

## CARE AGENCY ACT 2009

### Principal Act

<b>Act. No. 2009-20</b>	<i>Commencement</i>	28.5.2009
	<i>Assent</i>	26.5.2009

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AN ACT TO MAKE PROVISION FOR THE DELIVERY OF SERVICES TO MEMBERS OF THE COMMUNITY WHO ARE, OR WHO ARE ADJUDGED TO BE, IN NEED OF SOCIAL CARE AND IN THAT REGARD TO ESTABLISH THE CARE AGENCY; AND TO TRANSFER THE FUNCTIONS OF BOTH THE SOCIAL SERVICES AGENCY AND THE ELDERLY CARE AGENCY TO THE CARE AGENCY; AND FOR MATTERS CONNECTED THERETO.

**Title and commencement.**

1. This Act may be cited as the Care Agency Act 2009 and comes into operation on the day of publication.

**Interpretation.**

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

“Agency” means the Care Agency established under section 3;

“Chief Executive Officer” means the chief executive of the Agency appointed under section 10;

“Elderly Care Agency” means the agency established under section 3 of the Elderly Care Agency Act, 1999;

“Minister” means the Minister with responsibility for social services;

“Social Services Agency” means the agency established under section 3 of the Social Services Agency Act 2002.

**Establishment of the Care Agency.**

3.(1) There is hereby established the Care Agency which shall consist of the following members—

- (a) the Minister, as the Chairman;
- (b) the Chief Executive Officer; and
- (c) a minimum of four other persons appointed by the Minister.

(2) Members of the Agency (other than a member referred to in paragraph (a) or (b) of subsection (1)) shall hold office for such period and upon such terms as the Minister may deem appropriate.

(3) If the Minister is satisfied that any member referred to in paragraph (c) of subsection (1)–

- (a) has been absent from three consecutive meetings of the Agency without reasonable excuse;
- (b) has become bankrupt;
- (c) has been convicted of a criminal offence and been sentenced to a term of imprisonment;
- (d) is incapacitated by physical or mental illness; or
- (e) is otherwise unable or unfit to discharge the functions of a member,

the Minister may, by notice in the Gazette, declare his office as a member of the Agency to be vacant and thereupon his office shall become vacant.

(4) A member who wishes to resign his office shall give three months prior written notice to the Agency.

(5) The Chairman or any member of the Agency, other than a member to which subsection (3)(b) to (e) applies, who ceases to be a member shall be eligible for re-appointment.

(6) The Minister shall appoint a person who is an employee of the Agency to be the Secretary of the Agency.

## **Agency to be body corporate.**

4.(1) The Agency shall be a body corporate with perpetual succession under the name of the Care Agency and shall have a common seal which shall be officially and judicially noted.

(2) The common seal of the Agency may only be affixed to an instrument in the presence of the Chairman or the Chief Executive Officer or other person authorised by the Minister for that purpose, and one other member of the Agency; the persons so present shall sign the instrument as witnesses to the sealing.

(3) The Agency may sue and be sued in its corporate name. Service of any process or notice on the Agency may be effected by leaving it at, or sending it by registered post to, the principal office of the Agency.

**Meetings and proceedings.**

5.(1) The quorum at all meetings of the Agency shall be three members in addition to the Chairman or other person presiding.

(2) The Agency shall meet at least once in every three months.

(3) At all meetings of the Agency the Chairman or, in his absence, such other member as the Agency may select shall preside.

(4) Any matters arising at a meeting of the Agency shall be decided through the agreement of the members present and where such agreement is not arrived at, a vote will be held in which the decision of the majority of the members present shall prevail, and in the case of an equality of votes, the person presiding shall have a second or casting vote.

(5) All orders and directions of the Agency shall be given under the hand of the Chief Executive Officer.

**Duties of the Agency.**

6.(1) It shall be the principal duty of the Agency to carry out the functions conferred upon it by this or any Act so far as practicable within the financial and other resources provided or available to it, and having regard to the policies of the Government.

