



EXTRAORDINARY
OFFICIAL GAZETTE
THE BAHAMAS
PUBLISHED BY AUTHORITY

NASSAU

26th August, 2016

(C)

ADVANCE PASSENGER INFORMATION SYSTEM ACT, 2016

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No. 31 of 2016

ADVANCE PASSENGER INFORMATION SYSTEM ACT, 2016

AN ACT TO INSTITUTE A SYSTEM TO FACILITATE THE PROVISION OF ADVANCE INFORMATION RELATING TO PASSENGERS AND CREW MEMBERS OF A COMMERCIAL AIRCRAFT OR COMMERCIAL VESSEL; TO ESTABLISH PROTOCOLS FOR THE SHARING OF SUCH INFORMATION WITH OTHER STATES FOR THE PURPOSE OF IDENTIFYING PERSONS WHO MAY POSE RISKS TO SECURITY AND FOR CONNECTED MATTERS

[Date of Assent - 26th August, 2016]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act may be cited as the Advance Passenger Information System Act, 2016.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

2. Interpretation.

In this Act —

“**advance passenger information**” or “**API**” means the information or data concerning a crew member, passenger or any other person travelling in a commercial aircraft or commercial vessel as set out in the *First Schedule*;

- “advance passenger information system”** or **“APIS”** means the system of automated electronic data interchange of API developed by the Caribbean Community for the benefit of Member States of the Community and the screening of API by IMPACS and JRCC against a watch list for an API hit;
- “aircraft”** includes an aeroplane, helicopter, or other means of airborne navigation by means of which persons can travel across international borders;
- “API hit”** means a name present in one or more watch lists;
- “commercial aircraft”** means an aircraft which engages in transporting passengers or goods for monetary gain;
- “commercial vessel”** means a vessel which engages in transporting passengers or goods for monetary gain;
- “competent authority”** means the Department of Immigration or such entity as the Minister may appoint;
- “CONSLE”** means the CARICOM Council for National Security and Law Enforcement;
- “IMPACS”** means the CARICOM Implementing Agency for Crime and Security established by agreement in 2006 to administer the APIS;
- “JRCC”** means the Joint Regional Communications Centre established as a sub-agency of IMPACS and utilised for pre-screening of travellers to, or from, a Member State of the Caribbean Community;
- “Minister”** means the Minister responsible for Immigration and Emigration;
- “Participating Countries”** means Member States of the Caribbean Community and the United States of America;
- “passenger”** means any person, not being a *bona fide* member of the crew, travelling or seeking to travel on a commercial vessel or aircraft;
- “private aircraft”** means any aircraft which is not a commercial or state aircraft;
- “stop for non-traffic purposes”** means a technical stop;
- “technical stop”** means an aircraft or vessel arriving for purposes of refuelling, repairs, emergency, or other similar purpose, but does not include the taking on or discharging of passengers, baggage, cargo and or mail;
- “The Bahamas”** means the entire territory of the Commonwealth of The Bahamas including its territorial waters, airspace and its Exclusive Economic Zone;

“vessel” means a ship, boat, yacht or other floating or submersible transportation by means of which persons can travel across international borders;

“watch list” means a list that is used to watch or track the current activity or movements of persons including —

- (a) terrorists and persons who have been found guilty of involvement with stolen and lost travel documents;
- (b) criminal deportees; and
- (c) other persons of interest to the intelligence community.

3. Application.

This Act applies to any commercial aircraft or commercial vessel which is expected to arrive in The Bahamas or to leave The Bahamas.

4. Captain or master of vessel or aircraft must provide API.

- (1) Subject to subsection (4) and section 6, the captain, master or agent of every commercial aircraft or commercial vessel which is expected to arrive in The Bahamas or to leave The Bahamas shall provide the API to the competent authority within the time frames set out in the *Second Schedule*.
- (2) A captain, master or agent of a commercial aircraft or commercial vessel commits an offence who —
 - (a) fails to provide the API in accordance with sub-section (1);
 - (b) intentionally or recklessly provides erroneous, faulty, misleading, incomplete or false API; or
 - (c) transmits the API in an incorrect format.
- (3) A captain, master or agent may not be charged for an offence under subsection (2)(b) where the API provided is inaccurate but the captain, master or agent satisfies the competent authority that the error was not made knowingly or recklessly.
- (4) The Minister may, in consultation with the Minister of National Security, waive the requirements of sub-section (1) in such circumstances and subject to such conditions as the Minister may prescribe in such waiver where the aircraft or vessel is —
 - (a) a military or law enforcement aircraft or vessel; or
 - (b) on official state business.

