



BERMUDA

JUSTICE PROTECTION ACT 2010

2010 : 49

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WHEREAS it is expedient to uphold the integrity of the justice system by making provision to protect witnesses and certain other persons;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1
PRELIMINARY

Citation

- 1 This Act may be cited as the Justice Protection Act 2010.

Interpretation

- 2 In this Act—

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“ancillary documents” means the documents referred to in section 12(4);

“approved authority” or “authority” means—

- (a) the Director;
- (b) the Centre;
- (c) the Commissioner of Police; or
- (d) any other person or body that the Minister may under section 27 designate as an approved authority for the purposes of this Act;

“associate” means a person who, by virtue of his relationship or association with a participant or prospective participant, may be considered for protection or assistance or both under the Justice Protection Programme;

“Commissioner of Police” or “Commissioner” means the Commissioner of Police appointed under the Police Act 1974;

“Crown Counsel” means a person holding public office as such in the office of the DPP or the Attorney General’s Chambers, and any other person, instructed by or on behalf of the DPP or Attorney General to appear for the DPP or Attorney General in any criminal or civil cause or matter;

“designated territory” means a territory designated as such under section 19(a);

“Director” means the officer appointed as the Director of the Centre under section 4(1)(a);

“DPP” means the Director of Public Prosecutions;

“Minister” means the Minister responsible for Justice;

“Justice Protection Administrative Centre” or “Centre” means the unit established under section 3(2)(a);

“Justice Protection Investigative and Protective Agency” or “JPIP Agency” means the unit established under section 3(2)(b);

“Justice Protection Programme” or “Programme” means the Justice Protection Programme established under section 3(1);

“Memorandum of Understanding” means a memorandum referred to in section 10(1) and includes any protocol, addendum or document that supplements or is scheduled to any such memorandum;

“participants” means persons specified in or designated pursuant to Schedule 1;

“Police Service” means the Bermuda Police Service established by the Police Act 1974;

“register” means the register of participants maintained by the Centre pursuant to section 12;

“risk assessment” means an evaluation of the risk or danger which a participant is likely to pose for the receiving community, having regard to the matters specified in paragraphs (b), (d) and (e) of the definition of “threat assessment” and any other factor considered relevant in a particular case;

“threat assessment” means an evaluation of the danger to a prospective participant based on, but not limited to, information on—

- (a) persons who are the subject of judicial or administrative proceedings concerning the case in relation to which the prospective participant has given evidence or is required to give evidence;
- (b) any criminal organisation interested in the relevant proceedings;
- (c) the nature of the threat to the prospective participant;
- (d) the names and other identifying data of all persons who are likely to pose a danger to the prospective participant;
- (e) where appropriate, the prospective participant's association with persons referred to in paragraph (a) or his involvement in the illegal activity giving rise to the proceedings referred to in that paragraph; and
- (f) the immediacy of the threat;

“witness” means a person who has given, is obliged to give or has agreed to give a statement or evidence or both—

- (a) in relation to a crime that has been committed or in respect of which there are reasonable grounds to believe has been committed or will be committed;
- (b) to an approved authority in relation to a crime that has been committed or in respect of which there are reasonable grounds to believe has been committed or will be committed;
- (c) in any criminal proceedings; or
- (d) in any civil proceedings.

PART 2

THE JUSTICE PROTECTION PROGRAMME

Establishment of Justice Protection Programme

3 (1) The Minister shall establish a programme to be known as the Justice Protection Programme, for the purpose of providing to participants, subject to this Act, protection or assistance or both.

(2) For the purposes of administering the Programme, the following units are established—

- (a) in the Office of the DPP, a Justice Protection Administrative Centre;

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- (b) in the Police Service, a Justice Protection Investigative and Protective Agency (“JPIP Agency”).

Justice Protection Administrative Centre

4 (1) The Minister shall appoint the following persons as officers of the Justice Protection Administrative Centre —

- (a) a person holding public office in the Office of the DPP, who shall be appointed as the Director of the Centre; and
- (b) such other persons holding public office as the Minister in consultation with the DPP may consider necessary to provide services to the Centre.

