
CHAPTER 457

THE UNITED STATES DEFENCE AREA (AGREEMENT) ACT

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UNITED STATES DEFENCE AREA (AGREEMENT)

(29th August, 1969.)

7/1969.
25/1969.

1. This Act may be cited as the United States Defence Area (Agreement) Act. **Short title.**

2. (1) In this Act—

Interpretation.

"the Agreement" means the Agreement signed on the 10th day of February, 1961, between the Governments of the Federation of the West Indies, Antigua, Barbados, Jamaica, St. Lucia and Trinidad and Tobago, and the Government of the United States of America concerning the United States Defence Areas in the West Indies and published as a supplement to the West Indies *Gazette* of the 24th day of February, 1961.

"contractor personnel" means employees of a United States contractor who are not ordinarily resident in Antigua and Barbuda who are there solely for the purposes of the Agreement;

"defence area" means any area in respect of which the Government of the United States of America (hereinafter called "the United States Government") is for the time being entitled to have and enjoy, in accordance with the terms and conditions of the Agreement, the right, power and authority described in Article II thereof;

"dependants" means the spouse and children under twenty-one years of age of a person in relation to whom it is used; and if they are dependent upon him for their support, the parents and children over twenty-one years of age of that person;

"members of the United States Forces" means—

- (i) military members of the United States Forces on active duty;

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- (ii) civilian personnel accompanying the United States Forces and in their employ who are not ordinarily resident in Antigua and Barbuda and who are there solely for the purposes of the Agreement; and
 - (iii) dependants of the persons described in (i) and (ii) above;

"United States contractor" means any person, body or corporation ordinarily resident in the United States of America that is in Antigua and Barbuda for the purposes of the Agreement by virtue of a contract with the United States Government, and includes a sub-contractor;

"United States Forces" means the land, sea and air armed services of the United States, including the Coast Guard.

(2) References in this Act to any law or to any provision of any law shall, unless the context otherwise requires, be construed as referring to that as from time to time amended and to any law or provision for the time being in force in its place.

(3) References in this Act to any particular Act include references to any subsidiary legislation made under that Act.

Regulations.

- 3.** (1) The Cabinet may make regulations for—
- (a) giving effect to the provisions of this Act; and
 - (b) implementing the Agreement as to any matter for which no provision or no sufficient provision is made in this Act.

(2) Without prejudice to the generality of the powers conferred by subsection (1) of this section, regulations made under that subsection may make provision for—

- (a) the arrest of persons found committing or reasonably suspected of having committed an offence against the regulations;

(b) the seizure of things which are, or which are reasonably suspected of being things in respect of which or with which an offence against the regulations has been committed, and the disposal (including the forfeiture) of any thing so seized;

(c) the steps which may be taken, and the persons by whom they may be taken, to prevent the commission of any offence against the regulations or to remove from any area persons who, or things which are in that area in contravention of the regulations;

(d) the punishment of any person found guilty of any such offence on summary conviction:

Provided that provision shall not be made for any punishment greater than a fine of three thousand dollars and six months imprisonment;

(e) the exclusion, restriction or modification of the application of any law from time to time in force other than the provisions of this Act so far as is necessary for the purposes mentioned in subsection (1) of this section.

(3) Regulations may be made under the preceding subsection of this section with retrospective effect.

(4) The Cabinet may also make regulations to give retrospective effect to any of the provisions of this Act in so far as it may deem it expedient so to do for the purpose of implementing the Agreement.

(5) Regulations having retrospective effect under subsection (3) and regulations giving retrospective effect to any of the provisions of this Act under subsection (4) may be made to apply either generally or to any particular case or class of case and may make different provisions in different cases or classes of cases and may provide for incidental and consequential matters and may contain conditions, exemptions and qualifications.

(6) Regulations made under this section shall not have any force or effect until confirmed by resolution passed in each house of Parliament.

Exemption from certain immigration provisions. Cap. 208.

