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L.N. 31 of 2023

PUBLIC ADMINISTRATION ACT (CAP. 595)

Detention Services Agency (Establishment) Order, 2023

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

Citation and commencement.

1. (1) The title of this order is the Detention Services Agency (Establishment) Order, 2023.

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

Interpretation.

2. In this order, unless the context otherwise requires:

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

"Agency" means the Detention Services Agency as established by article 3;

"Agreement" means the agency performance agreement as provided in article 5;

"Appointment Commission" means a Commission made up of three (3) members appointed by the Minister, from among public officers and from among persons who, in the opinion of the Minister, have knowledge and experience in matters relating to detained persons;

"Chief Executive Officer" shall have the same meaning as assigned to it in article 4;

"Minister" means the Minister responsible for detention services;

"officer" means an officer of a detention centre and includes members of the Armed Forces of Malta, officers of the Malta Police Force, prisons officers serving with the Correctional Services Agency and officers of the detention services;

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"Permanent Secretary" means the Permanent Secretary within the Ministry responsible for detention services;

"Principal Immigration Officer" shall have the same meaning as assigned to it in article 3 of the Immigration Act.

Cap. 217.

Establishment and functions of the Detention Services Agency.

3. (1) There shall be established an Agency, to be known as the Detention Services 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 purpose of its operations and of suing and of being sued and to which any function or operation of Government may be assigned under this or any other law:

Provided that and without prejudice to the provisions of article 39 of the Act, the Minister shall be entitled to give directions in writing and the Agency and its Chief Executive Officer shall be bound to observe such directives.

(3) The legal and judicial representation of the Agency shall be vested with the Chief Executive Officer or his representative.

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

(5) The Agency shall be responsible for the confinement of third country nationals who entered Malta irregularly or are irregularly present in Malta and who have been issued with an order prescribing their detention in terms of the Immigration Act or subsidiary legislation thereunder or any other legislation providing for administrative detention or confinement.

Cap. 217.

Appointment and duties of the Chief Executive Officer and Deputies 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 Agency.

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

(3) There shall be such number of Deputies to the Chief Executive Officer of the Agency (hereinafter referred to as Deputies to the Chief Executive Officer) as the Prime Minister may determine, from time to time, by means of a Government notice published in the Gazette.

(4) The Deputies to the Chief Executive Officer shall be

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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 detention.

(5) The Deputies 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 Chief Executive Officer by virtue of this order and which are assigned to each of them by the Chief Executive Officer. Any reference in this order to the Chief Executive Officer shall be deemed to include also a reference to the Deputies to the Chief Executive Officer in the exercise of any function and power assigned to them by the Chief Executive Officer.

Agreement.

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

(2) The Agreement may cover one 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 an Agreement.

Finances.

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.

(2) The Agency shall be paid by the Government out of the Consolidated Fund such amounts 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 centres under its responsibility.

(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 to be used for the purposes of the Agency.

(5) Without prejudice to the generality of the powers given by the Minister in accordance with sub-article (4), any directive 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

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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 be approved, from time to time, 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 prepare a statement of accounts in respect of each financial year.

(2) The said accounts shall be audited by 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 certifications 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 resumes its sittings.

Staff appointments.

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 Act, the Immigration Act and its subsidiary legislation.

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(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:

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Provided that all employees having an employment contract with the detention services on the date of the coming into force of this order will be taken over by the Agency in terms of article 38 of the Employment and Industrial Relations Act and become employees of the Agency. Cap. 452.

Detailing of public officers.

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 direction:

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

(2) Where any public officer is detailed for duty with the Agency, such officer shall, during the time in which such direction 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 detailed for duty as provided in sub-article (1) shall continue to be detailed for duty as aforesaid until the Prime Minister may revoke such direction:

Provided that where the Prime Minister revokes any direction as aforesaid the officer in whose respect the direction 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 article or shall occupy such other higher grade which he would have occupied had he not been detailed as aforesaid.

Transitory provisions.

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 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.

(2) Where, 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 of the properties or undertakings, or any right or liability transferred by or under this order, the Agency shall, as from the aforesaid date, be substituted in such proceedings for the Government, or shall be made a party thereto in the same manner as the Government could have

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become, and such proceedings shall not abate by reason of the substitution.

Amends the Fourth Schedule to the Act.

12. In the Fourth Schedule to the Act, immediately after the words "International Protection Agency" there shall be added the following:

"Detention Services Agency	To be responsible for the confinement of third country nationals who entered Malta irregularly or are irregularly present in Malta, and who have been issued with an order prescribing their detention".

References in the Laws of Malta.

13. Any reference in any other law to "Head", meaning the Head Detention Services" or "Detention Services" or "Detention Service" meaning the Department responsible for Detention Services, shall be read and construed, after the coming into force of this order, as a reference to the "Chief Executive Officer of the Detention Services Agency" and "Detention Services Agency" respectively.

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