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LEGAL SUPPLEMENT – C

BILL No. 12 of 2007

Friday 9th March, 2007

PARLIAMENT OFFICE,
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Georgetown,
Guyana.

9th March, 2007.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 12 of 2007

VISITING FORCES BILL 2007

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A BILL
Intituled

AN ACT to make provision for armed forces of certain states visiting Guyana and for related purposes.

A.D. 2007 Enacted by the Parliament of Guyana:-

PART 1
PRELIMINARY

Short title. 1. This Act may be cited as the Visiting Forces Act 2007.

Interpretation. 2. In this Act, -

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

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

“Defence Board” means the Defence Board established by **section 9 of the Defence Act**;

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“dependant” with reference to a member of a visiting force or a member of the armed forces of a designated state, means -

- (a) the wife or husband of the member; or
- (b) any other person wholly or mainly maintained by the member, or in the member’s custody, charge or care;

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

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"Guyana Defence Force" means the Guyana Defence Force established by **the Defence Act**;

"military establishment" means a military prison or any other establishment under the control of the Defence Board where persons may be required to serve military sentences of imprisonment or detention;

"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 Guyana in connection with official duties, and includes civilian personnel designated under **section 4** as a civilian component of a visiting force.

Application of
Act.

3. **This Act applies in respect of a designated state -**

- (a) when the Defence Board has declared it to be applicable in respect of that state, under **section 4**; and
- (b) only to the extent declared by the Defence Board under **section 4**.

**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 2 JURISDICTION AND IMMUNITIES RELATING 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 Guyana alleged to have been committed by a member of a visiting force or a dependant.

**Previous trial by
civil court.**

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, no service court may try the member or dependant within Guyana for the same offence.

(2) A certificate signed by the Registrar or Deputy Registrar of the High Court, a sworn clerk of the Registry of the High Court, a judge, or a 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; and
- (c) the judgment or order of the court,

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

- (3) Nothing in **this section** prevents a service court from trying within

Guyana a member of a visiting force or a dependant for any violation of rules of discipline arising from an act or omission that constituted an offence for which the member or dependant was tried by a civil court.

Primary right of service court in certain cases.

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 -

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

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

(3) Nothing in **this section** affects or limits any other written law (including a provision of **this Act**) restricting the prosecution of any proceedings or requiring the consent of any authority to the prosecution of any proceedings.

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

8. (1) In **this section**, "offence" means an offence committed or believed to have been committed by a person against the laws of Guyana.

(2) Nothing in **section 7** affects or limits -

- (a) any power of arrest, search, entry, seizure, or custody exercisable under the laws of Guyana with respect to offences;
- (b) any obligation of any person in respect of a recognizance or bail bond entered into as a result of an arrest 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.

(3) Subject to **subsections (4) and (5)**, a police constable who, without warrant, takes a person into custody for an offence, may detain that person in custody for a period not exceeding 3 days without bringing that person before a court of summary jurisdiction if there is reasonable ground for believing that that person is subject to the jurisdiction of the service court of a designated state under **section 7**.

(4) The power of detention under **subsection (3)** may be exercised only for the purpose of determining whether that person is to be dealt with for that offence under the laws of Guyana or dealt with by the courts of the designated state for an offence under the laws of that designated state.

(5) If that person is not delivered into the custody of an authority of the designated state within the 3-day period referred to in **subsection (3)**, that person shall be released on bail or brought before a court of summary jurisdiction as soon as practicable after the expiry of that period.

Previous trial by
service courts.

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, no civil court may try the member or dependant for the same offence.

(2) For the purposes of **this section**, a certificate signed by the officer presiding over a service court, or the officer in command of a visiting force, stating -

- (a) that a member of a 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; and
- (c) the judgement or order of the court,

is evidence of the matters stated in the certificate.

Primary rights
may be waived.

10. (1) The civil court or service court that has the primary right to exercise jurisdiction under either **section 5** or **section 7** has the right to deal with charges against alleged offenders in the first instance, and the court not having the primary right has no jurisdiction in the matter, subject to **subsection (2)**.

(2) A court having jurisdiction under **subsection (1)** may, in accordance with **regulations**, waive its jurisdiction in favour of the court not having jurisdiction under **subsection (1)**, and the latter court shall then have jurisdiction in the matter.

