

*The Visiting Forces Act, 2007*

No.      of 2007

ANTIGUA AND BARBUDA

The Act has been drafted using the Visiting Forces Act, 1995 of Jamaica as a model and has been appropriately amended.



**THE VISITING FORCES ACT, 2007**

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Antiguan and Barbudan 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 Antiguan and Barbudan 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 Antiguan and Barbudan forces and of other forces shall be prescribed by regulations made by the Defence Board.

**33. Regulations**

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 the 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; and
- (d) prescribing anything that is required by the Act to be prescribed.

Passed the House of Representatives on the \_\_\_\_\_, 2007. Passed the Senate on the \_\_\_\_\_, 2007.

*Speaker.*

*President.*

*Clerk to the House of Representatives.*

*Clerk to the Senate.*

**EXPLANATORY NOTE**

This Bill would create a Visiting Forces Act to allow members of Defence Forces, (or the equivalent) of states designated by the Defence Board of Antigua and Barbuda, to enter Antigua and Barbuda and to function alongside the members of the Antigua and Barbuda Defence Force in cases of security emergencies and disaster.

The Act outlines the scope of the functions of the visiting forces. It sets up a service court to deal with disciplinary matters and the jurisdiction of this court in relation to that of the High Courts and Magistrates Courts of Antigua and Barbuda. It also deals with issues of taxation that would arise from the presence of visiting forces in Antigua and Barbuda.

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

**PART VII.**

**Attachments to and from forces of Antigua and Barbuda**

**32. Temporary attachments to Antiguan and Barbudan forces and to forces of another country.**

- (1) The Defence Board—
  - (a) may attach temporarily to the Antiguan and Barbudan 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 Antiguan and Barbudan 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 Antiguan and Barbudan forces, he is subject to the law relating to the Antigua and Barbudan forces in like manner as if he were a member of the Antigua and Barbudan forces, and shall be treated and have the like powers of command, punishment and, notwithstanding section 15, arrest over members of the Antiguan and Barbudan 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 Antiguan and Barbudan forces shall apply with the exceptions and subject to the adaptations and modifications as may be specified by the Minister.
- (4) When the Antiguan and Barbudan 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 Antiguan and Barbudan forces the like powers of command as if he were a member of the Antiguan and Barbudan 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 Antigua and Barbuda 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

**PART IV.**

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- 21. Claims against designated state.
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**PART VII.**

**Attachments to and from Antiguan and Barbudan forces**

- 32. Temporary attachments to forces of Antigua and Barbuda and to forces of another country.
- 33. Regulations.

**APPENDIX  
Explanatory Memorandum**

**ANTIGUA AND BARBUDA**  
**THE VISITING FORCES ACT, 2007**  
**No. of 2007**

**AN ACT** respecting the armed forces of countries visiting Antigua and Barbuda and for incidental and connected purposes.

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

**1. Short title**

This Act may be cited as the Visiting Forces Act, 2007.

**2. Interpretation**

In this Act—

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

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

“Defence Board” means the Defence Board constituted under section 10 of the Defence Act, 2003;

“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 that 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 Antigua and Barbuda, that is designated under section 4;

“Antigua and Barbudan forces” means the Antigua and Barbuda Defence Force established by section 4 of the Antigua and Barbuda Defence Act, 2003;

“military establishment” has the meaning assigned to those words by subsection (1) of section 36 of the Defence Act;

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 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) (a) The Registrar shall not give a death certificate under section 36 of the Antigua and Barbuda Births and Deaths (Registration) Act, Cap. 53 if the body is proposed to be removed out of Antigua and Barbuda before the coroner’s inquest has been completed.
- (b) Where a body is to remain in Antigua and Barbuda until the completion of the coroner’s inquest pursuant to paragraph (a) above;
  - (i) the body shall remain in the custody and under the control of the Chief Medical Examiner; and
  - (ii) the Minister of justice shall make arrangements for the expense of storing the body until the completion of the inquest or until the coroner directs that the body may be released.

(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; or

(2) Notwithstanding the provisions of section 30 of the Vehicles and Road Traffic Act, Cap. 460 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 Antigua and Barbuda without being the holder of 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.

**28. Import duty**

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

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

**29. Personal effects and motor vehicles.**

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 Antigua and Barbuda 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 Antigua and Barbuda.

**30. Fuel, oil, etc.**

Subject to compliance with 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.**

**Coroners Inquest**

**31. Provisions as to coroner's inquest.**

(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

“Minister” unless the context otherwise requires, means the Minister responsible for matters of defence in Antigua and Barbuda;

“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 Antigua and Barbuda in connection with official duties, and includes civilian personnel designated under section 4 as a civilian component of a visiting force.