(2) Subject to this Act, the Centre shall develop, manage and administer the Programme and shall, subject to any designation under Schedule 1, be responsible for deciding whether a prospective participant is to be afforded protection or assistance or both under the Programme.

(3) In performing its functions under this Act, the Centre shall—

- (a) liaise with appropriate overseas authorities within designated territories;
- (b) liaise, where necessary, with appropriate overseas authorities other than those within designated territories;
- (c) subject to any designation under Schedule 1, determine the participants in the Programme;
- (d) determine, after consultation with the JPIP Agency and the DPP, the level and duration of protection or assistance for a prospective participant, based on the assessments referred to in subsection (4);
- (e) obtain such information as may be required to determine—
 - (i) the financial implications of admitting the prospective participant to the Programme; and
 - (ii) the actual or potential civil and criminal liability of the prospective participant;
- (f) require the prospective participant to conclude a Memorandum of Understanding with the Centre, detailing the terms and conditions of his participation in the Programme;
- (g) arrange for the provision of safe-houses only on the written recommendations of the JPIP Agency on the basis of threat assessments and risk assessments;
- (h) develop guidelines for the effective operation of the Programme;
- (i) establish budgetary requirements of the Programme;
- (j) make payments in connection with the protection and assistance provided under this Act;

- (k) take cognisance of the high cost and complexity of providing adequate protection for participants; and
- (l) co-ordinate and relay to appropriate authorities in designated territories, relevant information on threat and risk assessments and other related matters.

(4) In the performance of its functions in accordance with subsection (3)(d), the Centre shall make a determination on the basis of written assessments received from—

- (a) a Crown Counsel; and
- (b) the JPIP Agency;

but the Centre may, in a case of emergency, arrange for provisional entry into the Programme by a prospective participant prior to any such determination.

(5) The Centre shall, in deciding whether to include a prospective participant in the Programme, have regard to—

- (a) any criminal record of the prospective participant, particularly in respect of crimes of violence, and whether that record indicates a risk to the public if he is included in the Programme;
- (b) the results of any medical, psychological or psychiatric examination or evaluation of the prospective participant conducted to determine his suitability for inclusion in the Programme;
- (c) the seriousness of the offence to which any relevant evidence or statement relates;
- (d) the nature and importance of any relevant evidence or statement;
- (e) whether there are viable alternative methods of protecting or assisting the prospective participant;
- (f) the nature of the perceived danger to the prospective participant;
- (g) the nature of the prospective participant's relationship with other prospective participants being assessed for inclusion in the Programme;
- (h) the expected duration of the protection or assistance to be provided; and
- (i) any other matters that the Centre considers relevant.

(6) Action which may be taken by the Centre to facilitate the safety and security of participants may include the following—

- (a) providing any documents necessary —
 - (i) to establish a new identity for the participant; or
 - (ii) to protect the participant;

- (b) permitting a participant to use an assumed name in carrying out his duties in relation to the Programme and to carry documentation supporting the assumed name;
- (c) providing payments to or for the participant for the purpose of —
 - (i) meeting his reasonable living expenses including, where appropriate living expenses of his family;
 - (ii) providing, whether directly or indirectly, other reasonable financial assistance;
- (d) providing payments to the participant for the purpose of meeting costs associated with relocation;
- (e) providing assistance to the participant in obtaining employment, access to education and health care; and
- (f) providing other assistance to the participant with a view to ensuring that the participant becomes self-sustaining.

(7) The Centre shall exercise its functions under this or any other enactment acting alone or through a person designated by the Centre to act on its behalf, and shall be deemed to act in an administrative capacity.

(8) Subject to this Act, the Centre has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this or any other statute.

(9) The Minister may make regulations governing the procedure of the Centre but, subject to any such regulations and to subsection (1), the Centre shall have power to regulate its own procedure.

Crown Counsel to submit application

5 (1) In relation to any matter, a Crown Counsel shall, where satisfied that the circumstances so warrant, prepare and submit an application in the prescribed form to the Centre for a prospective applicant's entry into the Programme.

