.—(1) A person commits an offence if he improperly uses for his own benefit or for the benefit of another person—

- (a) any classified or confidential information that he obtains as a result of or in the course of the performance of his public functions; or
- (b) any property belonging to a public body or any body performing a public function to which he has access as a result of or in the course of the performance of his functions.

(2) A person who contravenes subsection (1) is liable—

- (a) on summary conviction in a Resident Magistrate’s Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Offence of intermediary, etc. illicitly obtaining benefit

16.—(1) Any person who is an intermediary or is acting as an intermediary or through a third person who seeks to obtain a decision from any public body whereby he illicitly obtains for himself or for another person any advantage (whether or not the act or omission to act from which the advantage is derived is detrimental to the Government) commits an offence.

(2) A person who contravenes subsection (1) is liable—

- (a) on summary conviction in a Resident Magistrate’s Court to a fine not exceeding one million dollars or to imprisonment

for a term not exceeding two years or to both such fine and imprisonment; or

- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

17.—(1) An agent commits an offence if, directly or indirectly, he—

Offences of
corrupt
conduct
by agent.

- (a) corruptly solicit or accepts, or agrees or attempts to solicit or accept from any person for himself or for any other person any advantage as an inducement or reward for doing or for omitting to do, or for having done or omitted to do, any act in relation to his principal's affairs or business, or for showing or omitting to show favour or disfavour to any person in relation to his principal's affairs or business; or
- (b) knowingly uses with intent to deceive his principal, any receipt, account, or other document—
 - (i) in respect of which the principal is interested;
 - (ii) which contains any statement which is false or erroneous or defective in any material particular; and
 - (iii) which, to the knowledge of the agent, is intended to mislead the principal.

(2) An agent who contravenes subsection (1) is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(3) A person who—

- (a) corruptly gives, or agrees to give or offers, any advantage to any agent as an inducement or reward for doing or omitting to do, or for having done or omitted to do, any act in relation to his principal's affairs or business or for showing or omitting to show favour or disfavour to any person in relation to his principal's affairs or business; or
- (b) knowingly gives to any agent, any receipt, account, or other document—
 - (i) in respect of which the principal is interested;
 - (ii) which contains any statement which is false or erroneous or defective in a material particular; and
 - (iii) which, to the knowledge of the agent, is intended to mislead the principal,

commits an offence.

(4) A person who contravenes subsection (3) is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; and
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

ce of
aling
rty

18.—(1) A person shall not, whether within or outside Jamaica, whether directly or indirectly, whether on behalf of himself or on behalf of any other person—

- (a) enter into, or cause to be entered into, any dealing in relation to; or
- (b) otherwise use or cause to be used, or hold, receive, or conceal,

any property or any part thereof which was the subject matter of an offence under this Part.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrates' Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

19.—(1) A person shall not—

- (a) use physical force, threats or intimidation against, or promise, offer or give any advantage to, any person to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of an offence under this Act; or
- (b) use physical force, threats or intimidation against any person to interfere with the performance of function of a person holding a judicial office, a member of a jury, the prosecution, a member of the Security Forces or any other justice or law enforcement official involved in an investigation, prosecution or other proceedings in relation to the commission of an offence under this Act.

Offence of
obstruction of
justice.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Corruptly
procuring
or obtain-
ing with-
drawal of ten-
ders.

20.—(1) A person commits an offence if he—

- (a) with intent to obtain from any public body a contract for performing any work, providing any service, doing anything, or supplying any article, material or substance (hereinafter referred to as a public sector contract) offers any advantage to any person who has made a tender for the public sector contract for that person's withdrawing of that tender; or
- (b) solicits or accepts any advantage for his withdrawing a tender made by him for a public sector contract.

(2) A person who contravenes subsection (1) is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; and
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Offence of
making false
or misleading
statement or
return in
relation to
Government
property.

