

SUBSIDIARY LEGISLATION 217.11**AGENCY FOR THE WELFARE
OF ASYLUM SEEKERS REGULATIONS**

17th July, 2009

LEGAL NOTICE 205 of 2009.

- 1.** The title of these regulations is the Agency for the Welfare of Asylum Seekers Regulations. Citation.
- 2.** In these regulations, unless the context otherwise requires: Interpretation.
- "financial year" means the financial year of the Agency which shall commence on the 1st January and shall end on the 31st December of each year:
- Provided that the first financial year shall commence upon the coming into force of these regulations and shall end on the 31st December of the following year;
- "Minister" means the Minister responsible for immigration.
- 3.** (1) There shall be an agency known as the Agency for the Welfare of Asylum Seekers (AWAS), hereinafter referred to as "the Agency". Establishment of 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 Public Administration Act, the Minister responsible for the Agency shall be entitled to give directions in writing, and the Agency and its head shall be bound to observe such directives. Cap. 497.
- (3) The legal and judicial representation of the Agency shall lie 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.
- 4.** (1) The Agency shall enter into an agency performance agreement with the Permanent Secretary responsible thereof, or, where a Permanent Secretary is not appointed, with the Minister, and such agreement shall set out the tasks to be addressed by the Agency, the targets it is expected to meet, and the funds available to it. Agency performance agreement.
- (2) The agency performance 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 agency performance agreements.

Appointment of
Chief Executive
Officer.

5. (1) There shall be a Chief Executive Officer who shall have the overall responsibility for the running of the Agency and have legal representation thereof.

(2) The Chief Executive Officer shall be appointed directly by the Minister from among public officers or from among persons who in each case, in the opinion of the Minister, have knowledge and experience in matters relating to asylum and asylum seekers, and whose office will be renewable for periods of three years:

Provided that the Minister may appoint an advisory board of not less than two and not more than four members to assist the Chief Executive Officer in the discharge of his duties.

(3) In the discharge of his duties the Chief Executive Officer shall:

- (a) maintain the highest standards of the profession in this field;
- (b) be responsible for the implementation of all legislation relating to the welfare of the Agency's clients;
- (c) draw up business plans according to current norms and procedures to provide for the physical, human and technological resources necessary for the Agency to carry out its function;
- (d) draw up an Agency performance agreement setting out the tasks to be addressed;
- (e) draw up annual activity reports and audited financial statements;
- (f) ensure that the Agency upholds the highest public code of ethics;
- (g) advise the Minister in matters falling under the competence of the Agency; and
- (h) undertake other duties that may be assigned to him from time to time by the Minister or his representative.

- (4) (a) The Chief Executive Officer or any member of the Board may resign from his/her office by letter addressed to the Minister.
- (b) The Chief Executive Officer or any member of the Board may be removed from office by the Minister on the grounds of gross negligence, incompetence, or acts of omission or misconduct.

Functions of the
Agency.

6. (1) The function of the Agency shall be the implementation of national legislation and policy concerning the welfare of refugees, persons enjoying international protection and asylum seekers.

(2) In the performance of its functions, the Agency shall:

- (a) oversee the daily management of accommodation facilities either directly or through subcontracting agreements;
- (b) provide particular services to categories of persons

- identified as vulnerable according to current policies;
- (c) provide information programmes to its clients in the areas of employment, housing, education, health and welfare services offered under national schemes;
 - (d) act as facilitator with all public entities responsible for providing services to ensure that national obligations to refugees and asylum seekers are accessible;
 - (e) promote the Government's policy and schemes regarding resettlement and assisted voluntary returns;
 - (f) maintain data and draw up reports that are considered relevant for its own function and to provide statistics to appropriate policy-making bodies;
 - (g) advice the Minister on new developments in its field of operation and propose policy or legislation required to improve the service given and fulfil any legal obligations in respect of its service users;
 - (h) encourage networking with local voluntary organisations so as to increase the service standards as well as academic research;
 - (i) work with other public stakeholders and, where possible, offer its services to asylum seekers accommodated in other reception centres not under its direct responsibility; and
 - (j) implement such other duties as may be assigned to it by the Minister or his representative.

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

(2) The Agency shall be paid by 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 related to the on-going upkeep and maintenance of the centres under its responsibility.

(4) Any excess of revenue over expenditure shall, subject to such directives as the Minister may, after consultation with the Minister responsible for finance, from time to time give, be applied by the Agency to the formation of reserve funds to be used for the purposes of the Agency; and without prejudice to the generality of the powers given to the Minister by this sub-regulation, any directive given by the Minister as aforesaid 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-regulation (3) or any such excess as aforesaid.

(5) 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.

Accounts and
audit.

8. (1) The Agency shall keep proper accounts 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 power to carry out such physical checking and any other certifications as he may deem necessary.

Contracts and
supplies.

