

CHAPTER 245

THE EXECUTIVE AGENCIES ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 245

THE EXECUTIVE AGENCIES ACT

An Act to make provisions enabling the establishment and operation of semi-autonomous Executive Agencies within the ambit of Government Ministries for the purpose of providing public services in selected areas in a more efficient and effective manner and for related matters.

[11th December, 1997]
[G.N. No. 83 of 2003]

Acts Nos.
30 of 1997
18 of 2002

PART I
PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Executive Agencies Act.

Interpretation
Act No. 18
of 2002 s. 20

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

"chief executive" means the chief executive, however designated, of an executive agency;

"department" in relation to a Ministry of the Government, includes any division or unit, by whatever name called, of that Ministry;

"Executive Agency" or "Agency" means an Executive Agency established under this Act;

"financial year" means, in respect of the first accounting period of an Executive Agency, a period starting from the date of the establishment of the Executive Agency concerned and ending on the 30th June of the following year, and for any subsequent accounting period, the period of twelve months ending on the 30th June;

"Minister" in relation to an Executive Agency, means the Minister responsible for the department in respect of which that Agency is established;

"Ministerial Advisory Board" means an Advisory Board constituted under section 6;

"Permanent Secretary" in relation to an Executive Agency, means the Permanent Secretary of the Ministry under which the Agency is established;

"special fund" means a special fund established by an Order made under section 12 of the Public Finance Act in respect of an Executive Agency.

**PART II
POWER TO ESTABLISH EXECUTIVE AGENCIES, THEIR
FUNCTIONS AND OPERATIONAL PRINCIPLES**

Power of
Ministers to
establish
Executive
Agencies Act
No. 18 of
2002 s. 21

3.-(1) Where a Minister is of the opinion that, having regard to the provisions of this Act, it is appropriate to establish an Executive Agency for the purpose of carrying out the functions of a department of his Ministry he may, after obtaining appropriate authority, by Order published in the Gazette, establish such an Agency.

(2) Before a Minister establishes an Executive Agency, he shall take into account whether the establishment of the Agency will achieve the following objectives:

- (a) to improve the delivery of public service;
- (b) to create an environment conducive to efficient and effective management;
- (c) to improve the quality of the services hitherto provided by the department concerned; and
- (d) to promote the potential for the continuous improvement of the services provided by the proposed Executive Agency.

(3) An Order made under subsection (1) shall specify the department in relation to which the Agency is established and may be made in respect of more than one department of the same Ministry or, with the approval of another Minister concerned, may be made so as to include a department of another Ministry having similar functions, and it shall set out, in a Framework Document, the functions aims, role, objectives, authority, performance standards and any other particulars of the Agency as approved by the Chief Secretary taking into account any existing laws.

(4) If, at any time after the establishment of an Executive Agency, the matters in respect of which it is established are assigned to another Ministry, the responsibility for the Agency under this Act shall, by virtue of this subsection, vest in that other Ministry.

(5) Without prejudice to any other provisions of this Act, a Minister may, with the approval of the Minister responsible for the public service establish an Executive Agency under an Order containing such modifications to the provisions of this Act relating to the structural organisation of Executive Agencies as will facilitate the more effective discharge of its functions.

- (6) Notwithstanding any other law, an Executive Agency shall—
 - (a) be capable of entering into contracts in its own name;
 - (b) be capable of suing and being sued in its own name only in contract; and in that respect all laws applicable to legal proceedings other than Government Proceedings Act, 1967,

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- shall apply to legal proceedings to which the Agency is a party;
- (c) in all matters relating to contract, not be competent to sue or be sued in its own name; however, any legal proceedings which, but for this paragraph, would have been instituted by or against the executive agency, may only be instituted by or against the Government in accordance with the Government Proceedings Act;
 - (d) subject to section 13, in its own name, have power to borrow money and to acquire, hold or dispose of movable property;
 - (e) may do all other things which are necessary or desirable for the efficient and effective discharge of its functions, including the establishment of consultative arrangements necessary to secure the views of the users of its services.

Functions of Executive Agencies and operational principles

- 4.**-(1) Subject to this Act, an Executive Agency shall perform such functions as are conferred upon it under subsection (3) of section 3.
- (2) In the performance of its functions, an Executive Agency shall observe the following principles:
- (a) to provide its services to its customers and the public in the most efficient and effective manner;
 - (b) to manage its affairs in a businesslike and cost-effective manner and in accordance with modern management practices and techniques and, in particular, to apply to its operations the best standards of financial management and accounting; and
 - (c) to ensure that its operations are designed for the provision of the best service to its customers and to maintain a high degree of responsiveness to their needs.

PART III

ROLE OF PERMANENT SECRETARIES

Role of Permanent Secretaries Act No. 18 of 2002 s. 22

- 5.**-(1) The Permanent Secretary of a Ministry under which an Executive Agency is established shall be responsible for the strategic management of the Agency and, for that purpose, may give directions of a general nature to the Chief Executive but shall not direct, or participate in, the day-to-day management of the Agency's affairs.
- (2) Except as provided in subsection (6) of section 9, the Permanent Secretary shall be responsible for the discipline and control of the Chief Executive.

