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LEGAL SUPPLEMENT – C

BILL No. 13 of 2007 *Friday 9th March, 2007*

PARLIAMENT OFFICE,
Public Buildings,
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. 13 of 2007

STATUS OF VISITING POLICE OFFICERS BILL 2007

ARRANGEMENT OF SECTIONS

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A BILL
Intituled

AN ACT to provide for the presence, activities, privileges and immunities of members of foreign police forces and civilian personnel during the period of CWC 2007 and for matters connected therewith.

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

PART I
PRELIMINARY

Short title. 1. This Act may be cited as the Status of Visiting Police Officers Act 2007.

Interpretation. 2. In this Act, unless the context otherwise requires-

(a) "civil court" means a court of ordinary criminal jurisdiction in Guyana and includes a court of summary jurisdiction;

(b) "civilian personnel" means a civilian personnel designated under section 4 as a civilian component of a visiting police force;

(c) "designate State" means a State other than Guyana that is designated under section 4:

(d) "Member State" means a member State of the Caribbean Community;

(e) "Minister" means the Minister responsible for Home Affairs;

Cap. 16:01 (f) "Police Force" means the Police Force established under the Police Act;

(g) "service court" means a court-martial and includes the service authorities of a designated State who are empowered by the law as of that State to deal with charges;

(h) "Treaty on Security Assistance" means the Treaty on Security Assistance Among CARICOM Member States concluded on 6th July 2006 including any amendments or protocols thereto;

(i) "visiting police force" means the officers and other members of any police force of a designated State present in Guyana in connection with the official duties.

PART II
APPLICATION OF THE ACT

Application.

3. This Act applies in respect of police forces and civilian personnel visiting Guyana-

(a) of a State designated pursuant to section 4; or
(b) who are present in Guyana pursuant to the provisions of the Treaty on Security Assistance.

Designated States. Schedule.

4. (1) The countries specified in the Schedule are the designated States for the purposes of this Act but such designation may be amended or revoked in accordance with paragraph (d) of subsection (2).

(2) The Minister may by order-

(a) designate any country other than a country specified in the Schedule 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 police force;
(d) revoke or amend any designation or declaration made under paragraph (a),(b) or (c).

PART III
POWERS AND IMMUNITIES OF VISITING POLICE FORCES

Status of members of visiting police forces.

5. Any member of a visiting police force who is sent to Guyana for the performance of police duties similar to duties performed by him in office shall, while on duty in Guyana be liable to perform the same duties and subject to the orders of the Commissioner of Police in the same manner and in all respects as if he were a member of the Police Force. and shall, subject to this Act, have the same rights, powers, privileges and immunities as are conferred by law and custom on members of the Police Force as may be necessary for the performance of such duties.

Immunity from prosecution.

6. (1) Notwithstanding sections 5 and 7, the members of a visiting police force shall be immune from prosecution in civil and criminal proceedings in a court of law in Guyana 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 police force by the competent authority of the designated State of the visiting police force.

PART IV
JURISDICTION OF CIVIL COURTS AND VISITING POLICE FORCES

Jurisdiction of civil courts.

7. (1) Subject to subsection (2) and section 6, the civil courts have the primary right to exercise jurisdiction in respect of any act that constitutes an offence against any law in force in Guyana and that is committed by a member of a visiting police force.

(2) With respect to the alleged commission or omission by a member of a visiting police force of an offence respecting-

(a) the property or security of the designated State;

(b) the person or property of any another member of the visiting police force; or

(c) an act done in the performance of official duty,

the service courts of the visiting police force have the primary right to exercise jurisdiction.

Certificate concerning official duty.

8. The certificate of a service authority of a designated State that anything alleged to have been done by a member of a visiting police force of that State was or was not done in the performance of official duty is receivable in evidence in any civil court and for the purposes of this Act as *prima facie* proof of that fact.

Previous trial by civil courts.

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

(2) Nothing in subsection (1) prevents a service court from trying within Guyana a member of the visiting police force for any violation of the rules of discipline arising from an act that constituted an offence for which he was tried by a civil court.

Trial by court having primary right.