9. Without prejudice to any directions communicated by the Minister under regulation 3(2), the Agency shall not, except with the approval of the Minister granted for special reasons and after consultation with the Minister responsible for finance, award or enter into any contract for the supply of goods or material or for the execution of works, or for the rendering of services, to or for the benefit of the Agency, which is estimated by the Agency to exceed seven thousand and five hundred euro (€7,500) or such other amount as the Minister responsible for finance may by regulations prescribe, except after notice of the intention of the Agency to enter into the contract has been published and competitive tenders have been issued in accordance with the Financial Administration and Audit Act as far as these apply to government agencies.

Cap. 174.

Annual reports.

10. (1) The Agency shall, not later than six weeks after the end of each financial year, make and transmit 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 function and future plans.

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

Staff appointments.

11. (1) Without prejudice to the other provisions of these regulations, 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.

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

Provided that all employees having an employment contract with the Organisation for the Integration and Welfare of Asylum Seekers (OIWAS) on the date of the coming into force of these regulations 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.

12. (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.

Detailing.

(2) The period during which a direction as aforesaid shall apply to any officer specified therein shall, unless the officer retires from the public service, or otherwise ceases to hold office at an earlier date, or unless a different date is specified in such direction, cease to have effect after one year from the effective date of such direction unless the direction is revoked earlier by the Prime Minister.

13. (1) Subject to the provisions of article 44 of the Public Administration Act, where any officer is detailed for duty with the Agency under any of the provisions of regulation 11, such officer shall, during the time in which such direction has effect in relation to him, be under the administrative authority and control of the Agency, but he shall for all other intents and purposes remain and be considered and treated as a public officer.

Status of public officers detailed for duty with the Agency.
Cap. 497.

(2) Without prejudice to the generality of the foregoing, an officer detailed for duty as aforesaid -

(a) shall not, during the time in respect of which he is so detailed -

(i) be precluded from applying for a transfer to a department of the Government in accordance with the terms and conditions of service attached to the appointment under the Government held by him at a date on which he is so detailed for duty; or

(ii) be so employed that his remuneration and conditions of service are less favourable than those which are attached to the appointment under the Government held by him at the date aforesaid or which would have become attached to such appointment, during the said period, had such officer not been detailed for duty with the Agency; and

(b) shall be entitled to have his service with the Agency considered as service with the Government for the purposes of any pension, gratuity, or benefit under the Pensions Ordinance and under the Widows' and Orphans' Pensions Act and of any other right or privilege to which he would be entitled, and shall be liable to any liability to which he would be liable, but for the fact of his being detailed for duty with the said

Cap. 93.
Cap. 58.

Agency.

(3) Where an application is made as provided in subregulation (2)(a)(i), the same consideration shall be given thereto as if the applicant had not been detailed for service with the Agency.

(4) The Agency shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer detailed for duty with the Agency as aforesaid during the period in which he is so detailed.

Transfer of assets.

14.(1)(a) The property and undertakings owned by the Government and used by it, immediately before the date of the coming into force of these regulations, and used by it for the operation of any of the functions which by these regulations are being transferred to or vested in the Agency shall, on the aforesaid date, by virtue of these regulations and without further assurance, be transferred to and be vested in the Agency under the same title by which they were held by the Government immediately before the said date. The provisions of this sub-regulation shall not apply to immovable property.

(b) The immovable assets from time to time specified in an order made by the President of Malta and published in the Gazette (hereinafter referred to as "the immovable assets") being immovable assets which, immediately before the coming into force of these regulations, were owned by the Government and used by it for the operation of any of the functions which by these regulations are being transferred to or vested in the Agency shall, with effect from such day as may be specified in any such order, and by virtue of these regulations and without any further assurance, be transferred to and vested in the Agency under the same title by which they were held by the Government before such day.

(2) The aforesaid transfer and vesting of assets shall extend to the whole of such property and undertakings and, without prejudice to the generality of the aforesaid, shall include all plant, equipment, apparatus, instruments, vehicles, craft, buildings, structures, installations, land, roads, works, stocks and other property, movable or immovable, assets, powers, rights and privileges and all things necessary or ancillary thereto which are held or enjoyed in connection therewith or appertaining thereto, as well as all obligations affecting or relating to any of the aforesaid property or undertakings or other thing included therein as aforesaid.

Transitory provisions.

15. (1) When anything has been commenced by or under the authority of the Government prior to the date of the coming into force of these regulations, and such thing relates to any of the properties or undertakings or any right or liability transferred to the Agency by or under these regulations, such thing may be carried on

and completed by or as authorised by the Agency.

(2) Where, immediately before the coming into force of these regulations, 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 these regulations, 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 abate by reason of the substitution.

(3) The Minister may by order make such incidental, consequential and supplemental provisions as he may deem necessary or expedient for the purpose of determining, as appropriate, the assets transferred to the Agency by these regulations and securing and giving full effect to the transfer of any property or undertaking or any right or liability to the Agency by these regulations and make such orders as may be necessary to make any powers and duties exercisable by the Government in relation to any of the transferred property or undertakings exercisable by or on behalf of the Agency.
