

THE VISITING FORCES ACT

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THE VISITING FORCES ACT

Act
20 of 1975.

[11th April, 1975.]

PART I. *Preliminary*

1. This Act may be cited as the Visiting Forces Act. Short title.

2. In this Act—

Interpreta-
tion.

“civil court” means a court of ordinary criminal jurisdiction in Jamaica, and includes a court of summary jurisdiction;

“civil prison” means any prison, gaol or other place in Jamaica in which offenders sentenced under this Act by a civil court can be confined;

“Defence Board” means the Defence Board constituted under section 9 of the Defence Act;

“dependant”, with reference to a member of a visiting force or to a member of the armed forces of a designated state, means the wife or husband of such member, or any other person wholly or mainly maintained by him, or in his custody, charge or care;

“designated state” means a state, other than Jamaica, that is designated under section 4;

“Jamaican forces” means the armed forces of Her Majesty raised in Jamaica and for the time being serving in Jamaica;

“military establishment” has the meaning assigned to those words by subsection (1) of section 136 of the Defence Act;

“regulations” means regulations made under this Act;
 “service authorities” means naval, military or air force authorities;

“service court” means a court martial of a visiting force and includes the service authorities of a designated state who are empowered by the laws of that state to deal with charges brought against persons subject to the service law of that state;

“service law” in relation to a designated state, means the law governing all or any of the forces of that state;

“visiting force” means any of the armed forces of a designated state present in Jamaica in connection with official duties, and includes civilian personnel designated under section 4 as a civilian component of a visiting force.

PART II. *Application of Act*

Application
of Act.

3. This Act applies in respect of a designated state when the Defence Board has, pursuant to section 4, declared it to be applicable in respect of that state, and it applies in respect of that state only to the extent declared by the Defence Board pursuant to that section.

Orders
designating
states, etc.

4. The Defence Board may by order—
- (a) designate any country as a designated state for the purposes of this Act;
 - (b) declare the extent to which this Act is applicable in respect of any designated state;
 - (c) designate civilian personnel as a civilian component of a visiting force.

PART III. *Jurisdiction in relation to Visiting Forces*

Primary
right of
civil courts
to exercise
jurisdiction.

5. Except in respect of offences mentioned in subsection (1) of section 7, the civil courts have the primary right to exercise jurisdiction in respect of any act or omission

constituting an offence against any law in force in Jamaica alleged to have been committed by a member of a visiting force or a dependant.

6.—(1) Where a member of a visiting force or a dependant has been tried by a civil court and has been convicted or acquitted, he may not be tried again in Jamaica for the same offence by a service court, but nothing in this section shall prevent a service court from trying within Jamaica a member of the visiting force or a dependant for any violation of rules of discipline arising from an act or omission that constituted an offence for which he was tried by a civil court.

Previous trial by civil court.

(2) A certificate signed by the Registrar of the Supreme Court or a Judge, or a Resident Magistrate, or a Clerk of the Courts stating—

- (a) that a member of a visiting force or a dependant has been tried before a civil court for an offence specified in the certificate;
 - (b) the result of the trial;
 - (c) the judgment or order of the court,
- shall, for purposes of this section, be evidence of the matters stated in the certificate.

7.—(1) A service court of a visiting force has the primary right to exercise jurisdiction in relation to an alleged commission by a member of the visiting force or a dependant of an offence in respect of—

Primary right of service court in certain cases.

- (a) the property or security of the designated state;
- (b) the person or property of another member of the visiting force or a dependant; or
- (c) an act done or anything omitted in the performance of official duty.

(2) Subject to this Act, the service authorities and service courts of a visiting force may exercise within Jamaica in relation to members of that force and dependants, all the criminal and disciplinary jurisdiction that is conferred upon them by the law of the designated state to which they belong.

(3) Nothing in this section shall be construed as derogating from the provisions of any other enactment restricting the prosecution of any proceedings or requiring the consent of any authority to the prosecution thereof.

8.—(1) Nothing in section 7 shall affect—

Arrest,
custody, etc.,
of offenders
against
Jamaican
law.

- (a) any powers of arrest, search, entry, seizure or custody exercisable under the law of Jamaica with respect to offences committed or believed to have been committed against that law; or
- (b) any obligation of any person in respect of a recognizance or bail bond entered into in consequence of his arrest, or the arrest of any other person, for such an offence; or
- (c) any power of any court to remand (whether on bail or in custody) a person brought before the court in connection with such an offence.

(2) Where a person has been taken into custody by a constable without warrant for such an offence as aforesaid, and there is reasonable ground for believing that in accordance with section 7 he is subject to the jurisdiction of the service court of a designated state, then, with a view to its being determined whether he is to be dealt with for that offence under the law of Jamaica or dealt with by the courts of that state for an offence under the law thereof, he may, notwithstanding any other law to the contrary, be detained in custody for a period not exceeding three days without being brought before a court of summary jurisdic-

tion, but if within that period he is not delivered into the custody of an authority of that state he shall be released on bail or brought before a court of summary jurisdiction as soon as practicable after the expiration of that period.

