

### **OBJECTS AND REASONS**

This Bill would amend the Immigration Act, Cap. 190 to make provision for an offence of smuggling of persons in accordance with the United Nations Convention Against Transnational Organized Crime and for related matters.

*Arrangement of Sections*

1. Short title
2. Amendment of section 12A of Cap. 190
3. Insertion of new section 29A in Cap. 190
4. Amendment of section 30 of Cap. 190
5. Amendment of the Extradition Act, Cap. 189

## **BARBADOS**

A Bill entitled

An Act to amend the Immigration Act.

ENACTED by the Parliament of Barbados as follows:

### **Short title**

- 1.** This Act may be cited as the *Immigration (Amendment) Act, 2016*.

**Amendment of section 12A of Cap. 190**

**2.** *The Immigration Act, in this Act referred to as the principal Act, is amended in section 12A by deleting the closing words in subsection (5) and substituting the following:*

“the master of the vessel is guilty of an offence and is liable on conviction on indictment to a fine of \$200 000 or to imprisonment for a term of 5 years or to both.”.

**Insertion of new section 29A in Cap. 190**

**3.** *The principal Act is amended by inserting the following new sections immediately after section 29:*

**“Offences re smuggling of persons**

**29A.(1)** A person is guilty of the offence of smuggling of persons who with intent to obtain directly or indirectly a financial or other material benefit

- (a) engages in conduct preliminary to or takes part in the smuggling of persons by sea or air without complying with the requirements for legal entry into Barbados;
- (b) while engaging in conduct referred to in paragraph (a),
  - (i) produces a fraudulent travel or identity document; or
  - (ii) procures, provides or possesses a fraudulent travel or identity document; or
- (c) arranges for a person who is not a national or permanent resident of Barbados to remain in Barbados without having that person comply with the legal requirements for remaining in Barbados.

(2) A person is guilty of committing the offence of smuggling of persons with aggravation where in committing the offence, the person

- (a) endangers the lives of the persons concerned; or
- (b) engages in inhumane or degrading treatment.

(3) Where in proceedings brought under subsection (1), evidence is found that a vessel is engaged in the smuggling of migrants by sea, the vessel may be seized and forfeited.

(4) In this section

“fraudulent travel or identity document” means any travel or identity document that

- (a) has been falsely made or altered in some material way by a person other than a person lawfully authorized to make or issue the travel or identity document;
- (b) has been improperly issued or obtained through misrepresentation or in any other unlawful manner; or
- (c) is being used by a person other than the rightful holder;

“vessel” means any type of water craft that is capable of being used for transportation on water.

### **Penalties**

**29B.(1)** A person who is convicted under section 29A (1) of the offence of smuggling of persons is liable on conviction on indictment to a fine of \$1 500 000 or to imprisonment for 15 years or to both.

(2) A person who is convicted under section 29A (2) of the offence of smuggling of persons with aggravation is liable on conviction on indictment to a fine of \$2 000 000 or to imprisonment for 25 years or to both.

**Forfeiture**

**29C.(1)** Where a person has been convicted of the offence of smuggling of persons or smuggling of persons with aggravation, and the court is satisfied that

- (a) any property of the person convicted was used or was intended to be used or was obtained in the course of the crime; or
- (b) any benefits were gained from the proceeds of the crime,

the court shall order that the property or benefits be forfeited and accrue to the Criminal Assets Recovery Fund.

(2) For the purposes of subsection (1)

- (a) “Criminal Assets Recovery Fund” means the fund established under section 14 of the *Transnational Organized Crime (Prevention and Control) Act, 2011* (Act 2011-3) and continued under section 3 of the *Criminal Assets Recovery Fund Act, 2016* (Act 2016- );
- (b) “property” includes money, valuables and other movable and immovable property.

(3) The forfeiture of property referred to in subsection (1) applies to the property of persons convicted of the smuggling of persons or the smuggling of persons with aggravation, whether or not the property is located in Barbados.”.