PART IV

MINISTERIAL ADVISORY BOARDS

Ministerial Advisory Boards Act No. 18 of 2002 s. 23

- 6.**-(1) For each Executive Agency, the Minister responsible for the Agency shall establish a Ministerial Advisory Board consisting of the Permanent Secretary as Chairman, and not more than eight other members, all of whom shall be appointed by the Minister from among persons, whether

or not in the public service, who possess the necessary qualifications and expertise in respect of the matters for which the Agency is established.

(2) In appointing the members of an Advisory Board, the Minister shall have due regard to the need to include in its membership persons who are not in the public service, and persons who are representative of the interests of the Agency's customers.

(3) A member of an Advisory Board, other than an ex officio member, shall hold office for a period not exceeding three years or for such shorter period as may be specified in his instrument of appointment.

(4) The Chief Executive shall attend all meetings of the Board and may participate in its deliberations, except in matters affecting his own interests, but he shall have no right to vote.

Functions of Ministerial Advisory Boards Act No. 18 of 2002 s. 24

7. The function of a Ministerial Advisory Board is to advise the Minister on the following:

- (a) the development and maintenance of a strategic framework;
- (b) the objectives of the Agency;
- (c) the acceptability of the Chief Executive's plans and associated budgets;
- (d) the setting of priorities and annual performance targets for the Agency;
- (e) the Agency's annual reports and accounts;
- (f) the evaluation of the Agency's performance; and
- (g) any other matter provided for in this Act.

Meetings and procedure of Advisory Boards

8. An Advisory Board shall hold its meetings as often as the Chairman may determine, but not less than twice in each financial year, and without prejudice to the power of the Minister responsible for the Public Service to make rules for the conduct of its meetings, it shall determine its own procedure.

PART V CHIEF EXECUTIVE AND EMPLOYEES

Appointment and tenure of Chief Executive and employees Act No. 18 of 2002 s. 25

9.-(1) An Executive Agency shall have a Chief Executive appointed by the Minister on the advice of the Public Service Commission from among persons who possess the necessary qualifications, experience and competence to manage, efficiently and effectively, the affairs of the Agency in accordance with modern management standards and he shall hold office on such terms and conditions of service as the Ministry may specify.

(2) For the purpose of assisting the Public Service Commission to select the best candidate for appointment as Chief Executive, the Ministerial Advisory Board shall submit to the Commission a short list of candidates who submit their applications for such office under an open and competitive system, together with an objective assessment of the suitability of each candidate; and the Advisory Board shall be entitled to be represented, either

by one of its members or by any other person appointed by the Board for the purpose, at the proceedings of the Commission for selecting a candidate to be appointed.

(3) The Chief Executive Agency and, subject to strategic management by the Permanent Secretary as provided for in this Act, shall be responsible for the day-to-day operations of the Agency, the proper management of its funds, property and business and for the personnel management, organisation, control and discipline of the employees of the Agency.

(4) The Chief Executive shall—

(a) be the Agency's Accounting Officer with such financial responsibilities as may be provided for in its Framework Document, the Order establishing the special fund for the Agency under section 12 of the Public Finance Act and regulations made or directions issued under that section by the Minister responsible for finance;

(b) perform his functions in accordance with an Annual Performance Agreement concluded between him and the Permanent Secretary.

(5) The Chief Executive shall hold office for five years or for such shorter period as may be specified in his instrument of appointment and shall be eligible for re-appointment.

(6) The Minister may, after consultation with the Public Service Commission, and on the recommendation of the Permanent Secretary, terminate the appointment of the Chief Executive for—

(a) misconduct; or

(b) failure or inability to perform the functions of his office arising from infirmity of body or mind; or

(c) incompetence.

(7) A Chief Executive who is aggrieved by the decision of the Permanent Secretary made under subsection (2) of section 5 in respect of any disciplinary action against him or in respect of the decision of the Minister made under subsection (5) of section 9 to terminate his appointment may, in accordance with such procedure as may be prescribed, appeal to the Minister from the decision of the Permanent Secretary or to the Prime Minister from the decision of the Minister, as the case may be.

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Appointment
of employees

10.-(1) The Chief Executive shall appoint such number of employees as he may consider necessary or desirable for the efficient and effective discharge of the functions of the Agency and on such terms and conditions of service as he may determine in accordance with any directions issued by the Minister responsible for the public service.

(2) With effect from the date on which an Order under section 3 establishing an Executive Agency comes into force, a person who, on that date holds a public office in a department in relation to which the Agency is established shall, except as may otherwise be determined by the Chief

Executive in respect of any such person, become an employee of the Agency; but the provisions of this subsection shall not be construed as affecting the appointment to the public service of any person who, by virtue of this subsection, does not become an employee of the Agency nor his eligibility to continue to hold that office

(3) The Chief Executive shall be responsible for the discipline and control of the employees of the Agency and may terminate the appointment of an employee for—

- (a) misconduct; or
- (b) failure or inability to perform the functions of his office arising from infirmity of body or mind; or
- (c) incompetence.

