



ANGUILLA

A BILL FOR

JUSTICE PROTECTION ACT, 2016

Published by Authority

THE JUSTICE PROTECTION ACT, 2016

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Governor

Date

ANGUILLA

BILL FOR

JUSTICE PROTECTION ACT, 2016

No. of 2016

AN ACT to establish a programme to give protection to witnesses, certain other persons and for incidental and connected purposes.

[Gazette Date:, 2016] [Commencement: Section 29]

ENACTED by the Legislature of Anguilla

PART 1

PRELIMINARY

Interpretation

1. In this Act, unless the context otherwise requires—

“approved authority” means—

- (a) the Centre;
- (b) the Commissioner;
- (c) the Director; or
- (d) any other person or body that the Governor in Council may under section 27 designate as an approved authority for the purposes of this Act;

“associate” means a person who, by virtue of his relationship or association with a participant or prospective participant, may be considered for protection and assistance under the Programme;

“Board of Management” means the Anguilla Justice System Board of Management consisting of three persons appointed by the Governor in Council;

“Centre” means the Justice Protection Administrative Centre established under section 2(2)(a);

“Commissioner” means the Commissioner of Police appointed under the Anguilla Police Act R.S.A.c.A70;

“designated territory” means a territory designated under section 19(a);

“Director” means the officer appointed as Director of the Centre under section 3(1)(a);

“Investigative Agency” means the Justice Protection Investigative Agency established under section 2(2)(b)(i);

“Memorandum of Understanding” means the memorandum referred to in section 10(1) and includes any Protocol, addendum or document;

“participant” means a person from the categories of persons designated in Schedule 1 and includes judicial and legal officers, jurors and law enforcement personnel;

“Police Force” means the Anguilla Police Force established by the Anguilla Police Act R.S.A.c.A70;

“Programme” means the Justice Protection Programme established under section 2(1);

“Protective Agency” means the Justice Protection Protective Agency established under section 2(2)(b)(ii);

“register” means the register of participants maintained by the Centre under section 12;

“risk assessment” means an evaluation of the risk or danger which a participant is likely to pose for the receiving community, having regard to the matters specified in the definition of “threat assessment” and any other factor considered relevant in a particular case;

“threat assessment” means an evaluation of the danger to a prospective participant based on, but not limited to, information on—

- (a) any criminal organisation interested in the relevant proceedings;
- (b) the immediacy of the threat;
- (c) the names and other identifying data of all persons who are likely to pose a danger to the prospective participant;
- (d) the nature of the threat to the prospective participant;

- (e) persons who are the subject of judicial or administrative proceedings concerning the case in relation to which the prospective participant has given evidence or is required to give evidence; and
- (f) where appropriate, the prospective participant's association with persons referred to in paragraph (c) or his involvement in the illegal activity giving rise to the proceedings referred to in that paragraph;

“witness” means a person who has given, is obliged to give or has agreed to give a statement or evidence or both—

- (a) in relation to a crime that has been committed or in respect of which there are reasonable grounds to believe has been committed or will be committed;
- (b) to an approved authority in relation to a crime that has been committed or in respect of which there are reasonable grounds to believe has been committed or will be committed;
- (c) in any criminal proceedings; or
- (d) in any civil proceedings.

PART 2

THE PROGRAMME

Establishment of Programme

2. (1) The Governor in Council shall establish a Justice Protection Programme for the purpose of providing to participants protection and assistance.

(2) For the purposes of administering the Programme a Centre and two Agencies are established in the—

- (a) Attorney General's Chambers the Justice Protection Administrative Centre; and
- (b) Police Force a—
 - (i) Justice Protection Investigative Agency, and
 - (ii) Justice Protection Protective Agency.

PART 3

THE CENTRE

Constitution, functions and powers of Centre

3. (1) The Governor in Council shall appoint the following persons as officers of the Centre—

- (a) a person holding a public office in the Attorney General's Chambers shall be appointed the Director of the Centre; and
- (b) any other persons holding public office as the Attorney General may consider necessary to provide services to the Centre.

(2) The Centre shall develop, manage and administer the Programme and shall, subject to the categories of persons designated in Schedule 1, be responsible for deciding whether a prospective participant is to be afforded protection and assistance under the Programme.

