

THE JUSTICE PROTECTION ACT

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SCHEDULES

THE JUSTICE PROTECTION ACT

Act
23 of 2001.

[4th August, 2008.]

Preliminary

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

Short title.

2. In this Act—

Inter-
pretation.

“Administrative Centre” or “Centre” means the Witness Protection Administration and Victim Support Unit in the Ministry of National Security and Justice;

“Agreement” means the Agreement Establishing the Regional Justice Protection Programme, signed at Port of Spain on July 7, 1999;

“approved authority” or “authority” means—

- (a) the Attorney-General;
- (b) the Director of Public Prosecutions;
- (c) the Administrative Centre;
- (d) the Commissioner of Police or any other member of the Jamaica Constabulary Force designated by him;
- (e) such other person or body as the Minister may, from time to time, designate as an approved authority;

“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;

“Contracting Party” means a Party to the Agreement;

“Justice Protection Programme” or “Programme” means

the Justice Protection Programme referred to in section 4;

“participants” means witnesses, jurors, judicial officers, legal officers, law enforcement personnel or associates of such persons and any other persons to whom protection or assistance or both is given under the Justice Protection Programme;

“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 (a), (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 organization 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;
- (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 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 will be committed;
- (c) in a criminal trial; or
- (d) in any civil proceedings.

The 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.

Establishment of Justice Protection Programme and Agencies.

(2) The Minister may enter into a reciprocal arrangement with the government of a Contracting Party or any other country in order to enable a participant in that Contracting Party or other country, to be provided, subject to this Act, with protection or assistance or both.

The Administrative Centre

4.—(1) Subject to this Act, the Administrative Centre shall develop, manage and maintain the Justice Protection Programme and shall be responsible for deciding whether a prospective participant is to be afforded protection or assistance or both under the Programme.

Functions of Administrative Centre.

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

- (a) liaise with—

JUSTICE PROTECTION

- (i) other approved authorities and with Administrative Centres of other Contracting Parties; and
 - (ii) relevant authorities of other countries;
- (b) determine the participants in the Justice Protection Programme;
- (c) determine after consultation with the Commissioner of Police and the Director of Public Prosecutions, the level and duration of protection or assistance for a prospective participant, based on the assessments referred to in subsection (3);
- (d) 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;
- (e) require the prospective participant to conclude an agreement with the Centre, detailing the terms and conditions of his participation in the Programme;
- (f) arrange for the provision of safe houses;
- (g) develop guidelines for the effective operation of the Programme;
- (h) establish budgetary requirements of the Programme;
- (i) make payments in connection with the protection or assistance or both, provided under this Act;
- (j) take cognizance of the high cost and complexity of providing adequate protection for participants;
- (k) co-ordinate and furnish to approve authorities of Contracting Parties and the relevant authorities of any other country, relevant information on threat and risk assessments and other related matters.

(3) For the purpose of determining the participants in the Justice Protection Programme, the Administrative Centre shall—

- (a) in relation to criminal matters, take into account any written assessments received from the Commissioner of Police and the Director of Public Prosecutions;
- (b) in relation to civil matters and enquiries under the Commissions of Enquiry Act, make a determination only on the basis of recommendations received from the Attorney General.

(4) In deciding whether to include a prospective participant in the Programme, the Administrative Centre shall have regard to—

- (a) the prospective participant's criminal record, if any, particularly in respect of crimes of violence;
- (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 and 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;

(5) For the purposes of this Act, the Administrative Centre shall—

- (a) interview a prospective participant with a view to establishing his suitability for entry into the Programme;
- (b) examine the threat and risk assessments submitted to the Centre pursuant to section 8;
- (c) 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 authorize the results to be made available to the Centre;
- (d) protect participants and persons accorded provisional entry pursuant to section 8(c);
- (e) relocate participants where necessary;
- (f) carry out periodic reviews of threat and risk assessments.

(6) The Administrative Centre shall, not later than the last day of February in each year, submit to the Minister, a report of its operations during the preceding year.

(7) The report referred to in subsection (6) shall include information on the number of participants in the Programme, the nature of the legal proceedings involved and such other information as the Minister may consider appropriate.

5.—(1) The Administrative Centre may offer protection or assistance or both under the Justice Protection Programme in respect of civil matters and the offences set out in the First Schedule.

Cases to be considered for protection. First Schedule.

