

A BILL

ENTITLED

AN ACT to Amend the Disaster Risk Management Act in order to adequately implement and address measures to combat various calamitous events, including a pandemic; and for connected matters.

[]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Disaster Risk Management (Amendment) Act, 2021, and shall be read and construed as one with the Disaster Risk Management Act (hereinafter referred to as the "principal Act") and all amendments thereto.

Short title
and
construction.

Amendment
of section 2
of principal
Act.

2. Section 2 of the principal Act is amended—

(a) in the definition of “authorized officer” by—

(i) inserting next after paragraph (a)(iii), the following—

“ (iv) the Municipal Police;”;

(ii) deleting the word “and” at the end of paragraph (h);

(iii) inserting next after paragraph (i) the following—

(j) the Chief Executive Officer of the Passport, Immigration and Citizenship Agency;

(k) the Chief Immigration Officer and any immigration officer appointed by the Governor-General under the Aliens Act;

(l) the Commissioner of Customs;

(m) an officer employed in the Department of Customs; and

(n) the Senior Director in the Technical Services Department of the Ministry with responsibility for Local Government.”;

(b) in the definition of “disaster” delete paragraph (b) and substitute therefor the following—

“ (b) may result from a fire, an accident, an act of terrorism, a storm, a hurricane, an earthquake, a drought, a flood, pollution, a hazardous materials incident, a nuclear or radiation emergency, disease, a pandemic, the wide-spread dislocation of the essential services, or other calamity;”;

- (c) by inserting next after the definition of "disaster preparedness" the following definitions—

“environment” includes—

- (a) animals, alive or dead, and their organisms;
- (b) land, air, water, ecosystems, and their constituent parts;
- (c) human-made or modified structures or areas; and
- (d) natural and physical resources;

“exposure” means the state or condition of being subject to irradiation;”;

- (d) by inserting next after the definition of "hazard" the following definitions—

“hazardous material” means any substance, including an explosive, a flammable or combustible substance, a poison or a radioactive material, that has the potential to adversely affect human and other life forms;

“hazardous materials incident” means an event or occurrence that involves the uncontrolled release of one or more hazardous materials into an environment;”;

- (e) by inserting next after the definition of "National Headquarters" the following definition—

“nuclear or radiation emergency” means an emergency in which there is, or is perceived to be, a hazard due to—

- (a) the energy resulting from a nuclear chain reaction or from the decay of the products of a chain reaction; or
- (b) exposure;”.

Amendment
of section 26
of principal
Act.

3. Section 26 of the principal Act is amended—

- (a) by deleting subsection (1) and substituting therefor the following—

“ (1) Where the Office reports to the Minister that any part of Jamaica appears to be threatened with or affected by a natural or anthropogenic hazard and that measures apart from or in addition to those specifically provided for in this Act should be taken promptly, the Minister shall give written notice thereof to the Prime Minister.”;

- (b) in paragraphs (i) and (ii) of subsection (2)(b), by deleting the words “condition or”;

- (c) by deleting subsection (5) and substituting therefor the following—

“ (5) Any authorized officer or employee of the Office or any other person so authorized, in writing, by the Director-General may—

- (a) require compliance with the provisions of any order made or measures instituted under this section; and
- (b) at all times, enter any premises for the purpose of ensuring compliance with the provisions of any order made or measures instituted under this section.”.

Amendment
of section 27
of principal
Act.

4. Section 27 is amended—

- (a) in subsection (4) by deleting the words “or requirement” and substituting therefor the words “, requirement or measure”; and

- (b) by deleting subsection (5) and substituting therefor the following—

“ (5) An authorized officer, when giving a direction or imposing a requirement or measure in subsection

(1), may also give a warning that it is an offence under subsection 52(1)(b) to fail to comply with the direction, requirement or measure, unless the person has a reasonable excuse, however, the giving of a warning under this subsection shall not be a precondition to the prosecution of an offence under section 52(1)(b).”.

5. Section 52 of the principal Act is amended by—

Amendment
of section 52
of principal
Act.