(3) In performing its functions under this Act, the Centre shall—

- (a) arrange for the provision of safe-houses on the written recommendations of the Investigative Agency or the Protective Agency on the basis of threat assessments and risk assessments;
- (b) co-ordinate and relay to appropriate authorities in designated territories, relevant information on threat and risk assessments and other related matters;
- (c) determine after consultation with the Investigative Agency and the Attorney General, the level and duration of protection and assistance for a prospective participant, based on the assessments referred to in subsection (4);
- (d) develop guidelines for the effective operation of the Programme;
- (e) establish budgetary requirements for the Programme;
- (f) liaise with appropriate overseas authorities within designated territories;
- (g) liaise, where necessary, with appropriate overseas authorities other than those within designated territories;
- (h) make payments in connection with the protection and assistance provided under this Act;
- (i) obtain any information as may be required to determine—
 - (i) the financial implications of admitting a prospective participant to the Programme, and
 - (ii) the actual or potential civil and criminal liability of the prospective participant;
- (j) require the prospective participant to conclude a Memorandum of Understanding with the Centre, detailing the terms and conditions of his or her participation in the Programme;
- (k) subject to any designation under section 3(2) determine the participants in the Programme; and
- (l) take cognisance of the high cost and complexity of providing adequate protection for participants.

(4) In the performance of its functions in accordance with subsection (3)(k), the Centre shall make a determination on the basis of written assessments received from the—

- (a) Attorney General;
- (b) Investigative Agency; and
- (c) Protective Agency;

but the Centre may, in a case of emergency, arrange for provisional entry into the Programme by a prospective participant prior to any determination.

(5) The Centre shall, in deciding whether to include a prospective participant in the Programme, have regard to—

- (a) any criminal record of the prospective participant, particularly in respect of crimes of violence, and whether that record indicates a risk to the public if he or she is included in the Programme;
- (b) the expected duration of the protection and assistance to be provided;
- (c) the nature and importance of any relevant evidence or statement;
- (d) the nature of the perceived danger to the prospective participant;
- (e) the nature of the prospective participant's relationship with other prospective participants being assessed for inclusion in the Programme;
- (f) the results of any medical, psychological or psychiatric examination or evaluation of the prospective participant conducted to determine his or her suitability for inclusion in the Programme;
- (g) the seriousness of the offence to which any relevant evidence or statement relates;
- (h) whether there are viable alternative methods of protecting or assisting the prospective participant; and
- (i) any other matters that the Centre considers relevant.

(6) Action which may be taken by the Centre to facilitate the safety and security of participants includes the following—

- (a) providing any documents necessary to—
 - (i) establish a new identity for the participant, or
 - (ii) protect the participant;
- (b) permitting a participant to use an assumed name in carrying out his or her duties in relation to the Programme and to carry documentation supporting the assumed name;

- (c) providing payments to or for the participant for the purpose of—
 - (i) meeting his or her reasonable living expenses including, where appropriate, the living expenses of his or her family, and
 - (ii) providing, whether directly or indirectly, other reasonable financial assistance;
- (d) providing payments to the participant for the purpose of meeting costs associated with relocation;
- (e) providing assistance to the participant in obtaining employment, access to education and health care; and
- (f) providing other assistance to the participant with a view to ensuring that the participant becomes self-sustaining.

(7) The Centre may exercise its functions under this or any other Act through a person designated by the Centre to act on its behalf and any action taken by the Centre shall be deemed to be an administrative act.

(8) The Governor in Council may make rules governing the procedure of the Centre but, subject to those rules the Centre shall have power to regulate its own procedure.

Attorney General to submit application

4. (1) In relation to any matter, where the Attorney General is satisfied that the circumstances so warrant he shall prepare and submit an application in the prescribed form to the Centre for a prospective applicant's entry into the Programme.

(2) An application referred to in subsection (1) shall be made after the Attorney General has—

- (a) in the case of a prospective participant who is likely to be a witness, formed the opinion that the—
 - (i) testimony of the prospective participant is credible and essential, and
 - (ii) prospective participant can be relied upon to give the testimony; or
- (b) formed the opinion that a witness or his or her associate is in need of protection and assistance.