(2) An application referred to in subsection (1) shall be made after the Crown Counsel has—

- (a) in the case of a prospective participant who is likely to be a witness, formed the opinion that—
 - (i) the testimony of the prospective participant is credible and essential; and
 - (ii) the prospective participant can be relied upon to give the testimony; or
- (b) formed the opinion that a witness or his associate, is in need of protection or assistance or both,

and, in either case, consulted the DPP.

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(3) An application under this section shall be accompanied by detailed information on —

- (a) the significance of the case;
- (b) the prospective defendant; and
- (c) the testimony of the prospective participant.

Cases to be considered for protection

6 The Centre may offer, in relation to a participant, protection or assistance or both under the Programme in respect of—

- (a) criminal proceedings for the offences set out in Schedule 2; and
- (b) such civil proceedings as it thinks necessary.

Disclosure of certain information to Centre

7 (1) Notwithstanding section 4(4), the Centre shall not include a prospective participant in the Programme unless—

- (a) it is satisfied that the person has provided the Centre with the information required of him under subsection (2); and
- (b) it receives such other information as may be required in the case or under this Act.

(2) A prospective participant shall in relation to the following matters wherever arising disclose to the Centre—

- (a) details of all of his outstanding legal obligations;
- (b) details of all of his outstanding debts;
- (c) details of his criminal history;
- (d) details of any civil proceedings that have been instituted by or against him;
- (e) details as to whether he is prevented from entering any jurisdiction (as a result of a criminal conviction, court order or otherwise);
- (f) details of—
 - (i) any cash balances in bank accounts; and
 - (ii) property, real or personal, held by him in his own name or jointly or severally with any other person;
- (g) whether any of his property, real or personal, is liable to forfeiture or confiscation under any enactment;
- (h) details of any activity in which he is involved that may yield him a monetary return;
- (i) details of receivables and all sources of income;

- (j) details of his general medical condition;
- (k) details of any dependants and related obligations;
- (l) details of any court order relating to sentences imposed on him or to which he is subject in relation to criminal prosecutions;
- (m) details of any relevant court orders or arrangements relating to his custody of, or access to, children; and
- (n) details of any arrangements that he has made for—
 - (i) the service of documents on him;
 - (ii) representation in proceedings in any court;
 - (iii) enforcement of judgments in his favour; or
 - (iv) compliance with the enforcement of judgments against him.

(3) The Centre shall make such other inquiries and investigations, as it considers necessary for the purpose of assessing whether the prospective participant should be included in the Programme.

Inclusion of prospective participant in Programme

- 8 The Centre shall not include a prospective participant in the Programme unless—
- (a) subject to section 5, he applies to be included in the Programme on a form issued by the Centre for that purpose;
 - (b) the Centre is satisfied that he understands the implications of being included in the Programme; and
 - (c) he understands and signs a Memorandum of Understanding in accordance with the provisions of this Act, or if he is under eighteen years of age or otherwise lacks legal capacity to sign the Memorandum—
 - (i) it is signed by a parent or guardian; or
 - (ii) if there is no such parent or guardian, it is signed by a person appointed by the magistrates' court to be his guardian.

Justice Protection Investigative and Protective Agency (“JPIP Agency”)

- 9 (1) The Minister shall appoint the following persons as officers of the JPIP Agency—
- (a) the Commissioner; and
 - (b) such other persons holding office in the Police Service as the Minister in consultation with the Commissioner may consider necessary to provide services to the JPIP Agency.

(2) In relation to the possible inclusion of a prospective participant in the Programme, the JPIP Agency—

