

**ANTIGUA AND BARBUDA**



**CRIMINAL PROSECUTIONS SERVICE ACT, 2017**

**No. 28 of 2017**

*[Published in the Official Gazette Vol. XXXVII No. 12  
dated 1st February, 2017]*

Printed at the Government Printing Office, Antigua and Barbuda,  
by Philip P. Ashterman, Government Printer  
— By Authority, 2018.



**ANTIGUA AND BARBUDA**  
**CRIMINAL PROSECUTIONS SERVICE ACT, 2017**  
**ARRANGEMENT OF SECTIONS**

**SECTIONS**

**PART I**

**PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Purpose of the Act

**PART II**

**OFFICE OF THE CRIMINAL PROSECUTIONS SERVICE**

4. Establishment of the Office of Criminal Prosecutions Service
5. Legal status of the Director of Public Prosecutions

**PART III**

**PRINCIPAL OFFICER AND STAFF OF THE CRIMINAL  
PROSECUTIONS SERVICE**

6. Director of Public Prosecutions as principal officer
7. Deputy Director of Public Prosecutions and other staff
8. Appointment of the Director of Public Prosecutions
9. Appointment of the Deputy Director of Public Prosecutions

**PART IV**

**GUIDELINES**

10. Guidelines for prosecutors
11. Guidelines to an officer or other investigating authority

**PART V**

**POWERS AND FUNCTIONS OF THE  
DIRECTOR OF PUBLIC PROSECUTIONS AND OTHER STAFF**

12. Functions of the Director of Public Prosecutions
13. Functions of the Deputy Director of Public Prosecutions
14. Functions of other staff

**PART VI**

**TRAINING, SUPERVISION AND REMOVAL OF STAFF**

15. Training
16. Removal of the Director of Public Prosecutions from office
17. Registration
18. Removal of other staff from office

**PART VII**

**REMUNERATION**

19. Remuneration of the Director of Public Prosecutions and other staff
20. Scales for upward mobility of certain officers of the Office of the Criminal Prosecutions Service

**PART VIII**

**FUNDS OF THE OFFICE OF THE  
CRIMINAL PROSECUTIONS SERVICE**

21. Funds of the Office of the Criminal Prosecutions Service
22. Estimates of income and expenditure

**PART IX**

**MISCELLANEOUS**

23. Oath or affirmation of office
24. Secondment or transfer
25. Service of process on the Director of Public Prosecutions
26. Electronic technology
27. Transitional Provisions
28. Rules and regulations
29. Repeal

**SCHEDULE**

[L.S.]



I Assent,

**Rodney Williams,**  
*Governor-General.*

14th December, 2017

**ANTIGUA AND BARBUDA**  
**CRIMINAL PROSECUTIONS SERVICE ACT, 2017**

**No. 28 of 2017**

**AN ACT** to provide for the establishment of the Criminal Prosecutions Service in Antigua and Barbuda and for matters connected therewith.

**ENACTED** by the Parliament of Antigua and Barbuda as follows:

**PART I**

**PRELIMINARY**

**1. Short title and commencement**

(1) This Act may be cited as the Criminal Prosecutions Service Act, 2017.

(2) This Act comes into force on such date as the Attorney General determines by notice published in the *Gazette*.

## **2. Interpretation**

In this Act —

“Chief Justice” means the Chief Justice of the Eastern Caribbean Supreme Court;

“code of practice” means a guide approved by the Director of Public Prosecutions for prosecutors on general principles to be applied when making decisions pertaining to prosecutions;

“Commissioner of Police” means the Commissioner of the Royal Police Force of Antigua and Barbuda;

“Constitution” means the Constitution of Antigua and Barbuda;

“Court of Appeal” means the Court of Appeal of the Eastern Caribbean Supreme Court;

“criminal proceedings” include —

- (a) any criminal proceedings in a Magistrate Court or High Court (except a court martial);
- (b) proceedings by way of coroner’s inquest or inquiry conducted under the Coroners Act, Cap.105; and
- (c) an appeal from the determination of any court in criminal proceedings or review or rehearing or proceedings of the same nature as review or rehearing or a case stated or a question of law reserved in respect of those proceedings.