21. Any person charged with the receipt, custody, use or management of Government property, who knowingly furnishes, in his capacity as such, any false statement or return in respect of any money or other property received by him or entrusted to his care, or of any balance of money or other property in his possession or under his control commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

22.—(1) A public official who is offered or receives an advantage in circumstances which may constitute an offence under this Act, or the common law offence of bribery, shall disclose to the Office as soon as reasonably practicable and in the prescribed manner—

Offences relating to the reporting of corrupt conduct

- (a) the existence and nature of the advantage, or the offer of it; and
- (b) the name, if known, of the person by whom the advantage was given or procured or offered or who agreed to give or procure or offer the advantage.

(2) A person performing any public function who knows or reasonably suspects, or ought reasonably to have known or reasonably to have suspected, that any person has committed, is committing or is about to commit an offence under this Act, or the common law offence of bribery, shall disclose to the Office, as soon as reasonably practicable and in the prescribed manner, that knowledge or suspicion, and the information on which it is based, or cause such knowledge or suspicion to be so disclosed.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrate’s Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment; and
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

23.—(1) A person who takes any action harmful to any other person, including interference with the other person’s lawful employment or occupation, on the ground that, that the other person has made or may make a disclosure in accordance with section 22 commits an offence.

Interfering with duty to report corrupt conduct.

(2) A person who contravenes subsection (1) is liable—

- (a) on summary conviction in a Resident Magistrate’s Court to a fine not exceeding two million dollars or to imprisonment

for a term not exceeding three years or to both such fine and imprisonment; and

- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Offence *re*
off-the-
book
dealings.

24.—(1) A person commits an offence who, for the purpose of facilitating engagement in corrupt conduct or the commission of any other offence under this Act—

- (a) establishes off-the-book accounts;
- (b) makes an off-the-book or inadequately identified transaction;
- (c) records any expenditure which he knows to be non-existent;
- (d) enters any liability with an incorrect identification of its object;
- (e) uses any false document; or
- (f) destroys any bookkeeping documents.

(2) A person who contravenes subsection (1) is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; and
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Offence by
body
corporate

25. Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

**PART III. *The Office of the Special
Prosecutor for Corruption***

Establishment

26.—(1) For the purposes of this Act, there is hereby established a department of Government to be known as the Office of the Special Prosecutor for Corruption.

Establishment of Office and divisions.

(2) The Office shall consist of three divisions to be known respectively as the Administrative Division, the Investigation Division and the Legal and Prosecution Division.

Functions of Office

27.—(1) (1) Subject to the provisions of this Act, the Office shall—

Functions of Office generally.

- (a) be responsible generally for the detection, prevention, investigation and prosecution of corrupt conduct;
- (b) make such recommendations as are or desirable for—
 - (i) the review and reform of any relevant laws and procedures;
 - (ii) the protection of persons who make complaints under this Act from reprisal, discrimination and intimidation; or
 - (iii) ensuring that the system of making complaints and giving information and notifications is accessible;
- (c) promote public awareness and understanding of corrupt conduct and the importance of their elimination from the society;
- (d) provide advice or assistance, or both, to the Security Forces, any public body or other body or person on—
 - (i) ways in which corrupt conduct may be eliminated; and
 - (ii) changes in practice or procedures compatible with the effective performance of their functions which the Special Prosecutor thinks necessary to reduce

the likelihood of the occurrence of corrupt conduct;

- (e) from time to time, designate any person possessing the prescribed qualifications, whether employed by the Office or not, as an authorized officer; and
- (f) perform such other functions as may be assigned to it by or under this Act or any other enactment.

Administrative
functions of
Office.