(2) Without prejudice to the generality of the provisions of subsection (1), it shall be the duty of the Agency to do the following things in so far as it is mandated to do so by Government and the Government provides sufficient resources therefor—

- (a) to provide a comprehensive social care service for the community generally;
- (b) to provide a comprehensive service of care for the elderly including residential homes, nursing home, domiciliary care and day care services and facilities;
- (c) with the prior consent of the Chief Secretary of the Government to employ—
  - (i) a chief executive officer;
  - (ii) a finance and human resources director;

- (iii) a services safety and standards director;
- (iv) such appropriate staff as are considered necessary.
- (d) with the prior consent of the Chief Secretary of the Government to employ such persons (including advisors and consultants) as the Agency thinks fit for the proper discharge by the Agency of its functions;
- (e) to publish codes for regulating the terms of service, discipline and training of all persons employed by the Agency;
- (f) to administer and inspect all facilities provided by the Agency so as to ensure the effective and efficient operation of such facilities;
- (g) to ensure that all complaints made against the Agency or any employee or contractor of the Agency are properly investigated without delay;
- (h) to provide on request an advisory service to the Government of Gibraltar;
- (i) to prepare and implement schemes providing policies and plans designed to meet the present and anticipated future needs of social care service provision in Gibraltar and to secure continued services in the event of an emergency; and
- (j) to carry out such other duties as the Minister may from time to time direct.

## **Powers of the Agency.**

7.(1) The Agency shall have power to do all things necessary for the carrying out of its duties.

(2) The Agency may acquire any freehold or leasehold land required for the purposes of any of its duties and may dispose of any such land no longer required for such purposes.

(3) Without prejudice to the generality of the provision of subsection (1), the Agency may—

- (a) purchase, lease or otherwise acquire, and hold and dispose of any property (other than land acquired under subsection (2));

- (b) contract with any person for the supply to, or by, the Agency of any goods, services or personnel;
- (c) erect, equip and maintain all necessary buildings, plant, and equipment;
- (d) compile, prepare, print, publish, issue, circulate and distribute, whether for payment or otherwise, such papers, leaflets, magazines, periodicals, books and other literary matter as may be conducive to the attainment of the objects of the Agency or the advancement of its duties; and
- (e) reimburse the members of the Agency for such expenses as may be incurred by them in pursuance of their official duties as the Minister may deem appropriate.

**Discharge of functions by the Agency.**

8.(1) The Agency may arrange for the discharge of any of its duties—

- (a) by a committee, a sub-committee or an employee of the Agency; or
- (b) by any Government department or by any other authority or agency.

(2) Any arrangements made by the Agency under this section for the discharge of any of its functions by a committee, sub-committee, employee, Government department or other authority shall not prevent the Agency from exercising those functions.

**Standing Orders.**

9.(1) The Agency may regulate its own procedure.

(2) The Agency may make standing orders as respects any committee of the Agency with respect to the quorum, proceedings and place of meeting of the committee (including any sub-committee) but, subject to any such standing orders, the quorum, proceedings and place of meeting shall be such as the committee or sub-committee may determine.

(3) This section is subject to the provisions of section 5.

**Appointment of Chief Executive Officer.**

10.(1) The Agency shall appoint a person to be the Chief Executive Officer.

(2) The Chief Executive Officer shall hold office for such period and upon such terms as the Agency may deem appropriate.

(3) The Chief Executive Officer shall perform such other functions and exercise such other powers, as may, from time to time, be conferred upon him by this or any other Act or delegated to him by the Agency.

(4) In the event of the illness, death, retirement, suspension or removal from office or absence from Gibraltar of the Chief Executive Officer, the Agency shall appoint a person to act as Chief Executive Officer upon such terms as the Agency may deem appropriate.

