

CHAPTER 105

CRIMINAL JUSTICE

(INTERNATIONAL CO-OPERATION)

42 of 2000

An Act to enable The Bahamas to co-operate with other countries in criminal proceedings and investigations; to enable The Bahamas to join with other countries in implementing the Vienna Convention against illicit traffic in narcotic drugs and psychotropic substances; and for connected purposes.

[Assent 29th December, 2000]

[Commencement 29th December, 2000]

PART I

PRELIMINARY

Short title.

[Ch105s1]1. This Act may be cited as the Criminal Justice (International Co-operation) Act, 2000.

Interpretation.

[Ch105s2]2. In this Act-

"the Commissioner" means the Commissioner of Police;

"controlled drug" means a drug to which Parts II, III and IV of the Ch. 228. Dangerous Drugs Act apply.

PART II

CRIMINAL PROCEEDINGS AND INVESTIGATIONS

Mutual Service of Process

Service of overseas process in The Bahamas.

[Ch105s3]3. (1) This section has effect where the Attorney-General receives from the government of, or other authority in, a country outside The Bahamas-

(a) a summons or other process requiring a person to appear as defendant or attend as a witness in criminal proceedings in that country; or

(b) a document issued by a court exercising criminal jurisdiction in that country and recording a decision of the court made in the exercise of that jurisdiction,

together with a request for that process or document to be served on a person in The Bahamas.

(2) The Attorney-General may cause the process or document to be served by post or, if the request is for personal service, direct the Commissioner to cause it to be personally served on the person concerned.

(3) Service by virtue of this section of any such process or document as is mentioned (1) shall not impose any obligation under the law of The Bahamas to comply with it.

(4) Any such process or document served by virtue of this section shall be accompanied by a notice-

(a) stating the effect of subsection (3);

(b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the country or territory where it was issued; and

(c) indicating that under that law he may not, as a witness, be accorded the same rights and privileges as would be accorded in criminal proceedings in The Bahamas.

(5) Where the Commissioner is directed under this section to cause any process or document to be served, he shall after it has been served forthwith inform the Attorney-General when and how it was served and, if possible, furnish him with a receipt signed by the person on whom it was served; and if the Commissioner has been unable to cause the process or document to be served he shall forthwith inform the Attorney-General of that fact and of the reason.

Service of Bahamian process overseas.

[Ch105s4]4. (1) Process of the following descriptions, that is to say-

(a) a summons requiring a person charged with an offence to appear before a court in The Bahamas; and

(b) a summons or order requiring a person to attend before a court in The Bahamas for the purpose of giving evidence in criminal proceedings,

may be issued or made notwithstanding that the person in question is outside The Bahamas and may be served outside The Bahamas in accordance with arrangements made by the Attorney-General.

(2) Service of any process outside The Bahamas by virtue of this section shall not impose any obligation under the law of The Bahamas to comply with it and accordingly failure to comply shall not constitute contempt of any court nor is it a ground for issuing a warrant to secure the attendance of the person in question.

(3) Subsection (2) is without prejudice to the service of any process (with usual consequences for non-compliance) on the person in question if subsequently effected in The Bahamas.

Mutual Provision of Evidence

Overseas evidence for use in The Bahamas.

[Ch105s5]5. (1) On an application made in accordance with subsection (2), a Judge or Stipendiary and Circuit Magistrate shall issue a letter ("a letter of request") requesting assistance in obtaining such evidence as is specified in the letter for use in the proceedings or investigation of an offence.

(2) An application under subsection (1) may be made by the Attorney-General or, if proceedings have been instituted, by the person charged in those proceedings.

(3) The Attorney-General may issue a letter of request if he is satisfied-

(a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and

(b) that proceedings in respect of the offence have been instituted or that the offence is being investigated.

(4) Subject to subsection (5), a letter of request shall be sent to the Attorney-General for transmission either-

(a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or

(b) to any authority recognised by the government of the country in question as the appropriate authority for receiving requests for assistance of the kind of which this section applies.

(5) In cases of urgency a letter of request may be sent directly to such a court or tribunal as is mentioned in subsection (4)(a).

(6) In this section "evidence" includes documents and other articles.

(7) Evidence obtained by virtue of a letter of request shall not without the consent of such an authority as is mentioned in subsection (4)(b) be used for any purpose other than that specified in the letter; and when any document or other article obtained pursuant to a letter of request is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to such authority unless that authority indicates that the document or article need not be returned.

Bahamian evidence for use overseas.