9.—(1) Where a member of a visiting force or a dependant has been tried by a service court of that visiting force and has been convicted or acquitted he may not be tried again by a civil court for the same offence.

Previous trial by service courts.

(2) For the purposes of this section a certificate under the hand of the officer presiding over a service court, or the officer in command of a visiting force stating—

(a) that a member of the visiting force or a dependant has been tried before a service court for an offence specified in the certificate;

(b) the result of the trial;

(c) the judgment or order of the Court,
shall be evidence of the matters stated in the certificate.

10.—(1) Where under sections 5 and 7 a civil court or a service court of a visiting force has the primary right to exercise jurisdiction, the court having such primary right has the right to deal with charges against alleged offenders in the first instance, and the court not having such primary right shall, subject to subsection (2), have no jurisdiction in the matter.

Primary rights may be waived.

(2) A court having jurisdiction pursuant to subsection (1) may, in accordance with regulations under this Act, waive such jurisdiction in favour of the court not having jurisdiction pursuant to subsection (1) and thereupon the latter court shall have jurisdiction in the matter.

(3) A certificate of the service authorities of a designated state stating that anything alleged to have been done or omitted by a member of a visiting force of that state

was or was not done or omitted in the performance of official duty, shall be receivable in evidence in any civil court, and for the purposes of this Act is *prima facie* proof of that fact.

Immunities and privileges of members of service court and witnesses.

11. The members of a service court of a visiting force exercising jurisdiction by virtue of this Act, and witnesses appearing before such service court, have respectively the like immunities and privileges as a court martial exercising jurisdiction under the Defence Act and witnesses appearing before any such court martial.

Sentence, detention and proof thereof.

12.—(1) Where any sentence has been passed by a service court within or without Jamaica upon a member of the armed forces of a designated state or upon a dependant of a member of any such force, then for the purposes of any legal proceedings within Jamaica—

- (a) the service court shall be deemed to have been properly constituted;
- (b) its proceedings shall be deemed to have been regularly conducted;
- (c) the sentence shall be deemed to have been within the jurisdiction of the service court and in accordance with the law of the designated state; and
- (d) subject to section 17, if the sentence has been executed according to the tenor thereof, it shall be deemed to have been lawfully executed.

(2) Any member of a visiting force or any dependant who is detained in custody—

- (a) in pursuance of a sentence mentioned in subsection (1); or
- (b) pending the determination by a service court of a charge brought against him,

shall, for the purposes of any legal proceedings in Jamaica, be deemed to be in lawful custody.

(3) For the purposes of any legal proceedings within Jamaica, a certificate under the hand of the officer in command of a visiting force stating that the persons specified in the certificate sat as a service court, shall be receivable in evidence and shall be conclusive proof of that fact; and a certificate under the hand of such an officer stating that a member of that force or a dependant is being detained in either of the circumstances described in subsection (2) shall be receivable in evidence and shall be conclusive proof of the cause of the detention, but not of his being a member of the visiting force or a dependant.

13. For the purposes of enabling the service authorities and service courts of a visiting force to exercise more effectively the powers conferred upon them by this Act, the Defence Board, if so requested by the officer in command of the visiting force or by the designated state, may from time to time by general or special orders to the Jamaican forces or any part thereof, direct the officers and soldiers thereof to arrest members of the visiting force or dependants alleged to have been guilty of offences against the law of the designated state and to hand over any person so arrested to the appropriate authorities of the visiting force. Arrest.

14.—(1) Where a member of a visiting force or a dependant of any such member has been sentenced by a service court to undergo a punishment involving incarceration, the incarceration may, at the request of the officer in command of the visiting force and in accordance with the regulations, be served wholly or partly in a civil prison or military establishment and the provisions of the Defence Act relating to the carrying out of punishments of imprisonment or detention imposed upon officers and soldiers of the Jamaican forces shall *mutatis mutandis* apply. Place of imprisonment or detention.

(2) The Defence Board shall, in accordance with regulations, and having regard to the nature of the place of incarceration to which the offender would have been committed under the law of the designated state, determine whether the offender's punishment is to be served in whole or in part in a civil prison or in a military establishment.

Police
functions.

15. The authority of members of a visiting force to exercise police functions, including the power of arrest, in relation to any member of that force or dependant, shall be the same as authorized by the service law of that force, but nothing herein contained shall empower a member of a visiting force to exercise police functions in respect of a person who is not a member of the visiting force or a dependant.

Application
of section
106 of
Defence
Act.

