

**ELDERLY CARE AGENCY ACT, 1999****Repealed by Act 2009-20 as from 28.5.2009****Principal Act**

<b>Act. No. 1999-36</b>	<i>Commencement</i>	4.1.2000
	<i>Assent</i>	4.11.1999

Amending enactments	Relevant current provisions	Commencement date
Acts. 2005-36	s.6(2)(b) and (c)	23.5.2005
2007-07	s. 5(2)	19.4.2007

## English sources

None cited

**ARRANGEMENT**

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AN ACT TO MAKE PROVISION FOR THE CARE OF THE ELDERLY IN THE COMMUNITY, AND, IN THAT REGARD, TO ESTABLISH THE ELDERLY CARE AGENCY; AND FOR MATTERS CONNECTED THERETO.

## **Title and Commencement.**

1.(1) This Act may be cited as the Elderly Care Agency Act 1999.

(2) The provisions of this Act shall come into operation on such day as the Minister may, by notice published in the Gazette appoint, and different days may be so appointed for different purposes.

## **Interpretation.**

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

“Agency” means the Elderly Care Agency (“ECA”) established by section 3;

“Elderly Care Manager” means the Elderly Care Manager of the Agency appointed under section 10;

“Minister” means the Minister with responsibility for care of the elderly.

## **Establishment of ECA.**

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

- (a) the Minister, as the Chairman;
- (b) a member of the Board of Governors of the John Mackintosh Home nominated by the Board after consultation with the Minister;
- (c) the Elderly Care Manager;
- (d) one registered medical practitioner appointed by the Minister;
- (e) one person appointed by the Minister after consultation with the Gibraltar Trades Council; and
- (f) four other persons appointed by the Minister.

(2) Members of the Agency (other than a member referred to in paragraph (a), (b) or (c) 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 (d), (e) and (f) 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 notice written 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 Elderly 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 Elderly Care Manager 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 calendar 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 by a majority of the members present 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 Elderly Care Manager.

## **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.
  - (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 service of care for the elderly including residential homes, nursing home, domiciliary care and day care services and facilities;
    - (b) with the prior consent of the Chief Secretary of the Government to employ—
      - (i) a registered medical practitioner to carry out the duties of a specialist in geriatric medicine under this or any other Act;
      - (ii) a Finance Officer;
      - (iii) a Personnel Officer;
      - (iv) a Nursing Services Co-ordinator;
    - (c) 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;

- (d) to publish codes for regulating the terms of service, discipline and training of all persons employed by the Agency;
- (e) to administer and inspect all facilities provided by the Agency so as to ensure the effective and efficient operation of such facilities;
- (f) to ensure that all complaints made against the Agency or any employee or contractor of the Agency are properly investigated without delay;
- (g) to provide on request an advisory service to the Government of Gibraltar;
- (h) to prepare and implement schemes providing policies and plans designed to meet the present and anticipated future needs of elderly persons in Gibraltar and to secure continued services in the event of an emergency;
- (i) 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 Elderly Care Manager.**

- 10.(1) The Agency shall appoint a person to be Elderly Care Manager.
  - (2) The Elderly Care Manager shall hold office for such period and upon such terms as the Agency may deem appropriate.
  - (3) The Elderly Care Manager shall be the executive officer of the Agency and shall, in addition, 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 Elderly Care Manager, the Agency shall appoint a person to act as Elderly Care Manager 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 Elderly Care Manager, as Chairman
- (b) the finance officer of the Agency;
- (c) the personnel officer of the Agency;
- (d) the nursing services co-ordinator of the Agency;
- (e) the specialist in geriatric medicine of the Agency; and
- (f) the Hospitals Manager appointed under the Medical (Gibraltar Health Authority Act) 1987.

(2) It shall be the function of the board of management to advise and assist the Elderly Care Manager 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 Elderly Care Manager 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 House of Assembly 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 Elderly Care Manager shall be responsible for the management of the general fund established under sub-section (1).

(3) The Agency 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 nine months (or such longer period as the Minister shall 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 Chief Minister shall lay one copy of the annual report and of the audited accounts on the table of the House of Assembly as soon as practicable 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 the 15 day of 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 such period as may from time to time be prescribed by section 2 of the Financial Year Act:

Provided that the first financial year of the Agency shall be the period commencing on the date of establishment of the Agency and ending on the 31st day of March 2000.

## **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 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.

**Consequential modifications and amendments.**

23.(1) The Schedule to the Public Services Ombudsman Act 1998 shall be amended by inserting after paragraph 2.6 the following paragraph–

“2.7 The Elderly Care Agency.”.

(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.