- (a) shall conduct investigations and submit to the Centre the participant's application form, accompanied by the following documents prepared by the JPIP Agency—
 - (i) an assessment of the application;
 - (ii) a threat assessment, including a prison report where the prospective participant is in prison; and
 - (iii) a risk assessment;
 - (b) shall provide protection for the prospective participant in the period prior to the determination referred to in section 4(4); and
 - (c) may, in a case of an emergency, apply to the Centre for provisional entry into the Programme by the prospective participant prior to the determination referred to in paragraph (b).
- (3) For the purposes of this Act, the JPIP Agency shall—
- (a) prepare and submit a report to the Centre on the suitability of a prospective participant for entry into the Programme and for that purpose—
 - (i) shall interview a prospective participant with a view to establishing his suitability for entry into the Programme;
 - (ii) shall examine the threat assessments and risk assessments submitted to the Centre pursuant to subsection (2)(a); and
 - (iii) may require a prospective participant or a participant, as the case may be, to undergo, for the purpose of determining his physical and mental health, medical tests or examinations and psychological or psychiatric evaluations and to authorise the results to be made available to the JPIP Agency;
 - (b) protect participants and persons accorded provisional entry pursuant to subsection (2)(c);
 - (c) assist with the relocation of participants where necessary; and
 - (d) carry out periodic reviews of threat assessments and risk assessments.
- (4) The JPIP Agency shall exercise its functions under this or any other Act acting alone or through a person designated by the JPIP Agency to act on its behalf, and shall be deemed to act in an administrative capacity.
- (5) Subject to this Act, the JPIP Agency has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this or any other Act.
- (6) The Minister may make regulations governing the procedure of the JPIP Agency but, subject to any such regulations and to subsection (1), the JPIP Agency shall have power to regulate its own procedure.

Memorandum of Understanding with participant

10 (1) The Centre shall prepare a Memorandum of Understanding which shall contain the matters set out in Schedule 3.

(2) The Centre may, where it considers necessary in a particular case, include any other matter in the Memorandum of Understanding.

(3) The Memorandum of Understanding shall be signed—

(a) by the prospective participant; or

(b) where the circumstances so require, by the person referred to in section 8(c),

in the presence of two witnesses, one of whom may be the participant's attorney.

(4) A prospective participant is included in the Programme when the Memorandum of Understanding is countersigned by the person authorised by the DPP for that purpose.

(5) The Centre may, after consultation with the DPP, vary the Memorandum of Understanding —

(a) with the consent of the participant; or

(b) upon application by the participant for a variation.

(6) Any such variation shall take effect on the day on which the participant receives written notice thereof.

(7) Where a participant remains in the Programme upon attaining the age of eighteen years, the Centre shall require him to sign a Memorandum of Understanding on his own behalf upon his attaining that age.

Agreement with designated and other territories

11 (1) If a memorandum of agreement is executed between Bermuda and any of the designated territories with a view to giving effect to the purposes of this Act—

(a) it shall form the basis of co-operation between Bermuda and the designated territory in relation to the objectives outlined in the agreement; and

(b) this Act shall apply in the implementation of such agreement or other arrangement with such modification as may, by an order made by the Minister, be considered necessary or expedient.

(2) Subsection (3) and section 28(2) apply where, in any exceptional circumstance, it is considered expedient for Bermuda to enter into a memorandum of agreement or any other scheme of arrangement with a country or territory that is not a designated territory, for the purposes of—

(a) receiving assistance from or rendering assistance to that country or territory in relation to the location of a participant;

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- (b) establishing a system of co-operation for the treatment and security of a participant of Bermuda; or
- (c) exchanging such information as may be necessary for the administration of justice in Bermuda as it relates to any specified witness.

(3) This Act shall apply in the implementation of any memorandum of agreement or other scheme of arrangement entered into pursuant to subsection (2) with such modification as may, by an order made by the Minister, be considered necessary or expedient.

Register of participants

12 (1) The Centre shall maintain a register of participants which shall be accorded a security classification not below "Top Secret".

(2) The Centre shall include in the register, the following details in respect of each participant—

- (a) the participant's name and any assumed names;
- (b) the participant's new name where he has been provided with a new identity under the Programme;
- (c) the participant's address;
- (d) details of any offences for which the participant has been convicted;
- (e) the dates on which the participant entered and left the Programme;
- (f) the matter giving rise to the participant's entry into the Programme; and
- (g) details of any approval or refusal pursuant to section 15(1).

