

L.N. 194 of 2020

**PUBLIC ADMINISTRATION ACT
(CAP. 595)**

International Protection Agency (Establishment) Order, 2020

IN EXERCISE of the powers conferred by article 26 of the Public Administration Act, the Prime Minister, has made the following Order:-

1. (1) The title of this Order is International Protection Agency (Establishment) Order, 2020. Citation and commencement.

(2) This Order shall come into force on such date or dates as the Minister responsible for immigration may by notice in the Gazette establish, and different dates may be so established for different provisions or different purposes of this Order.

2. In this Order, unless the context otherwise requires: Interpretation.

"the Act" means the Public Administration Act; Cap. 595.

"Agency" means the International Protection Agency established by article 3;

"beneficiary of international protection" means the same as the meaning given to it by article 2 of the Refugees Act; Cap. 420.

"Chief Executive Officer" means the same as the meaning given to it by article 4 and includes to the extent and authority given, any other person temporarily authorised in that behalf by the Minister;

"international protection" means the same as the meaning given to it by article 2 of the Refugees Act; Cap. 420.

"Minister" means the Minister responsible for immigration;

"person eligible for subsidiary protection" means the same as the meaning given to it by article 2 of the Refugees Act; Cap. 420.

"refugee" means the same as the meaning given to it by article 2 of the Refugees Act. Cap. 420.

Establishment
of the
International
Protection
Agency.

3. (1) There shall be an Agency, that shall be known as the International Protection Agency hereinafter referred to as "the Agency".

(2) The Agency shall be a body corporate having a distinct legal personality and shall be capable of entering into contracts, of employing personnel, of acquiring, holding and disposing of any kind of property for the purposes of its operations and of suing and being sued:

Provided that and without prejudice to the provisions of article 39 of the Act, the Minister responsible for immigration shall be entitled to give directions in writing and the Agency shall be bound to observe such directives.

(3) The legal and judicial representation of the Agency shall be vested in the Head International Protection Agency who shall have the overall responsibility of the running of the Agency.

(4) The Agency shall be subject to the provisions of the Act and its employees shall uphold and promote public service values and those specific to the role of the Agency.

Appointment
and duties of the
Head
International
Protection
Agency and
Deputy to the
Chief Executive
Officer.

4. (1) There shall be a Chief Executive Officer appointed by the Prime Minister, who shall have the overall responsibility for the day-to-day running of the International Protection Agency.

(2) The Chief Executive Officer shall report on a regular basis to the Minister on the day-to-day running of the International Protection Agency and related matters.

(3) There shall be such number of Deputy to the Chief Executive Officer of the International Protection Agency (hereinafter referred to as Deputy to the Chief Executive Officer) as the Prime Minister may by notice in the Gazette from time to time determine.

(4) The Deputy to the Chief Executive Officer shall be appointed by the Prime Minister from among public officers and from among persons who in each case, in the opinion of the Prime Minister, have knowledge and experience in matters relating to refugees.

(5) The Deputy to the Chief Executive Officer shall under the general direction of the Chief Executive Officer have such functions and powers as are conferred on the Head by this Act, and are assigned to each of them by the Head, including the function and power to examine applications for refugee status, and any reference in this Act, other than in this article, to the Head shall be deemed to include also reference to a Deputy Head in the exercise of any function assigned to

him by the Head.

5. (1) The Agency shall enter into an Agency Performance Agreement with the Minister with a view to determining the funding of the Agency, the targets it is expected to meet, as well as the tasks to be addressed and achieved.

Agency
Performance
Agreement.

(2) The Agency Performance Agreement may cover one (1) or more years and shall be renewable in accordance with such directives and guidelines as the Principal Permanent Secretary may issue governing the development of the Agency Performance Agreement.

6. (1) The Agency shall draw up yearly estimates for each financial year and submit them for consideration of the Minister in accordance with norms and practices established by the Minister responsible for finance.

Finances.

(2) The Agency shall be paid by the Government out of the Consolidated Fund such sums as the House may from time to time authorise to be appropriated to meet the cost of its operational and capital expenditure identified in its financial business plan.

(3) In the conduct of its affairs, the Agency may levy fees for services rendered by it which shall as far as possible, be used for the on-going upkeep and maintenance of the Agency:

Provided that no fees shall be levied in respect of the filing of an international protection application or for the issuing of documentation attesting the holder's status as an asylum seeker or a beneficiary of international protection. Fees may only be levied on the re-issue of such documents in the event that the holder has lost or mislaid the documents originally issued to him.

(4) The Minister may, after consultation with the Minister responsible for finance give such directives with a view to applying any excess of revenue over expenditure to the formation of reserve funds that shall be used for the purposes of the Agency.

(5) Without prejudice to the generality of the powers given by the Minister under sub-article (4), any direction given by the Minister may order the transfer to the Government, or the application in such manner as may be specified in the directive, of any part of the fees, rates and other payments levied in accordance with sub-article (3) or any such excess as aforesaid.