4. Sections 14 and 15 of the Immigration and Passport Act shall not apply in relation to members of the United States Forces entering Antigua and Barbuda for purposes of the Agreement.

Exemption from shipping, dues, pilotage, etc.

5. Vessels owned or operated by or on behalf of the United States Government using port facilities in Antigua and Barbuda shall —

(a) not be subject to any tonnage and harbour dues; and

(b) not be subject to compulsory pilotage; and

(c) be exempted from the provisions of the Passengers Act.

Cap. 307.

Customs and Excise exemption.

6. (1) Subject to the provisions of this section no import duty of customs shall be imposed upon —

(a) materials and equipment imported by or for the use of the United States Forces or United States contractors for the purposes of the Agreement;

(b) the personal effects and household goods (including private motor cars) of members of the United States Forces, United States contractors and contractor personnel, imported by such persons at the time of their first arrival in Antigua and Barbuda or, if they are related to such arrival, within six months thereafter.

(2) Subject to the provisions of this section, no excise, consumption or other duty or tax shall be imposed on any goods purchased in Antigua and Barbuda by or for the use of the United States Government for the purposes of the Agreement.

(3) A certificate signed by the Minister responsible for Finance that any goods referred to in subsections (1) and (2) are required for the purposes of the Agreement shall be conclusive evidence that they are so required.

(4) Any person who without the consent in writing of the Comptroller of Customs, uses, disposes of, acquires or receives any goods —

(a) imported free of customs duty under paragraph (a) of subsection (1) of this section, or

(b) exempted from excise, consumption or other duty under subsection (3) of this section,

otherwise than for the purposes of the Agreement shall be guilty of an offence and shall be liable—

- (i) on summary conviction, to a fine of five times the value of such goods or eight thousand dollars, whichever shall be greater, or to imprisonment for six months or to both such fine and such imprisonment; or
- (ii) on conviction on indictment, to a fine of five times the value of such goods or twenty-five thousand dollars whichever shall be greater, or to imprisonment for three years, or to both such fine and such imprisonment.

(5) A certificate in writing signed by or on behalf of the Comptroller of Customs shall for the purposes of subsection (4) of this section be *prima facie* proof of the value of such goods.

(6) Consent given under subsection (4) of this section may be upon terms and conditions as to payment of duty or otherwise as the Comptroller of Customs may think fit.

(7) It shall be lawful for the Comptroller of Customs to accept payment, by any person who admits that he has committed an offence against this section in relation to any goods, of a penalty not greater than the maximum fine which could have been imposed on a conviction for such offence. Acceptance of payment in any such case shall be a bar to any criminal proceedings for the offence.

(8) Sections 43, 44 and 60 of the Trade and Revenue Act shall apply in regard to goods reasonably suspected to have been the subject of an offence against this section as though they were uncustomed or prohibited goods and it is hereby declared that on all occasions on which the Comptroller of Customs, whether acting in pursuance of the above mentioned sections or otherwise, shall come upon any goods reasonably suspected to have been the subject

Cap. 433.

of an offence against this section, it shall be lawful for the Comptroller of Customs to seize such goods together with any documents or exhibits which may go to prove the commission of the offence.

(9) The provisions of the Trade and Revenue Act shall apply in relation to seizures and forfeitures under this section as though they were seizures or forfeitures under that Act; and where any person is convicted of an offence against this section all goods in respect of which any such offence was committed shall be forfeited and shall be disposed of as the Comptroller of Customs may direct.

Cap. 125. (10) The Comptroller of Customs may authorise any person who is an officer for the purposes of the Customs Duties Act to exercise the powers conferred upon him by this section.

Tax exemption. **7.** (1) Where the legal incidence of any form of taxation depends on residence or domicile in Antigua and Barbuda, periods during which members of the United States Forces, United States contractors or contractor personnel are in Antigua and Barbuda solely by reason of the Agreement shall not be considered as periods of residence or as creating a change of residence or domicile for the purposes of such taxation.