10. Where under sections 5 and 6 a civil court or a service court of a visiting police force has the primary right to exercise jurisdiction, the court having the primary right has the right to deal with charges against alleged offenders in the first instance, but that right may be waived in accordance with such order as may be made by the Minister in that behalf.

Police functions.

11. The authorities of the members of every visiting police force to exercise police functions, including the power of arrest are such functions as are prescribed by the Minister by order but no such order shall empower a member of a visiting police force to exercise police functions in respect of any person who is not a member of the visiting police force.

Common law arrest.

12. Nothing in section 9 shall be construed as to prevent a member of a visiting police force from exercising any common law power to make an arrest.

Firearms and explosives.

13. The members of a visiting police force acting in the course of their duties, excluding civilian personnel-

(a) may, if authorised to do so by the Commissioner of Police, possess and carry explosives, ammunition and firearms; and
(b) are not subject to any law of Guyana relating to the making or possessing of explosives.

PART V
CLAIMS AGAINST VISITING POLICE FORCES

Claims against the designated States.

14. (1) A tort committed by a member of a visiting police force while acting within the scope of his duties or employment shall be deemed to have been committed by a servant in right of the designated State while acting within the scope of his duties or employment.

(2) The property owned, occupied, possessed or controlled by a visiting police force shall be deemed to be owned, occupied, possessed or controlled by the designated State.

(3) A service motor vehicle of a visiting police force shall be deemed to be owned by the designated State.

Enforcement of judgments.

15. A member of a visiting police force is not subject to any proceedings for the enforcement of any judgment given against him in Guyana in respect of a matter that arose while he was acting within the

scope of his duties or employment.

Shipping claims.

16. Except as section 13 may be made applicable by order of the Minister in respect of the ships of any particular designated State, that section 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 a person.

Settlement of questions on scope of official duties.

17. Where a question that cannot be settled by negotiation between the parties arises under this Part as to whether-

(a) a member of a visiting police force was acting within the scope of his duties or employment; or

(b) a matter in respect of which judgment was given against a member of a visiting police force arose while he was acting within the scope of his duties or employment,

the question shall be submitted to the arbitrator appointed in accordance with section 18, and for the purposes of this Part the decision of the arbitrator is final and conclusive.

Appointment of arbitrators.

18. (1) An arbitrator shall be appointed for the purposes of section 17 by agreement between the designated State concerned and Guyana from among the nationals of Guyana who hold or have held judicial office.

(2) If within two months the designated State and Guyana are unable to agree upon an arbitrator, either the designated State or Guyana may request any person designated in an agreement with the designated State or acceptable to the designated State and Guyana to appoint the arbitrator from among the nationals of Guyana who have held judicial office.

PART VI
TAXATION

Tax and residence.

19. Where the liability for any form of taxation in Guyana depends upon residence or domicile, a period during which a member of a visiting police force is in Guyana by reason of his being a member of the visiting police force shall, for the purposes of that taxation, be deemed not to be a period of residence in Guyana and not to create a change of residence or domicile.

Salaries.

20. (1) A member of a visiting police force is exempt from taxation on salaries in Guyana on the salary and emoluments paid to him as a

member of a visiting police force by a designated State and in respect of any tangible moyable property that is in Guyana temporarily by reason of his presence in Guyana in that capacity.

(2) For the purposes of section 19 and this section, the term "member of a visiting police force" does not include a citizen of Guyana who is resident or ordinarily resident in Guyana.

Service vehicles.

21. No tax or fee is payable in respect of the licensing or registration of service vehicles of a visiting police force or in respect of the use of those vehicles on any road in Guyana.

Imports.

22. A visiting police force may import into Guyana free of customs duty and any tax, any equipment and such quantities of provisions, supplies and other goods as are required for the exclusive use of the visiting police force.

Personal effects.

23. A member of a visiting police force at the time of his first arrival to take up service in Guyana imports his personal effects free of customs duty and any tax.

Fuel, oil, etc,.

24. Subject to compliance with such conditions as are imposed by the concerned Minister by order, no customs duty or any tax is payable on any fuel, oil or lubricants intended for use exclusively in the service vehicles, aircraft or vessels of a visiting police force.