## **Management Board.**

11.(1) The Agency shall appoint a board of management which shall consist of—

- (a) the Chief Executive Officer, as Chairman;
- (b) the finance and human resources director;
- (c) the services safety and standards director;
- (d) such other employees of the Agency as the Minister, in consultation with the Chief Executive Officer, shall determine.

(2) It shall be the function of the board of management to advise and assist the Chief Executive Officer in the execution of his functions.

(3) The board of management shall meet at least once in every calendar month and forward a copy of minutes of its meetings to the Minister as soon as practicable thereafter.

## **Professional advisory committees.**

12. The Agency may establish any other advisory committee to give to the Agency, the Chief Executive Officer and the board of management such professional and technical advice as may be required.

## **Financial duty of the Agency.**

13. The Agency shall so manage its affairs as to ensure that, taking one year with another, its outgoings are not greater than its revenues from—

- (a) all funds which may from time to time be voted by the Gibraltar Parliament for the purposes of the Agency;
- (b) any sums received by the Agency under sections 14(3) and 16 of this Act in that year;
- (c) all fees due to the Agency for the provision of services and facilities provided by the Agency in the exercise of its functions; and
- (d) any monies properly accruing to the Agency from any other source.

**Establishment and operation of general fund.**

14.(1) The Agency shall establish a general fund—

- (a) into which all monies received by the Agency shall be paid; and
- (b) out of which all payments made by the Agency shall be paid.

(2) The Chief Executive Officer shall be responsible for the management of the general fund established under sub-section (1).

(3) The Agency with the approval of the Minister with responsibility for public finance may borrow temporarily by way of overdraft or otherwise such sums as it may require for meeting its obligations and discharging its functions.

(4) The Government may make advances to the Agency for the purposes of meeting expenditure of a capital nature.

**Accounts and auditing.**

15.(1) The Agency shall keep proper books of account of its operations during each financial year, and shall also cause a statement of its accounts for each financial year to be prepared within six months (or such longer period as the Minister shall exceptionally allow) after the end of each financial year.

(2) The accounts of the Agency for each financial year shall be audited and certified by the Principal Auditor as soon as practicable after the end of that year.



(3) The Principal Auditor shall, with reference to the accounts of the Agency, report—

- (a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of the audit; and
- (b) whether, in his opinion, proper books of account have been kept by the Agency, so far as appears from his examination of those books; and
- (c) whether the Agency has discharged its financial duties and obligations under the provisions of this Act.

(4) Within three months after the end of the audit of its accounts for any financial year, the Agency shall prepare and submit to the Chief Minister a written report of its operations for that year together with a copy of the audited accounts for that year, and shall also submit copies of the report and audited accounts to the Minister.

(5) The Minister shall lay one copy of the annual report and of the audited accounts on the table of the Gibraltar Parliament during the meeting of the Parliament next following the date after they have been received by him.

(6) The Agency shall furnish to the Government—

- (a) a copy of the estimates of income and expenditure, including capital expenditure, no later than 15 January in each year; and
- (b) such financial and statistical returns as it may from time to time require.

### **Power of Agency to engage in fund-raising activities.**

16.(1) The Agency shall have power to engage in activities intended to stimulate the giving (whether on trust or otherwise) of money or other property to assist the Agency in providing or improving any services or any facilities or accommodation which is, or are, or is or are to be, provided by the Agency, or to assist it in connection with its functions.

(2) Subject to any directions of the Minister excluding specific descriptions of activity, the activities authorised by this section include public appeals or collections and competitions, entertainments, bazaars, sales of produce or other goods and other similar activities and the activities may involve the use of land, premises or other property held by or for the benefit of the

Agency, subject however to any restrictions on the purposes for which trust property may be used.

(3) Subject to the following provisions of this section, the Agency shall, after defraying out of it any expenses incurred in obtaining it, hold, administer and apply property given in pursuance of this section on trust or for the purpose for which it was given.