(3) An application under this section shall be accompanied by detailed information on the—

- (a) prospective defendant;
- (b) significance of the case; and
- (c) testimony of the prospective participant.

Cases to be considered for protection

5. The Centre may offer, in relation to a participant, protection and assistance under the Programme in respect of the offences specified in Schedule 2.

Disclosure of certain information to Centre

6. (1) Notwithstanding section 3(4), the Centre shall not include a prospective participant in the Programme unless it—

- (a) is satisfied that the person has provided the Centre with the information required of him or her under subsection (2); and
- (b) receives any other information as may be required in the case or under this Act.

(2) A prospective participant shall, in relation to the following matters make full disclosure to the Centre, details of—

- (a) all of his or her outstanding debts;
- (b) all of his or her outstanding legal obligations;
- (c) any activity in which he or she is involved that may yield him or her a monetary return;
- (d) any arrangements that he or she has made for—
 - (i) the service of documents on him or her,
 - (ii) representation in proceedings in any court,
 - (iii) enforcement of judgments in his or her favour, and
 - (iv) compliance with the enforcement of judgments;
- (e) any cash balances in bank accounts;
- (f) any civil proceedings that have been instituted by or against him or her;
- (g) any court order relating to sentences imposed on him or her or to which he or she is subject to in relation to criminal prosecutions;
- (h) any dependants and related obligations;
- (i) any of his or her property, real or personal that is liable to forfeiture or confiscation under any law;
- (j) any relevant court orders or arrangements relating to his or her custody of, or access to, children;
- (k) his or her criminal history;
- (l) his or her general medical condition;

(m) property, real or personal, held by him or her in his or her own name or jointly or severally with any other person or persons; and.

(n) receivables and all sources of income.

(3) The Centre shall make inquiries and investigations as it considers necessary for the purpose of assessing whether the prospective participant should be included in the Programme.

Inclusion of prospective participant in Programme

7. The Centre shall not include a prospective participant in the Programme unless—

- (a) subject to section 4, he or she applies in the prescribed form to be included;
- (b) the Centre is satisfied that he or she understands the implications of being included in the Programme; and
- (c) he or she understands and signs a Memorandum of Understanding in accordance with the provisions of this Act or where he or she has not attained the age of 18 years or otherwise lacks legal capacity to sign the Memorandum—
 - (i) it is signed by his or her parent or guardian,
 - (ii) where there is no parent or guardian, it is signed by a person appointed by the High Court to be his or her guardian, or
 - (iii) where there is an application before the High Court to appoint a legal guardian by the attorney at law on record in that application.

PART 4

THE INVESTIGATIVE AGENCY

Constitution, functions and powers of the Investigative Agency

8. (1) The Governor in Council shall appoint the following persons as officers of the Investigative Agency—

- (a) the Commissioner; and
- (b) any other persons holding office in the Police Force as the Commissioner may consider necessary to provide services to the Investigative Agency.

(2) In relation to the possible inclusion of a prospective participant in the Programme, the Investigative Agency—

- (a) shall conduct investigations and submit to the Centre the prospective participant's application form which shall be accompanied by the following documents prepared by the Investigative Agency—
 - (i) an assessment of the application,

- (ii) a threat assessment including a prison report where the prospective participant is in prison, and
- (iii) a risk assessment;
- (b) shall provide protection for the prospective participant in the period prior to the determination of the request; and
- (c) may, in a case of an emergency, apply to the Centre for provisional entry into the Programme by the prospective participant prior to the determination of the request.

(3) The Investigative Agency shall exercise its functions under this or any other Act through a person designated by the Investigative Agency to act on its behalf and any actions taken by the Investigative Agency shall be deemed to be an administrative act.

(4) The Governor in Council may make rules governing the procedure of the Investigative Agency but subject to those rules the Investigative Agency shall regulate its own procedure.

