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I ASSENT

[L.S.]

PEARLETTE LOUISY,
Governor-General.

May 23, 2013.

SAINT LUCIA

No. 5 of 2013

An Act to provide for the regulation of Visiting Forces in Saint Lucia and for related matters.

[3rd June, 2013]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the Visiting Forces Act, 2013.

Interpretation

2. in this Act –

“aircraft” means any machine for flying, whether propelled by mechanical means or not, and includes any description of balloon;

“civil court” means a court of ordinary criminal jurisdiction in Saint Lucia and includes a District Court;

“Commissioner of Police” means the Commissioner of Police appointed under section 7 of the Police Act, Cap. 14.01;

“dependant” means the wife, husband or child of a member of a visiting force, or any other person in his or her custody, charge or care;

“designated State” means a State designated by Order of the Minister, pursuant to section 3;

“Minister” means the Minister responsible for national security, except where this Act specifically designates another Minister;

“police force” means the Royal Saint Lucia Police Force established under section 3 of the Police Act, Cap. 14.01;

“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 laws of that State;

“service law” in relation to a designated State, means the law governing all or any of the visiting forces of that State;

“service motor vehicle” means any mechanically propelled vehicle manufactured or adapted for use on roads;

“ship” includes any ship, vessel, tug or boat of any kind whatsoever whether the same is propelled by steam or otherwise or is towed;

“visiting force” means any armed force or police force of a designated State and dependants of such persons present in Saint Lucia in connection with official duties, and includes civilian personnel designated under section 5 as a civilian component of a visiting force.

Application

3.—(1) The Minister may by Order published in the Gazette declare a State to be a designated State under the Act.

(2) The Act shall apply to a designated State, to the extent declared by the Minister.

Binding of the Crown

4. This Act binds the Crown.

Designation of civilian personnel

5. The Minister may by Order published in the Gazette designate civilian personnel as a civilian component of a visiting force.

Jurisdiction of civil court

6. Except in respect of offences mentioned in section 8(2), 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 Saint Lucia committed by a member of a visiting force or a dependant.

Previous trial by service court

7. Where a member of a visiting force has been tried by a service court of a visiting force and has been convicted or acquitted, he or she may not be tried again by a civil court for the same offence.

Jurisdiction of service court

8.— (1) Subject to this Act, a service court of a visiting force may exercise within Saint Lucia 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.

(2) 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 member of a visiting force of an offence in respect of —

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

Previous trial by civil court

9.—(1) Where a member of a visiting force or a dependant of a member of a visiting force has been tried by a civil court and has been convicted or acquitted, he or she shall not be tried again within Saint Lucia for the same offence by a service court of that designated State.

(2) Subsection (1) does not prevent a service court from trying within Saint Lucia a member of the visiting force or a dependant of a member of a visiting force for any violation of rules of discipline arising from an act or omission that constituted an offence for which he or she was tried by a civil court.

Trial by court having primary right

10. Where under sections 6 to 9 a civil court or a service court of a visiting force has the primary right to exercise jurisdiction, the court having such 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 Regulations as may be made in that behalf.

Certificate concerning official duty

11. 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.

Immunities and privileges of members of service court and witnesses

12. The members of a service court of a visiting force exercising jurisdiction by virtue of this Act, and witnesses appearing before such service court, have respectively the like immunities and privileges as a High Court exercising jurisdiction, and witnesses appearing before the High Court.

Sentence

13. Where any sentence has been passed by a service court within or outside Saint Lucia upon a member of a visiting force of a designated State or upon a dependant, then for the purposes of any legal proceedings within Saint Lucia –

- (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) if the sentence has been executed according to the tenor thereof, it shall be deemed to have been lawfully executed.

Detention

14. Any member of the visiting force or any dependant, who is detained in custody –

- (a) under a sentence mentioned in section 13; or
- (b) pending the determination by a service court of a charge brought against him or her,

is for the purposes of any legal proceedings in Saint Lucia, deemed to be in lawful custody.

Certificate of service court

15. – (1) For the purposes of any legal proceedings within Saint Lucia, a certificate issued by the officer in command of a visiting force stating that the persons specified in the certificate sat as a member of a service court, is receivable in evidence and is conclusive proof of that fact.