“Deputy Director of Public Prosecutions” (“Deputy DPP”) means the person appointed under clause 9 as the Deputy Director of Public Prosecutions;

“Director of Public Prosecutions” (“DPP”) means the Director of Public Prosecutions appointed under section 87 of the Constitution;

“Office” means the Office of Criminal Prosecutions Service established by clause 4 of this Act;

“officer” means any member of the Royal Police Force of Antigua and Barbuda including a Gazetted officer, or an officer of the Office of the National Drug and Money Laundering Control Policy (ONDCP) or an officer of any other Law Enforcement Agency in Antigua and Barbuda;

“para-legal training” means training at a tertiary institution covering the major branches of law and their relation to each other, and the Constituion;

“Police Force” includes the Royal Police Force of Antigua and Barbuda established by the Police Act, Cap. 330 and any other body established by an Act of Parliament.

### **3. Purpose of the Act**

The purpose of this Act is to give effect to section 88 of the Constitution by establishing an institutional framework in which is vested the power to institute and undertake all criminal proceedings in any court, except a court martial, in respect of an offence against any law in force in Antigua and Barbuda; and to secure the protection of the law to persons charged with criminal offences by ensuring that such offenders receive a fair hearing within a reasonable time.

## **PART II**

### **OFFICE OF THE CRIMINAL PROSECUTIONS SERVICE**

#### **4. Establishment of the Office of Criminal Prosecutions Service**

(1) There is hereby established an Office to be known as Criminal Prosecutions Service headed by the Director of Public Prosecutions, which shall have responsibility to institute criminal proceedings in Antigua and Barbuda.

(2) Subject to the provisions of this Act, the Office of the Criminal Prosecutions Service shall have the staff presently attached to the Office of the Director of Public Prosecutions and such other staff as the Cabinet determines.

#### **5. Legal status of the Director of Public Prosecutions**

(1) There shall be a Director of Public Prosecutions, who shall be the principal Legal Officer of the Office of the Criminal Prosecutions Service and, subject to section 89 of the Constitution, exercise the powers conferred upon him by section 88 of the Constitution to the exclusion of any person or authority.

(2) For the purpose of the performance of his functions, the DPP may prosecute in his official title any offence against the laws of Antigua and Barbuda.



### **PART III**

## **PRINCIPAL OFFICER AND STATE OF THE CRIMINAL PROSECUTIONS SERVICE**

### **6. Director of Public Prosecutions as principal officer**

(1) The DPP shall have responsibility for the conduct of criminal cases in the Magistrate's Court, the High Court, the Court of Appeal, the Judicial Committee of the Privy Council, or any other appellate court established by law.

(2) The DPP shall be responsible to appear or cause a designated officer to appear on his behalf in any proceedings in which the DPP is named as a party.

(3) The DPP shall have responsibility for all administrative functions relating to the carrying out of the functions of the Office of the Criminal Prosecutions Service.

(4) The DPP may, in writing, delegate some of his functions, except the power to delegate, to such officers in the Office of the Criminal Prosecutions Service as he thinks fit.

### **7. Deputy Director of Public Prosecutions and other staff**

(1) There shall be a Deputy Director of Public Prosecutions (Deputy DPP), who shall perform such functions as the DPP may assign to him, including the prosecution of criminal cases in any court.

(2) There shall be other professional staff, including persons with para-legal training, and non-professional staff for the purposes of the Office of the Criminal Prosecutions Service.

### **8. Appointment of the Director of Public Prosecutions**

(1) The DPP shall, subject to section 87(4) of the Constitution, be appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission.

(2) For the avoidance of doubt, the person holding the office of DPP at the commencement of this Act shall, subject to section 87 of the Constitution, continue to hold that office on the terms and conditions of his appointment.

### **9. Appointment of Deputy Director of Public Prosecutions and other staff**

(1) The Deputy DPP, the prosecutors and the administrative staff of the Office of the Criminal Prosecutions Service shall be appointed by the Judicial and Legal Service Commission, or in the case of non-professional staff, by the Public Service Commission, in accordance with sections 100 and 103 of the Constitution.

(2) Other staff of the Office of the Criminal Prosecutions Service shall hold office on such terms and conditions as provided in their letters of appointment.

## **PART IV GUIDELINES**

### **10. Guidelines for prosecutors**

(1) The DPP may, for the sole purpose of assisting prosecutors generally, prepare a code of practice to guide Prosecutors in determining —

- (a) whether proceedings for an offence should be instituted;
- (b) whether proceedings that have been instituted should be discontinued;
- (c) what charges should be preferred; and
- (d) whether to make representation to a Magistrate's court about the mode of trial suitable for that case.

(2) The DPP may amend the code of practice prepared under subsection (1), taking into account amendments made to the law or decisions made by the Court of Appeal of the Eastern Caribbean Supreme Court, the Judicial Committee of the Privy Council or any appellate court established by law in which a legal issue, evidence or legislation is in *pari materia* with the issue and the law which concern the prosecution.