- (a) deleting the marginal note and substituting therefor the following—

“Offences and penalties,
including fixed penalties.”;

- (b) renumbering the section as subsection (1) of the section;

- (c) deleting paragraph (b) of subsection (1), as amended, and substituting therefor the following—

“ (b) without reasonable excuse, fails to comply with a direction given or requirement or measure imposed by an authorized officer under section 27; or”;

- (d) renumbering paragraph (c) of subsection (1), as amended, as paragraph (d);

- (e) inserting next after paragraph (b) of subsection (1), as amended, the following as paragraph (c)—

“ (c) fails to comply with a measure specified, by order, pursuant to section 26(2);”;

- (f) inserting next after subsection (1), as amended, the following—

“ (2) Subsections (3) to (10) shall apply to any offence created by this Act or regulations made under this Act and punishable on summary conviction, being an offence subject to a fixed penalty.

Fifth
Schedule.

(3) Where a constable has reason to believe that a person is committing or has committed an offence referred to in subsection (2), without prejudice to the power of the constable to arrest and charge the person, the constable may give to the person, the notice set out in the Fifth Schedule, offering the opportunity to discharge any liability to conviction of that offence by the payment of a fixed penalty, and in the event that the fixed penalty is not paid within the period specified in the notice, the notice constitutes a summons to attend before the court, on such date as may be specified in the notice, to answer the charge outlined in the notice.

(4) A person shall not be liable to be convicted of an offence referred to in subsection (2) if the penalty is paid in accordance with subsection (7) before the expiration of the final adjudication of the case.

(5) Where a person is given a notice under subsection (3) in respect of an offence, proceedings shall not be taken against that person for the offence by a constable, until the end of thirty days following the date of the notice or such longer period (if any) as may have been specified in the notice.

(6) In subsection (5), "proceedings" means any criminal proceedings in respect of the act or omission constituting the offence specified in the notice under subsection (3).

(7) Payment of a fixed penalty under this Act or regulations made under this Act shall be made in respect of any offence specified in this Act or regulations made under this Act, to any Collector of Taxes at its offices, or on the website of Tax Administration Jamaica, at any time before the final adjudication of the case.

(8) In any proceedings in respect of a fixed penalty under this Act or regulations made under this Act—

- (a) a certificate that the payment of the fixed penalty was or, was not made to the Collector of Taxes on or by a date specified in the certificate, if the certificate purports to be signed by the Collector of Taxes; or
- (b) in the case of a payment made on the website of the Tax Administration Jamaica, an electronically-generated receipt purportedly issued by that website,

shall be sufficient evidence of the facts stated in the certificate or receipt, unless the contrary is proved.

(9) A notice under subsection (3) shall—

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation;

- (c) state the period during which, by virtue of subsection (5), proceedings will not be taken for the offence;
- (d) state the amount of the fixed penalty and that the fixed penalty shall be paid to any Collector of Taxes at its offices or, on the website of the Tax Administration Jamaica; and
- (e) require the person, in the event that the fixed penalty is not paid within the period specified in the notice under subsection (5), to attend before the Parish Court in the parish in which the offence is alleged to have been committed, to answer the charge on such date as may be specified, being a date not earlier than ten days after the expiration of the period specified pursuant to subsection (5).

(10) Where a person contravenes a requirement, restriction or direction under a measure specified in regulations made under this Act, the fixed penalty applicable to such an offence shall be specified in those regulations by reference to the tier of penalties specified in the Sixth Schedule.

Sixth
Schedule.

(11) For the avoidance of doubt, in this section, "regulations" includes an order made under section 26(2)."

6. The principal Act is amended by inserting next after section 52 the following—

Insertion of section 52A in principal Act.

“ Service of notices.

52A.—(1) Any notice under this Act that is authorized or required to be served upon or issued to any person, shall either be—

- (a) served personally upon the person to whom it is addressed;
- (b) sent to that person by registered post to the last known address of the person; or
- (c) sent to that person by electronic means.

(2) Service by registered post in terms of subsection (1) shall be deemed to have been effected on the tenth day after the date stamped upon the receipt for registration issued by the post office which accepted the notice.