Immunities and
privileges of
members of
service court and
witnesses.

11. The members of a service court exercising jurisdiction under **this Act**, and witnesses appearing before the service court, have the immunities and privileges of a court martial exercising jurisdiction under the **Defence Act**, and witnesses appearing before the court martial, respectively.

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Sentence,
detention, and
proof of these.

12. (1) Where a service court in Guyana or elsewhere has passed any sentence upon a member of the armed forces of a designated state or upon a dependant, then for the purposes of any legal proceedings in Guyana -

(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 laws of the designated state; and

(d) subject to **section 17**, if the sentence has been executed according to its tenor, it shall be deemed to have been lawfully executed.

(2) For the purposes of any legal proceedings in Guyana, a member of a visiting force or a dependant who is detained in custody shall be deemed to be

in lawful custody if the member or dependant is in custody -

- (a) under a sentence mentioned in **subsection (1)**; or
 - (b) pending the determination by a service court of a charge brought against that member or dependant.
- (3) For the purposes of any legal proceedings within Guyana, -
- (a) a certificate signed by the officer in command of a visiting force stating that the persons specified in the certificate sat as a service court, is receivable in evidence and is conclusive proof of that fact; and
 - (b) a certificate signed by the officer in command of a visiting force stating that a member of that force or a dependant is being detained in either of the circumstances described in **subsection (2)**, is receivable in evidence and is conclusive proof of the cause of the detention, but not of the person concerned being a member of the visiting force or a dependant.

Defence Board
may order arrest.

13. (1) For the purposes of enabling the service authorities and service courts of a visiting force to exercise more effectively the powers given to them by **this Act**, the Defence Board may from time to time by general or special orders direct officers and soldiers of the Guyana Defence Force -

- (a) to arrest members of the visiting force or dependants alleged to have been guilty of offences against the laws of the designated state; and
- (b) to hand over any person so arrested to the appropriate authorities of the visiting force.

(2) However, the Defence Board may exercise the power in **subsection (1)** only if requested by the officer in command of the visiting force or by the designated state.

Place of imprisonment or detention. 14. (1) Where a member of a visiting force or a dependant has been sentenced by a service court to undergo a punishment involving incarceration, the officer in command of the visiting force may make a request to the Defence Board that the incarceration be served wholly or partly in a civil prison or military establishment.

(2) The Defence Board shall determine whether the offender's punishment is to be served in whole or in part in a civil prison or military establishment -

(a) having regard to the nature of the place of incarceration to which the offender would have been committed under the laws of the designated state; and

(b) in any event, in accordance with regulations.

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(3) Where the offender's punishment is to be served in whole or in part in a civil prison or military establishment, the provisions of the Defence Act relating to the carrying out of punishments of imprisonment or detention imposed upon officers and soldiers of the Guyana Defence Force shall apply with necessary modifications.

Police functions.

15. (1) Members of a visiting force have the same power to exercise police functions (including the power of arrest), in relation to any member of that force or dependant, as provided by the service law of that force.

(2) However, nothing in subsection (1) empowers a member of a visiting force to exercise police functions in respect of a person who is neither a member of the visiting force nor a dependant.

Summonses.

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16. (1) Sections 64(1)(a) and 106(1)(a) of the Defence Act apply with necessary modifications in relation to a court martial under this Act as if it were a court martial under that Act.

(2) However, a court martial under this Act shall not summon any person other than a member of a visiting force except by process issued by a

magistrate or a justice of the peace in accordance with regulations.

Death sentence.

17. Notwithstanding anything in **this Act**, a sentence of death passed by a service court shall not be carried out in Guyana unless a sentence of death could have been passed in a similar case under the laws of Guyana.

**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, the making or possessing of explosives, or the possession of ammunition and firearms.

**Restrictions on
proceedings
relating to service
of members of
visiting force.**

19. (1) In **this section**, "service" means service as a member of a visiting force.

(2) No proceedings shall be entertained by any court in Guyana in relation to any of the following -

- (a) the pay of any person in respect of service;
- (b) the terms of service of any person;
- (c) any person's discharge from service.