(2) A certificate under the hand of the officer in command given under subsection (1) stating that a member of that visiting force or a dependant is being detained in any of the circumstances described in section 13, is receivable in evidence and is conclusive proof of the cause of the detention, but not of his or her being a member of the visiting force or a dependant of a member of a visiting force.

Arrest

16. 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, officers of the police force, if so requested by the officer in command of the visiting force or by the designated State, may arrest members of the

visiting force or dependants of a visiting force, alleged to have committed offences or found guilty of offences against the law of the designated State and hand over any person so arrested to the appropriate authorities of the visiting force.

Place of incarceration

17. Where a member of a visiting force or a dependant of a member of a visiting force 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.

Lawful arrest

18. Notwithstanding anything in the Act, a member of a visiting force may exercise any lawful power to make an arrest.

Exercise of police functions

19. 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 of that member, shall be the same as authorised by the service law of that force but nothing contained in this Act 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 of a member of the visiting force.

Visiting force may be subject to order of Commissioner of Police

20. Any member of a visiting force who is sent to Saint Lucia for the performance of police duties similar to duties performed by him or her in office shall, while on duty in Saint Lucia may be liable to perform the same duties and be subject to the orders of the Commissioner of Police in the same manner and in all respects as if he or she 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.

Treatment of visiting force to be similar to police force

21.— (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 other 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 used;

the Minister 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 force to which the order applies to any extent to which it would be exercisable if the visiting force were a part of the police force.

(2) The Minister may, by Order —

- (a) exempt a visiting force or its members, its service courts, any other person connected therewith or any property used or to be used for the purposes thereof from the operation of any enactment specified in the Order to any extent to which the force, members, service courts, persons or property would be, or would be capable of being exempted, if the visiting force were a part of the police force; and
- (b) confer on the visiting force or any members, 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 police force, members, courts, persons or property, if the visiting 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 Minister may by Order, extend the prohibition, restriction or requirement to any visiting force in the same manner as if the visiting 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 Minister 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 Crown.

Firearms and explosives

22. A member of a visiting force acting in the course of his or her duties, except civilian personnel –

- (a) may, after approval from the competent Authority of Saint Lucia, and if authorized to do so by orders of service authorities of the visiting force, possess and carry explosives, ammunition and firearms; and
- (b) where paragraph (a) is satisfied, the member of a visiting force shall not be subject to the criminal law relating to unlawful drilling or the making or possessing of explosives.

Proceedings in respect of service of members of visiting force

23. No proceedings shall be heard by any court in Saint Lucia 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 such a visiting force, with regard to the terms of such service or with regard to a person's discharge from such service.

Claims

24. For the purposes of the Crown Proceedings Act, Cap. 2:05-

- (a) a delict or tort committed by a member of a visiting force while acting within the scope of his or her duties or employment shall be deemed to have been committed by a servant of the Crown while acting within the scope of his or her 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.

Proceedings when compensation is payable

25. Proceedings shall not lie against –

- (a) the Crown by virtue of section 23; or
- (b) any member of a visiting force who is deemed a servant of the Crown under section 23, with respect to a claim by himself or herself or his or her personal representative or a dependant arising out of that member's death, or injury to that member;

if compensation has been paid or is payable by a designated State, or out of any funds administered by any agency of a designated State, for the death or injury.

Enforcement of judgment

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

Immunity from prosecution

27.— (1) A member of a visiting force shall be immune from prosecution in court proceedings in Saint Lucia in respect of actions taken in the course of his or her 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 visiting force.

Ships

28. Except as section 24 may be made applicable by Order of the Attorney General in respect of ships of visiting forces, 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 the person.

Official duty

29.— (1) Where a question cannot be settled by negotiation between the parties arises under this Act a certificate from the officer in command that —

- (a) a member of a visiting force was acting within the scope of his or her duties or employment; or
- (b) a matter in respect of which judgment was given against a member referred to in paragraph (a) arose while he or she was acting within the scope of his or her duties or employment;

the question shall be submitted to an arbitrator appointed in accordance with subsection (2), and for the purposes of this section the decision of the arbitrator is final and conclusive.

(2) An arbitrator shall be appointed for the purposes of subsection (1) by agreement between the designated State concerned and Saint Lucia from among the nationals of Saint Lucia who hold or have held high judicial office.