(2) The Minister may, after consultation with the Director of Public Prosecutions and the Commissioner of Police, amend the First Schedule by Order subject to negative

resolution.

6.—(1) The Administrative Centre may refuse to include a prospective participant in the Programme if—

Disclosure
of certain
information
to Adminis-
trative
Centre.

- (a) it is satisfied that the person has not provided the Centre with the information specified in subsection (2); and
- (b) it has not received such other information as may be required in the case or under this Act.

(2) A prospective participant shall disclose to the Centre—

- (a) detailed information on—
 - (i) his outstanding legal obligations;
 - (ii) his outstanding debts;
 - (iii) any civil proceedings that have been instituted by or against him;
 - (iv) any business activity in which he is involved;
 - (v) receivables and all sources of income;
 - (vi) his general medical condition;
 - (vii) any dependants and related obligations;
 - (viii) any court order relating to sentences imposed on him or to which he is subject in relation to criminal prosecutions;
 - (ix) any relevant court orders or arrangements relating to his custody of or access to children;
- (b) his criminal record, if any;
- (c) details of—
 - (i) any cash balances in bank accounts; and
 - (ii) property, real or personal, held anywhere by him in his own name or jointly or severally with any other person;

- (d) whether any of his property, real or personal, is liable to forfeiture under any other law;
- (e) 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.

Conditions for inclusion of prospective participant in Programme.

7. The Administrative Centre shall not include a prospective participant in the Programme unless—

- (a) subject to section 9, he applies in the prescribed form to be included;
- (b) the Centre is satisfied that—
 - (i) he understands the implications of being included in the Programme; and
 - (ii) he understands the terms of the agreement and it is signed in accordance with section 11.

The Commissioner of Police

Functions of Commissioner.

8. In relation to the possible inclusion of a prospective participant in the Justice Protection Programme, the Commissioner of Police—

- (a) shall carry out investigations and submit to the Administrative Centre, the prescribed application form completed by the prospective participant, and the following documents prepared by the Commissioner—
 - (i) an assessment of that application;
 - (ii) a threat assessment, including a report of the

Commissioner of Corrections where the prospective participant is in a correctional institution;

(iii) a risk assessment;

(b) shall provide protection for the prospective participant in the period prior to the determination by the Centre pursuant to section 4(3);

(c) may, in a case of emergency, apply to the Centre for provisional entry into the Programme by the prospective participant prior to that determination.

The Director of Public Prosecutions

9.—(1) The Director of Public Prosecutions shall, where he is satisfied that the circumstances so warrant, prepare and submit an application in the prescribed form to the Administrative Centre for a prospective participant's entry into the Justice Protection Programme.

Director of
Public Pro-
secutions
to submit
application.

(2) An application referred to in subsection (1) shall be made after the Director of Public Prosecutions has—

(a) in the case of a prospective participant who is likely to be a witness—

(i) determined that his testimony is credible and essential; and

(ii) formed the opinion that the prospective participant can be relied upon to give the testimony;

(b) determined that a juror, judicial officer, legal officer, law enforcement officer or any of their associates, is in need of protection or assistance or both.

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

(a) the significance of the case;

(b) the prospective defendant;

- (c) the testimony of the prospective participant;
- (d) the anticipated benefits of a successful prosecution.

Agreement

Agreement.
Second
Schedule.

10.—(1) The Administrative Centre shall prepare an agreement containing the matters set out in the Second Schedule.

(2) The Administrative Centre may, where it considers necessary in a particular case, include any other matter in an agreement.

(3) The agreement shall be signed—

- (a) by the prospective participant; or
- (b) where the prospective participant is under eighteen years of age and unmarried, or otherwise lacks legal capacity to sign the agreement, by a parent or guardian or if there is no such parent or guardian, by a person appointed by the Supreme Court to be his guardian,

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

(4) A prospective participant is included in the Programme when the agreement is counter-signed by the person authorized by the Centre for the purpose.

(5) The agreement may be varied by the Centre with the participant's consent.

(6) The variation referred to in subsection (5) 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 Administrative Centre shall require him to sign an agreement on his own behalf upon his attaining that age.

Register of Participants

Register of
participants.

11.—(1) The Administrative Centre shall maintain a register of participants which shall be accorded a security classification

not below "Top Secret".

(2) The register may be maintained by electronic means.

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

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

(4) The Centre shall keep the following documents (hereinafter referred to as "ancillary documents") along with the register—

- (a) the original of each agreement;
- (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 15(1);
- (d) any documents returned to the Centre pursuant to section 17(5).