5. Verification of API.

- (1) The competent authority shall verify the API provided under section 4 during physical processing at any port by using the travel documents provided by crew members or passengers.
- (2) Where a discrepancy is found in the API, the competent authority shall —
 - (a) correct the information or data at the port of entry or exit; and
 - (b) update the information or data in the APIS after verifying it from the travel or other relevant documents of the crew member or passenger.
- (3) The captain, master or agent, and a crew member or passenger, of a commercial vessel or commercial aircraft shall —
 - (a) answer any question asked by the competent authority relating to the vessel or aircraft and its crew, passengers, voyage or flight; and
 - (b) forthwith at the request of the competent authority, produce any documents within such person's possession or control relating to the vessel or aircraft and its crew, passengers, voyage or flight.
- (4) A person referred to in subsection (3) commits an offence who —
 - (a) refuses to answer, or knowingly gives a false answer, to a question put to such person by the competent authority under sub-section (3) (a); or
 - (b) fails to comply with a request to produce documents made under sub-section (3)(b).

6. Technical or non-traffic stops.

- (1) Section 4 does not apply to a commercial aircraft or commercial vessel which makes a technical stop or lands, berths, anchors, or otherwise arrives or stops for non-traffic purposes where such arrival or stop is —
 - (a) required by any statutory or other requirement relating to navigation;
 - (b) compelled by any emergency, accident, unfavourable weather conditions, or other necessity; or
 - (c) authorised by the competent authority.
- (2) Where a commercial aircraft or commercial vessel arrives or stops for a reason referred to in subsection (1), the captain or master —
 - (a) shall forthwith report to the competent authority;
 - (b) shall not, except with the consent and authorisation of the competent authority, permit a crew member or passenger to disembark from the aircraft or vessel; and

- (c) shall comply with any directions given by the competent authority in respect of any crew members or passengers carried on the aircraft or vessel.
- (3) No member of the crew or passenger of a commercial aircraft or commercial vessel shall, without the consent and authorisation of the competent authority, disembark from the aircraft or vessel and all such persons shall comply with any directions given by the competent authority.
- (4) A captain or master who contravenes or fails to comply with a provision of subsection (2) commits an offence.
- (5) Notwithstanding any provision of this section, the disembarkation of crew members or passengers from a commercial aircraft or commercial vessel shall not constitute an offence where the disembarkation is necessary for reasons of national security, health, safety or the preservation of life.

7. Management of APIS.

The competent authority shall —

- (a) co-ordinate with the IMPACS on all matters relating to the APIS;
- (b) where requested, allow a crew member or passenger from a vessel or aircraft to access their personal identifiable information maintained in the APIS to ensure its correctness;
- (c) determine, after consultation with the IMPACS, the admissibility or otherwise of passengers or crew members;
- (d) withhold clearance for the departure of a commercial aircraft or commercial vessel whose captain, master or agent has not provided the API required under section 4, pending submission of the API;
- (e) assess the sufficiency, and error rates, in review of API transmissions for each journey;
- (f) be deemed to be a data controller for purposes of the Data Privacy (Protection of Personal Information) Act¹.

8. Use of API and the APIS.

- (1) API shall be used solely for the purposes of this Act.
- (2) The IMPACS shall use the APIS to conduct screening against watch lists of crew members and passengers on aircraft and vessels that enter into, depart from, and travel within, the regional space in order to provide information to assist Participating Countries.

¹*Vol. VII, (Ch. 324A)*

- (3) The IMPACS may share the information contained within the APIS, for the purpose of furthering national, regional or international security, with —
 - (a) the International Criminal Police Organization (INTERPOL); and
 - (b) any other national, regional or international intelligence, law enforcement, or security agencies or centres approved by CONSLE.

9. Retention of API.

- (1) API collected under this Act for entry screening purposes shall be retained for a period not exceeding three years from the date of travel of the crew member or passenger of the aircraft or vessel.
- (2) Subsection (1) does not apply to information or data copied from the APIS into any other security database system to which a different data retention schedule applies.

10. Minister may amend Schedules.

The Minister may by Order published in the Gazette, after consultation with CONSLE, amend the *First Schedule* or *Second Schedule* with respect to API.