(3) The Centre shall keep the following ancillary documents along with the register—

- (a) the original of each Memorandum of Understanding;
- (b) in respect of new identities, copies of each new document issued under the Programme;
- (c) the original of each approval granted by the Centre pursuant to section 16(1);
- (d) any documents returned to the Centre pursuant to section 17(6); and
- (e) such other documents as the Director may direct to be kept.

Access to register

13 (1) The Centre shall be the only approved authority that shall have access to the register and to the ancillary documents.

(2) But the Centre may, if it is of the opinion that it is in the interests of the due administration of justice to do so, allow another approved authority to have access to the register and the ancillary documents.

(3) Where the Centre allows an approved authority access to the register and the ancillary documents, the Centre shall notify the other approved authorities of—

- (a) the identity of the authority to whom the access was allowed;
- (b) the information to which the authority was allowed access;
- (c) the reasons for allowing access; and
- (d) the date and time of such access.

PART 3

PROTECTION UNDER THE JUSTICE PROTECTION PROGRAMME

Rights and obligations

14 (1) Where a participant is entitled to exercise a right, is under an obligation or is subject to any restriction, the appropriate approved authority shall take such steps as are reasonably practicable to ensure that—

- (a) the right or obligation is dealt with according to law; and
- (b) the participant complies with the restriction.

(2) The steps referred to in subsection (1) may include—

- (a) providing protection for the participant while the participant is attending court; and
- (b) notifying a party or possible party to legal proceedings, that the authority shall accept process issued by a court or tribunal on behalf of the participant, and nominating one of its officers for the purpose.

(3) Where the authority is satisfied that a participant who has been provided with a new identity under the Programme is using the new identity to—

- (a) avoid obligations that were incurred before the new identity was established; or
- (b) avoid complying with restrictions that were imposed on the participant before the new identity was established,

the authority shall give notice in writing to the participant stating that unless he satisfies the authority that the obligations are dealt with according to law or the restriction is complied with, the authority shall take such action as it considers necessary to ensure performance of the obligations or compliance with the restrictions.

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(4) The action referred to in subsection (3) may include informing a person who is seeking to enforce rights against the participant, of the details of any property, real or personal, owned by the participant under his former identity.

Non-disclosure of former identity

15 (1) A participant who has been provided with a new identity under the Programme shall not identify or disclose his former identity unless he has obtained the prior written approval of the Centre.

(2) Notwithstanding subsection (1) and any other enactment, the participant shall in any proceedings, be entitled to claim that his new identity is his only identity.

(3) In this section, "participant" includes a person who is no longer participating in the Programme but retains his new identity.

Termination of protection and assistance

16 (1) Protection or assistance provided under the Programme to a participant shall be terminated by the Centre if the participant requests in writing that it be terminated.

(2) Protection or assistance provided under the Programme to a participant may be terminated by the Centre if—

- (a) the participant deliberately breaches a term of the Memorandum of Understanding;
- (b) the Centre discovers that the participant had knowingly given information to the Centre that was false or misleading in a material particular;
- (c) the participant's conduct is, in the opinion of the Centre, likely to compromise the integrity of the Programme;
- (d) the circumstances that gave rise to the need for protection or assistance for the participant cease to exist;
- (e) the participant deliberately breaches an undertaking, including an undertaking to give evidence, in relation to a matter, material to the Programme;
- (f) the participant refuses or fails to sign a new Memorandum of Understanding when required to do so under section 10(7); or
- (g) there is, in the opinion of the Centre, no reasonable justification for the participant to remain in the Programme.

(3) Where the Centre decides under subsection (2) to terminate protection or assistance or both under the Programme, the Centre shall—

- (a) take reasonable steps to notify the participant of the decision; and
- (b) notify the other approved authorities of the decision.

(4) A participant who receives such a notification may, within 28 days after receiving the notice, apply in writing to the DPP for a review of the decision of the Centre.

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(5) Where a participant applies for a review of the decision of the Centre, the DPP shall—

- (a) allow the participant a reasonable opportunity to state his case; and
- (b) review the decision of the Centre and—
 - (i) confirm or reverse it; or
 - (ii) vary it with the consent of the participant,

and inform the participant in writing of the decision.

