

ANTIGUA AND BARBUDA



THE STATUS OF VISITING POLICE FORCES ACT, 2007

No. 5 of 2007

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SCHEDULE

No. 5 of 2007

The Status of Visiting Police Forces Act, 2007.



I Assent,

Sir James B. Carlisle,
Governor General.

16th March, 2007.

ANTIGUA AND BARBUDA

THE STATUS OF VISITING POLICE FORCES ACT, 2007

No. 5 of 2007

AN ACT to provide for the presence, activities, privileges and immunities of members of foreign police forces and civilian personnel during the period of CWC 2007 and for incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

- (1) This Act may be cited as the Status of Visiting Police Forces Act 2007.
- (2) This Act shall come into force on the 28th day of February 2007.

2. Interpretation

In this Act unless the context otherwise requires —

“civil court” means a court of ordinary criminal jurisdiction in Antigua and Barbuda and includes a court of summary jurisdiction;

“civilian personnel” means civilian personnel designated under Section 4 as a civilian component of a visiting police force or visiting police force “designated state” means a state other than Antigua and Barbuda, that is designated under section 4;

“Minister” means the Minister to whom responsibility for Police is assigned;

“Police Force” means the Royal Police Force of Antigua and Barbuda;

“Member State” means a Member State of the Caribbean Community;

“service court” means a court-martial and includes the service authorities of a designated state who are empowered by the laws of that state to deal with charges;

“Treaty on Security Assistance” means the Treaty on Security Assistance among CARICOM Member States concluded on 6 July 2006, including any amendments or protocols thereto;

“visiting police forces” means the members of any police force of a designated state present in Antigua and Barbuda in connection with official duties.

PART II

APPLICATION OF THE ACT

3. Application

This Act applies in respect of visiting police forces and civilian personnel—

- (a) of a state designated pursuant to Section 4; or
- (b) who are present in Antigua and Barbuda pursuant to the provisions of the Treaty on Security Assistance.

4. Designated States

(1) The Minister may by Order—

- (a) designate any country as a designated state for the purpose of this Act;
- (b) declare the extent to which this Act is applicable in respect of any designated state;
- (c) designate civilian personnel as a civilian component of a visiting police force; and
- (d) revoke or amend any designation or declaration made under paragraph (a), (b) or (c)

(2) The countries listed in the Schedule hereto are designated states for the purpose of this Act but such designation may be amended or revoked in accordance with paragraph (d) of subsection (1).

PART III

POWERS AND IMMUNITIES OF VISITING POLICE FORCE

5. Status of members of visiting police forces

Any member of a visiting police force who is sent to Antigua and Barbuda for the performance of police duties similar to duties performed by him in office shall, while on duty in Antigua and Barbuda be liable to perform the same duties and subject to the orders of the Commissioner of Police in the same manner and in all respects as if he were a member of the Police Force, and shall, subject to this Act, have the same rights, powers, privileges and immunities as are conferred by law and custom on

members of the Police Force as may be necessary for the performance of such duties.

6. Immunity from Prosecution

(1) Notwithstanding sections 5 and 7, members of a visiting police force shall be immune from prosecution in civil and criminal court proceedings in Antigua and Barbuda in respect of actions taken in the course of their official duties.

(2) The immunity specified in subsection (1) may be waived in respect of any member of a visiting police force, by the competent authority of the designated state of the visiting police force.

PART IV

JURISDICTION OF CIVIL COURTS AND VISITING POLICE FORCES

7. Civil courts' jurisdiction

(1) Subject to subsection (2) and section 6, the civil courts have the primary right to exercise jurisdiction in respect of any act that constitutes an offence against any law in force in Antigua and Barbuda and that is committed by a member of a visiting police force.

(2) With respect to the alleged commission by a member of a visiting police force of an offence respecting—

- (a) the property or security of the designated state; or
- (b) the person or property of another member of the visiting police force.

the service courts of the visiting police force have the primary right to exercise jurisdiction.

8. Certificate concerning official duty

A certificate of the service authorities of a designated state that anything alleged to have been done by a member of a visiting police force of that state was or was not done in the performance of official duty, is receivable in evidence in any civil court and for the purposes of this Act is prima facie proof of that fact.

9. Previous trial by civil courts

(1) Where a member of a visiting police force has been tried by a civil court and has been convicted or acquitted, he may not be tried again within Antigua and Barbuda for the same offence by a service court of that visiting police force.

(2) Nothing in subsection (1) prevents a service court from trying within Antigua and Barbuda a member of the visiting police force for any violation of rules of discipline arising from an act that constituted an offence for which he was tried by a civil court.