PART 5

THE PROTECTIVE AGENCY

Constitution, functions and powers of the Protective Agency

9. (1) The Governor in Council shall appoint the following persons as officers of the Protective Agency—

- (a) the Commissioner; and
 - (b) any other persons holding office in the Police Force as the Commissioner may consider necessary to provide services to the Protective Agency.
- (2) For the purposes of this Act, the Protective Agency shall—
- (a) prepare and submit a report to the Centre on the suitability of a prospective participant for entry into the Programme and for that purpose—
 - (i) shall interview a prospective participant with a view to establishing his or her suitability for entry into the Programme,
 - (ii) shall examine the threat assessments and risk assessments submitted to the Centre under section 8(2)(a), and
 - (iii) may require a prospective participant or participant to undergo, for the purpose of determining his or her physical and mental health, medical tests or examinations and psychological or psychiatric evaluations and to authorise the results to be made available to the Protective Agency;
 - (b) protect participants and persons accorded provisional entry under section 8(2)(c);
 - (c) relocate participants where necessary; and

(d) carry out periodic reviews of threat assessments and risk assessments.

(3) The Protective Agency shall exercise its functions under this or any other Act through a person designated by the Protective Agency to act on its behalf and all actions taken by the Protective Agency shall be deemed to be an administrative act.

(4) The Governor in Council may make rules governing the procedure of the Protective Agency but, subject to those rules the Protective Agency shall have power to regulate its own procedure.

PART 6

MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding with participant

10. (1) The Centre shall, subject to the approval of the Attorney General, prepare a Memorandum of Understanding which shall, subject to subsection (2), be in Form 1 of Schedule 3.

(2) The Centre may, where it considers necessary in a particular case, include any other relevant subject matter in a Memorandum of Understanding.

(3) The Memorandum of Understanding shall be signed in the presence of two witnesses—

(a) by the prospective participant; or

(b) where the circumstances so require, in accordance with section 7(c).

(4) A prospective participant is included in the Programme when the Memorandum of Understanding is counter-signed by the Director of the Centre.

(5) The Centre may, after consultation with the Attorney General, vary the Memorandum of Understanding—

(a) with the consent of the participant; or

(b) upon application by the participant for a variation.

(6) A variation shall take effect on the day on which the participant receives written notice thereof.

(7) Where a participant attains the age of 18 years while in the Programme the Centre shall require him or her to sign a Memorandum of Understanding on his or her own behalf.

PART 7

MEMORANDUM OF AGREEMENT

Memorandum of Agreement

11. (1) Anguilla and the designated territories may enter into a Memorandum of Agreement which shall form the basis of cooperation between Anguilla and the designated territories in relation to the Programme.

(2) Notwithstanding subsection (1) Anguilla may enter into an agreement or arrangement with any country or territory for the purposes of—

- (a) establishing a system of cooperation for the treatment and security of a participant of Anguilla;
- (b) exchanging any information as may be necessary for the administration of justice in Anguilla as it relates to any specified witness; or
- (c) receiving assistance from or rendering assistance to that country or territory in relation to the relocation of a participant.

PART 8

REGISTER OF PARTICIPANTS

Register of participants

12. (1) The Centre shall maintain a register of participants which shall be accorded a security classification not below “Top Secret”.

(2) The register shall be maintained manually and by electronic means.

(3) The Centre shall include in the register the following information in respect of each participant the—

- (a) dates on which the participant entered and left the Programme;
- (b) details of any approval or refusal under section 15(1);
- (c) details of any offences for which the participant has been convicted;
- (d) participant’s address;
- (e) participant’s name and assumed names if any;
- (f) participant’s new name where he or she has been provided with a new identity under the Programme; and
- (g) matter giving rise to the participant’s entry into the Programme.

- (4) In addition to the register the Centre shall keep the following documents—
- (a) any documents returned to the Centre under section 17(5);
 - (b) copies of each new document issued under the Programme in respect of new identities;
 - (c) the original of each approval granted by the Centre under section 15(1);
 - (d) the original of each Memorandum of Understanding; and
 - (e) any other documents which the Director determines should be kept.

Access to register

13. (1) Subject to this section, the Centre shall be the only approved authority that shall have access to the register and to the documents kept under section 12(4).

(2) The Centre may, where it is of the opinion that it is in the public interest to do so, allow another approved authority to have access to the register and the documents kept under section 12(4).