(6) The decision of the DPP shall be final.

(7) A decision of the Centre pursuant to subsection (2) to terminate protection or assistance or both shall be effected as follows—

- (a) where the participant's whereabouts are unknown and the Centre has taken reasonable steps to notify the participant of the decision but has been unable to do so or where, in the opinion of the DPP, the participant is avoiding notification, the protection shall be terminated at the end of the period of 28 days after those steps were commenced;
- (b) where the participant does not apply for a review of the decision in accordance with subsection (4), termination shall take effect at the end of the period of 28 days after the participant receives the notification; or
- (c) if the participant applies for a review of the decision in accordance with subsection (4) and the DPP notifies the participant that the decision of the Centre is confirmed, termination shall take effect from the date of receipt of the notification.

Restoration of former identity

17 (1) Where a participant has been provided with a new identity under the Programme and protection or assistance to the participant is terminated, the Centre may, if it considers it appropriate to do so, take such action as is necessary to restore the former participant's previous identity.

(2) The Centre shall take reasonable steps to notify the former participant of its decision under subsection (1).

(3) Where the Centre decides to take action to restore the identity of the former participant, he may, within 28 days after receiving the notification, apply in writing to the DPP for a review of the decision of the Centre.

(4) Where an application is made, the DPP shall—

- (a) before making a decision, give the former participant a reasonable opportunity to state his case; and
- (b) review the decision of the Centre and vary, confirm or reverse it, and inform the former participant, in writing, of the decision.

(5) The decision of the DPP shall be final.

(6) Where the Centre takes action under this section to restore the identity of the former participant and the Centre requests the return of all documents that were provided in relation to the new identity, the former participant shall return those documents to the Centre within seven days after receiving the request.

Provision of information to an approved authority

18 (1) Subsection (2) applies where another approved authority notifies the Centre that a participant who has been provided with a new identity or has been relocated, is under investigation for, or has been arrested or charged with an offence, the maximum penalty for which is or includes imprisonment for a period of more than one year.

(2) The Centre may —

- (a) provide the appropriate approved authority with —
 - (i) the participant's new identity;
 - (ii) the participant's criminal record and fingerprints; and
 - (iii) such other information relating to the Programme as the Centre considers appropriate in the circumstances; and
- (b) cause the participant to appear before the appropriate authority.

PART 4

MISCELLANEOUS

External enforcement of Programme

19 Without prejudice to any agreement or arrangement entered into pursuant to section 11, the Minister may, by order—

- (a) designate any territory specified in Schedule 4 as a territory to which this Act applies for the purposes of the relocation of participants under the Programme;
- (b) specify appropriate overseas authorities within designated territories that are to give effect to the provisions of this Act in relation to the relocation of participants under the Programme to designated territories; and
- (c) specify, in respect of designated territories, the steps that need to be taken there for the purposes of the relocation of participants under the Programme to designated territories.

Officers protected from suit

20 Officers of the Centre and the JPIP Agency performing functions in relation to the Programme shall not be liable to any action, suit or other proceedings in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of a power conferred by this Act.

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Offences

21 (1) A person commits an offence if, without lawful authority, he discloses information—

- (a) about the identity or location of a person who is or has been a participant; or
- (b) that compromises the safety or security of a participant or the integrity of the Programme.

(2) A person who is or has been a participant, or a person who has undergone assessment for inclusion in the Programme, commits an offence if, without being authorised by the Centre, he discloses—

- (a) the fact of such participation or assessment;
- (b) information as to the way in which the Programme operates;
- (c) information about any officer of the Centre who is or has been involved in the Programme;
- (d) the fact that he has signed a Memorandum of Understanding; or
- (e) any details of a Memorandum of Understanding that he has signed.

(3) A person commits an offence—

- (a) if he offers any bribe, gratification or other inducement to any person employed in the administration of this Act, for the purpose of obtaining information which could prejudice the safety or security of a participant or the integrity of the Programme; or
- (b) being a person employed in the administration of this Act, if he accepts any bribe, gratification or other inducement in exchange for the information referred to in paragraph (a).