(4) Where property held by the Agency under this section is more than sufficient to enable the purpose for which it was given to be fulfilled the excess shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property comprising the excess was given, for such purposes connected with any of the functions of the Agency as the Agency thinks fit.

(5) Where property held by the Agency under this section is insufficient to enable the purpose for which it was given to be fulfilled then—

- (a) the Agency may apply so much of the capital or income at its disposal as is needed to enable the purpose to be fulfilled subject, however, in the case of trust property, to any restrictions on the purpose for which the trust property may be applied; but
- (b) where the capital or income applicable under paragraph (a) above is insufficient or is not applied to enable the purpose to be fulfilled, the property so held by the Agency shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property was given, for such purposes connected with any of the functions of the Agency as the Agency thinks fit.

(6) Where under sub-section (4) or (5) property becomes applicable for the purposes other than that for which it was given the Agency shall have regard to the desirability of applying the property for a purpose similar to that for which it was given.

#### **Financial Year.**

17. The financial year of the Agency shall be the period set out in section 78(1) of the Gibraltar Constitution Order 2006 save that in first financial year of the Agency it shall be the period commencing on the date of the establishment of the Agency and ending on the 31st day of March 2010.

#### **No personal liability to attach to members.**

18. Subject to the provisions of section 19, no personal liability shall attach to any member of the Agency in respect of anything done or omitted to be done in good faith under the provisions of this or any other Act.

### **Proceedings on failure of Authority to perform its duties.**

19. If at any time it appears to the Government that the Agency has failed to comply with any of the provisions of this or any other Act, it may by notice in writing require the Agency to make good the default within such time as may be specified in the notice.

### **Restriction on execution.**

20. No execution by attachment of property or process in the nature thereof shall be issued against the Agency.

### **Acquisition of land compulsorily.**

21. The functions of the Agency are a public purpose within the definition of “public purpose” contained in section 2 of the Land (Acquisition) Act.

### **Exemption from Taxes.**

22. The Agency shall be exempt from all taxes, duties, rates, levies or other charges whatsoever save import duties.

### **Consequential modifications and amendments.**

23.(1) The Schedule to the Public Services Ombudsman Act 1998 is amended—

(a) by substituting for paragraph 2.7 the following paragraph—

“2.7 The Care Agency.”; and

(b) by deleting paragraph 2.9.

(2) The Minister may make regulations for the purpose of modifying and amending any orders, regulations or rules made under any Act for the purpose of giving effect to any modifications or amendments made to any Act by this Act and for the purpose of transferring the functions of any person or body to the Agency, notwithstanding that the power to make such orders, regulations and rules is vested in some person or body other than the Minister.

**Transfer to the Care Agency.**

24. On the date of the coming into operation of this Act—

- (a) any sums held by either the Elderly Care Agency or the Social Services Agency under the provisions of section 14 of the Elderly Care Agency Act, 1999 or section 14 of the Social Services Agency Act 2002 respectively, shall after any liabilities have been settled, be transferred to the fund created under section 14 of this Act;
- (b) any other assets and any liabilities held by either the Elderly Care Agency or the Social Services Agency shall vest in the Care Agency;
- (c) any proceedings which are pending or which could have been brought against either the Elderly Care Agency or the Social Services Agency shall be continued or as the case may be, be brought in the name of the Care Agency;
- (d) all employment and other contracts and obligations whatsoever of the Elderly Care Agency and the Social Services Agency shall vest in the Care Agency as if they had been entered into and incurred by the Care Agency ab initio, including (but without prejudice to the generality of the foregoing) the period of service of employees with the first mentioned agencies for the purposes of establishing the rights of employees against the Care Agency; and
- (e) the Government may by Regulations provide for any other matter or thing necessary or desirable to be done to give effect to the establishing of the Care Agency and its replacement of the Elderly Care Agency and the Social Services Agency.

**Repeals.**

25. The Elderly Care Agency Act, 1999 and the Social Services Agency Act 2002 are repealed.