**Immunity from
prosecution of
civil and criminal
proceedings.**

20. (1) Notwithstanding any other provision of **this Act**, members of a visiting force shall be immune from the prosecution of civil and criminal proceedings in respect of actions taken in the course of their official duties.

(2) The service authority to which a member of a visiting force belongs may waive the immunity specified in **subsection (1)** in respect of the member.

(3) Nothing in **this section** affects or limits any other provision of **this Act** that restricts or excludes proceedings in relation to a member of a visiting force.

Evidence
regarding official
duties.

21. A certificate of the service authority to which a member of a visiting force belongs stating that anything alleged to have been done or omitted by the member was or was not done or omitted in the performance of an official duty —

- (a) is receivable in evidence in any civil court; and
- (b) for the purposes of this Act, is *prima facie* proof of that fact.

PART 3

CLAIMS FOR PERSONAL INJURIES AND PROPERTY DAMAGE

Claims against
designated state.
No. 20 of 1984

22. Subject to section 24, for the purposes of the State Liability and Proceedings Act 1984 —

- (a) a tort committed by a member of a visiting force while acting within the scope of the member's duties or employment shall be deemed to have been committed by a servant of the State while acting within the scope of the servant's 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 State; and
- (c) a service motor vehicle or aircraft of a visiting force shall be deemed to be owned by the State.

No proceedings
where
compensation
payable.

23. No proceedings lie against the State by virtue of section 22, or against any member of a visiting force who is deemed a servant of the State under section 22, in respect of a claim by a member of a visiting force or a dependant (or the personal representative of the member or the dependant) arising out of death or injury to the member or the dependant if compensation has been paid or is payable for the death or injury, by a designated state, or out of any funds

administered by an agency of a designated state.

Ships.

24. Section 22 does not apply in respect of 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 -

- (a) the Minister otherwise orders in respect of ships of a specified designated state; or
- (b) the claim is a claim arising out of the death of or injury to a person.

**Settlement of
claims against
visiting forces.**

25. (1) The Minister may make arrangements to satisfy claims in respect of acts or omissions of -

- (a) members of visiting forces; or
- (b) other persons connected to those forces and specified in these arrangements.

(2) The arrangements shall include -

- (a) a description of the acts or omissions to which they relate; and
- (b) a description of the method of satisfying those claims, which may include the payment of amounts -
 - (i) adjudged by any court or other authority in Guyana; or
 - (ii) agreed between the claimant and the Minister.

(3) Any expenses of the Minister incurred in satisfying claims under arrangements made under **this section** or otherwise in connection with the arrangements shall be defrayed out of moneys provided by Parliament.

(4) The Minister shall take any steps required to ensure that persons affected by any arrangements under **this section** are informed of the nature and operation of the arrangements.

PART 4

TAXATION

- Exemption from income tax.** 26. (1) In this section, "member of a visiting force" excludes any Guyanese citizen resident or ordinarily resident in Guyana.
- (2) A member of a visiting force shall be exempt from income tax in Guyana on the salary and emoluments paid to that member as a member of the visiting force.
- Service vehicles and licences.** 27. (1) No tax or fee shall be payable in respect of the licensing or registration of service vehicles of a visiting force.
- Cap. 51:02 (2) Notwithstanding the **Motor Vehicles and Road Traffic Act**, a member of a visiting force may drive a service vehicle on any road in Guyana without being the holder of a driver's licence issued under that Act if the member is the holder of a valid driver's licence issued under any law of the designated state to which that member belongs.
- Import duty.** 28. (1) Subject to regulations, a visiting force may import into Guyana free of duty and tax, for the exclusive use of the visiting force, -
- (a) any equipment;
 - (b) a quantity of provisions, supplies, and other goods that the Comptroller of Customs considers reasonable.
- (2) The Comptroller of Customs may authorize the import into Guyana, free of duty and tax, of goods for use by dependants of members of a visiting force.
- Personal effects and motor vehicles.** 29. (1) A member of a visiting force may in accordance with regulations made under this Act or the **Customs Act** import, free of duty and tax, -
- Cap. 82:01 (a) the member's personal effects and furniture, if the importation is made within 6 months of the first arrival

of that member to take up service in Guyana;

- (b) the personal effects of a dependant of the member, if the importation is made within 6 months of the first arrival of the dependant to join that member; and
- (c) the private motor vehicle of that member for the temporary personal use of that member and dependants.