[Ch105s6]6. (1) This section has effect where the Attorney-General receives-

(a) from a court or tribunal exercising criminal jurisdiction in a country outside The Bahamas or a prosecuting authority in such a country; or

(b) from any other authority in such a country which appears to him to have the function of making requests of the kind to which this section applies,

a request for assistance in obtaining evidence in The Bahamas in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country.

(2) If the Attorney-General is satisfied-

(a) that an offence under the law of the country in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and

(b) that proceedings in respect of that offence have been instituted in that country or that an investigation into that offence is being carried on there,

he may, after consultation with the Chief Justice, by a notice in writing nominate a court in The Bahamas to receive the evidence to which the request relates.

(3) For the purpose of satisfying himself as to the matters mentioned in subsections (2)(a) and (b) the Attorney-General shall regard as conclusive a certificate issued by such authority in the country in question as appears to him to be appropriate.

(4) In this section "evidence" includes documents and other articles.

(5) The First Schedule. First Schedule shall have effect with respect to the proceedings before a nominated court in pursuance of a notice under subsection (2).

(6) Where it appears to the Attorney-General that the request relates exclusively to a fiscal offence he shall not exercise his powers under subsection (2) unless the request is made pursuant to a treaty to which The Bahamas is a party.

Additional Co-operation Powers

Transfer of Bahamian prisoner to give evidence overseas.

[Ch105s7]7. (1) The Attorney-General may, if he thinks fit, issue a warrant providing for any person (a "prisoner") serving a sentence in a prison in The Bahamas to be transferred to a country outside The Bahamas for the purpose-

(a) of giving evidence in criminal proceedings there; or

(b) of being identified in, or otherwise by his presence assisting in, such proceedings or the investigation of an offence.

(2) No warrant shall be issued under this section in respect of a prisoner unless he has consented to being transferred as mentioned in subsection (1), and that consent may be given either-

(a) by the prisoner himself; or

(b) in circumstances in which it appears to the Attorney-General inappropriate, by reason of the prisoner's physical or mental condition or his youth, for him to act for himself, by a person appearing to the Attorney-General to be an appropriate person to act on his behalf;

but a consent once given is not capable of being withdrawn after the issue of the warrant.

(3) The effect of a warrant under this section is to authorise-

(a) the taking of the prisoner to a place in The Bahamas and his delivery at a place of departure from The Bahamas into the custody of a person representing the appropriate authority of the country to which the prisoner is to be transferred; and

(b) the bringing of the prisoner back to The Bahamas and his transfer in custody to the place where he is liable to be detained under the sentence to which he is subject.

(4) Where a warrant has been issued in respect of a prisoner under this section he shall be deemed to be in legal custody at any time when, being in The Bahamas or on board a ship or aircraft registered in The Bahamas, he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(5) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody has all the powers, authority, protection and privileges of a police officer.

(6) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a police officer and taken to any place to which he may be taken under the warrant issued under this section.

(7) This section applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine as it applies to a prisoner, and the reference in subsection (3)(b) to a sentence shall be construed accordingly.

Transfer of overseas prisoner to give evidence in The Bahamas.

[Ch105s8]8. (1) This section has effect where-

(a) a witness order has been made or a witness summons issued in criminal proceedings in The Bahamas in respect of a person (a "prisoner") who is detained in custody in a country outside The Bahamas by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction in that country; or

(b) it appears to the Attorney-General that it is desirable for a prisoner to be identified in, or otherwise by his presence to assist in, such proceedings or the investigation in The Bahamas of an offence.

(2) If the Attorney-General is satisfied that the appropriate authority in the country where the prisoner is detained will make arrangements for him to come to The Bahamas to give evidence pursuant to the witness order or witness summons or, as the case may be, for the purpose mentioned in subsection (1)(b), he may issue a warrant under this section.

(3) A warrant shall not be issued under this section in respect of a prisoner unless he has consented to being brought to The Bahamas to give evidence as aforesaid or, as the case may be, for the purpose mentioned in subsection (1)(b); but a consent once given is not capable of being withdrawn after the issue of the warrant.

(4) The effect of the warrant is to authorise-

- (a) the bringing of the prisoner to The Bahamas;
- (b) the taking of the prisoner to, and his detention in custody at, such place or places in The Bahamas as are specified in the warrant; and
- (c) the returning of the prisoner to the country from which he has come.

(5) Subsections (4) to (7) of section 7 shall have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.

(6) A person is not subject to the Ch. 191. Immigration Act in respect of his entry into or presence in The Bahamas in pursuance of a warrant under this section, but if the warrant ceases to have effect while he is still in The Bahamas he shall be treated for the purposes of that Act as if he has then illegally entered The Bahamas.

Enforcement of overseas forfeiture orders.