(3) Service by electronic means shall be deemed to have occurred on the next business day after the document is sent to the addressee at an electronic address previously given by the addressee.

(4) A certificate by the person who issued the notice referred to in subsection (1), or by a person authorized on behalf of the person who issued the notice, stating the time, place and manner of issuing the notice, shall be *prima facie* evidence that the notice was duly served.”

7. Section 54(1) of the principal Act is amended by—

Amendment of section 54 of principal Act.

- (a) deleting the word “and” at the end of paragraph (d);
- (b) renumbering paragraph (e) as paragraph (f); and

- (c) inserting next after paragraph (d), as amended, the following as paragraph (e)—

“ (e) specifying the offences under the regulations, that are subject to the fixed penalties provided for in section 52; and”.

Amendment
of Second
Schedules to
principal Act.

8. The Second Schedule to the principal Act is amended—

- (a) in paragraph 1(1) by—

- (i) deleting the word “and” at the end of subparagraph (aj);
- (ii) renumbering subparagraph (ak) as subparagraph (am); and
- (iii) inserting next after subparagraph (aj), as amended, the following—

“(ak) the Mayor of each Municipal Corporation;

(al) the Chief Medical Officer (Health); and”;

- (b) in paragraph 1(2) by deleting the words “sub-paragraph (1)(e) to (aj) and substituting therefor the words “subparagraph (1)(e) to (al)”.

Amendment
of Third
Schedule to
principal Act.

9. The Third Schedule to the principal Act is amended in paragraph 1(1) by—

- (a) deleting the word “and” at the end of subparagraph (o);
- (b) renumbering subparagraph (p) as subparagraph (q); and
- (c) inserting next after subparagraph (o), as amended, the following as subparagraph (p)—

“ (p) a representative from the Office;”.

10. The Fourth Schedule to the principal Act is amended in paragraph 1(e) by deleting the word “five” and substituting therefor the word “four”. Amendment of Fourth Schedule to the principal Act.

11. The principal Act is amended by inserting next after the Fourth Schedule, as amended, the following— Insertion of Fifth and Six Schedules in principal Act.

FIFTH SCHEDULE (Section 52(3))
 SARS CoV-2 (Coronavirus COVID-19)
 FIXED PENALTY NOTICE
(Under section 52 of the Disaster Risk Management Act)

SECTION A—PERSONAL INFORMATION OF ALLEGED OFFENDER	
1. Name (Last, First, Middle)	2. Taxpayer Registration Number/ Government Issued Identification
3a. Residential Address (Street Number and Name, Parish):	4. Contact Number(s): i. (Home) ii. (Mobile) iii. (Work)
3b. Mailing address (if different):	
3c. Email address:	
SECTION B—OFFENCE	
5. Details of Offence:	
6. Amount of Fixed Penalty:	
I am giving you this notice in accordance with the Disaster Risk Management Act or regulation made thereunder, to offer you the opportunity of discharging any liability to conviction for the fixed penalty offence, by payment of a penalty.	

This means that no legal proceedings will be commenced for the offence if the penalty is paid within 30 days of the date of this notice, or such longer period (if any) specified in this notice.

The penalty herein may be paid at the offices of any Collector of Taxes or on the website of Tax Administration Jamaica.

If you fail to pay the penalty within the period specified herein, legal proceedings may be commenced against you in the Parish Court, in the parish in which the offence is alleged to have been committed.

SECTION C—NAME AND SIGNATURE OF ALLEGED OFFENDER

I _____ ACKNOWLEDGE RECEIPT OF THIS NOTICE.
 NAME OF ALLEGED OFFENDER

 SIGNATURE OF ALLEGED OFFENDER

SECTION D—NAME AND SIGNATURE OF AUTHORIZED OFFICER:

 NAME OF AUTHORIZED OFFICER

 SIGNATURE OF AUTHORIZED OFFICER

7. Date of Offence:

8. Date of Fixed Penalty Notice:

9. Place of Alleged Offence:

SECTION E—FOR OFFICIAL USE ONLY

SIXTH SCHEDULE

(Section 52(11))