PART VII
MISCELLANEOUS

Power to delegate.

25. (1) Where under any enactment a power is exercisable by any authority or person-

(a) respecting the Police Force, its members, its service courts or any person connected therewith; or

(b) respecting any property used or to be used for the purposes of the Police Force, or for taking possession of any property to be so used, or for acquiring, whether by agreement or compulsorily, any property so used or to be so used,

the President may by order provide that the power be exercisable by that authority or person, as the case may be, in the case of a visiting police force to which the order applies to the extent to which it would be exercisable if the visiting police force were a part of the Police Force.

(2) The President may, by order-

(a) exempt a visiting police force or its members, its service courts or any other person connected with such force or courts or any property used or to be used for the purposes of them from the operation of any enactment specified in the order to any extent to which the force, members, courts, persons or property would be, or would be capable of being exempted, if the force were a part of the Police Force; and

(b) confer on that force or any member, courts, persons or property referred to in paragraph (a) any other privilege or immunity specified in the order, being a privilege or immunity that would be enjoyed, by, or would be capable of being conferred on, the force, members, courts, persons or property if the force were part of the Police Force.

(3) Where under any enactment the doing of anything is prohibited, restricted or required in relation to -

(a) the Police Force, its members, its service courts or any other person connected therewith; or

(b) any property used or to be used for the purposes of the Police Force,

the President may by order extend the prohibition, restriction or requirement to any visiting police force in the same manner as if the visiting police force were a part of the Police Force.

(4) An order made under this section may contain such incidental, consequential and supplementary provisions as the President thinks necessary for the purposes of the order, including provisions for applying, modifying, adapting or suspending any enactment.

(5) Subsections (1) and (4) apply whether the power is exercisable, or the prohibition, restriction or requirement is imposed, by a provision expressly relating to the Police Force or by a more general provision' and subsection (3) applies whether the exemption, privilege or immunity subsists, or is capable of being conferred, by virtue of such a provision or by reason of any enactment not binding the State.

Inquest by coroner.

26. (1) Where a coroner who has jurisdiction to hold an inquest into an unnatural death is satisfied that the deceased person at the time of his death had a relevant association with a visiting police force, then, unless the Minister otherwise directs, the coroner may not hold the inquest, or,

if it has been begun but not completed. shall adjourn it.

(2) Subject to subsection (1), a coroner referred to in that subsection shall. unless the Minister otherwise directs. adjourn the inquest if he is satisfied-

(a) that a person who is subject to the jurisdiction of the service court of a visiting police force has been charged before a service court with the homicide of the deceased person referred to in subsection (1), whether or not that charge has been dealt with; or

(b) that a person referred to in paragraph (a) is being detained by an authority of a visiting police force with a view to being so charged.

(3) Where an inquest is adjourned under this section, the coroner may resume the inquest only on the direction of the Minister.

(4) Where an inquest that was adjourned under this section is resumed. the coroner shall proceed in all respects as if the inquest had not been previously begun.

(5) In this section-

(a) "homicide" includes murder. manslaughter, infanticide and any offence under the law of the country in question that is analogous to any of those offences;

(b) references to a person having a relevant association with a visiting police force are references to this being at the time-

(i) a member of the visiting police force or a member of a civilian component of that force; or

(ii) a person who, not being a citizen of Guyana or a permanent resident thereof within the meaning of the Immigration Act, is a member of the visiting police force or of a civilian component of that force.

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(6) In determining for the purposes of this section whether a person is or was at any time a permanent resident of Guyana, no account shall be taken of any period during which he has been, or intends to be present in Guyana as a member of a visiting police force or of a civilian component of such a force.

Act to bind the State.

27. This Act binds the State.

SCHEDULE

Sec.4(1)

Designated States

1. Member States of the Caribbean Community.
2. Associate Members of the Caribbean Community.
3. South Africa.
4. Canada.
5. United Kingdom.
6. France.
7. The Netherlands Antilles.

EXPLANATORY MEMORANDUM

The Bill seeks to provide for the presence, activities, privileges and immunities of police forces of foreign countries and certain civilian personnel accompanying the forces as a civilian component of them visiting Guyana during the period of staging of ICC Cricket World Cup West Indies 2007.