[Ch105s9]9. (1) The Attorney-General may by order provide for the enforcement in The Bahamas of any order which-

- (a) is made by a court in a country outside The Bahamas designated for the purposes of this section by such order;
- (b) is for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which an offence to which this section applies has been committed, or which was used in connection with the commission of such an offence.

(2) Without prejudice to the generality of subsection (1), an order made under this section may provide for the registration by a court in The Bahamas of any order as a condition of its enforcement and prescribe requirements to be satisfied before an order can be registered.

(3) An order made under this section may include such supplementary and incidental provisions as appear to be necessary or expedient and may apply for the purposes of the order, with such modifications as appear to the Attorney-General to be

appropriate, any provisions relating to confiscation or forfeiture orders under any other written law.

(4) An order made under this section may make different provisions for different cases.

(5) This section applies to any offence which corresponds to or is similar to an offence under the Ch. 228. Dangerous Drugs Act, 2000, or an offence as defined in the Ch. 93. Proceeds of Crime Act, 2000.

Supplementary

Rules of court.

[Ch105s10]10. (1) Provision may be made by rules of court for any purpose for which it appears to the authority having power to make the rules that it is necessary or expedient that provision should be made in connection with any of the provisions of this Part.

(2) Rules made for the purposes of the First Schedule may, in particular, make provision with respect to the persons entitled to appear or take part in the proceedings to which that Schedule applies for excluding the public from any such proceedings.

(3) An order made under section 9 may authorise the making of rules of court for any purpose specified in the order.

(4) This section is without prejudice to the generality of any existing power to make rules.

Application to proceedings involving Defence personnel.

[Ch105s11]11. (1) Section 4 applies also to a summons requiring a person charged with a civil offence to appear before a court-martial or to attend before such a court for the purpose of giving evidence in proceedings for such an offence; and a warrant may be issued under section 8 where-

(a) such a summons has been issued in respect of a prisoner within the meaning of that section; or

(b) it appears to the Attorney-General that it is desirable for such a prisoner to be identified in, or otherwise by his presence to assist in, such proceedings or the investigation of such an offence.

(2) Section 7 applies also to a person serving a sentence of detention imposed by a court-martial or detained in custody awaiting trial by such a court.

(3) In this section-

"civil offence" has the meaning assigned to it in section 78 of the Ch. 211. Defence Act;

"court-martial" means a court exercising jurisdiction in relation to a civil offence under section 78 of the Ch. 211. Defence Act.

PART III

THE VIENNA CONVENTION

Interpretation

Interpretation of Part III.

[Ch105s12]12. (1) In this Part-

"Convention state" means a state which is a party to the Vienna Convention;

"enforcement vessel of a Convention state" means a warship or other ship of that state, authorised by the state to be on its service other than its commercial service, clearly identifiable as being on such service and having on board law enforcement officials of that state and includes any boat or aircraft carried on such ship;

"enforcement vessel of The Bahamas" means a vessel operated by the Royal Bahamas Defence Force, the Royal Bahamas Police Force or by the Customs Department;

"ship" includes any vessel used in navigation;

"the Vienna Convention" means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on 20th December, 1988;

(2) If in any proceedings under this Part of this Act any question arises whether any country is a state or is a party to the Vienna Convention, a certificate issued by or under the authority of the Attorney-General shall be conclusive evidence on that question.

Offences at Sea

Offences on Bahamian registered ships.

[Ch105s13]13. Anything which would constitute an offence under the Ch. 228. Dangerous Drugs Act or an offence within the meaning of the Ch. 93. Proceeds of Crime Act, 2000 if done on land in The Bahamas shall constitute that offence if done on a ship registered in The Bahamas.

Ships used for illicit traffic.

[Ch105s14]14. (1) This section applies to a ship registered in The Bahamas or in a Convention state.

(2) A person is guilty of an offence if on a ship to which this section applies, wherever it may be, he-

- (a) has a controlled drug in his possession; or
- (b) is in any way knowingly concerned in the carrying or concealing of a controlled drug on the ship,

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to the Ch. 228. Dangerous Drugs Act, or to the law of any state.

(3) A certificate purporting to be issued by or on behalf of the government of any state to the effect that the importation or exportation of a controlled drug is prohibited by law of that state shall be evidence of the matters stated.