28.—(1) The Office shall—

- (a) receive and keep on record statutory declarations furnished by parliamentarians and public officials pursuant to section 56;
- (b) examine such statutory declarations and request from any parliamentarian or public official any information relevant to a statutory declaration made by him, which in the opinion of the Director of Administration would assist in its examination;
- (c) make such independent enquiries relating to a statutory declaration as it considers necessary; and
- (d) receive any complaint, information or notification about any matter that involves or may involve corrupt conduct or, on its own initiative, cause any matter that involves or may involve corrupt conduct to be investigated under this Act;
- (e) manage, safeguard, maintain and control any property seized, or restrained or forfeited under this Act or any other enactment, in connection with proceedings relating to corrupt conduct; and
- (f) perform such other administrative functions as may be assigned to it by or under this Act or any other enactment.

Investi-
gation
functions
of Office.

29. The Office shall—

- (a) investigate or cause any matter that involves or may involve corrupt conduct to be investigated, on its own initiative, or on the basis of any complaint, information or notification referred to it; and

- (b) perform such other functions relating to investigations as may be assigned to it by or under this Act or any other enactment.

30. The Office may—

Legal and
prosecu-
tion
functions
of Office.

- (a) subject to the powers conferred upon the Director of Public Prosecutions by section 94 of the Constitution of Jamaica, institute, undertake and have the conduct of any criminal proceedings which appear to the Special Prosecutor, on reasonable grounds, to involve corrupt conduct;
- (b) provide legal advice on matters concerning corrupt conduct;
- (c) conduct such proceedings as may be necessary, towards the seizure, restraint, forfeiture or recovery of any assets or property relating to corrupt conduct; and
- (d) perform such other functions relating to corrupt conduct as may, from time to time, be assigned to it by or under this Act or any other enactment.

Staff

31. For the due administration of the Office, the Governor-General may, acting on the advice of the Public Service Commission and in accordance with any procedure established for appointments to sensitive posts, appoint—

Appoint-
ment of
Special
Prosecutor
and staff.

- (a) a Special Prosecutor, who shall have—
 - (i) overall general responsibility for the Office; and
 - (ii) day-to-day management and operational superintendence of the Legal and Prosecution Division;
- (b) a Deputy Special Prosecutor;
- (c) a Director of Administration who shall, subject to paragraph (a)(i), be responsible for the day-to-day management and operation of the Office and the Administrative Division;
- (d) a Deputy Director of Administration;

- (e) a Director of Investigation who shall be responsible for the day-to-day management and have operational superintendence of the Investigation Division;
- (f) a Deputy Director of Investigation; and
- (g) so many attorneys-at-law,

investigators and other officers as may be necessary for the efficient operation of the Office.

Office to
work in
Divisions,
etc.

32.—(1) The functions of the Office set out in sections 28, 29 and 30 shall be performed by the officers employed in or assigned to the Administrative Division, the Investigation Division and the Legal and Prosecution Division, respectively.

(2) The same person shall not investigate and prosecute an offence under this Act.

(3) The prosecuting functions of the Office shall, subject to section 30(a), only be performed under this Act by the Special Prosecutor or any person authorized in that behalf by the Special Prosecutor.

Investi-
gators to
have police
powers.

33. For the purposes of this Act, the Director of Investigation, investigators and all officers of the Investigation Division who are authorized in that behalf by the Director of Investigation, shall have such powers, authority and privileges as are given to authorized persons under the Revenue Administration Act and are given by law to officers of the Jamaica Constabulary Force.

The Special Prosecutor

Eligibi-
lity for
appoint-
ment as
Special
Prosecutor.

34.—(1) A person shall not be qualified to be appointed as, or act as the Special Prosecutor—

- (a) unless the person—
 - (i) possesses the competence and qualifications for appointment at the level of Senior Deputy Director of Public Prosecutions; and
 - (ii) is a person of high integrity and is able to exercise competence, diligence and sound judgement in fulfilling his functions under this Act.

35.—(1) Subject to the provisions of subsections (2) to (5), the Special Prosecutor shall hold office until he attains the age of sixty years.

Tenure of
Special
Prosecutor
and Acting
Special
Prosecutor.

(2) The Special Prosecutor may, at any time, resign his office.