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

Salaries

30. — (1) A member of a visiting force shall be exempt from taxation in Saint Lucia on the salary and emoluments paid to him or her by a designated State and in respect of any tangible movable property that is in Saint Lucia temporarily by reason of his or her presence in Saint Lucia in that capacity.

(2) For the purpose of this section, the expression “member of a visiting force” does not include a Saint Lucian citizen resident or ordinarily resident in Saint Lucia.

Service motor vehicles

31. — Taxation, including value added tax, shall not be payable in respect of the licensing, registration and importation of service motor vehicles of a visiting force or in respect of the use of those vehicles on any public road in Saint Lucia.

Imports

32. — (1) A visiting force may import into Saint Lucia, free of customs duty and taxation, including value added tax, equipment, supplies, materials and goods for the exclusive use of the visiting force as the Minister responsible for finance considers reasonable.

(2) The Minister responsible for finance may authorize the importation into Saint Lucia, free of duty and taxation, including value added tax, equipment, supplies, materials and goods for the exclusive use by dependants of members of the visiting force.

Personal effects

33. A member of a visiting force may –

- (a) at the time of his or her first arrival to take up service in Saint Lucia and at the time of the first arrival of any dependant of that member to join him or her, import his or her personal effects, property, supplies and material free of customs duty and any taxation, including value added tax.
- (b) at the time of his or her first departure from Saint Lucia of any dependant of that member to join him or her, export his or her personal effects, property, equipment, supplies and material free of customs duty and any taxation including value added tax.

Driver's licence

34. – (1) A member of a visiting force is exempt from obtaining and the need to have a Saint Lucia driver's permit or endorsement for the use of a service motor vehicle belonging to a visiting force or vehicle assigned to the visiting force in Saint Lucia, provided that such vehicle is driven whilst in their employment as a member of a visiting force.

(2) A member of a visiting force shall hold a valid driver's licence from his or her designated State or from a State acceptable to Saint Lucia when driving a service motor vehicle.

Telecommunications

35. – (1) A visiting force shall not be required to obtain a licence or permit to import and use in Saint Lucia telecommunication equipment and systems, subject to subsection (2).

(2) A visiting force shall not import or use telecommunication equipment and systems in Saint Lucia without the prior written approval of the Minister with responsibility for telecommunication.

(3) Approval granted by the Minister in accordance with subsection (2) may be of a general or specific nature, and may be subject to conditions.

(4) When acting under this section the Minister shall consult with the Chairperson of the National Telecommunications Authority and the Commission of Police, prior to granting his approval.

Fuel, oil, etc.

36. Customs duty or tax, including value added tax, is not payable on any fuel, oil or lubricants intended for use exclusively in the service motor vehicles, aircraft or vessels of a visiting force.

Coroner's inquest

37.— (1) Where a coroner who has jurisdiction to hold an inquest relating to a death is satisfied that the deceased person at the time of his or her death had a relevant association with a visiting force, then unless the Director of Public Prosecution otherwise directs, the coroner may not hold the inquest or, if the inquest has begun but is not completed, shall adjourn it.

(2) Subject to subsection (1) a coroner referred to in that subsection shall, unless the Attorney General otherwise directs, adjourn the inquest if he or she is satisfied:

- (a) that a person who 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 referred to in paragraph (a) is being detained by an authority of that State 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 Attorney General.

(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) 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 a person having at any time a relevant association with a visiting force are references to his or her 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;

(ii) a person, not being a citizen of Saint Lucia or ordinarily resident in Saint Lucia who is a dependant of a member of that visiting force or of a civilian component of that force.

(6) In determining whether a person is, or was at any time, ordinarily resident in Saint Lucia, no account shall be taken of any period during which he or she has been or intends to be present in Saint Lucia while being a member of a visiting force or of a civilian component of such a force, or while being a dependant of a member of a visiting force or of such a civilian component.

Regulations

38. The Minister 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;
- (d) prescribing anything that is required by the Act.

Passed in the House of Assembly this 17th day of May, 2013.

PETER I. FOSTER,
Speaker of the House.

Passed in the Senate this 21st day of May, 2013.

CLAUDIUS J. FRANCIS,
President of the Senate.