(2) There shall be exempt from income tax—

(a) the salary and other emoluments received by members of the United States Forces and contractor personnel as such members or personnel respectively; and

(b) any income received by United States contractors under a contract with the Government of the United States solely for the purposes of the Agreement; and

(c) the income of such agencies as are referred to in Article XIV of the Agreement.

(3) A certificate signed by the Minister responsible for Finance that a contract referred to in paragraph (b) of subsection (2) is solely for the purposes of the Agreement shall be conclusive evidence of such contract.

(4) Members of the United States Forces, United States contractors and contractor personnel shall not incur liability for any tax, licence or other charge imposed—

(a) in respect of any tangible movable property provided that such property is kept exclusively within the defence area; or

(b) solely by reason of the ownership of any such property, if such property although kept outside the defence area is in Antigua and Barbuda solely by reason of the Agreement.

8. (1) A motor vehicle or trailer while owned by the Government of the United States shall be exempted from the need for registration under the Vehicles and Road Traffic Act. **Exemption of vehicles from registration and insurance. Cap. 460.**

(2) Every such motor vehicle and trailer shall carry in front and at the rear a distinct nationality identification mark in addition to its identification number.

(3) A list of all such motor vehicles and trailers specifying their respective identification numbers shall be supplied by the military authorities of the United States to the Traffic Commissioner.

(4) Section 3 of the Motor Vehicles Insurance (Third Party Risks) Act shall not apply in relation to any motor vehicle or trailer owned by the United States Government while it is being used for the purposes of the Agreement. **Cap. 288.**

(5) A certificate signed by the Minister responsible for roads that a motor vehicle or trailer owned by the United States Government was being used for the purposes of the Agreement shall be conclusive evidence of such use.

9. Fees, taxes and charges leviable under the Vehicles and Road Traffic Act in respect of motor vehicles shall not be payable in respect of private motor cars imported by members of the United States Forces free of Customs duty under paragraph (b) of subsection (1) of section 6 of this Act. **Exemption of private motor cars from fees, taxes and charges.**

Exercise of powers by military authorities of the United States.

10. (1) The military authorities of the United States may exercise over persons subject to their jurisdiction in accordance with this section all such powers as are exercisable by them according to the law of the United States.

(2) Nothing in this section shall be deemed to confer any right on the military authorities of the United States to exercise jurisdiction over persons who are citizens of or are ordinarily resident in Antigua and Barbuda unless they are military members of the United States Forces.

(3) Where any sentence has, whether within or outside Antigua and Barbuda, been passed by the military authorities of the United States upon a person who immediately before the sentence was passed was subject to the jurisdiction of such authorities in accordance with this section, then for the purposes of any proceedings in any court the sentence shall be deemed to be within the jurisdiction of such authorities and in accordance with the law of the United States, and the due execution thereof shall be deemed to be a lawful act.

(4) Notwithstanding anything in the preceding subsections of this section a sentence of death passed by the military authorities of the United States shall not be carried out in Antigua and Barbuda unless under the laws for the time being in force in Antigua and Barbuda a sentence of death could have been passed by a court in a similar case.

(5) Any person who—

(a) is detained in custody in pursuance of a sentence in respect of which subsection (3) of this section has effect; or

(b) being subject to the jurisdiction of the military authorities of the United States in accordance with this section, is detained in custody pending or during the trial by such a court of a charge brought against him, shall for the purposes of any proceedings in any court, be deemed to be in legal custody.

Exclusive jurisdiction of courts of Antigua and Barbuda.

11. (1) The courts of Antigua and Barbuda shall have the right to exercise exclusive jurisdiction over members of the United States Forces with respect to offences,

including offences relating to security, punishable by the law in force in Antigua and Barbuda but not by the law of the United States.

(2) For the purposes of this section an offence relating to security shall include—

- (i) treason;
- (ii) sabotage, espionage or violation of any law relating to official secret or secrets relating to the defence of Antigua and Barbuda.