Tier of Offences and Penalties

<u>Tier of Offences</u>	<u>Penalty</u>
Tier 1 Offences	Three thousand dollars (\$3,000.00)
Tier 2 Offences	Five thousand dollars (\$5,000.00)
Tier 3 Offences	Ten thousand dollars (\$10,000.00)
Tier 4 Offences	Twenty thousand dollars (\$20,000.00)
Tier 5 Offences	Twenty-five thousand dollars (\$25,000.00)
Tier 6 Offences	Thirty thousand dollars (\$30,000.00)
Tier 7 Offences	Fifty thousand dollars (\$50,000.00)
Tier 8 Offences	One hundred thousand dollars (\$100,000.00)
Tier 9 Offences	Two hundred and fifty thousand dollars (\$250,000.00)
Tier 10 Offences	Five hundred thousand dollars (\$500,000.00)

MEMORANDUM OF OBJECTS AND REASONS

The primary focus of the Disaster Risk Management Act (“the Act”) is the mitigation of the effects of natural disasters as a result of natural and man-made hazards.

While the Act focuses on reducing the country’s vulnerability to natural and man-made hazards which may result from fire, accident, act of terrorism, storm, hurricane, pollution, disease, earthquake, drought, flood, the widespread dislocation of the essential services or other calamity, it is the intention to more effectively address the enforcement of measures to combat a pandemic.

In the wake of the outbreak of the SARS – CoV-2 (Coronavirus COVID-19) Pandemic, the opportunity is therefore being taken to amend the Act to strengthen the provisions of the Act in order to combat any conceivable calamitous event.

Consequently, subsection (1)(a) of section 26 of the Act is being deleted to remove any vagueness or ambiguity as to the circumstances which would lead to the declaration of a “disaster area”. In support of the foregoing, the definition of “disaster” is being amended to include events such as a hazardous substance incident, a nuclear or radiation emergency as well as a pandemic.

Of importance, the provisions of the Act which deal with offences are being bolstered to make it an offence for failing to comply with measures imposed under section 26 of the Act with the intent of discouraging and ultimately reducing breaches of the measures implemented to address a calamitous event. In support of this amendment, a fixed penalty regime is being inserted in the Act to provide the option of discharging the obligation associated with an offence, by payment of a fixed penalty.

DESMOND MCKENZIE
Minister of Local Government and
Rural Development

A BILL

ENTITLED

AN ACT to Amend the Disaster Risk Management Act in order to adequately implement and address measures to combat various calamitous events, including a pandemic; and for connected matters.

As introduced by the Honourable Minister of Local Government and Rural Development.

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SECTION 2 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

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

“appointed day” means the day appointed under section 1 for the coming into operation of this Act;

“authorized officer” means—

- (a) a member of—
 - (i) any Police Force;
 - (ii) the Jamaica Defence Force;
 - (iii) the Jamaica Fire Brigade;
- (b) a public health officer;
- (c) a Medical Officer and a Medical Officer (Health) under the *Public Health Act*;
- (d) a nurse registered under the *Nurses and Midwives Act*;
- (e) a veterinary surgeon registered under the *Veterinary Act*;
- (f) a member of staff of the Office;
- (g) any person so designated in writing by the Director-General;
- (h) the City Engineer in the Council of the Kingston and St. Andrew Corporation, the Superintendent of Parochial Roads and Works in each Parish Council and the officer in any Municipal Council, known as the Municipal Engineer, who carries the duties equivalent to that of the Superintendent of Parochial Roads and Works; and
- (i) the Chief Executive Officer of the National Works Agency;

“disaster” means the occurrence or threat of occurrence of event or other calamity, whether caused by an act of God or otherwise, which—

- (a) results or threatens to result in loss or damage to property, damage to the environment or death, ill health or injury to persons on a scale which requires emergency intervention by the state; and

- (b) may result from fire, accident, an act of terrorism, storm, hurricane, pollution, disease, earthquake, drought, flood, the widespread dislocation of the essential services, or other calamity;

... ..
“disaster preparedness” includes any activity undertaken in anticipation of a disaster, hazard or emergency situation in order to reduce any negative impact;

