



## **MINISTERIAL BRIEF**

HON. DR HORACE CHANG  
MINISTER OF NATIONAL SECURITY

**Houses of Parliament**

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*The Major Organised Crime and Anti-Corruption Agency (Investigation  
and Prosecution Procedures) Regulations, 2021*

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### **BACKGROUND**

1. Madam Speaker, pursuant to the powers conferred on the Minister by Section 42 (2) (b) of the MOCA Act, 2018, the matter for the consideration of this Honourable House is a Resolution on **The Major Organised Crime and Anti-Corruption Agency (Investigation and Prosecution Procedures) Regulations, 2021**.
2. This Honourable House will recall that MOCA was established by virtue of the MOCA Act, 2018 to carry out critical functions aimed at combatting serious crime. In effect, Madam Speaker, MOCA is Jamaica's first fully independent Law Enforcement Agency, with a cadre of professionals charged with the responsibilities of conducting investigations and operations of the highest standards and professionalism integrity. The Agency is primarily mandated to effectively tackle major organised crime, economic crime, cyber-crime, and corruption in Jamaica, through an integrated and cooperative approach with local, regional and international key stakeholders.
3. The House will also recall that the Appointed Day Notice, required under the Act, brought it into force April 1, 2021. This would have been done subsequent to the *Major Organized Crime and Anti-*

*Corruption Agency (Code of Conduct and Disciplinary Procedure) Regulations, 2020*, which were passed by this Honourable House on March 24, 2020.

4. Madam Speaker, in recognizing the mandate of MOCA to investigate and prosecute serious crimes, which include major organized crime and corruption, it is important that clear guidelines are provided for officers as they carry out their duties. As with other law enforcement organizations around the world, it is crucial to have formal investigative protocols written to both enhance and preserve the investigative process.
5. The Regulations proposed for approval are a guide to best practice. To ensure consistency in the investigation of MOCA cases, investigations are to be conducted in accordance with these regulations to the greatest extent possible. These regulations are outlined so that the public, and our strategic partners would be in position to know how the Agency will be operating as it relates to investigating and prosecuting serious crimes. They operate to hold the Agency accountable to an established standard.
6. Madam Speaker, I want to just remind this Honourable House of some of the successes of MOCA since its inception. MOCA has had varied successes in the investigation and prosecution of serious crime. Indeed Madam Speaker, since 2016 there have been:

- a) Four hundred and fifty-four (**454**) intelligence driven operations with 70% of those persons charged being convicted.
  - b) 112 persons charged under the Law Reform (Fraudulent Transactions) (Special Provisions) Act. Ongoing bilateral collaborations with other law enforcement agencies have contributed to the extradition and conviction of several key offenders.
7. Madam Speaker, it is our belief that these Regulations will put MOCA on even stronger footing to achieve even greater successes in the investigation and prosecution of serious crimes.

## **THE REGULATIONS**

Madam Speaker, I will now take the House through key elements of these new Regulations, which are laid out in five (5) parts.

### ***Part I: Preliminary***

**Part I** outlines the title of the regulations, the date of commencement being 1<sup>st</sup> day of December, 2021 as well as the definition of terms. The Objects of the Regulations are also outlined in this part. The objects of as outlined in **Regulation 3** are:

*To provide for the proper administration of the functions of the Agency, pursuant to section 6(1)(d) and (e) of the Act, by outlining the practices and procedures to be followed by an officer in executing powers of arrest, search and seizure in relation to serious crimes; the detention, treatment and the*

*questioning of persons, all relating to the investigation and prosecution of serious crimes; so as to ensure that the procedures and guidelines relating thereto are balanced by safeguards to protect the public.*

**Regulation 4** empowers the Director-General to establish a use of force policy outlining the circumstances in which reasonable force may be used by an officer. The regulations stipulate that all MOCA officer must be bound by these guidelines in exercising their power.

***Part II: Powers of arrest with or without warrant***

**Part II** of the Regulations addresses the powers of arrest, with or without a warrant, which are expected to be conducted in accordance with the Seventh Schedule of the principal Act.

In such instances where a MOCA officer carries out an arrest without a warrant, **Regulation 6(1)** stipulates that this arrest is made in accordance with paragraph 1 of the Seventh Schedule of the Act, which states: *“An officer of the Agency may arrest without a warrant any person found committing or whom he has **reasonable cause** to suspect is about to commit a serious crime.”*

For the purpose of making an arrest without a warrant based on **reasonable cause**, **Regulation 6(3)** requires that the determination of reasonable cause is based on any facts or information known to the officer, which are relevant to the likelihood that a serious crime is about

to be committed or has been committed, as the circumstances may require.

It is important to note that the Regulations provide that an officer upon arresting a person, shall inform the arrested person of the arrest and the relevant circumstances of the arrest. Outlined at **Regulation 7** is the information to be provided to the arrested person at the time of the arrest, including the caution to be administered.