**PART.**

**Application of Act**

**3. Application of Act**

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.

**4. Orders designating states, etc.**

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; and
- (c) designate civilian personnel as a civilian component of a visiting force.

**PART III.**

**Jurisdiction in relation to Visiting Forces**

**5. Primary right of civil courts to exercise jurisdiction**

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 Antigua and Barbuda alleged to have been committed by a member of a visiting force or a dependant.

**6. Previous trial by civil court**

(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 Antigua and Barbuda for the same offence by a service court, but nothing in this section shall prevent a service court from trying within Antigua and Barbuda 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.

(2) A certificate signed by the Registrar of the Supreme Court or a Judge, or a Resident Magistrate, 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; or
- (c) the judgment or order of the court;

shall, for purposes of this section, be evidence of the matters stated in the certificate.

**7. Primary right of service court in certain cases**

(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—

- (a) the property or security of the designated state; or
- (b) the person or property of another member of the visiting force or a dependant.

(2) Subject to this Act, the service authorities and service courts of a visiting force may exercise within Antigua and Barbuda 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. Arrest, custody, etc. of offenders against Antigua and Barbuda law**

(1) Nothing in section 7 shall affect—

- (a) any powers of arrest, search, entry, seizure or custody exercisable under the law of Antigua and Barbuda with respect to offences committed or believed to have been committed against that law;
- (b) an obligation of a person in respect of a recognizance or bail bond entered into in consequence of his arrest, or the arrest of any other person, for 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 an offence.

**24. Ships.**

Except the Minister by order so directs in respect of the ships of any particular designated state, section 21 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.

**25. Settlement of claims against visiting forces.**

(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 those amounts as may be—
  - (i) adjudged by any court in Antigua and Barbuda or any 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 steps as may be required 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**

**26. Exemption from income tax**

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

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

**27. Service vehicles and licences**

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

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

No proceedings shall be entertained by any court in Antigua and Barbuda 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 that force, with regard to the terms of that service or with regard to a person's discharge from service.

**20. Immunity from prosecution.**

(1) Members of a visiting force shall be immune from prosecution in civil and criminal court proceedings in Antigua and Barbuda in respect of actions taken in the course of their official duties.

(2) The immunity specified in subsection (1) may be waived in respect of any member of a visiting force, by the competent authority of the designated state of the visiting force.

**PART IV.****Claims for personal injuries and property damage****21. Claims against designated state**

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

- (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.

**22. No proceedings lie where compensation payable**

No proceedings lie against the Crown by virtue of section 21, or against any member of a visiting force who is deemed a servant of the Crown under section 21, 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 funds administered by an agency of a designated state, for the death or injury.

**23. Enforcement of judgment.**

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

(2) Where a person has been taken into custody by a constable without warrant for an offence, 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 Antigua and Barbuda 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 forty-eight hours after his detention without being brought before a court of summary jurisdiction, but if within that period he is not delivered into the custody of an authority of the designated 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.

(3) In computing the period of detention in subsection (2) Sundays and public holidays shall be excluded.

**9. Previous trial by service courts**

(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.

(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; or
- (c) the judgment or order of the Court,

shall be evidence of the matters stated in the certificate.

**10. Primary rights may be waived**

(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 that primary right has the right to deal with charges against alleged offenders in the first instance, and the court not having that primary right shall, subject to subsection (2), have no jurisdiction in the matter.

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

**11. Immunities and privileges of members of service court and witnesses.**

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

**12. Sentence, detention and proof thereof.**

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

- (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 Antigua and Barbuda, be deemed to be in lawful custody.

(3) For the purposes of legal proceedings within Antigua and Barbuda, 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 the 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. Arrest**

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 forces of Antigua and Barbuda, direct the Antiguan and Barbudan officers and soldiers 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 arrested to the appropriate authorities of the visiting force.

**14. Place of imprisonment or detention**

(1) Where a member of a visiting force or a dependant of a 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 Antiguan and Barbudan forces shall *mutatis mutandis* apply.

(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.

**15. Police functions.**

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.

**16. Application of section 111 of the Defence Act**

The provisions of section 111 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.

**17. Death sentence**

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 Antigua and Barbuda unless, under Antigua and Barbudan law, a sentence of death could have been passed in a similar case.

**18. Firearms and drilling**

Members of a visiting force acting in the course of and 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.