... ..
“hazard” means a natural or man-made phenomenon, which is likely to cause physical damage, economic loss, or threaten life, well-being or property;

... ..
“National Headquarters” means the headquarters of the Office;

“Office” means the Office of Disaster Preparedness and Emergency Management established under section 3;

... ..
SECTIONS 26 AND 27 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

26.—(1) Where the Office reports to the Minister—

- (a) the existence of any local condition in any part of Jamaica tending to endanger public safety; or
- (b) that any part of Jamaica appears to be threatened with or affected by a natural or anthropogenic hazard and that measures apart from or in addition to those specifically provided for in this Act, should be taken promptly,

the Minister shall give written notice thereof to the Prime Minister.

(2) The Prime Minister may by order published in a daily newspaper published and circulating in Jamaica or by other broadcast medium

- (a) declare the whole or any part of Jamaica to be a disaster area or a threatened area and the Order shall be published in the *Gazette*;
- (b) direct the enforcement of any measures recommended by the Office or any other measures that the Prime Minister thinks expedient for—
 - (i) removing or otherwise guarding against such condition or hazard and the probable consequences thereof; or

- (ii) mitigating, as far as possible, any such condition or hazard;
- (c) require the whole or any part of a declared area to be evacuated.

... ..
 27.—(1)

(4) A direction or requirement may be required to be complied with in such time as may be specified by the authorized officer.

(5) An authorized officer, when giving a direction or imposing a requirement mentioned in subsection (1)(b), (g), (o) or (r), shall also give a warning that it is an offence under section 52 to fail to comply with the direction or requirement unless the person has a reasonable excuse.

SECTION 52 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

52. Every person who—

- (a) assaults or obstructs the Director-General or any other authorized officer acting in the exercise of his functions under this Act;
- (b) without reasonable excuse, fails to comply with a direction given or requirement imposed by an authorized officer under section 27(1)(b), (g), (h), (p) or (r); or
- (c) fails to furnish any information required pursuant to the provisions of this Act or of an order under this Act, or in purported compliance with such a requirement, knowingly furnishes false information,

commits an offence and shall be liable on summary conviction before a Resident Magistrate, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months.

SECTION 54 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

54.—(1) The Minister may make regulations generally for giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing, may make regulations in relation to—

- (a) the prevention, mitigation and suppression of hazards;
- (b) the collection and publication of data pertaining to disaster mitigation and preparedness and emergency management;

- (c) fees payable for recovering the cost of or incurred in the provision of services under this Act;
- (d) prescribing the composition and rules for community disaster committees; and
- (e) any other matter or anything which may be, or is required by this Act to be prescribed.

SECOND SCHEDULE OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

SECOND SCHEDULE (Section 16(2))
*Constitution of the National Disaster
Risk Management Council*

1.—(1) The Council shall consist of—

(a) the Prime Minister as Chairman;

...

...

...

(aj) the Chief Technical Director in the Ministry responsible for local government; and

(ak) such other persons as the Chairman may appoint.

(2) A member of the Council specified in sub-paragraph (1)(e) to (aj) may designate an alternate to represent that member at any meeting of the Council.

THIRD SCHEDULE OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

THIRD SCHEDULE (Section 19(1))
Constitution of Parish Disaster Committee

1.—(1) Each parish disaster committee shall comprise the following persons in respect of the parish—

(a) the Mayor, as Chairman of the Committee;

...

...

...

(o) the Parish Manager in the Ministry responsible for labour and social security; and

(p) any other person nominated by the committee, being a person whose qualifications and experience the committee considers to be relevant to disaster management.

... ..
FOURTH SCHEDULE OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

FOURTH SCHEDULE (Section 37(3))
The Constitution of the Fund Committee

1. The Fund Committee shall consist of such number of members not being less than seven nor more than ten as the Cabinet on the advice of the Minister may appoint by instrument in writing, being—

(a) the Permanent Secretary in the Ministry responsible for disaster management;

...

...

...

(e) not more than five other persons appearing to the Minister to have such knowledge, skills or experience relevant to the proper administration and management of this Fund.