12.—(1) Subject to this section, the Administrative Centre shall be the only approved authority that shall have access to the register and to the ancillary documents.

(2) The Centre may, if it is of the opinion that it is in the interest of the due administration of justice to do so, allow another approved authority to have access to information contained in the register and the ancillary documents in relation to a particular participant.

Protection under the Justice Protection Programme

Action *re*
participant.

13. Action which may be taken under this Act to ensure the safety and security of participants may include the following—

- (a) providing any documents necessary to establish a new identity for the participant or otherwise 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) relocating the participant and his property, if any;
- (d) providing accommodation for the participant;
- (e) 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; and
 - (ii) providing, whether directly or indirectly, other reasonable financial assistance;
- (f) providing payments to the participant for the purpose of meeting costs associated with relocation;
- (g) providing assistance to the participant in obtaining employment, access to education and health care;
- (h) providing other assistance to the participant with a view to ensuring that the participant becomes self-sustaining.

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—

Participant's
rights and
obligations.

- (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;
- (b) notifying a party or possible party to legal proceedings that the appropriate approved 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 appropriate approved authority is satisfied that a participant who has been provided with a new identity under the Justice Protection 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 act in accordance with subsection (4).

(4) The appropriate approved 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 it considers necessary to ensure performance of those obligations or compliance with those restrictions.

(5) The action referred to in subsection (4) 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 Justice Protection Programme shall not disclose his former identity unless he has obtained the prior written approval of the Administrative Centre.

(2) Notwithstanding subsection (1), 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.

Cessation of protection or assistance.

16.—(1) Protection or assistance provided under the Justice Protection Programme to a participant—

(a) shall be terminated by the Centre upon the written request of a participant; or

(b) may be terminated by the Centre if—

- (i) the participant willfully breaches a term of the Agreement;
- (ii) the Centre discovers that the participant had knowingly given information to the Centre that is false or misleading in a material particular;
- (iii) the participant’s conduct is, in the opinion of the Centre, likely to compromise the integrity of the Programme;
- (iv) the circumstances that gave rise to the need for protection or assistance for the participant have ceased to exist;
- (v) the participant willfully breaches an undertaking, including an undertaking to give evidence, in relation to a matter relevant to the

Programme;

- (vi) the participant refuses or fails to sign a new agreement when required to do so under section 10(7); or
- (vii) there is, in the opinion of the Centre, no reasonable justification for the participant to remain in the Programme.

(2) Where the Centre decides under subsection (1)(b) to terminate protection or assistance or both, the Centre shall—

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

(3) A participant who receives such a notification may, within twenty-eight days thereafter, apply in writing to a Tribunal appointed by the Minister for a review of the decision of the Centre.

(4) The Tribunal shall, in relation to an application in subsection (3)—

- (a) allow the participant a reasonable opportunity to state his case;
- (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.

(5) A decision of the Centre pursuant to subsection (1)(b) 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, without success, to notify the participant of the decision, the protection

shall be terminated at the end of the period of twenty-eight days after those steps were commenced;

- (b) if the participant does not apply for a review of the decision, termination shall take effect at the end of the period of twenty-eight days after the participant receives the notification; or
- (c) if the participant applies for a review of the decision and the Tribunal notifies the participant that the decision of the Centre is confirmed, termination shall take effect from the date of receipt of the notification.

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

Restoration
of former
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 apply in writing to the Tribunal appointed by the Minister for a review of that decision.

(4) Where an application is made under subsection (3), the Tribunal shall—

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

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

(6) A person who, without reasonable excuse, fails to return the documents pursuant to subsection (5) commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

18.—(1) Where another approved authority notifies the Administrative 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 specified in subsection (2), the Centre may—

Provision of information to an approved authority.

(a) provide the appropriate approved authority with—

- (i) the participant's new identity;
- (ii) the participant's criminal record; and
- (iii) such other information relating to the Justice Protection Programme as the Centre considers appropriate in the circumstances; or

(b) cause the participant to appear before the appropriate authority.

(2) The offence referred to in subsection (1) is an offence for which the maximum penalty is or includes imprisonment for a period of more than one year.

Miscellaneous

19. Persons 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.

Protection from suit.

20.—(1) A person who, without lawful authority, discloses information—

Offences.