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

(4) If the office of the Special Prosecutor is vacant or the holder of that office is for any reason unable to perform the functions thereof, a person qualified for appointment to that office may, in accordance with any procedure established for appointments to sensitive posts, be appointed to act therein, and any person so appointed shall, subject to the provisions of subsection (1), continue to act until the office of the Special Prosecutor is filled or, as the case may be, until the Special Prosecutor has resumed the functions of his office or the appointment of that person is revoked by the Governor-General acting on the advice of the Public Service Commission.

36. A person appointed as the Special Prosecutor shall engage exclusively in the functions of his office and shall not hold any other office, or engage in any other employment, for reward.

Restriction on
holding
other
office.

37.—(1) The Special Prosecutor may be removed from office on the following grounds—

Removal of
Special
Prosecutor
from office.

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

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

(2) The Special Prosecutor shall not, while holding office as Special Prosecutor become a party to, or a partner in a firm or a director or manager of a company which to his knowledge, is or becomes a party to any contract with the Government of Jamaica.

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

- (a) the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, shall appoint a tribunal consisting 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) the tribunal shall enquire into the matter;
- (c) and report on the facts thereof to the Governor-General and advise the Governor-General whether the Special Prosecutor ought to be removed from office on any of the grounds set out in subsection (1).

(4) The provisions of sections 8 to 16 of the Commissions of Enquiry Act shall with necessary modifications in relation to a tribunal appointed under subsection (3) or, as the case may require, to the members thereof, as they apply in relation to offices or officers appointed under that Act.

(5) Where the question of removing the Special Prosecutor from office has been referred to a tribunal appointed under subsection (3)(a) and the tribunal has advised the Governor-General that the Special Prosecutor ought to be removed from office, the Governor-General shall by instrument under the Broad Seal, remove the Special Prosecutor from Office.

(6) Where the question of removing the Special Prosecutor from office has been referred to a tribunal under subsection (3), the Governor-General, may, after consultation with the Prime Minister and

the Leader of the Opposition, suspend the Special Prosecutor from performing the functions of his office and any such suspension—

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

38.—(1) Where a vacancy arises on the office of Special Prosecutor, the Governor-General may, acting on the advice of the Public Service Commission and in accordance with any procedure established for appointments to sensitive posts, designate a person to act in that office during the vacancy until an appointment is made. Filling of
vacancy.

(2) Where, by reason of illness, absence from Jamaica or other sufficient cause, a person appointed as the Special Prosecutor is unable to perform his functions as such, the Governor-General may, after consultation with the Prime Minister and the Leader of the Opposition, appoint such person as he thinks fit, being a person qualified under this Act, to perform those functions.

39.—(1) Subject to subsection (2), the Special Prosecutor shall receive the 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 equivalent to the emoluments which may, from time to time, be payable to a Senior Deputy Director of Public Prosecutions. Remuneration
of Special
Prosecutor.

(2) The emoluments and terms and conditions of service of the Special Prosecutor, 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 Special Prosecutor under this Act shall be charged on and paid out of the Consolidated Fund.

Pensions and gratuities of Special Prosecutor. Second Schedule.

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

Administration

Oath of secrecy.

41. This Special Prosecutor and every other person appointed to the staff of the Office shall, before they perform any function assigned to them under or by virtue of this Act, take and subscribe an oath in the form set out in the Third Schedule to be administered—

Third Schedule.

- (a) in the case of the Special Prosecutor, by the Governor-General; and
- (b) in the case of every other person, by the Special Prosecutor.

Cooperation by Office and with Office.

42.—(1) In performing its functions under this Act, the Office shall, as far as is practicable, work in co-operation with the Director of Public Prosecutions, the Security Forces, the Contractor General, the Auditor General and such other persons or bodies as the Special Prosecutor thinks appropriate.

(2) The Office may request in writing that another public sector body or a member of the private sector disclose information or produce documents for the purpose of assisting the Office in the performance of its functions under this Act.