**11. Guidelines to an officer or other investigating Authority**

(1) Where the DPP is of the opinion that a matter requires an investigation, the DPP shall request the investigator in writing to commence investigation into the matter concerned and the investigator shall so comply with those directions.

(2) Where the DPP is of the opinion that a matter connected with an offence requires further investigation or inquiry, the DPP may in writing request that the investigator conduct further investigations.

**PART V****POWERS AND FUNCTIONS OF DPP  
AND OTHER MEMBERS OF STAFF****12. Powers and the Functions of the Director of Public Prosecutions**

(1) The DPP shall, subject to subsection (2), exercise the following powers —

- (a) have overall conduct of criminal proceedings in Antigua and Barbuda;
- (b) institute and undertake criminal proceedings against any person before any court in respect of any offence against any law;
- (c) take over and continue any criminal proceedings that may have been instituted by any other person or authority.
- (d) discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority;
- (e) appear in proceedings before the International Criminal Court or in any court under the provisions of the Mutual Assistance in Criminal Matters Act 1993, No. 2 of 1993;
- (f) issue directions in relation to any criminal matter at any stage of the proceedings;
- (g) direct the appeal of a case where an accused is discharged by a Magistrate.

(2) Notwithstanding the provisions of subsection (1), the DPP shall exercise the powers conferred upon him by section 88 of the Constitution in accordance with the directions of the Attorney General in relation to offences against —

- (a) official secrets;

(b) mutiny or incitement to mutiny, and

(c) any offence under any law relating to any right or obligation of Antigua and Barbuda under international law.

(3) Without prejudice to anything contained in subsection (1), the DPP shall have conduct of all extradition proceedings in Antigua and Barbuda.

(4) The DPP shall, at the end of each law term, prepare a report for the Attorney General, of cases prosecuted during the preceding law term together with the result of each case and any comments and observations he may deem appropriate to bring to the attention of the Attorney General.

### **13. Functions of the Deputy Director of Public Prosecutions**

The Deputy DPP shall perform such duties and functions as the DPP may assign.

### **14. Functions of other staff**

The other staff, whether professional or non-professional, shall perform such duties as the DPP may assign to them.

## **PART VI TRAINING, SUPERVISION AND REMOVAL OF STAFF FROM OFFICE**

### **15. Training**

(1) The DPP shall —

(a) include in the annual budget of the Office of the Criminal Prosecutions Service, funds for the training and improvement of the staff; and

(b) with the approval of the Attorney General, secure funds from sources including foreign governments, their agencies and non-governmental agencies to meet the cost of training of the staff of the Office of Criminal Prosecutions Service.

(2) The DPP may, from time to time, arrange seminars for the benefit of all prosecutors to address complex cases or new decisions given by the Court of Appeal, the Privy Council, or any other appellate court established by law or any other court in the Commonwealth Caribbean.

(3) The DPP may designate a suitably qualified member of staff, as a Research Officer.

**16. Removal of the Director of Public Prosecutions from office**

The DPP may be removed from office in accordance with the provisions of sections 87(7) to 87(10) of the Constitution.

**17. Resignation**

(1) The DPP may resign his office in writing and delivered to the Governor-General and such resignation shall take effect as from the date of the receipt of such instrument by the Governor-General.

(2) The Deputy DPP or any member of staff may terminate his appointment in writing and delivered to the appointing authority.

**18. Removal of other staff from office**

(1) The removal of other officers of the Office of Criminal Prosecutions Service from office shall be in accordance with the procedure prescribed by the Judicial and Legal Service Commission, or in the case of non-professional staff, by the Public Service Commission.

(2) Where an officer was not appointed by the Public Service Commission, his or her removal shall be in accordance with the terms and conditions of his employment.

**PART VII  
REMUNERATION****19. Remuneration of the Director of Public Prosecutions and other staff**

(1) The DPP shall be paid such remuneration and allowances as determined by the Cabinet.

(2) The Deputy DPP and other members of the professional staff shall be paid such remuneration on the terms and conditions agreed to in their contract of employment.

**20. Scales for upward mobility of certain officers of the Office of the Criminal Prosecutions Service**

Without prejudice to anything contained in section 15, the Cabinet may, for the purpose of upward mobility, establish offices in the Office of the Criminal Prosecutions Service in accordance with the Civil Service Act Cap. 87 for the purpose of classification of the offices so established.