10. Trial by court having primary right

Where under sections 5 and 6 a civil court or a service court of a visiting police force has the primary right to exercise jurisdiction, the court having the primary right has the right to deal with charges against alleged offenders in the first instance, but that right may be waived in accordance with regulations made in that behalf.

11. Police functions

The authority of members of a visiting police force to exercise police functions, including the power of arrest are the functions as are prescribed by the Minister by Order; but no such regulation may empower a member of a visiting police force to exercise police functions in respect of any person who is not a member of the visiting police force.

12. Common law arrest

Nothing in section 9 shall be construed to prevent a member of a visiting police force from exercising any common law power to make an arrest.

13. Firearms and drilling

Members of a visiting police force acting in the course of their duties, excluding civilian personnel—

- (a) may, if authorised to do so by the Commissioner of Police, possess and carry explosives, ammunition and firearms; and
- (b) are not subject to any law of Antigua and Barbuda relating to the making or possessing of explosives.

PART V

CLAIMS AGAINST VISITING POLICE FORCES

14. Claims against designated States

For the purposes of the Crown Proceedings Act, cap 121—

- (a) a tort committed by a member of a visiting police force while acting within the scope of his duties or employment shall be deemed to have been committed by a servant of Her Majesty in right of Antigua and Barbuda while acting within the scope of his duties or employment;
- (b) property owned, occupied, possessed or controlled by a visiting police force shall be deemed to be owned, occupied, possessed or controlled by Her Majesty in right of Antigua and Barbuda; and
- (c) a service vehicle of a visiting police force shall be deemed to be owned by Her Majesty in right of Antigua and Barbuda.

15. Enforcement of judgment

A member of a visiting police force is not subject to any proceedings for the enforcement of any judgment given against him in Antigua and Barbuda in respect of a matter that arose while he was acting within the scope of his duties or employment.

16. Ships

Except as section 13 may be made applicable by order of the Minister in respect of the ships of any particular designated state, that section does not apply to a claim arising out of or in connection with the navigation, operation or salvage of a ship or the loading, carriage or discharge of a cargo, unless the claim is a claim arising out of death or injury to the person.

17. Official Duty

Where a question that cannot be settled by negotiation between the parties arises under this Part as to whether—

- (a) a member of a visiting police force was acting within the scope of his duties or employment, or
- (b) a matter in respect of which judgment was given against a member of a visiting police force arose while he was acting within the scope of his duties or employment,

the question must be submitted to an arbitrator appointed in accordance with section 18, and for the purposes of this Part the decision of the arbitrator is final and conclusive.

18. Arbitration

(1) An arbitrator must be appointed for the purposes of section 26 by agreement between the designated states concerned and Antigua and Barbuda from among the nationals of Antigua and Barbuda who hold or have held high judicial office.

(2) If the designated state and Antigua and Barbuda are unable, within 2 months, to agree upon an arbitrator, either the designated state or Antigua and Barbuda may request any person designated in an agreement with the designated state or acceptable to the designated state and Antigua and Barbuda to appoint the arbitrator from among the nationals of Antigua and Barbuda who have held high judicial office.

PART VI

TAXATION

19. Tax and residence

Where the liability for any form of taxation in Antigua and Barbuda depends upon residence or domicile, a period during which a member of a visiting police force is in Antigua and Barbuda by reason of his being a member of the visiting police force shall, for the purposes of that taxation, be deemed not to be a period of residence in Antigua and Barbuda and not to create a change of residence or domicile.

20. Salaries

(1) A member of a visiting police force is exempt from taxation salaries in Antigua and Barbuda on the salary and emoluments paid to him as a member of a visiting police force by a designated state and in respect of any tangible movable property that is in Antigua and Barbuda temporarily by reason of his presence in Antigua and Barbuda in that capacity.

(2) For the purposes of section 30 and this section, the term “member of a visiting police force” does not include a citizen of Antigua and Barbuda who is resident or ordinarily resident in Antigua and Barbuda.

21. Service Vehicle

No tax or fee is payable in respect of the licensing or registration of service vehicles of a visiting police force or in respect of the use of those vehicles on any road in Antigua and Barbuda.

22. Imports

A visiting police force may import into Antigua and Barbuda, free of customs duty and any tax, equipment for the visiting police force and such quantities of provisions, supplies and other goods for the exclusive use of the visiting police force.

23. Personal effects

A member of a visiting police force at the time of his first arrival to take up service in Antigua and Barbuda, may import his personal effects free of customs duty and any tax.