Office to act impartially, etc.

43. The Office shall, at all times, act impartially and fairly having regard to the purposes of the Act and the importance of protecting the public interest.

Duty to notify Office of possible corrupt conduct.

44.—(1) Where in the performance of his functions—

- (a) the Auditor General;
- (b) the Public Defender;
- (c) a person appointed as a Contractor-General;
- (d) a Permanent Secretary; or
- (e) the managing director or chief executive officer of a public body, as the case may be,

suspects on reasonable grounds that any matter involves or may involve corrupt conduct, he shall refer the matter to the Director of Administration.

(2) The Director of Administration, after consultation with the Special Prosecutor, may issue guidelines as to what matters need or need not be reported.

Complaints

45.—(1) Any person may, orally or in writing, make a complaint, give information on, or notify the Office about, a matter, that involves or may involve, corrupt conduct.

Complaint,
etc. about
possible
corrupt
conduct.

(2) Subsection (1) does not limit to whom a complaint can be made about corrupt conduct.

46. On receipt of a complaint, information or notification under section 45, the Director of Administration shall—

Complaint,
etc. to be
recorded.

- (a) record it or cause it to be recorded in the prescribed form and subscribed on oath or affirmed;
- (b) supply to the complainant or cause to be supplied to the complainant a copy of the record made of that complaint, information or notification signed by the person receiving the complaint.

47.—(1) A copy of a complaint, information or notification supplied under subsection (1) may be in a form which keeps anonymous the identity of the complainant or of any other person.

Copies of
complaints.

(2) The Director of Administration may decide that a copy of a complaint shall not be supplied if it is of the opinion that to do so—

- (a) might prejudice any criminal investigation or pending proceedings; or
- (b) would otherwise be contrary to the public interest.

(3) Where the Director of Administration decides not to supply a copy of a complaint, he shall keep that decision under regular review.

Evidence.

48.—(1) Subject to the provisions of subsection (4), the Director of Investigation may, by notice in writing served on a parliamentarian, public official or any other person who, in his opinion, is able to give assistance in relation to the investigation of any matter pursuant to this Act, to furnish such information and produce any document or thing in connection with such matter as may be in the possession or under the control of that parliamentarian, public official or other person.

(2) For the purpose of an investigation under this Act, the Director of Investigation 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.

(3) Any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document, paper or thing imposed on any person—

- (a) by or under the Official Secrets Act, 1911 to 1939 of the United Kingdom (or any Act of the Parliament of Jamaica replacing to Jamaica); or
- (b) 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 Director of Investigation for the purpose of an investigation; and accordingly, no person shall be liable to prosecution for an offence under the Official Secrets Act, 1911 to 1939 or such Act of Parliament of Jamaica or any other law, by reason only of his compliance with a requirement of the Special Prosecutor under this Act.

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

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

Restriction
on disclosure
of certain
matters.

- (a) gives notice that the disclosure by the Office of any document or information specified in the notice, or any class of document or information so specified would—
 - (i) involve the disclosure of 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 Special Prosecutor or any employee of the Office shall not communicate to any person for any purpose any document or information specified in the notice, or 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 document or thing would prejudice the security or defence of Jamaica, the Office 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 Office.

Powers of Entry, etc., Privilege and Confidentiality

Power to enter premises and retain documents.

50.—(1) The Director of Investigation or an authorized officer may, as the case may be, at any time, for the purpose of an investigation—

- (a) enter and inspect any premises occupied or used by a public body, parliamentarian or public official in that capacity;
- (b) inspect any document or other thing in or on the premises; and
- (c) take copies of any document in or on the premises.

(2) The public body, parliamentarian or public official shall make available to the Director of Administration or authorized officer such facilities as are necessary to enable the powers conferred by this section to be exercised.

Privilege.