16. The provisions of section 106 of the Defence Act shall *mutatis mutandis* apply in relation to a court martial under this Act as they apply to a court martial under that Act, except that no person other than a member of a visiting force may be summoned before a court martial except by process issued by a magistrate or justice of the peace whose authority in that behalf shall be exercised in accordance with regulations.

Death
sentence.

17. Notwithstanding anything in the foregoing provisions of this Part relating to a sentence by a service court, a sentence of death passed by a service court shall not be carried out in Jamaica unless, under Jamaican law, a sentence of death could have been passed in a similar case.

Firearms
and
drilling.

18. Members of a visiting force acting in the course of their duties, except civilian personnel—

- (a) may, if authorized to do so by orders of service authorities of the visiting force, possess and carry explosives, ammunition and firearms; and

- (b) are not subject to the criminal law relating to unlawful drilling or the making or possessing of explosives.

19. No proceedings shall be entertained by any court in Jamaica with regard to the pay of any person in respect of service as a member of a visiting force or as a member of a civilian component of such a force, with regard to the terms of such service or with regard to a person's discharge from such service.

Restriction on proceedings in respect of service of members, etc., of visiting force.

PART IV. *Claims for personal injuries and property damage*

20. Subject to section 23, for the purposes of the Crown Proceedings Act—

Claims against designated state.

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

21. No proceedings lie against the Crown by virtue of section 20, or against any member of a visiting force who is deemed a servant of the Crown under section 20, in respect of a claim by a member of a visiting force or his personal representative or a dependant arising out of the death, or injury to the person, of the member, if compensation has been paid or is payable by a designated state, or out of any

No proceedings lie where compensation payable.

funds administered by an agency of a designated state, for the death or injury.

Enforce-
ment of
judgment.

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

Ships.

23. Except the Minister by order so directs in respect of the ships of any particular designated state, section 20 does not apply to a claim arising out of or in connection with the navigation, operation or salvage of a ship or the loading, carriage or discharge of a cargo, unless the claim is a claim arising out of death or injury to the person.

Settlement
of claims
against
visiting
forces.

24.—(1) The Minister may make arrangements whereby claims in respect of acts or omissions of—

(a) members of visiting forces, or

(b) other persons connected to those forces and specified in the arrangements,

may be satisfied by payments made by the Minister of such amounts as may be—

(i) adjudged by any court in Jamaica or such authority as may be provided by the arrangements, or

(ii) agreed between the claimant and the Minister,

so, however, that the acts or omissions in respect of which the claim is made shall be acts or omissions of a description to which the arrangements relate.

(2) Any expenses of the Minister incurred in satisfying claims in pursuance of any arrangements under this

section or otherwise in connection with the arrangements shall be defrayed out of moneys provided by Parliament.

(3) The Minister shall take such steps as may be requisite for securing that persons concerned with any arrangements made by him under this section shall be informed of the nature and operation of the arrangements.

PART V. *Taxation*

25.—(1) A member of a visiting force shall be exempt from income tax in Jamaica on the salary and emoluments paid to him as such member by a designated state.

Exemption
from income
tax.

(2) For the purpose of this section, the expression “member of a visiting force” does not include a Jamaican citizen resident or ordinarily resident in Jamaica.

26.—(1) No tax or fee shall be payable in respect of the licensing or registration of service vehicles of a visiting force.

Service
vehicles and
licences.

(2) Notwithstanding the provisions of section 12 of the Road Traffic Act, a member of a visiting force shall not be required to hold a driver's licence issued under that Act, and may drive a service vehicle on any road in Jamaica without being the holder of such a licence if he is the holder of a valid driver's licence issued under any law of the designated state to which he belongs.

27.—(1) Subject to any regulations made under this Act or under any other enactment, a visiting force may import into Jamaica, free of duty and tax, equipment for the visiting force and such quantities of provisions, supplies, and other goods for the exclusive use of the visiting force as the Commissioner of Customs considers reasonable.

Import
duty.

(2) The Commissioner of Customs may authorize the import into Jamaica, free of duty and tax, of goods for use by dependants of members of a visiting force.

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Personal effects and motor vehicles.

28. A member of a visiting force may in accordance with any regulations made under this Act or under the Customs Act—

- (a) within six months of his first arrival to take up service in Jamaica and within six months of the first arrival of any dependant to join him, import his personal effects and furniture and the personal effects of his dependant free of duty and tax; and
- (b) import, free of duty and tax, his private motor vehicle for the personal use of himself and his dependants temporarily, but this paragraph shall not be construed as granting, or authorizing the granting of, any exemption from taxes or fees in respect of the licensing or the registration of private vehicles or the use of the roads by private vehicles in Jamaica.

Fuel, oil, etc.

29. Subject to compliance with such conditions as may be prescribed, no duty or tax shall be payable on any fuel, oil or lubricants intended for use exclusively in the service vehicles, aircraft or vessels of a visiting force.