(4) A person guilty of an offence under this section is liable-

- (a) in a case where the controlled drug is a Class A drug-
 - (i) on summary conviction, to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding five years or both;
 - (ii) on conviction on indictment, to a fine not exceeding five hundred thousand dollars or to imprisonment for life or both;
- (b) in a case where the controlled drug is a Class B drug-
 - (i) on summary conviction, to a fine not exceeding one hundred and fifty thousand dollars or to imprisonment for a term not exceeding four years or both;
 - (ii) on conviction on indictment, to a fine not exceeding three hundred thousand dollars or to imprisonment for a term not exceeding twenty years or both;
- (c) in a case where the controlled drug is a Class C drug-
 - (i) on summary conviction, to a fine not exceeding seventy-five thousand dollars or to imprisonment for a term not exceeding three years or both;
 - (ii) on conviction on indictment, to a fine not exceeding one hundred and fifty thousand dollars or to imprisonment for a term not exceeding ten years or both.

(5) The Minister of Health may make regulations dividing controlled drugs into classes A, B and C for purposes of subsection (4).

Enforcement powers.

[Ch105s15]15. (1) The powers conferred on an enforcement officer by the Second Schedule. Second Schedule shall be exercisable in relation to any ship to which section 13 or 14 applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in those sections.

(2) The powers shall not be exercised outside the territorial waters of The Bahamas in relation to a ship registered in a Convention state except with the authority of

the Attorney-General; and he shall not give his authority unless that state has in relation to that ship-

(a) requested the assistance of The Bahamas for the purpose mentioned in subsection (1) ; or

(b) authorised The Bahamas to act for that purpose.

(3) In giving his authority pursuant to a request or authorisation from a Convention state the Attorney-General shall impose such conditions or limitations on the exercise of the powers as may be necessary to give effect to any conditions or limitations imposed by that state.

(4) The Attorney-General may either of his own motion or in response to a request from a Convention state, authorise a Convention state to exercise, in relation to a Bahamian ship, powers corresponding to those conferred on enforcement officers by the Second Schedule but subject to such conditions or limitations, if any, as he may impose.

(5) Subsection (4) is without prejudice to any agreement made, or which may be made, on behalf of The Bahamas whereby The Bahamas undertakes not to object to the exercise by any other state powers corresponding to those conferred by the Second Schedule.

(6) The powers conferred by the Second Schedule shall not be exercised in the territorial waters of any state without the authority of the Attorney-General and he shall not give his authority unless that state has consented to the exercise of those powers.

Enforcement powers of Convention state in territorial waters.

[Ch105s16]16. (1) Subject to this section, a Convention state may, under an agreement made or which may be made by or on behalf of The Bahamas exercise in relation to a ship in the territorial waters of The Bahamas powers corresponding to those conferred on enforcement officers by the Second Schedule.

(2) A Convention state may exercise those powers in relation to-

(a) any ship, when so authorised by an enforcement officer of The Bahamas who is embarked on an enforcement vessel of the Convention state;

(b) any ship which is pursued into the territorial waters of The Bahamas by an enforcement vessel of the Convention state; or

(c) a ship other than a ship registered in The Bahamas,

for the purpose of detecting and taking appropriate action in respect of drug offences.

(3) A Convention state shall, before exercising the powers referred to in subsection (2)(b) and (c)-

(a) give advance notice of its proposed action in relation to the ship to an enforcement officer of The Bahamas;

(b) where it was not practical to do so at the time, notify such officer of any action taken in relation to the ship as soon as possible after its occurrence.

(4) A Convention state shall not exercise the powers referred to in subsections (2)(b) and (c) unless an enforcement vessel of The Bahamas is not immediately available to exercise enforcement powers in relation to the ship.

Jurisdiction and prosecutions.

[Ch105s17]17. (1) Proceedings under this Part or the Second Schedule in respect of an offence on a ship may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in The Bahamas.

(2) No proceedings for an offence under section 14 alleged to have been committed outside the territorial waters of The Bahamas on a ship registered in a Convention state shall be instituted except in pursuance of the exercise with the authority of the Attorney-General of the powers conferred by the Second Schedule. Second Schedule.

PART IV

GENERAL

Expenses and receipts.

[Ch105s18]18. (1) Any expenses incurred by the Attorney-General under this Act shall be defrayed out of money provided by Parliament.

(2) Any money representing cash forfeited under Part III or accrued interest on any such money shall be paid into the Consolidated Fund.

FIRST SCHEDULE (Section 6(6))

BAHAMIAN EVIDENCE FOR USE OVERSEAS:

PROCEEDINGS OF NOMINATED COURT

Securing Attendance of Witness

1. The court shall have the like powers for securing the attendance of a witness for the purpose of the proceedings before the court as it has for the purpose of other proceedings before the court.

Power to Administer Oaths

2. The court may in the proceedings take evidence on oath.

Privilege of Witnesses

3. (1) A person shall not be compelled to give in the proceedings any evidence which he could not be compelled to give-

- (a) in criminal proceedings in The Bahamas; or
- (b) subject to subparagraph (2) in criminal proceedings in the country from which the request for the evidence has come.