(3) Where the Centre allows an approved authority access to the register and the documents kept under section 12(4) the Centre shall notify any other relevant approved authorities of the—

- (a) date and time of access;
- (b) identity of the authority to whom the access was allowed;
- (c) information to which the authority was allowed access; and
- (d) reasons for allowing access.

PART 9

PROTECTION UNDER THE PROGRAMME

Rights and obligations

14. (1) Where a participant who is entitled to exercise a right, is under an obligation or is subject to any restriction, the appropriate approved authority shall take reasonably practicable steps to ensure that the—

- (a) participant complies with the restriction; or
- (b) right or obligation is dealt with according to this Act.

(2) The steps referred to in subsection (1) may include—

- (a) notifying a party or possible party to legal proceedings, that the authority shall accept process issued by a court or tribunal on his or her behalf and will nominate one of its officers for the purpose; and
- (b) providing protection for the participant while the participant is attending court.

(3) Where the authority is satisfied that a participant who has been provided with a new identity under the Programme is using the new identity to avoid—

- (a) complying with restrictions that were imposed on the participant before the new identity was established; or
- (b) obligations that were incurred before the new identity was established;

the authority shall give notice in writing to the participant stating that unless he or she satisfies it that the obligations are dealt with according to this Act or the restriction is complied with it shall take any action it considers necessary to ensure performance of the obligations or compliance with the restrictions.

(4) The action referred to in subsection (3) may include informing a person who is seeking to enforce rights against the participant, of the details of any property, real or personal, owned by the participant under his former identity.

Non-disclosure of former identity

15. (1) A participant who has been provided with a new identity under the Programme shall not identify or disclose his former identity unless he has obtained the prior written approval of the Centre.

(2) Notwithstanding subsection (1) and any other Act, the participant shall in any proceedings, be entitled to claim that his new identity is his only identity.

(3) In this section, “participant” includes a person who is no longer participating in the Programme but retains his new identity.

Cessation of protection and assistance

16. (1) Protection and assistance provided under the Programme to a participant—

- (a) may be terminated by the Centre where—
 - (i) the Centre discovers that the participant had knowingly given it information that was false or misleading in a material particular,
 - (ii) the circumstances that gave rise to the need for protection or assistance for the participant cease to exist,
 - (iii) the participant conducts himself in a manner which in the opinion of the Centre is likely to compromise the integrity of the Programme,
 - (iv) the participant deliberately breaches an undertaking, including an undertaking to give evidence, in relation to a matter, material to the Programme,

- (v) the participant deliberately breaches a term of the Memorandum of Understanding,
 - (vi) the participant refuses or fails to sign a new Memorandum of Understanding when required to do so under section 10(7),
 - (vii) there is, in the opinion of the Centre, no reasonable justification for the participant to remain in the Programme; or
- (b) shall be terminated by the Centre where the participant requests in writing that it be terminated.

(2) Where the Centre decides under subsection (1)(a) to terminate protection or assistance or both under the Programme, the Centre shall—

- (a) take reasonable steps to notify the participant; and
- (b) notify the other approved authorities;

of the decision.

(3) A participant who receives notification under subsection (2) may, within 28 days after receiving the notice, apply in writing to the Attorney General for a review of the decision of the Centre.

(4) Where a participant applies for a review of the decision the Attorney General shall—

- (a) allow the participant a reasonable opportunity to state his case;
- (b) after reviewing the decision confirm, reverse or vary it; and
- (c) inform the participant in writing of the decision.

(5) A decision of the Centre under subsection (1)(a) to terminate protection or assistance or both shall take effect where the—

- (a) participant applies for a review of the decision in accordance with subsection (3) and the Attorney General notifies the participant that the decision of the Centre is confirmed, termination shall take effect from the date of receipt of the notification;
- (b) participant does not apply for a review of the decision in accordance with subsection (3), termination shall take effect at the end of the period of 28 days after the participant receives the notification; or
- (c) participant's whereabouts are unknown and the Centre has taken reasonable steps to notify the participant of the decision but has been unable to do so or where, in the opinion of the Attorney General, the participant is avoiding notification, the protection shall be terminated at the end of the period of 28 days after those steps were commenced.