**Amendment of section 30 of Cap. 190**

**4.** *The principal Act is amended by deleting section 30 and substituting the following:*

**“General penalties**

**30.(1)** A person who is guilty of an offence under this Act for which no other penalty is provided is liable on summary conviction to a fine of \$5 000 or to imprisonment for 12 months or to both.

(2) Where subsidiary legislation made under this Act creates an offence, the subsidiary legislation may provide for such offences to be tried summarily or on indictment and the subsidiary legislation may prescribe the following penalties:

- (a) in the case of an offence triable summarily, a fine not exceeding \$5 000 or imprisonment for a term of 12 months or both;
- (b) in the case of an offence triable on indictment, a fine not exceeding \$25 000 or imprisonment for a term of 5 years or both.”.

**Amendment of the Extradition Act, Cap. 189**

**5.** *The Extradition Act, Cap. 189, is amended in the Schedule by adding the following as paragraph 40:*

**“40.** Any offence concerning the smuggling of persons.”.

Read three times and passed the House of Assembly this  
day of \_\_\_\_\_, 2016.

**Speaker**

Read three times and passed the Senate this \_\_\_\_\_ day of  
, 2016.

**President**



## *Immigration Act, 2016*

### **EXPLANATORY MEMORANDUM**

#### **SUMMARY**

The purpose of this Bill is to make fuller provision for the prevention of the smuggling of persons in the terms of the **Protocol against the Smuggling of Migrants by Land, Sea and Air**, *supplementing the United Nations Convention Against Transnational Organized Crime*.

The creation of offences related to the smuggling of persons in the *Immigration Act* now reflects the fact that the offences created are essentially immigration offences and that prevention lies in strong border control.

Notwithstanding the title of the Protocol, the emphasis of the Protocol is on the smuggling of persons by sea. This is clearly expressed in Part II (Articles 7 to 9) of the Protocol which is headed “smuggling of migrants by sea”. There are no provision of the Protocol which expressly deal with smuggling by air or land.

This Bill must be read with the *Trafficking in Persons Prevention Bill, 2015* and the *Criminal Assets Recovery Fund Bill, 2015* which provide for other aspects of the *Convention Against Transnational Organized Crime*.

#### **Clause 2: Amendment of section 12A**

The amendment to this section increases the penalty of imprisonment from to 2 years to 5 years. The amendment also removes two existing ambiguities. Firstly, by providing for the offence to be tried on indictment, it makes it clear that the offence is not to be tried summarily. Secondly, it removes the conflict that the general penalty in section 30 applied to the offence under this section.

#### **Clause 3: Insertion of new section 29A (offences of the smuggling of persons)**

This provision implements Article 6 of the Protocol which requires states to criminalize the smuggling of migrants especially where false travel and identity documents are used.

**Subsection (1): offence of the smuggling of persons**

Subsection (1) creates an offence of the smuggling of persons simpliciter.

**Subsection (2): offence of the smuggling of persons with aggravation**

Subsection (2) creates an offence of the smuggling of persons with aggravation. This implements Article 6 (3) of the Protocol which requires that a special offence be created where the lives of person are endangered or where persons are subjected to inhuman or degrading treatment. These circumstances would include for example, the overcrowding of migrant boats, the insufficiency of ventilation, food and water and the infliction of physical abuse.

**Insertion of new section 29B: Penalties**

This clause provides heavy penalties in relation to the offences prescribed under section 29A. A heavier penalty is prescribed in relation to the offence of the smuggling of persons with aggravation.

**Insertion of new section 29B: Forfeiture**

This clause implements Articles 12, 13 and 14 of the Convention by providing for the forfeiture of assets where an offence of smuggling of persons is committed.

**Clause: 4 Amendment of section 30 (General penalties)**

This amendment clarifies the law by removing an ambiguity relating to the mode of trial of the offences under the Act and the imposition of the general penalty. The amendment now makes it clear that the general penalty does not apply to any of the indictable offences under the Act and secondly, that the mode of trial for those offences to which the general penalty applies is by way of summary trial.

**Clause: 5 Amendment of the Extradition Act, Cap. 189**

This clause would make the offence of smuggling of persons an extraditable offence.