51.—(1) Except in the manner specified under this Act, no proceedings whatsoever shall lie against the Office or any person authorized for anything done, reported or said by him in the performance of his functions under this Act.

(2) Anything said or information supplied or any document or thing produced by any person for enquiry by the Office under this Act, shall be absolutely privileged.

(3) For the purposes of the *Defamation Act*, any report made by the Office or any person concerned with the administration of this Act and any fair and accurate report thereon shall be deemed to be privileged.

Secrecy of information.

52.—(1) The Office and every person concerned with the administration of this Act shall, subject to subsection (2), 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 Director of Investigation or any person aforesaid in proceedings for an offence under section 22 of this Act or under the *Perjury Act*, by virtue of section 17(2) of that Act;

- (b) which the Director of Investigation thinks it necessary to make in the discharge of his functions,

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

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

Reports

53.—(1) The Special Prosecutor shall, not more than four months after the end of each financial year or within such longer period as the Minister may, in special circumstances approve, cause to be made and transmit to the Minister a report dealing generally with the activities of the Office during the preceding financial year which shall contain the information set out in the Fourth Schedule.

Report to
Minister

Fourth
Schedule.

(2) The Minister shall cause a copy of the report to be laid in the House of Representatives and the Senate.

PART IV. Provisions relating to Statutory Declarations

54.—(1) Every person who, on or after the appointed day, is a parliamentarian or public official shall, subject to the provisions of this section, furnish to the Director of Administration a statutory declaration of his assets and liabilities and his income in the form set out as Forms A and B, respectively, in the Fifth Schedule.

Duty of
parlia-
mentarians
and public
officials to
furnish
statutory
declaration.
Fifth
Schedule.
Forms A and
B.

(2) The Special Prosecutor, Director of Administration, Director of Investigation, and every person employed to the Office shall furnish a statutory declaration to the committee established for that purpose under subsection (15).

(3) Subsection (1) shall not apply to a public official who is in receipt of total emoluments less than the amount prescribed by the Minister, subject to negative resolution of the House of Representatives

(4) Notwithstanding subsection (3), regulations made under section 83 may contain provisions requiring public officials who occupy such posts as are prescribed to furnish a statutory declaration pursuant to subsection (1).

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

(6) The particulars required to be furnished under subsection (5) shall be limited to assets held by the spouse or child (as the case may be) in trust for, or as agent of, the declarant—

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

(7) Nothing in subsection (6) shall be construed as precluding the Director of Administration from requiring from a declarant any additional particulars the Director of Administration may think fit.

(8) Subject to subsection (9), a statutory declaration pursuant to subsection (1) shall be furnished—

- (a) subject to paragraph (b), in the case of a person elected or appointed, as the case may be, as a parliamentarian, within three months from the date of such election or appointment, as the case may be; and thereafter—
 - (i) on the 31st day of December in each year during any part of which he remains a parliamentarian; and

- (ii) at the end of twelve months from the date on which he ceases to be a parliamentarian,

so, however, that a declaration required to be made on the 31st day of December in any year shall be deemed to comply with the requirements of this subsection if it is made on the 31st day of March next following that date;

- (b) in the case of a person elected or appointed as a parliamentarian, as the case may be, after the dissolution of Parliament who was a parliamentarian immediately prior to such dissolution and had furnished all such declarations required up to that time shall furnish the next such declaration on the 31st day of December of the year in which the dissolution occurred and thereafter on the 31st day of December in each year during any part of which he remains a parliamentarian;
- (c) in the case of a person who is a public official on that date, including public officials referred to in subsection (4)—
 - (i) within three months after the date of appointment of a person as a public official; or
 - (ii) within three months after the date on which the emoluments of a public official become equivalent to or in excess of the prescribed amount,

and thereafter on the 31st day of December in each year during any part of which he remains a parliamentarian or a public official, or at such other intervals as the Office may direct by notice published in the *Gazette*.