12. (1) Subject to the provisions of this section, a person charged with an offence against any law for the time being in force in Antigua and Barbuda which is also an offence punishable by the law of the United States shall not be liable to be tried for that offence by a court if at the time when the offence is alleged to have been committed he was a member of the United States Forces and—

Restriction as regards certain offences, of trial by courts of military members of United States Forces.

(a) the alleged offence, if committed by him, arose out of any act done in the course of his duty as a member of the United States Forces; or

(b) the alleged offence is an offence against the person, and the person, or, if more than one, each of the persons, in relation to whom it is alleged to have been committed, was at the time thereof a member of the United States Forces; or

(c) the alleged offence is an offence against property, and the whole of the property in relation to which it is alleged to have been committed (or, in a case where different parts of that property were differently owned, each part of the property) was at the time thereof the property either of the United States or of an authority of the United States, or of a member of the United States Forces:

Provided that this subsection shall not apply if at the time when the offence is alleged to have been committed the alleged offender was not subject to the jurisdiction of the military authorities of the United States in accordance with section 10 of this Act.

(2) In relation to the trial of a person who was not a military member of the United States Forces at the time

when the offence is alleged to have been committed, subsection (1) of this section shall not have effect unless it is shown that the case can be dealt with under the military law of the United States.

(3) Nothing in subsection (1) of this section—

(a) shall prevent a person from being tried by a court in a case where the Attorney-General certifies either before or in the course of the trial, that the military authorities of the United States have notified him that they do not propose to exercise their jurisdiction in that case; or

(b) shall affect anything done or omitted in the course of a trial unless in the course thereof objection has already been made that by reason of that subsection the court is not competent to deal with the case; or

(c) shall, after the conclusion of a trial, be treated as having affected the validity thereof if no such objection was made in the proceedings at any stage before the conclusion of the trial.

(4) In relation to cases where the charge (by whatever words expressed) is a charge of attempting or conspiring to commit an offence, or of aiding, abetting, procuring or being accessory to, or of being art and part in, the commission of an offence, paragraphs (b) and (c) of subsection (1) of this section shall have effect as if references in those paragraphs to the alleged offence were references to the offence which the person charged is alleged to have attempted or conspired to commit or, as the case may be, the offence as respects which it is alleged that he aided, abetted, procured or was accessory to, or was art and part in, the commission thereof; and references in those paragraphs to persons in relation to whom or property in relation to which the offence is alleged to have been committed shall be construed accordingly.

(5) 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.

(6) For the purposes of this section the expression "offence against property" shall be construed in accordance with the provisions of the Schedule to this Act.

Schedule.

13. (1) Without prejudice to the operation of section 12 of this Act, where a person has been tried by the military authorities of the United States in the exercise of the powers referred to in subsection (1) of section 10 of this Act, he shall not be tried by a court for the same crime.

Courts not to try offenders tried by military authorities of the United States.

(2) Where a person who has been convicted by the military authorities of the United States in the exercise of the said powers is convicted by a court of Antigua and Barbuda of a different crime, but it appears to the court that the conviction by the said authorities was wholly or partly in respect of acts in respect of which he is convicted by the court, the court shall have regard to the sentence of the said authorities.

14. (1) Sections 11, 12 and 13 of this Act shall not affect—

Arrests, custody, etc. of offenders.

(a) any powers of arrest, search, entry, seize, or custody exercisable by or under any law in force in Antigua and Barbuda with respect to offences committed against any such law; or

(b) any obligation of any person in respect of a recognisance or bail bond entered into in consequence of his arrest of any 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.

15. (1) If a Coroner having jurisdiction to hold an inquest touching a death is satisfied that the deceased person was at the time of his death a member of the United States Forces, then, unless the Attorney-General otherwise directs, the Coroner shall not hold an inquest, or, if the inquest has been begun but not completed, shall adjourn the inquest.

Provisions as to coroner's inquest.