(4) A person who commits an offence under subsection (1), (2) or (3) is liable —

- (a) on summary conviction to a fine of \$50,000 or to imprisonment for a term of ten years, or both; and
- (b) on conviction on indictment, to a fine of \$100,000 or to imprisonment for a term of fifteen years, or both.

(5) A person who, without reasonable excuse, fails to return the documents referred to in section 17(6) in accordance with that section, commits an offence and is liable—

- (a) on summary conviction to a fine of \$15,000 or to imprisonment for a term of three years, or both; and
- (b) on conviction on indictment, to a fine of \$25,000 or to imprisonment for a term of five years, or to both.

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(6) No person shall be charged with an offence under subsection (3) committed wholly on or after the commencement date of the Bribery Act 2016.

[Section 21 subsection (6) inserted by 2016 : 47 s. 24(1) & Sch 2 effective 1 September 2017]

Officers not required to disclose information

22 (1) Subject to subsection (2), no officer of the Centre or the JPIP Agency shall be required to —

- (a) produce in any court or to another approved authority, any document that has come into the custody or control of the Centre or the JPIP Agency in the course of, or because of, the performance of functions or duties under this Act; or
- (b) divulge, communicate or produce to or before such a body, any matter or thing that has come to the notice of the officer in the performance of functions or duties under this Act.

(2) Subsection (1) does not apply where —

- (a) it is necessary to do any such thing for the purpose of carrying the provisions of this Act into effect; or
- (b) a court, on an application, considers that it is necessary to do so in the interests of justice, and that such production or disclosure is not likely to adversely affect the intent and purposes of this Act, and orders accordingly.

(3) Where a court makes an order under subsection (2)(b) for production or disclosure, the DPP or a person aggrieved by the order may—

- (a) upon the making of the order, give oral notice; or
- (b) within seven days of the making of the order, give written notice,

of his intention to appeal against the order.

(4) Where notice is given under subsection (3), the court shall stay the execution of the order pending the outcome of the appeal.

(5) Where, in the determination of legal proceedings it becomes necessary for the judge or magistrate presiding to be advised of a person's participation in the Programme, the DPP may issue a certificate in the form set out in Schedule 5.

(6) A certificate issued under subsection (5) shall be conclusive evidence that the person named therein is a participant in the Programme for any of the purposes of the legal proceedings, and the judge or magistrate shall not disclose the fact of that person's participation in the Programme otherwise than in accordance with this Act.

Requirement where participant becomes a witness in criminal proceedings

23 (1) Where—

- (a) a person is provided with a new identity under the Programme;

- (b) the person retains that identity, whether or not he remains a participant; and
- (c) the person is to appear as a witness in criminal proceedings under that identity,

the person shall notify the Centre that he is to appear as a witness in such proceedings.

(2) After being notified under subsection (1), the Centre may take any action it considers appropriate in the circumstances, except that where the person has a criminal record, the Centre shall disclose that criminal record to the court, the DPP and the accused person or the accused person's attorney.

Identity of participant not to be disclosed

24 If in any proceedings in any court, the new identity of a person who is a participant is in issue or may be disclosed, the court shall, unless it considers that the interests of justice require otherwise—

- (a) hold that part of the proceedings that relate to the identity of the participant in camera; and
- (b) make such order restricting the publication of evidence given before the court as in its opinion will ensure that the identity of the participant is not disclosed.

Annual reports

25 (1) Subject to subsection (2), the Centre shall submit to the Minister, annual reports on the general operation, performance and effectiveness of the Programme.

(2) A report under subsection (1) shall not contain any matter which in the opinion of the Centre, is likely to prejudice the effectiveness or security of the Programme.

Regulations and orders

26 (1) The Minister may make regulations prescribing all matters which are required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations —

- (a) respecting the establishment of identities of participants and any matters relating thereto;
- (b) adopting such measures as are necessary and reasonable to secure the safety, health and welfare of participants;
- (c) facilitating the relocation of participants within Bermuda and to and from a designated territory pursuant to any agreement or scheme of arrangement entered into pursuant to section 11;
- (d) providing for access by participants to their attorneys and vice versa; and

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(e) establishing a mechanism for the monitoring and reviewing of the Programme.