Restoration of former identity

17. (1) Where a participant has been provided with a new identity under the Programme and protection or assistance to the participant is terminated, the Centre may, where it considers it appropriate to do so, take the necessary action to restore the former participant's former identity.

(2) The Centre shall take reasonable steps to notify the former participant of its decision under subsection (1).

(3) Where the Centre decides to take action to restore the identity of the former participant, he may, within 28 days after receiving the notification, apply in writing to the Attorney General for a review of the decision of the Centre.

(4) Where an application is made, the Attorney General shall—

- (a) allow the former participant a reasonable opportunity to state his case;
- (b) after reviewing the decision of the Centre and confirm, reverse or vary it; and
- (c) inform the former participant in writing of the decision.

(5) Where the Centre takes action under this section to restore the identity of the former participant and the Centre requests the return of all documents that were provided in relation to the new identity the former participant shall return those documents to the Centre within 7 days after receiving the request.

Provision of information to an approved authority

18. Where another approved authority notifies the Centre that a participant who has been provided with a new identity or has been relocated, is under investigation for, or has been arrested or charged with an offence, the maximum penalty for which is or includes imprisonment for more than one year, the Centre may—

- (a) cause the participant to appear before the appropriate authority; and
- (b) provide the appropriate approved authority with—
 - (i) the participant's criminal record and fingerprints,
 - (ii) the participant's former identity, and
 - (iii) any other information relating to the participant and the Programme as the Centre considers appropriate in the circumstances.

PART 10

EXTERNAL APPLICATION OF PROGRAMME

External application of the Programme

19. Without prejudice to any agreement or arrangement entered under section 11(2), the Governor in Council may by order—

- (a) designate any territory specified in Schedule 4 as a territory to which this Act applies for the purposes of the relocation of participants under the Programme;
- (b) specify appropriate overseas authorities within designated territories that are to give effect to the provisions of this Act in relation to the relocation of participants under the Programme to designated territories; and
- (c) specify in respect of designated territories, the steps that need to be taken there for the purposes of the relocation of participants under the Programme to designated territories.

PART 11

MISCELLANEOUS

Immunity

20. Officers of the Centre, the Investigative Agency or the Protective Agency performing functions in relation to the Programme, shall not be liable to any action, suit or other proceedings in respect of any act done or omitted to be done in good faith in the exercise or purported exercise of a power conferred by this Act.

Offences

21. (1) A person who, without lawful authority, discloses information—

- (a) about the identity or location of a person who is or has been a participant; or
- (b) that compromises the safety or security of a participant or the integrity of the Programme;

commits an offence.

(2) A person who is or has been a participant or a person who has undergone assessment for inclusion in the Programme and without being authorised by the Centre, discloses—

- (a) any details of a Memorandum of Understanding that he or she has signed;
- (b) information about any officer of the Centre who is or has been involved in the Programme;
- (c) information as to the way in which the Programme operates;
- (d) the fact that he has signed a Memorandum of Understanding; or
- (e) the fact of his or her assessment or participation;

commits an offence.

(3) A person who—

- (a) corruptly gives, confers on or procures for, or promises or offers to give or confer on , or to procure for, or to attempt to procure for—

(i) any person employed in the administration of this Act, or

(ii) any other person; or

(b) being a person employed in the administration of this Act, corruptly solicits; receives or obtains, or agrees or attempts to receive or retain, any property or benefit of any kind for the purpose of obtaining information which could prejudice the safety or security of a participant or the integrity of the Programme commits an offence.

(4) A person who commits an offence under subsection (1), (2) or (3) is liable on—

(a) summary conviction to a fine of \$15,000 and 10 years imprisonment; or

(b) conviction on indictment, to a fine of \$30,000 and 15 years imprisonment .

(5) A person who, without reasonable excuse, fails to return the documents referred to in section 17(5) in accordance with that section, commits an offence and is liable on—

(a) summary conviction to a fine of \$10,000 and 3 years imprisonment; or

(b) conviction on indictment to a fine of \$20,000 and 6 years imprisonment.