(2) If, subject to subsection (1) of this section, on any inquest touching the death of any person, the Coroner is satisfied before the inquest is completed that a member of

the United States Forces has been charged by the military authorities of the United States with any offence involving responsibility for the death of the deceased person, or is being detained by the said authorities with a view to his being so charged, then unless the Attorney-General otherwise directs, the Coroner shall adjourn the inquest, and shall furnish the Registrar-General 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 Attorney-General, 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 furnish the Registrar-General with any certificate or further certificate as the case may be.

(4) Members of the United States Forces shall not be required to give the notice of the death of a member of the United States Forces contemplated by section 4 of the Coroners Act.

Cap. 105.

Evidence.

16. (1) A certificate issued by or on behalf of the military authorities of the United States stating that at the time specified in the certificate a person so specified either was or was not a member of the United States Forces shall in any court be sufficient evidence of the fact so stated unless the contrary is proved.

(2) A certificate issued by or on behalf of the said authorities stating as regards a person specified in the certificate —

(a) that on a date so specified he was sentenced by the said authorities to such punishment as is so specified, or

(b) that he is, or was at a time so specified detained in custody in pursuance of a sentence passed on him by the said authorities or pending or during the trial of a charge brought against him by the said authorities, or

(c) that he has been tried, at a time and place specified in the certificate by the said authorities for a crime so specified,

shall in any court be conclusive evidence of the facts so stated.

(3) A certificate issued by or on behalf of the said authorities stating that a specified case in a court can be dealt with under the military law of the United States shall, for the purposes of subsection (2) of section 12 of this Act be conclusive evidence of that fact.

(4) Where a person is charged in a court with an offence and at the time when the offence is alleged to have been committed he was a member of the United States Forces, a certificate issued by or on behalf of the military authorities of the United States stating that the alleged offence, is committed by him, arose out of any act done in the course of his duty as a member of the United States Forces, shall be conclusive evidence of that fact.

17. Nothing in the Post Office Act shall prevent the establishment and operation of United States Post Offices in accordance with Article XIII of the Agreement. **Post Office Act not to apply. Cap. 335.**

18. Members of the United States Forces, United States contractors, contractor personnel and their dependants who are the holders of driving permits issued by the United States or a sub-division thereof shall, while such permits remain valid, be exempted from any requirement to hold a driver's licence under the Vehicles and Road Traffic Act. **Exemption from driving permits.**

19. (1) The Telecommunications Act shall not apply to any telecommunications apparatus installed by the Government of the United States of America in a defence area and used solely for military purposes. **Non-application of the Telecommunications Act. Cap. 423.**

(2) No licence shall be required under the said Act in respect of any telecommunications receiving set when installed or used in a defence area solely by members of United States Forces, United States contractors and contractor personnel.

20. The provisions of the Entertainments Duty Act, and section 15 of the Small Charges Act, shall not apply to any place of entertainment, performance, dances or other amusements in a defence area; and the Governor-General may exempt any place of entertainment, performance, **Entertainments. Cap. 154. Cap. 405.**

dances or other amusements outside a defence area under the control of the organization known as the United Services Organization from any of the said provisions subject to such conditions, if any, as he may specify.

Roads.

21. Such roads running through the defence areas which were open generally for public use on the date of signature of the Agreement shall continue to remain open for such use:

Provided that nothing shall be done to interfere with the carrying out of the Agreement.

Bush fires.
Cap. 62.

22. Nothing in the Bush Fires Act, shall apply in relation to anything done in a defence area by the United States Government in exercise of any rights, powers and authorities conferred by the Agreement.

Dogs.
Cap. 140.

23. Nothing in the Dogs Act, shall apply to any dog kept solely in a defence area by members of the United States Forces, United States contractors or contractor personnel.

Explosives.
Cap. 159.

24. The Explosives Act shall not apply in relation to—

(a) any explosives in a defence area; or

(b) the importation, exportation, loading or unloading, landing, removal, conveyance or possession, in accordance with arrangements made by agreement between the United States Authorities and the Government of Antigua and Barbuda of explosives required for construction, demolition, maintenance, operation or defence in a defence area or for the United States Forces.

Firearms.
Cap. 171.