(a) about the identity or location of a person who is or has been a participant or prospective participant;

(b) that compromises the safety or security of a participant

or the integrity of the Programme,

commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(2) Unless he is authorized in writing by the Centre to do so, a person who is or has been a participant or a person who has undergone assessment for inclusion in the Justice Protection Programme shall not disclose—

- (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 Administrative Centre who is or has been involved in the Programme;
- (d) the fact that he has signed an agreement; or
- (e) any details of an agreement signed by him.

(3) A person commits an offence if—

- (a) he offers a bribe 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, he accepts any bribe or other inducement in exchange for the information referred to in paragraph (a).

(4) A person who commits an offence under subsection (3) is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Officers not required to disclose information.

21.—(1) Subject to subsection (2), an officer of the Administrative Centre shall not 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 in the course of or because of the performance of functions or duties under this Act;
- (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 such functions or duties,

except where it is necessary to do so in the interest of justice or for the purpose of carrying the provisions of this Act into effect.

(2) Where, in any legal proceedings it becomes necessary for the Judge or Magistrate presiding to be advised of a participant's location and the circumstances, an officer referred to in subsection (1) shall disclose the relevant information to the Judge or Magistrate in chambers but no such disclosure shall be made in the presence of any person other than the Judge or Magistrate.

(3) The Judge or Magistrate shall not disclose any information received under subsection (2) otherwise than in accordance with this Act.

22.—(1) A person who—

- (a) is provided with a new identity under the Justice Protection Programme;
- (b) retains that identity, whether or not he remains a participant; and
- (c) is required to appear as a witness in criminal proceedings under that identity,

Requirement where participant becomes witness in criminal proceedings.

shall notify the Administrative Centre of the requirement referred to in paragraph (c).

(2) After being notified under subsection (1), the Centre may take such action as it considers appropriate in the circumstances, including, where the person has a criminal record, disclosing that criminal record to the court, the prosecutor and the accused person or the accused person's attorney-at-law.

23. 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—

Identity of participant not to be disclosed.

- (a) hold that part of the proceedings that relate to the identity of the participant in private; or
- (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.

24.—(1) Subject to subsection (2), the Administrative Centre shall submit to the Board annual reports on the general operation, performance and effectiveness of the Justice Protection Programme.

Annual reports to Board.

(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.

(3) In subsection (1) "Board" means the Board of Governors referred to in Article 5 of the Agreement, comprised of Ministers responsible for national security of Contracting Parties to the Agreement.

25. The Minister may make regulations generally for giving effect to the provisions of this Act.

Regulations.

26. Nothing in this Act shall be construed so as to abrogate or derogate from any arrangement or practice respecting the provision of protection or assistance or both to persons before the 4th day of August, 2008.

Preservation of informal arrangements.

FIRST SCHEDULE

(Section 5)

*Offences which may give rise to Protection under the
Justice Protection Programme*

Murder

Manslaughter

Treason

Treason felony

Sedition

Piracy or hijacking

Possession or use of firearms and ammunition with intent to injure

Possession or use of firearms in furtherance of any criminal offence

Aggravated assault

Shooting or wounding with intent to do grievous bodily harm

Robbery

Robbery with aggravation

Arson

Any sexual offence

Any offence involving drug trafficking or dealing.

Kidnapping

Domestic violence

Money laundering

Any offence involving fraud, dishonesty or corruption.

SECOND SCHEDULE

(Section 10)

Contents of Agreement

The basis on which a prospective participant is to be included in the Justice Protection Programme.

The details of the protection or assistance that is to be provided.

*JUSTICE PROTECTION*SECOND SCHEDULE, *contd.**Contents of Agreement, contd.*

The terms and conditions upon which protection or assistance shall be provided to the prospective participant.

An undertaking that the participant will not compromise, directly or indirectly, the security of, or any other aspect of the protection or assistance being provided.

An undertaking by the participant to comply with all reasonable directions of the Centre in relation to the protection or assistance provided to him.

An undertaking by the prospective participant or participants, as the case may be, if required to do so by the Administrative Centre, to undergo—

- (a) medical tests or examinations and psychological or psychiatric evaluation by medical officers approved by the Centre for those purposes;
- (b) drug or alcohol counselling or treatment,

and authorize the results to be made available to the Centre.

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.

A financial support arrangement.

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.

A provision to the effect that protection or assistance under the Programme may be terminated if he breaches a term of the agreement.