PART VI. *Coroner's Inquest*

Provisions as to coroner's inquest.

30.—(1) If any coroner having jurisdiction to hold an inquest touching a death is satisfied that the deceased person at the time of his death had a relevant association with a visiting force, then unless the Minister responsible for justice otherwise directs the coroner shall not hold the inquest or, if the inquest has begun but not completed, shall adjourn the inquest and, if a jury has been summoned, shall discharge the jury.

(2) Subject to subsection (1), if on an inquest touching a death the coroner is satisfied—

- (a) that a person who in accordance with section 7 is subject to the jurisdiction of the service courts of

a designated state has been charged before a court of that state with the homicide of the deceased person, whether or not that charge has been dealt with; or

(b) that such a person is being detained by an authority of that state with a view to being so charged, then unless the Minister responsible for justice otherwise directs the coroner shall adjourn the inquest and, if a jury has been summoned, shall discharge the jury, and shall furnish the Registrar of deaths with a certificate stating the particulars necessary for the registration of the death so far as they have been ascertained at the inquest.

(3) Where an inquest is adjourned under this section, the coroner shall not resume it except on the direction of the Minister responsible for justice and, if he does resume it, shall proceed in all respects as if the inquest had not previously been begun, except that it shall not be obligatory on the coroner to view the body or to furnish the Registrar of deaths with any certificate, as the case may be.

(4) Notwithstanding section 32 of the Registration (Births and Deaths) Act (which relates to certificates to be given to persons giving information concerning deaths), the Registrar shall not give a certificate under that section to the person giving information concerning a death if that person informs the Registrar that the body is one as respects which it is proposed to remove the body out of Jamaica.

(5) In this section—

- (a) the expression “homicide” includes murder, manslaughter, infanticide and any offence under the law of the country in question which is analogous to any of those offences;
- (b) references to persons having at any time a relevant association with a visiting force are references to

his being at that time a person of one or other of the following descriptions, that is to say—

- (i) a member of that visiting force or a member of a civilian component of that force;
- (ii) a person, not being a citizen of Jamaica or ordinarily resident in Jamaica who is a dependant of a member of that visiting force or of a civilian component of that force;
- (c) in determining whether a person is, or was at any time, ordinarily resident in Jamaica, no account shall be taken of any period during which he has been or intends to be present in Jamaica while being a member of a visiting force or of a civilian component of such a force, or while being a dependant of a member of a visiting force or of such a civilian component.

PART VII. *Attachments to and from
Jamaican forces*

31.—(1) The Defence Board—

- (a) may attach temporarily to the Jamaican forces a member of another force who is placed at the disposal of the Defence Board for the purpose by the service authorities of the country to which the other force belongs; and
- (b) subject to anything to the contrary in the conditions applicable to his service, may place any member of the Jamaican forces at the disposal of the service authorities of another country for the purpose of being attached temporarily by those authorities to a force of that country.

(2) While a member of another force is by virtue of this section attached temporarily to the Jamaican forces,

Temporary attachments to Jamaican forces and to forces of another country.

he is subject to the law relating to the Jamaican forces in like manner as if he were a member of the Jamaican forces, and shall be treated and have the like powers of command, punishment and, notwithstanding section 15, arrest over members of the Jamaican forces as if he were a member thereof of relative rank.

(3) The Minister may direct that, in relation to members of another force to which this section applies, the statutes relating to the Jamaican forces shall apply with such exceptions and subject to such adaptations and modifications as may be specified by the Minister.

(4) When the Jamaican forces and another force to which this section applies are serving together, whether alone or not—

- (a) any member of the other force shall be treated and shall have over members of the Jamaican forces the like powers of command as if he were a member of the Jamaican forces of relative rank; and
- (b) if the forces are acting in combination, any officer of the other force appointed, by agreement between Her Majesty in right of Jamaica and the government of the country to which that force belongs, to command the combined force, or any part thereof, shall be treated and shall have over members of the Jamaican forces the like powers of command, punishment and arrest, and may be invested with the like authority as if he were an officer of the Jamaican forces of relative rank and holding the same command.

(5) For the purposes of this section, forces shall be deemed to be serving together or acting in combination if and only if they are declared to be so serving or so acting by order of the Defence Board, and the relative rank of

members of the Jamaican forces and of other forces shall be such as may be prescribed by regulations made by the Defence Board.

Regulations.

32. The Defence Board may make regulations for the better carrying out of the purposes and provisions of this Act and without prejudice to the generality of the foregoing such regulations may provide for—

- (a) the summoning of civilian witnesses before a service court;
- (b) waiving of the primary right of jurisdiction by a service court or a civil court;
- (c) determining where a sentence of imprisonment shall be spent;
- (d) prescribing anything that is required by the Act to be prescribed.