Clause 1 sets out the short title of the proposed legislation.

Clause 2 defines certain words and expressions used in the Bill. "Designated State", "civilian personnel", "Police Force" and Treaty on Security Assistance" are some of them.

Clause 3 lays down the applicability of the Act.

Clause 4 deals with designated States. The Schedule to the Act specifies the designated States. However, the Minister may by order specify any other country to be a designated State. He may declare the extent of the various designated States and designate the civilian component of the visiting police forces. Also, the Minister may by Order revoke or amend the list of designated States, their extent or the designated component of the civilian personnel accompanying the foreign police forces.

Clause 5 lays down the status of the members of the visiting foreign police forces as equivalent to the Police Force of Guyana established under the Police Act (Cap.16:01) as regards their rights, powers, privileges and immunities. However, this is subject to the other provisions of the proposed legislation.

Clause 6 provides immunity to the members of the visiting foreign police forces from civil and criminal proceedings in Guyana in respect of action taken by them in the course of their official duties.

Clause 7 provides the extent of jurisdiction of civil courts in certain matters of commission of acts that constitute any offence against any law in force in Guyana. As regards the alleged commission of offences in respect of property or security of the designated States, the person or property of any member of the visiting police force or act done in the due performance of official duties by the visiting police forces, the service courts of the visiting police forces have the primary right of jurisdiction.

Clause 8 provides that the certificate of service authorities of the designated States regarding the alleged commission or omission of the members of the visiting police force would be receivable as evidence in a civil court for the purposes of the Act.

Clause 9 deals with the cases of previous trial by civil courts as a rule against double jeopardy. However, in respect of violation of the rules of discipline by any member of the foreign police force within Guyana, the previous trial would not be a bar to trial.

Clause 10 provides that the civil court or a service court of a visiting foreign police force has the primary right to deal with charges against the offenders in the first instance. However, that right could be waived by the Minister by order.

Clause 11 empowers the Minister to determine the functions of every visiting police forces.

Clause 12 clarifies that the provisions relating to previous trial provided vide clause 9 shall not affect the arrests under the common law.

Clause 13 empowers the Commissioner of Police to regulate the possession and carrying and use of explosives, ammunition and firearms by the visiting police forces.

Clause 14 provides for the claims against the designated States in respect of tortious and certain other acts committed by the members of the visiting police force.

Clause 15 provides that a member of the visiting police force shall not be subject to any judgment given against him in Guyana in respect of any proceedings in connection with his duties or employment.

Clause 16 deals with claims arising out or in connection with the navigation, operation or salvage of a ship or the loading, carriage or discharge of a ship, except in respect of the claims arising out of death or injury to any person. However, this is not applicable in respect of matters referred to in clause 13.

Clause 17 provides that all questions as to whether any act of the visiting police force is an act within the scope of official duties or employment should be settled by negotiation between the parties failing which it should be submitted to an arbitrator.

Clause 18 provides for the procedure for appointment of arbitrators for the purposes mentioned in clause 17.

Clause 19 deals with the liability of members of visiting police forces in respect of taxation.

Clause 20 provides for exemption from taxation in respect of salaries and emoluments paid in Guyana to the members of the visiting police forces.

Clause 21 provides for the exemption of the service vehicles of the visiting police force from the tax and fees payable in respect of licensing and registration.

Clause 22 provides for allowing the import into Guyana equipments, provisions, supplies and other goods for the exclusive use of the visiting police forces.

Clause 23 provides for the exemption of the personal effects of the visiting police forces brought on their first arrival from payment of customs duty and other taxes.

Clause 24 provides for exemption from payment of customs duty and other taxes in respect of fuel, oil and lubricants intended for the exclusive use in the service vehicles, air crafts and vessels by the visiting police forces.

Clause 25 empowers the President to delegate by order certain powers exercisable by any authority or person in respect of the Police Force and service courts.

Clause 26 deals with the inquest by the coroner.

Clause 27 provides that the Act binds the State.

The Schedule contains a list of designated States for the purposes of the Act.

Minister of Home Affairs.