(9) The Director of Administration may—

- (a) at any time in writing, require any public official or parliamentarian to furnish a statutory declaration;
- (b) by notice published in the *Gazette*, require such categories of public officials as are specified in the notice, to furnish a statutory declaration within the period so specified,

and the powers conferred by this paragraph may be exercised subject to such exceptions or conditions as the Office may specify in the notice.

(10) Where a person ceases to be a public official, including a public official referred to in subsection (4), he shall furnish a statutory declaration at the end of twelve months from the date on which he so ceases.

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

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

(13) A first declaration furnished by a parliamentarian under subsection (1) shall include particulars of all the assets, liabilities and income of the parliamentarian as at the date of his election or appointment, as the case may be.

(14) The Director of Administration may, if it thinks necessary for the purpose of carrying out any investigation under this Act, request that information be supplied to it by—

- (a) any public body;
- (b) a Commissioner as defined in section 2 of the *Revenue Administration Act*;
- (c) a bank licensed under the *Banking Act*;
- (d) a financial institution licensed under the *Financial Institutions Act*;
- (e) a building society registered under the *Building Societies Act*;
- (f) a society registered under the *Co-operative Societies Act* or the *Industrial and Provident Societies Act*, as the case may be; or

(g) a person registered under the Public Accountancy Act.

(15) There shall be constituted for the purpose of this section, a committee consisting of—

- (a) the Auditor-General;
- (b) a member of the Privy Council; and
- (c) a retired judge of the Supreme Court or the Court of Appeal who shall be the chairman.

(16) The committee constituted under subsection (15) shall—

- (a) receive and examine the declarations of the Special Prosecutor, the Director of Administration, the Director of Investigation, other prosecutors, officials and employees of the Office;
- (b) audit the operations of the Office for the purpose of monitoring compliance with law;
- (c) deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Office, the Special Prosecutor, the Director of Administration, the Director of Investigation, other prosecutors, officials and employees of the Office;
- (d) deal with (by reports and recommendations) delay in the conduct of investigations;
- (e) assess the effectiveness and appropriateness of the procedures of the Office relating to the legality or propriety of its activities; and
- (f) notify the Director of Public Prosecutions of the existence or possible existence of corrupt conduct,

and for the purpose of this subsection shall exercise similar powers as are conferred upon the Office under this Act.

(17) In this section, “assets” does not include such gifts as may be prescribed or received by a parliamentarian or public official from such relatives of that parliamentarian or public official as may be prescribed.

(18) The committee constituted under subsection (15) shall regulate its own proceedings.

Expenses incurred in preparation of declaration, etc., tax deductible.

55. For the purposes of subsection (1) of section 13 of the Income Tax Act, any disbursement and expenses incurred in a year of assessment by a parliamentarian or a public official in connection with the preparation of a statutory declaration or other document required to be furnished by him for the purposes of this Act shall be deemed to be made or incurred by him wholly and exclusively in acquiring his income for that year of assessment.

Office may require further information.

56. Where the Office, upon examination of a statutory declaration furnished pursuant to section 59, is of the opinion that further information is necessary, it may, in writing request the parliamentarian or public official concerned to furnish such other documents, information, or otherwise as may be specified, within such time as may be specified.

Offences relating to declaration.

57.—(1) Any person who—

- (a) fails, without reasonable cause, to furnish to the Director of Administration a statutory declaration which he is required to furnish in accordance with section 54;
- (b) knowingly makes any false statement in the statutory declaration;
- (c) fails, without reasonable cause, to give any information as the Office may require under this Act;
- (d) fails, without reasonable cause, to attend an enquiry being conducted by the Investigation Division under section 59 or knowingly gives false information at such enquiry,

commits an offence, and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred thousand dollars, or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(2) Where the offence involves the deliberate non-disclosure of the property of a parliamentarian or public official the Court may, subject to determining the beneficial interest of innocent third parties, in addition to the imposition of a fine or term of imprisonment, or both—

- (a) if the property involved is situated within Jamaica, declare that it be forfeited to the Crown; or

- (b) if the property involved is situated outside Jamaica, order that an amount equivalent to the value of the property (the value to be assessed as directed by the Court), be paid by the parliamentarian or public official to the Crown.