11. Offences and penalties.

- (1) A person who commits an offence under this Act shall be liable on summary conviction for a first offence to a fine not exceeding five thousand dollars and, for any subsequent offence, to a fine not exceeding ten thousand dollars.
- (2) Subject to subsection (3), where an offence under this Act has been committed by a body corporate every person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that —
 - (a) the offence was committed without his consent or connivance; or
 - (b) he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all circumstances.
- (3) Subsection (2) shall, where the affairs of a body corporate are managed by its members, apply in relation to the acts and defaults of a member in connection with his functions of management as if the member were a director of the body corporate.

12. Regulations.

The Minister may make regulations to give effect to the principles and provisions of this Act and, without prejudice to the generality of the foregoing, in particular may make regulations prescribing —

- (a) procedures for collaboration and coordination of information gathering and sharing under this Act; and
- (b) offences for contraventions of any of the provisions of regulations made pursuant to this Act with penalties not to exceed five thousand dollars for a first offence and ten thousand dollars for any subsequent offence.

FIRST SCHEDULE (Section 2)

ADVANCE PASSENGER INFORMATION

(A) **Data relating to the flight or voyage (Header Data):**

Flight Identification:

Vessel Identification Number:

Vessel Name:

Country of Registration:

Agent/Owner:

Call Sign (if applicable):

Scheduled Departure Date:

Scheduled Departure Time:

Scheduled Arrival Date:

Scheduled Arrival Time:

Last Place/Port of Call of Commercial Vessel or Commercial Aircraft:

Place/Port of Commercial Vessel or Commercial Aircraft Initial Arrival:

Subsequent Place/Port of Call within the country/regional space:

Number of Persons on board:

(B) **Data relating to each individual on board:**

Official Travel Document Number:

Issuing State or Organisation of the Official Travel Document:

Official Travel Document Type:

Expiration Date of Official Travel document:

Surname/Given Name(s):

Nationality:

Date of Birth:

Gender:

Place of Birth:

Traveller's Status:

Place/Port of Original Embarkation:

Place/Port of Clearance:

Place/Port of Onward Foreign Destination:

Passenger Name Record (PNR) Data including (as available in the traveller's Passenger Name Record in the carrier's reservation system):

- (a) PNR record locator
- (b) date of reservation/issue of ticket
- (c) date(s) of intended travel
- (d) name(s)
- (e) address and contact information (telephone number, e-mail address)
- (f) all forms of payment information, including billing address
- (g) complete travel itinerary for specific PNR
- (h) frequent flyer information
- (i) travel agency /travel agent
- (j) travel status of passenger, including confirmations, check-in status, no show or go show information
- (k) split/divided PNR information
- (l) general remarks (including all available information on unaccompanied minors under 18 years, such as name and gender of the minor, language(s) spoken, name and contact details of guardian on departure and relationship to the minor, name and contact details of guardian on arrival and relationship to the minor, departure and arrival agent)
- (m) ticketing field information, including ticket number, date of ticket issuance and one way tickets, Automated Ticket Fare Quote fields
- (n) seat number and other seat information
- (o) code share information
- (p) all baggage information
- (q) number and other names of travellers on PNR
- (r) any Advance Passenger Information (API) data collected
- (s) all historical changes to the PNR listed in items (a) to (s)

(C) Additional Data Elements:

Visa Number (if applicable):

Issue Date of the Visa:

Place of Issuance of the Visa:

Other Document Number used for Travel (if applicable):

Type of Other Document used for Travel:

Primary Residence:

Country of Primary Residence:

Address:

City:
State/Province/County:
Postal Code:
Destination Address:
Address:
City:
State/Province/County:
Postal Code:

(D) Data Relating to the Reporting Party

Reporting Party Name:
Reporting Party Telephone Number:
Reporting Party Facsimile Number:
Reporting Electronic Mail Address:

SECOND SCHEDULE (Section 4)

TIME FRAMES FOR PROVISION OF API

- (1) In case of—
 - (a) a commercial aircraft, no later than 40 minutes prior to departure from the last port of call;
 - (b) a commercial vessel arriving from outside the regional space, no later than 24 hours prior to arrival;
 - (c) a commercial vessel arriving from a destination within the regional space, no later than 1 hour prior to the arrival of the vessel from the last port of call.
- (2) In the event of any changes to the flight/vessel header data or data relating to an individual on board, an updated API file is required prior to departure of the aircraft or vessel.