## **PART VIII**

### **FUNDS OF THE OFFICE OF THE CRIMINAL PROSECUTIONS SERVICE**

#### **21. Funds of the Office of the Criminal Prosecutions Service**

The funds of the Office of the Criminal Prosecutions Service shall consist of such moneys as may be appropriated by Parliament for the purposes of the Office of the Criminal Prosecutions Service.

#### **22. Estimates of income and expenditure**

The provisions of the Finance Administration Act, 2006, relating to estimates of income and expenditure, annual reports, accounts and audit of departments of Government apply to the Office of the Criminal Prosecutions Service.

## **PART IX**

### **MISCELLANEOUS**

#### **23. Oath or affirmation of office**

(1) The DPP and other members of staff of the Office of the Criminal Prosecutions Service shall not perform the duties of the office unless an oath or affirmation is made in relation to that office in accordance with the form of oath or affirmation as set out in the Schedule.

(2) An oath or affirmation under this section shall be made before a judge of the High Court.

#### **24. Secondment or transfer**

(1) At the commencement of this Act, any police officer, who is attached to the Office of the Criminal Prosecutions Service on transfer or secondment must make a determination as to whether he intends to continue in employment, on transfer or secondment to the Office of the Criminal Prosecutions Service, or return the Police Force.

(2) Any such determination must be made within three months after the commencement of this Act, or such further period approved by the Attorney General, after consultation with the DPP.

(3) Where an officer decides to continue on transfer to the Office of the Criminal Prosecutions Service, the pension and other benefits that have accrued at the date of transfer shall be carried over to his service in the Office of the Criminal Prosecutions Service.

(4) Without prejudice to anything contained in subsections (1) to (3), any police officer who is a prosecutor on transfer to the Office of the Criminal Prosecutions Service may be transferred to the Office of the Criminal Prosecutions Service, if the officer agrees to such transfer.

(5) Where an officer indicates that it is his intention to return to the Police Force, his service at the Office of the Criminal Prosecutions Service shall be counted as service for the purposes of pension and other benefits.

## **25. Service of process on the Director of Public Prosecutions**

A process addressed to the DPP is effective if served on a member of the staff who is a member of the professional staff of the Office of the Criminal Prosecutions Service.

## **26. Electronic technology**

The Attorney General must ensure that the Office of the Criminal Prosecutions Service is fully equipped with cutting-edge electronic technology so as to permit the electronic filing of documents, the scheduling of different stages of criminal cases before the court, and other functions that may ensure the efficient operation of the Office of the Criminal Prosecutions Service.

## **27. Transitional Provisions**

(1) At the coming into force of this Act —

- (a) any criminal case commenced in any Magistrate Court prior to the commencement of this Act shall continue and be deemed to have been authorised in writing by the DPP;
- (b) any police prosecutor assigned to prosecute any criminal case, prior to the commencement of this Act, shall continue to prosecute the case assigned to him and be deemed to have been authorised, in writing, by the DPP; and
- (c) any public officer, who is authorised by any law to prosecute offences against that law, shall continue to prosecute any such offence commenced prior to the commencement of this Act.

(2) Despite the provisions of any law in force in Antigua and Barbuda, and subject to subsection (1), no public officer shall, after the commencement of this Act, institute any criminal proceedings or undertake the prosecution of any criminal case in any court, unless he is authorised so to do, in writing by the DPP.

**28. Rules and regulations**

The Chief Justice may make rules and regulations to give effect to the provisions of this Act, and the procedures to be followed in criminal trials.

**29. Repeal**

Section 31 of the Police Act, Cap. 330 is repealed.

**SCHEDULE**

(Section 23)

**OATH**

I, A.B. do swear that I will exercise the functions of.....  
in the Office of the Criminal Prosecutions Service without fear or favour, affection or ill-will to the  
Constitution and laws of Antigua and Barbuda.

So help me God!

Sworn before me this.....day of .....20.....

.....

**JUSTICE OF THE HIGH COURT**

**AFFIRMATION**

I, A.B. do solemnly and sincerely affirm that I will exercise the functions of.....  
in the Office of the Criminal Prosecutions Service without fear or favour, affection or ill-will  
according to the Constitution and laws of Antigua and Barbuda.



Affirmed before me this.....day of.....  
20.....

.....

**JUSTICE OF THE HIGH COURT**

Passed the House of Representatives on  
this the 9th day of October, 2017.

Passed the Senate  
this 30th day of October, 2017.

**Gerald Watt Q.C.,**  
*Speaker.*

**Alicia Williams Grant**  
*President.*

**Ramona Small,**  
*Clerk to the House of Representatives.*

**Ramona Small,**  
*Clerk to the Senate.*