Officers not required to disclose information

22. (1) Subject to subsection (2), no officer of the Centre, the Investigative Agency or the Protective Agency shall be required to—

(a) divulge, communicate or produce to or before any court or to another approved authority, any matter or thing that has come to the notice of the officer in the performance of functions or duties under this Act; or

(b) produce in any court or to another approved authority, any document that has come into the custody or control of the Centre, the Investigative Agency or the Protective Agency in the course of, or because of, the performance of functions or duties under this Act.

(2) Subsection (1) does not apply where—

(i) it is necessary to do so for the purpose of carrying the provisions of this Act into effect, or

(ii) the court, on an application, considers that it is necessary to do so in the interest of justice and that the production or disclosure is not likely to adversely affect the intent and purposes of this Act.

(3) Where a court makes an order under subsection (2) for production or disclosure, the Attorney General or any person with a legitimate interest who is aggrieved by the order may—

(a) upon the making of the order, give oral notice; or

(b) within 7 days of the making of the order, give written notice;

of his intention to appeal against the order.

(4) Where notice is given under subsection (2), the court shall stay the execution of the order pending the outcome of the appeal.

(5) Where, in the determination of legal proceedings it becomes necessary for the judge or magistrate presiding to be advised of a person's participation in the Programme, the Attorney General may issue a certificate in the form set out in Schedule 5.

(6) A certificate issued under subsection (4) shall be conclusive evidence that the person named therein is a participant in the Programme for all purposes of the legal proceedings and the judge or magistrate shall not disclose the fact of that person's participation in the Programme otherwise than in accordance with this Act.

Requirement where participant becomes a witness in criminal proceedings

23. (1) Where—

- (a) a person is provided with a new identity under the Programme;
- (b) the person retains that identity, whether or not he remains a participant; and
- (c) the person is to appear as a witness in criminal proceedings under that identity;

the person shall notify the Centre that he is to appear as a witness in the proceedings.

(2) After being notified under subsection (1), the Centre may take any action it considers appropriate in the circumstances, and where the person has a criminal record, the Centre shall disclose that criminal record to the court, the prosecutor and the accused person or the accused person's attorney.

Identity of participant not to be disclosed

24. Where in any proceedings in any court, the new identity of a person who is a participant is in issue or may be disclosed, the court shall, unless it considers that the interests of justice require otherwise—

- (a) hold that part of the proceedings that relates to the identity of the participant in camera; and
- (b) make any order restricting the publication of evidence given before the court as in its opinion will ensure that the identity of the participant is not disclosed.

Annual reports

25. (1) Subject to subsection (2), the Centre shall submit to the Board of Management, annual reports on the general operation, performance and effectiveness of the Programme.

(2) A report under subsection (1) shall not contain any matter which in the opinion of the Centre, is likely to prejudice the effectiveness or security of the Programme.

Regulations

26. (1) The Governor in Council may make regulations prescribing all matters which are required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Governor in Council may make regulations—

- (a) adopting measures as are necessary and reasonable to secure the safety, health and welfare of participants;
- (b) establishing a mechanism for the monitoring and reviewing of the Programme;
- (c) facilitating the relocation of participants within Anguilla and to and from a designated territory pursuant to a Memorandum of Understanding, or with any country or territory pursuant to an agreement or scheme of arrangement entered into under section 11(2);
- (d) providing for access by participants to their attorney and vice versa; and
- (e) respecting the establishment of identities of participants and any matters relating thereto.

Designation of approved authorities

27. The Governor in Council may by order designate any person or body as the Governor in Council sees fit as an approved authority for the purposes of this Act.

Amendment of Schedules

28. The Governor in Council may by Regulation amend the Schedules to this Act.

Citation and Commencement

29. (1) This Act may be cited as the—
Justice Protection Act, 2016.

(2) This Act shall come into force on the date as the Governor in Council may by Order published in the *Gazette* appoint.

Leroy C. Rogers
Speaker

Passed by the House of Assembly this day of , 2016.