25. Nothing in the Firearms Act shall apply in relation to—

(a) the importation or transportation of firearms by or on behalf of the United States Government; or

(b) the use, carriage, custody or possession of firearms by a member of the United States Forces in the exercise of his duties as such, if duly authorized by the United States Authorities.

26. (1) Whenever the United States Authorities notify the Minister of their wish to make any such topographic or hydrographic survey as is contemplated by Article XI of the Agreement, it shall be lawful for any member of the United States Forces or any civilian employee thereof, or any other persons designated for the purpose by agreement between the Minister responsible for the administration of the Public Works Department and the United States Authorities, to enter upon any land or other premises and to make such survey accordingly, and to do all such things as may be incidental to such survey, including the cutting of sightways or traces and the placing or erection of any beacon, post, stone or mark:

Power of United States Authorities to make surveys.

Provided that no such person shall enter on land or premises in private occupation for the purpose of exercising the powers conferred by this section unless not less than twenty-four hours prior notice in writing of the intention to exercise such powers has been given by or on behalf of the Minister to the occupier (if any) thereof.

(2) The notice in writing referred to in subsection (1) may be served personally, or by letter addressed to the occupier of the land or premises at his usual or last known place of abode or business, or (if service in any such manner is impracticable) by posting up or affixing the notice in some conspicuous place on the land or premises.

(3) Any person who wilfully obstructs or hinders in any way any other person exercising the powers conferred by subsection (1) shall be guilty of an offence against this Act and liable on summary conviction to a fine not exceeding two hundred and fifty dollars or in default of payment to imprisonment with hard labour for a term not exceeding three months:

Provided that an occupier of any land or premises or his servants or agents shall not be guilty of an offence under this section in any case where a person exercising the powers conferred by this section does not upon demand produce an instrument of authority given by or on behalf of the United States Authorities.

(4) Compensation shall be payable from the general revenue for any damage resulting from the exercise, or the

purported exercise, of the powers conferred by this section, and the amount of the compensation shall be as agreed between the Director of Public Works and the claimant or in default of such agreement may be adjudged (without limit of amount) in an action brought by the claimant against the Attorney-General, and any such action shall be commenced by the filing of a claim as if the Attorney-General were a private person and any sum adjudged to be paid by the Attorney-General in any such action shall be paid out of the general revenue:

Provided that compensation under this subsection—

(a) shall not be payable for any damage in respect of which the claimant has accepted or agreed to accept compensation from the Government of the United States of America or the United States Authorities; and

(b) shall not be awarded by the court unless proceedings are commenced within twelve months, or such extended period as the court may in any special case allow, after the date upon which the damage was caused.

SCHEDULE

OFFENCES REFERRED TO IN SECTION 12

1. In the application of section 12 of this Act, the expression "offences against the person" means any of the following offences, that is to say—

(a) murder, manslaughter, rape, buggery, and assault and

(b) any offence not falling within the foregoing sub-paragraph being an offence punishable under any of the following enactments:—

- Cap. 460. (i) section 57 of the Vehicles and Road Traffic Act (which relates to the offence of causing death by dangerous driving);
- Cap. 300. (ii) section 6 of the Offences against the Person Act (which relates to infanticide);
- (iii) the offences against the Person Act (except section 55 thereof which relates to bigamy);
- Cap. 405. (iv) section 56 of the Small Charges Act (which relates to wounding);
- Cap. 241 (v) section 33 of the Larceny Act (which relates to robbery);
- Cap. 229. (vi) section 5 and 6 of the Juvenile Act;
- Cap. 116. (vii) section 5, 6 and 7 of the Criminal Law Amendment Act.

2. In the application of the said section 12 the expression "offence against property" means any offence punishable under any of the following enactments, that is to say—

- (a) the Larceny Act, except section 34 thereof;
- Cap. 258. (b) the Malicious Damage Act;
- (c) section 33 of the Small Charges Act;
- (d) section 67 of the Vehicles and Road Traffic Act.
-