(2) Nothing in **paragraph (c) of subsection (1)** grants or authorizes the granting of any exemption from taxes or fees in respect of -

- (a) the licensing or registration of private vehicles; or
- (b) the use of the roads by private vehicles in Guyana.

Fuel, oil, etc. 30. Subject to compliance with any conditions prescribed by **regulations**, no duty or tax is payable on any fuel, oil, or lubricants intended for use exclusively in the service vehicles, aircraft, or vessels of a visiting force.

PART 5

CORONER'S INQUEST

Provision as to coroner's inquest. 31. (1) In this section, -

- (a) "homicide" includes murder, manslaughter, infanticide, and any offence under the laws of the country in question which is analogous to any of those offences;
- (b) "inquest" includes an inquiry;
- (c) "Registrar General" has the meaning given to it by **section 2 of the Registration of Births and Deaths Act**;
- (d) references to persons having at any time a relevant association with a visiting force are references to that person being at that time -

Cap. 44:01

- (i) a member of that visiting force;
- (ii) a person, not being a citizen of Guyana or ordinarily resident in Guyana, who is a dependant

of a member of that visiting force; and

- (e) in determining whether a person is, or was at any time, ordinarily resident in Guyana, no account shall be taken of any period during which the person has been or intends to be present in Guyana while being a member of a visiting force or a dependant.

(2) If any coroner having jurisdiction to hold an inquest into a death is satisfied that the deceased person at the time of death had a relevant association with a visiting force, the coroner -

- (a) shall not start the inquest; or
- (b) if the inquest has been started but has not been completed, the coroner shall -
 - (i) adjourn the inquest; and
 - (ii) if a jury has been summoned, discharge the jury.

(3) Subject to **subsection (2)**, if on an inquest into a death a 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.

the coroner shall take the actions specified in **subsection (4)**.

(4) **Subsection (3)** refers to the following actions -

- (a) adjourn the inquest;
- (b) if a jury has been summoned, discharge the jury; and
- (c) give the Registrar General a certificate stating the particulars necessary for the registration of the death to the extent that these have been ascertained at the inquest.

(5) Where an inquest is adjourned under **this section**, -

- (a) the coroner may resume it only on the direction of the Minister responsible for justice; and
 - (b) if the coroner resumes it under **paragraph (a)**, the coroner shall proceed in all respects as if the inquest had not previously been started, but the coroner need not (as the case may be) again view the body or again give the Registrar General a certificate.
- (6) **Subsection (2) and subsection (3)** shall not apply where the Minister responsible for justice by order directs otherwise.

PART 6

ATTACHMENTS TO AND FROM GUYANA DEFENCE FORCE

Temporary
attachments to
Guyana Defence
Force and to
forces of another
country.

32. (1) The Defence Board -
- (a) may attach temporarily to the Guyana Defence Force a member of another force who is placed at the disposal of the Defence Board 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 the member's service, may place any member of the Guyana Defence Force 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 under **this section** attached temporarily to the Guyana Defence Force, the member -
- (a) is subject to the law relating to the Guyana Defence Force in like manner as if that member were a member of the Guyana Defence Force; and
 - (b) shall be treated, and shall have the like powers of command, punishment, and (notwithstanding **section 15**)

arrest over members of the Guyana Defence Force, as if that member were a member of the Guyana Defence Force of relative rank.

(3) The Minister may direct that the written law of Guyana relating to the Guyana Defence Force shall apply in relation to members of another force to which this section applies, subject to any adaptations and modifications specified by the Minister.

(4) When the Guyana Defence Force 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 Guyana Defence Force the like powers of command as if that member were a member of the Guyana Defence Force of relative rank; and

(b) if the forces are acting in combination, any officer of the other force appointed, by agreement between the Government of Guyana and the government of the designated state to which that force belongs, to command all or any part of the combined force, -

(i) shall be treated;

(ii) shall have over members of the Guyana Defence Force the like powers of command, punishment, and arrest; and

(iii) may be invested with the like authority,

as if that officer were an officer of the Guyana Defence Force of relative rank and holding the same command.