(3) Regulations made under this section are subject to the negative resolution procedure.

(4) Orders made under this Act are subject to the negative resolution procedure.

Designation of approved authorities

27 The Minister may by order designate such person or body as the Minister sees fit as an approved authority for the purposes of this Act.

Amendment of Schedules

28 (1) The Minister may by order amend Schedule 1, 2, 3 or 5.

(2) Notwithstanding section 19 and the definition of "designated territory" in section 2, the Minister may by order amend Schedule 4 to include any other territory or country, and any reference in this Act to a designated territory shall be construed as including a reference to that other territory or country.

Consolidated fund

29 Any expenses incurred under this Act shall be paid out of the Consolidated Fund.

Commencement

30 This Act shall come into force on such date as the Minister may appoint by notice in the Gazette.

SCHEDULE 1

(section 2)

PROSPECTIVE PARTICIPANTS IN THE JUSTICE PROTECTION PROGRAMME

1. Witnesses and their associates
2. Any person designated in writing by the DPP

SCHEDULE 2

(section 6)

OFFENCES WHICH MAY GIVE RISE TO PROTECTION UNDER THE JUSTICE
PROTECTION PROGRAMME

1. Arson, criminal damage to property, and related offences
2. Drug offences
3. Firearms and ammunition offences
4. Hijacking
5. Homicide, assaults endangering life and health, and other serious assaults
6. Money laundering offences
7. Offences against property
8. Offences against the administration of justice
9. Offences against the Crown and offences against public order
10. Offences involving domestic violence
11. Piracy
12. Sexual offences
13. Terrorism and related offences

SCHEDULE 3

(section 10)

CONTENTS OF MEMORANDUM OF UNDERSTANDING

1. The basis on which a prospective participant is to be included in the Programme.
2. The details of the protection or assistance that is to be provided.
3. The terms and conditions upon which protection or assistance shall be provided to the prospective participant.
4. An undertaking that the participant will not compromise, directly or indirectly, the security of, or any other aspect of, the protection or assistance, or both, being provided.
5. An undertaking that the participant will comply with all reasonable directions of the Centre in relation to the protection or assistance, or both, provided to him.
6. An undertaking that the prospective participant or participant (as the case may be) shall, if required to do so by the Centre—
 - (a) undergo medical tests or examinations and psychological or psychiatric evaluations by medical officers approved by the Centre for those purposes; and
 - (b) undergo drug or alcohol counselling or treatment,and authorise that the results be made available to the Centre.
7. A list of all outstanding legal obligations, and a statement by the prospective participant of the arrangements which have been made to meet those obligations.
8. A financial support arrangement.
9. An undertaking by the prospective participant to disclose to the Centre details of any criminal charges that are made against him, and any civil or bankruptcy proceedings that are instituted against him after his inclusion in the Programme.
10. A provision to the effect that protection or assistance under the Programme may be terminated if the participant breaches a term of the Memorandum of Understanding.

SCHEDULE 4

(section 19)

TERRITORIES WHICH MAY PARTICIPATE IN THE JUSTICE PROTECTION
PROGRAMME

Anguilla

British Virgin Islands

Cayman Islands

Montserrat

Turks and Caicos Islands

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SCHEDULE 5

(section 22)

JUSTICE PROTECTION PROGRAMME CERTIFICATE

SECTION 22(5) and (6) OF THE JUSTICE PROTECTION ACT 2010

For the purposes of section 22(5) and (6) of the Justice Protection Act 2010, the Director of Public Prosecutions hereby certifies that—

_____ [name]

_____ [date of birth]

of _____ [address]

is a participant in the Justice Protection Programme.

Dated this day of , 20

[Director of Public Prosecutions]

NOTE: Under section 22(5) and (6) of the Justice Protection Act 2010, this certificate is conclusive evidence in legal proceedings that the person named above is a participant in the Justice Protection Programme.

[Assent Date: 09 August 2010]

[Operative Date: 04 February 2011]

Amended by
2016 47]