24. Fuel, oil etc

Subject to compliance with such conditions as are prescribed by the regulations, no customs duty or any tax is payable on any fuel, oil or lubricants intended for use exclusively in the service vehicles, aircraft or vessels of a visiting police force.

PART VII

MISCELLANEOUS

25. Miscellaneous

(1) Where under any enactment a power is exercisable by any authority or person—

- (a) respecting the Police Force, its members, its service courts or any person connected therewith; or
- (b) respecting any property used or to be used for the purposes of the Police Force, or for taking possession of any property to be so used, or for acquiring, whether by agreement or compulsorily, any property so used or to be so used;

the Minister may by order provide that the power be exercisable by that authority or person, as the case may be, in the case of a visiting police force to which the order applies to any extent to which it would be exercisable if the visiting police force were a part of the Police Force.

(2) The Minister may, by order—

- (a) exempt a visiting police force or its members, its service courts, any other person connected therewith or any property used or to be used for the purposes thereof from the operation of any enactment specified in the order to any extent to which the force, members, courts, persons or property would be, or would be capable of being exempted, if the force were a part of the Police Force; and
- (b) confer on that force or any members, courts, persons or property referred to in paragraph (a) any other privilege or immunity specified in the order, being a privilege or immunity that would be enjoyed, by, or would be capable of being conferred on, the force, members, courts, persons or property if the force were part of the Police Force.

(3) Where under any enactment the doing of anything is prohibited, restricted or required in relation to—

- (a) the Police Force its members, its service courts or any other person connected therewith; or
- (b) any property used or to be used for the purposes of the Police Forces;

the Minister may by Order extend the prohibition, restriction or requirement to any visiting police force in the same manner as if the visiting police force were a part of the Police Force.

(4) An Order made under this section may contain such incidental, consequential and supplementary provisions as the Minister thinks necessary for the purposes of the Order, including provisions for applying, modifying, adapting or suspending any enactment.

(5) Subsections (1) and (4) apply whether the power is exercisable, or the prohibition, restriction or requirement is imposed, by a provision expressly relating to the Police Force or by a more general provision; and subsection (3) applies whether the exemption, privilege or immunity subsists, or is

capable of being conferred, by virtue of such a provision or by reason of any enactment not binding the Crown.

26. Coroner's inquest

(1) Where a coroner who has jurisdiction to hold an Coroner's inquest touching a death is satisfied that the deceased person at the time of his death had a relevant association with a visiting police force, then, unless the Governor General otherwise directs, the coroner may not hold the inquest, or, if it has been begun but not completed, shall adjourn it.

(2) Subject to subsection (1), a coroner referred to in that subsection shall, unless the Governor-General otherwise directs, adjourn the inquest if he is satisfied—

- (a) that a person who is subject to the jurisdiction of the service courts of a visiting police force has been charged before a service court with the homicide of the deceased person referred to in subsection (1), whether or not that charge has been dealt with, or
- (b) that a person referred to in paragraph (a) is being detained by an authority of a visiting police force with a view to being so charged.

(3) Where an inquest is adjourned under this section the coroner may resume the inquest only on the direction of the Governor General.

(4) Where an inquest that was adjourned under this section is resumed, the coroner shall proceed in all respects as if the inquest had not been previously begun.

(5) In this section—

- (a) "homicide" includes murder, manslaughter, infanticide and any offence under the law of the country in question that is analogous to any of those offences;
- (b) references to a person having a relevant association with a visiting police force are references to this being at the time—
 - (i) a member of the visiting police force or a member of a civilian component of that force, or
 - (ii) a person who, not being a citizen of Antigua and Barbuda or a permanent resident thereof within the meaning of the, Immigration Act, is a member of the visiting police force or of a civilian component of that force.

(6) In determining for the purposes of this section whether a person is, or was at any time, a permanent resident of Antigua And Barbuda, no account shall be taken of any period during which he has been, or intends to be, present in Antigua and Barbuda as a member of a visiting police force or of a civilian component of such a force.

27. Act to bind the Crown

This Act binds the Crown.

Schedules

Section 4 (2)

SCHEDULE

DESIGNATED STATES

1. Member States of the Caribbean Community
2. Associate Members of the Caribbean Community
3. South Africa
4. Canada
5. United Kingdom
6. France
7. The Netherlands Antilles

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Passed the House of Representatives
on the 8th March, 2007.

Passed the Senate on the 9th
March, 2007.

D. Giselle Isaac-Arindell,
Speaker.

Hazlyn M. Francis
President.

Yvonne Henry,
Clerk to the House of Representatives.

Yvonne Henry,
Clerk to the Senate.

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