Permeating throughout these regulations is a careful attention to abiding by the constitutional protections provided to every person in Jamaica.

**Regulation 8** provides for the record of information to be kept by an officer who makes an arrest.

### ***Part III: Powers of search and seizure***

Madam Speaker, powers of search and seizure are provided for extensively under **Regulations 10 through 20**, which outline the procedures to be followed by an officer.

These provisions guide the MOCA officer in the search of a person subsequent to the making of an arrest; the search of premises and any person found upon said premises; the search of any specified equipment and any person found therein; and the retention of seized property or specified equipment, all in accordance with the Seventh Schedule of the Act.

The Government acknowledges the critical importance of the various steps involved prior to an actual search or seizure once a case is taken to Court. **Regulation 11(1)** requires an officer and any authorized person to identify themselves and to provide information to the persons being searched or to the owner of the property or premises or specified equipment being searched. Such information must include other pertinent record such as the authority under which the person is being detained for conducting the search, and the purpose and objective of the search.

**Regulation 11(2)** requires that the officer in charge seeks permission from the owner or person in charge, for access to the premises or specified equipment. The regulation however provides for an exemption in instances where for example, the premises is unoccupied or if the owner or person in charge of the premises or specified equipment is not present at the date and time when the search is being conducted.

**Regulations 12, 13, 14 and 15** outline procedures to be followed in the case of application to obtain a search warrant. In such instances, the officer shall take reasonable steps to ensure that the information is accurate. Of import, an application for a search warrant shall specify the grounds for the making of the application, including the object of the search and whether the purpose is to find evidence that is relevant to an investigation into an act involving a serious crime.

Another key element in Part III of the regulations is **Regulation 16**, requiring a MOCA officer to allow the owner or person in charge or his agent, to observe all stages of the search being conducted by the officer. This provision is relevant during the conduct of the search and is very important in safeguarding the integrity of the investigations being carried out.

**Regulation 18** provides for the use of reasonable force in accordance with the use of force policy guidelines and duty of officer when force is used to enter premises or specified equipment in execution of a search warrant. Once satisfied by the officer, use of reasonable force may be necessary in instances of refusal of the request for access; where communication with the owner or person in charge is impossible; and under any of the circumstances specified under regulation 11(3).

**Regulation 20** provides for the record of the search and stipulates that where an officer conducts a search of any person, premises, or specified equipment, the officer shall at the time of the search , make a record of the search and such record shall be captured in writing.

#### ***Part IV: Detention, Treatment, and Questioning of Persons***

**Part IV** of the Regulations outlines the practices and procedures to be adopted by an officer relating to the detention, treatment, and questioning of persons.

One of the key provisions addresses the treatment of a detained person, which is important in acknowledging the rights of all persons



to be treated fairly whilst in the custody of the law enforcement agency. **Regulation 22** stipulates that a detained person shall be dealt with expeditiously and released as soon as it is reasonably determined that there is no need for continued detention . In addition, the regulation provides for special treatment for persons where there are language and disability challenges. For example, if a person who is detained appears to be with a disability, then they should be afforded the necessary assistance.

**Regulation 23** speaks to the notification of rights for persons who are arrested for a serious crime.**Regulation 24** through **Regulation 29**, outline in detail the treatment of persons who voluntarily attend at a police station, Agency or other location to be interviewed.

**Regulation 30** sets out the right to legal representation upon detention, wherein a person who is detained by the Agency shall be informed of his right to legal representation and to consult and communicate privately with an attorney-at-law. The right to legal representation is set out in the constitution. Regulations 31 and 32 set out the terms under which a caution is given.

**Regulations 33 to 39** set out how and where interviews are to be conducted, rules in relation to conducting interviews and recording of the interview.

### ***Part V: Prosecution Procedures***

**Part V** of the Regulations, and particularly **Regulation 40**, addresses duty of a prosecuting officer to review, advise on, and to prosecute offences relating to serious crimes. It is to be noted that in conducting criminal prosecutions, that officers are expected to carry out their functions consistent with any prosecutorial code of practice established by the Director of Public Prosecution.

**Regulation 41** stipulates that the prosecuting officer is fair, objective and impartial in carrying out his prosecutorial duties and is therefore prohibited from allowing his *“personal views about ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity of the suspect, defendant, victim or any witness to influence his decisions.”*

**CONCLUSION**

Madam. Speaker, in closing, I want to emphasize that in recognizing the mandate of MOCA to investigate major organised crime and corruption, it is critical that procedures and guidelines are in place to provide safeguards and the requisite protection for the public.

I look forward to the support of the members of this Honourable House.

Thank you.

**Hon Dr Horace Chang, CD, MP**  
**Minister of National Security**