(3) Payment of all sums due to the Crown pursuant to subsection (2)(b) may be enforced in like manner as a debt due to the Crown and any proceedings thereof on behalf of the Crown may be taken summarily in a Resident Magistrate's Court, without limit of amount.

(4) In considering whether an order for the forfeiture of the property of a parliamentarian or public official should be made under subsection (2)(a), the Court shall have regard to the rights and interests, if any, of third parties in that property.

(5) A person who claims an interest in any property referred to in subsection (4) may apply to the Court for an order under subsection (6)—

- (a) during the proceedings for the offence referred to in subsection (2); or
- (b) within a period of six months after the day on which a forfeiture order is made in respect of that property or such longer period as the Court may, having regard to all the circumstances, allow.

(6) Where an application is made under subsection (5) the Court shall take account of the representations made by the applicant in relation to the property and shall make an order declaring the nature and extent of the applicant's interest, if any, in the property.

(7) The Court may—

- (a) where subsection (5)(a) applies, decide that the property, or the part thereof to which the applicant's interest relates, should not be forfeited to the Crown; or
- (b) where subsection (5)(b) applies, order that—
 - (i) the property, or the part thereof to which the applicant's interest relates, be returned to the applicant; or

- (ii) an amount equal to the value of the applicant's interest, as declared in the order under subsection (5), be paid to the applicant.

Offences
relating to
obstruction.

58.—(1) A person commits an offence if he—

- (a) refuses the Director of Investigation or any authorized officer in the execution of his duty under this Act access to any place;
- (b) assaults, obstructs, hinders or delays the Director of Investigation or any authorized officer in the execution of his duty under this Act in effecting any entrance which he is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act;
- (c) fails to comply with any lawful demands, of the Director of Investigation or any authorized officer in the execution of his duty under this Act; or
- (d) refuses or neglects to give any information which may reasonably be required of the person and which he has in his power to give.

(2) A person who contravenes subsection (1) is liable—

- (a) on summary conviction in a Resident Magistrate's Court, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court, to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

PART V. Investigation Procedure

Hearings and
enquires of
the Office.

59. The Director of Investigations or any investigation authorized by him in that behalf may hold all hearings and enquiries of the office relating to statutory declarations furnished pursuant to section 51(1).

60.— (1) Where the Director of Administration, upon examination of a statutory declaration furnished pursuant to section 54(1), determines that a hearing or enquiry is necessary for the purposes of this Act he may, in writing, request the Director of Investigation to require the parliamentarian or public official to attend on the Investigation Division, at such time as may be specified by the Director of Investigation, to be heard by the Director of Investigation on any matter relating to the declaration.

Director of Administration may cause Investigation Division to conduct enquiries.

(2) The Director of Investigation may summon before it and examine on oath—

- (a) a person who has made a complaint, a referral or representation to it; or
- (b) any parliamentarian, public official or any other person who, in the opinion of the Director of Investigation, 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) A parliamentarian, public official or other person required to attend on the Investigation Division pursuant to this section may—

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

61.— (1) Any summons to attend, to give evidence or to produce documents before the Investigation Division shall be served on the person required to attend or to produce the documents and shall be issued under the hand of the Director of Investigation or any person designated by the Director of Investigation.

Issue of summons.

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

Fifth Schedule. Form C.

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

Witness may be examined on oath.

62. The Director of Investigation may—

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

Duty and privileges of witness.

63.—(1) Subject to subsection (2), all persons summoned to attend and give evidence or to produce any paper, book, record or document before the Director of Investigation—

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

(2) The Director of Investigation may disallow the whole or any part of such expenses in any case, if it thinks fit.

(3) Any person who—

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