(4) An employee of an Executive Agency who is aggrieved by the decision of the Chief Executive under subsection (3) in respect of any disciplinary action against him or the termination of his appointment may, in accordance with such procedure as may be prescribed, appeal to the Permanent Secretary against the decision.

Exemption from personal liability

11. An employee of an Executive Agency shall not, in his personal capacity, be liable in civil or criminal proceedings in respect of any act or omission done or made in good faith in the performance of his functions.

PART VI FINANCIAL AND RELATED MATTERS

Funds of an Executive Agency Act No. 18 of 2002 s. 26

12.-(1) The funds of an Executive Agency shall consist of—

- (a) moneys received by the Agency for goods or services provided under the authority of this Act;
- (b) subject to subsection (2), such moneys as may be voted by Parliament for the purposes of the Agency;
- (c) any such other moneys borrowed, received by or made available to the Agency for the purposes of its functions.

(2) An Executive Agency shall—

- (a) perform its functions in accordance with modern commercial principles and shall ensure that, as far as possible, its revenue is sufficient to meet its expenditure properly chargeable to revenue;
- (b) charge and collect fees or commissions for the provision of any goods or services to enable it to meet its expenditure in accordance with its strategic framework.

(2A) For each Executive Agency the Minister responsible for finance shall establish a special fund in accordance with section 12 of the Public Finance Act.

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(3) All receipts, earnings and accruals of the special fund shall become the property of the Agency and, having regard to the capacity of the Agency to generate income from its own operations and its ability to be self-

financing, the financial implications of its strategic plans and its annual business plans and budgets, the Minister after consultation with the Minister responsible for finance may determine, in respect of each Agency, the amount of revenue which shall remain the property of the Agency and the amount of revenue which shall be treated as public funds and credited to the Exchequer account.

Borrowing,
etc., subject
to Minister's
approval Act
No. 18 of
2002 s. 27

13. An Executive Agency may borrow money or acquire or dispose of immovable property only with the approval of the Minister responsible for finance and upon such terms and conditions as the Minister may approve, either generally or in any particular case.

[s.12A]

Estimates of
income and
expenditure
and financial
control Act
No. 18 of
2002 s. 28

14.-(1) The Chief Executive shall prepare and, not less than three months before the end of each financial year, submit to the Permanent Secretary for his approval, strategic and business plans that include the estimates of income and expenditure for the next ensuing year and may, at any time before the end of a financial year, prepare and submit to the Permanent Secretary for approval any estimates supplementary to the estimates of a current year.

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(2) The Permanent Secretary shall submit to the Minister responsible for finance, the estimates of income and expenditure referred to in subsection (1) in order to enable the Minister to decide whether to approve the estimates and to lay them before the National Assembly as provided for in subsection (3) of section 12 of the Public Finance Act.

(3) The Chief Executive shall ensure that all payments out of the Agency's funds are correctly made and properly authorised and adequate control is maintained over its property and over the incurring of liabilities by the Agency.

[s. 13]

Accounts
and audit

15.-(1) An Executive Agency shall keep books of account and maintain proper records of its operations in accordance with commercial accounting standards.

(2) The accounts of an Executive Agency shall be audited by the Controller and Auditor-General or such other person registered as an auditor under the Accountants and Auditors (Registration) Act appointed for the purpose by the Controller and Auditor-General on such terms and conditions as the Controller and Auditor-General may determine.

[s. 14]

Annual
reports and
performance
agreements

16.-(1) The Chief Executive of an Executive Agency shall, within two months after the end of each financial year, submit to the Minister and the Permanent Secretary an annual report in respect of that year containing—

- (a) a copy of the audited accounts of the Agency, together with the auditor's report on those accounts;

- (b) a report on performance against key targets and any other related information;
- (c) a report on the operations of the Agency during that financial year; and
- (d) such other information as the Permanent Secretary may require.

(2) The annual report referred to in subsection (1) shall also contain the Annual Performance Agreement between the Permanent Secretary and the Chief Executive.

(3) The Minister shall cause a copy of the annual report of an Executive Agency to be laid before the National Assembly, within two months or at the next meeting of the National Assembly, after he has received the report.

[s.15]

PART VII MISCELLANEOUS PROVISIONS

Vesting of
property

17. All movable and immovable property, except any such property as the Minister may determine which immediately before the commencement of this Act is vested in the Government for the use of the department in relation to which an Executive Agency is established shall, on the date of commencement of an Order made under subsection (3) of section 3 and without further assurance, vest in the Agency subject to all interests, liabilities, charges, obligations and trusts affecting that property.

[s.16]

Regulations

18. The Minister responsible for the public service may make regulations for the carrying out of the purposes of this Act.

[s.17]