(5) For the purposes of this section, -

(a) forces shall be deemed to be serving together or acting in combination only if they are declared to be so serving or so acting by order of the Defence Board; and

(b) the relative rank of members of the Guyana Defence Force and of other forces shall be prescribed by regulations.

PART 7
MISCELLANEOUS

Regulations.

33. (1) The Defence Board may make regulations to better carry out the purpose and provisions of **this Act**.

(2) Without limiting the generality of **subsection (1)**, these 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 served;
- (d) prescribing anything that is required or authorized by **the Act** to be prescribed.

Repeal of Visiting Forces Act 1952 (U.K) by order.

15 & 16 Geo. 6 & 1

Eliz. 2

34. The Minister may by order repeal all or any part of the **Visiting Forces Act 1952 (U.K.)** to the extent that that Act is in force in Guyana.

EXPLANATORY MEMORANDUM

This Bill seeks to make provision for the armed forces of certain designated states visiting Guyana and for related purposes.

It is part of a raft of Bills that seeks to give effect to the decisions of a conference of Heads of Government of the Caribbean Community concerning implementation of a regional security plan during the hosting of the Cricket World Cup in 2007. The other Bills are the Security Assistance (Caricom Member States) Bill 2007 and the Status of Visiting Police Officers Bill 2007.

This Bill is divided into 7 Parts.

Part 1 (Preliminary) sets out the short title and defines expressions used in the Act. It also provides for the Defence Board to designate states to which the Act would apply and the extent to which the Act would apply to those states.

Part 2 (Jurisdiction and Immunities relating to Visiting Forces) provide for civil courts in Guyana, or service courts of visiting forces, to have the primary right to exercise jurisdiction over members of visiting forces and their dependants in different circumstances. To facilitate the exercise of jurisdiction by service courts, **this Part** -

- (a) authorizes the Defence Board to order the arrest of a member of a visiting force or a dependant at the request of the officer in command of the visiting force;
- (b) authorizes the Defence Board to allow a sentence of incarceration imposed by a service court to be served in a civil prison or military establishment;
- (c) gives members of a visiting force in Guyana the same police powers they have under the service law of the designated state to which the force belongs;
- (d) allows courts martial of the visiting forces to issue summonses.

Part 2 also allows members of visiting forces to possess and carry explosives, ammunition, and firearms. Finally, **this Part** restricts proceedings relating to the service of members of visiting forces, and grants members of visiting forces immunity from civil and criminal proceedings in respect of actions taken by them in the course of their official duties.

Part 3 (Claims for Personal Injuries and Property Damage) deals with torts committed by members of visiting forces. In effect, it provides for the State of Guyana to be substituted for a designated state in respect of liability for certain torts. In this regard, the Minister is allowed to make arrangements to satisfy claims in respect of acts or omissions of members of visiting forces and related persons.

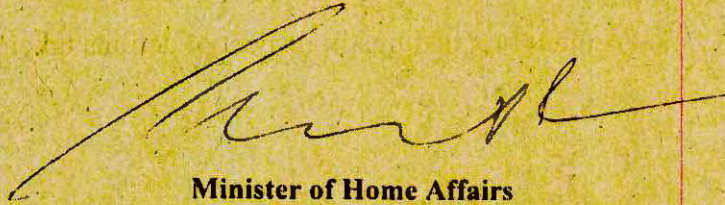
Part 4 (Taxation) exempts members of visiting forces from certain taxes and duties (including import duties and income tax), and also exempts service vehicles, equipment, and supplies of visiting forces from certain fees, taxes, and duties.

Part 5 (Coroner's Inquest) provides for a coroner not to hold an inquest, and to adjourn an inquest (if started), if –

- (a) the deceased person has a relevant connection with a visiting force;
or
- (b) any person subject to the jurisdiction of a service court has been or will be charged by the court with the homicide of the deceased person.

Part 6 (Attachments to and from Guyana Defence Force) provides for temporary attachments of a member of another force to the Guyana Defence Force, and *vice versa*. It also provides for situations where the Guyana Defence Force and other forces are serving together or acting in combination.

Part 7 (Miscellaneous) provides for the Defence Board to make regulations to carry out the purposes of the Act. It also provides for the Minister to make an order to wholly or partly repeal the Visiting Forces Act 1952 (U.K.).



Minister of Home Affairs