(6) Any funds of the Agency not immediately required to meet expenditure may be invested in such manner as may from time to time be approved by the Minister with the concurrence of the Minister

responsible for finance.

Accounts and
audit.

7. (1) The Agency shall keep proper books of account and other records in respect of its operations and shall cause to be prepared a statement of accounts in respect to each financial year.

(2) Such accounts shall be audited by an auditor or auditors appointed for this purpose by the Agency with the concurrence of the Minister responsible for finance and the Minister:

Provided that the Minister responsible for finance, may after consultation with the Minister, require moreover that the books and accounts of the Agency be audited or examined by the Auditor General who shall for this purpose have the powers to carry out such physical checking and any other certification as he may deem necessary.

Annual reports.

8. (1) The Agency shall, not later than six (6) weeks after the end of each financial year, present to the Minister a report dealing generally with the activities of the Agency during that financial year and containing an audited statement of accounts together with such information relating to the proceedings and workings of the Agency to fulfil its functions and future plans.

(2) The report mentioned in sub-article (1) shall be laid on the Table of the House by the Minister not later than six (6) weeks after its receipt, or where the said House is during the period not in session, not later than the second week after the House resume its sittings.

Staff
appointments.

Cap. 595.
Cap. 420.

9. (1) Without prejudice to the other provisions of this Order, the appointment of officers and other employees of the Agency shall be made by the Agency. The terms and conditions of employment shall be established by the Agency with the concurrence of the Minister in accordance with the provisions of the Public Administration Act, the Refugees Act and any subsidiary legislation made thereunder.

(2) The Agency shall appoint and employ, at such remuneration and upon such terms and conditions as it may in accordance with sub-article (1) determine, such officers and employees of the Agency as may be necessary for the due and efficient discharge of the function of the Agency in compliance with established Government procedures:

Cap. 452.

Provided that all employees having an employment contract with the Office of the Refugee Commissioner on the date of the coming into force of this Order shall be taken over by the Agency in terms of article 38 of the Employment and Industrial Relations Act

and become employees of the Agency.

10. (1) The Prime Minister may at the request of the Agency from time to time direct that any public officer shall be detailed for duty with the Agency in such capacity and with effect from such date as may be specified in the said directive: Detailing of public officers.

Provided that, the Prime Minister may at any time revoke such directive.

(2) When any public officer is detailed for duty with the Agency, such officer shall, during the time in which such directive is in force, be under the administrative direction and control of the Agency but shall otherwise remain, and retain all rights and duties as, a public officer, and for the purposes of any law relating to Government service pensions, service with the Agency shall be deemed to be service with the Government.

(3) Any public officer serving in the Agency on the date of the coming into force of this Order shall from such date be deemed to have been detailed by directive of the Prime Minister for duty with the Agency as a Government agency under article 8, and thereupon the provisions of the same article shall apply to such officer who shall continue to be detailed for duty as aforesaid until such time as the Prime Minister may revoke such directive as provided in sub-article (1):

Provided that when the Prime Minister revokes any directive as aforesaid, the officer in whose respect the directive is revoked shall retain such grade in the public service which he held immediately before being detailed for duty with the Agency as a Government agency by virtue of this Order or shall occupy such other higher grade which he would have occupied had he not been detailed as aforesaid.

11. (1) When anything has been commenced by or under the authority of the Government prior to the date of the coming into force of this Order, and such thing relates to any one (1) of the properties or undertakings or any right or liability transferred to the Agency by or under this Order, such thing may be carried on and completed by or as authorised by the Agency. Transitory provisions.

(2) When, immediately before the coming into force of this Order, any legal proceedings are pending to which the Government is or is entitled to be a party, and such proceedings are related to any one (1) of the properties or undertakings, or any right or obligation or liability transferred by or under this Order to the Agency, the Agency shall, as from the aforesaid date, be substituted in such proceedings for

the Government, or shall be made a party thereto in like manner as the Government could have become, and such proceedings shall not be abated by reason of the substitution.

Amends
generally the
Laws of Malta.

12. The Laws of Malta, shall be amended as follows:

(a) any reference in any other law to "Commissioner" meaning the Refugee Commissioner and Commissioner of Refugees shall be read and construed, after the coming into force of this Order, as a reference to the "Chief Executive Officer";

(b) any reference in any other law to the "Office of the Refugee Commissioner" shall be read and construed, after the coming into force of this Order, as a reference to the "International Protection Agency"; and

(c) any reference in any other law to the "Assistant Commissioners" meaning the Assistant Refugee Commissioners shall be read and construed, after the coming into force of this Order, as a reference to "Deputy to the Chief Executive Officer of the International Protection Agency".

Amends the
Fourth Schedule
to the Public
Administration
Act.
Cap. 595.

13. In the Fourth Schedule to the Public Administration Act, immediately after the item "Valletta Cultural Agency", there shall be added the following:

(a) under the heading "Agency" thereof, the words "International Protection Agency"; and

(b) under the heading "Agency Function" thereof, the words "To receive, process and determine applications for international protection as well as ensuring an independent, fair and efficient asylum determination procedure".