(2) Subparagraph (1)(b) shall not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the court, tribunal or authority which made the request.

(3) Where such a claim made by any person is not conceded as aforesaid he may (subject to the other provisions of this paragraph) be required to give the evidence to which the claim relates but the evidence shall not be transmitted to the court, tribunal or authority which requested it if a court in the country in question, on the matter being referred to it, upholds the claim.

(4) Without prejudice to subparagraph (1) a person shall not be compelled under this Schedule to give any evidence if his doing so would be prejudicial to the security of The Bahamas and a certificate signed by or on behalf of the Minister of National Security to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(5) Without prejudice to subparagraph (1) a person shall not be compelled under this Schedule to give any evidence in his capacity as an officer or servant of the Crown.

(6) In this paragraph references to giving evidence include references to answering any question and to producing any document or other article and the references in subparagraph (3) to the transmission of evidence given by a person shall be construed accordingly.

Transmission of Evidence

4. (1) The evidence received by the court shall be furnished to the Attorney-General for transmission to the court, tribunal or authority that made the request.

(2) If in order to comply with the request it is necessary for the evidence to be accompanied by a certificate, affidavit or other verifying documents, the court shall also furnish for transmission such document of that nature as may be specified in the notice nominating the court.

(3) Where the evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

Supplementary

5. For the avoidance of doubt it is hereby declared that section 177 of the Ch. 65. Evidence Act, 1996 shall not apply to these proceedings.

6. No order for costs shall be made in the proceedings.

SECOND SCHEDULE (Section 15)

ENFORCEMENT POWERS IN RESPECT OF SHIPS

Preliminary

1. (1) In this Schedule "an enforcement officer" means-

- (a) a police officer or a customs officer;
- (b) a captain of any ship belonging to the Royal Bahamas Defence Force and any person acting under the command of such captain; and
- (c) any other person of a description specified in an order made for the purposes of this Schedule by the Attorney-General.

(2) In this Schedule "the ship" means the ship in relation to which the powers conferred by this Schedule are exercised.

Power to Stop, Board, Divert and Detain

2. (1) An enforcement officer may stop the ship, board it and, if he thinks it necessary for the exercise of his functions, require it to be taken to a port in The Bahamas and detain it there.

(2) Where an enforcement officer is exercising his powers with the authority of the Attorney-General given under section 15(2) the officer may require the ship to be taken to a port in the Convention state in question or, if that state has so requested, in any other country willing to receive it.

(3) For any of those purposes in subparagraphs (1) and (2), the enforcement officer may require the member of the crew to take such action as may be necessary.

(4) If an enforcement officer detains a vessel he shall serve on the master a notice in writing stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by an enforcement officer.

Power to Search and Obtain Information

3. (1) An enforcement officer may search the ship, anyone on it and anything on it including its cargo.

(2) An enforcement officer may require any person on the ship to give information concerning himself or anything on the ship.

(3) Without prejudice to the generality of those powers an enforcement officer may-

- (a) open any containers;
- (b) make tests and take samples of anything on the ship;

(c) require the production of documents, books or records relating to the ship or anything on it;

(d) make photographs or copies of anything whose production he has power to require.

Powers in respect of Suspected Offence

4. If an enforcement officer has reasonable grounds to suspect that an offence mentioned in section 13 or 14 has been committed on a ship to which that section applies he may-

(a) arrest without warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence; and

(b) seize and detain anything found on the ship which appears to him to be evidence of the offence.

Assistants

5. (1) A enforcement officer may take with him, to assist him in exercising his powers-

(a) any other persons; and

(b) any equipment or materials.

(2) A person whom an enforcement officer takes with him to assist him may perform any of the officer's functions but only under the officer's supervision.

Use of Reasonable Force

6. An enforcement officer may use reasonable force, if necessary, in the performance of his functions.

Evidence of Authority

7. An enforcement officer shall, if required, produce evidence of his authority.

Protection of Officers

8. An enforcement officer shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this Schedule if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Offences

9. (1) A person is guilty of an offence if he-

(a) intentionally obstructs an enforcement officer in the performance of any of his functions under this Schedule;

(b) fails without reasonable excuse to comply with a requirement made by an enforcement officer in the performance of those functions; or

(c) in purporting to give information required by an enforcement officer for the performance of those functions-

(i) makes a statement which he knows to be false in a material particular or recklessly makes a statement which he knows to be false in a material particular; or

(ii) intentionally fails to disclose any material information.

(2) A person guilty of an offence under this paragraph is liable-

(a) on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both;

(b) on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding ten years, or both.