Lenox J. Proctor
Clerk of the House of Assembly

SCHEDULE 1

(Section 3)

CATEGORIES OF PROSPECTIVE PARTICIPANTS IN THE JUSTICE PROTECTION PROGRAMME

Witnesses and their associates

Judicial and Legal officers

Jurors

Law enforcement personnel

Any other person designated in writing by the Attorney General

SCHEDULE 2

(Section 5)

OFFENCES WHICH MAY GIVE RISE TO PROTECTION UNDER THE JUSTICE PROTECTION PROGRAMME

Criminal damage and related offences

Drug offences

Firearms and ammunition offences

Hijacking

Money laundering offences

Offences against property

Offences against the administration of justice

Offences against the Crown and offences against public order

Offences against the person

Offences involving domestic violence

Piracy

Sexual offences

Terrorism and related offences

SCHEDULE 3

(Section 10)

FORM 1

Justice Protection Administrative Centre

MEMORANDUM OF UNDERSTANDING

Agreement on acceptance of a person into the Justice Protection Programme

This will form the basis (subject to variation as necessary) of our agreed arrangements and commitments

All reasonable steps to protect participants will be taken

The contents of this Memorandum of Understanding is confidential (disclosure is subject to penalty under section 21 of the Justice Protection Act, 2016)

FROM the date of signature I

will abide by the terms of this Memorandum of Understanding-

I have been included in the Justice Protection Program, and

I understand the implication of being included in the Programme.

I acknowledge, accept and understand the contents of this Memorandum of Understanding.

1 My threat level has been assessed as necessitating relocation overseas. Consequently I will be provided with financial assistance to facilitate my location to

2 I will not compromise, directly or indirectly the security of, or any other aspect of the assistance being given.

3 I undertake that details of any change of address, movements or other circumstances in relation to me will remain strictly confidential.

4 I will comply with all reasonable directions in relation to the assistance provided to me.

5 On the request of the Centre I shall undergo-

- (a) alcohol and drug counselling; and
- (b) medical tests or examinations and psychiatric or psychological evaluations by qualified medical professionals,

and authorize that the results of any examination or evaluation are made available to the Centre.

6 I will receive financial support as follows:

- (a) rent paid directly to the landlord not exceeding dollars daily/ weekly//monthly;
- (b) an allowance equivalent to dollars will be paid into my bank account at account number monthly;
- (c) additional funding on a needs basis on the approval of the Centre; and
- (d) funding for educational purposes for approved courses of study on the approval of the Centre.

7 I will diligently search for employment and pursue courses that will make me more marketable.

8 I will do all in my power to integrate into my new surroundings and with the knowledge of the Centre apply for any financial benefit available from the host country.

9 The level of financial support given to me will be continuously reviewed and continue only when appropriate, justifiable and reasonable to my peculiar circumstances. However mandatory reviews shall be undertaken at six months intervals from the signing of this Memorandum of Understanding.

10 I shall disclose to the Centre details of any criminal charges that are made against me and any civil or bankruptcy proceedings that are instituted against me from the date of my signing of this Memorandum of Understanding.

11 In relation to the cause or matter which led to the necessity of my being in the programme I SHALL-

- (a) cooperate frankly and fully with the police, prosecuting and judicial authorities in relation to the provision of any information or assistance they may seek or lawfully request and divulge all that I know in relation to the request;

- (b) give evidence when called upon to do so at any preliminary inquiry or trial before any duly constituted court of any person charged with any criminal offence in relation to any witness statement I have given to the police; and
- (c) ensure that any evidence I give is accurate and truthful and given fully without any embellishment.

12 I UNDERSTAND and fully appreciate that the Centre may terminate any and all assistance given to me in accordance with this Memorandum of Understanding where it is discovered that-

- (a) I behave, conduct or have behaved or conducted myself in an unacceptable manner while is likely to compromise the Justice Protection Programme;
- (b) I knowingly gave information to the Centre that was false or misleading in a material particular;
- (c) I refuse or fail to sign a new Memorandum of Understanding when requested to do so;
- (d) the circumstances which necessitated the need for assistance no longer exist; or
- (e) due to changed circumstances it cannot be reasonably justified that assistance should continue.

13. I CLEARLY UNDERSTAND that protection and assistance may be terminated due to a breach of any term of this Memorandum of Understanding.

I AGREE to abide by the terms of this Memorandum of Understanding.

Name:

Signature:

Date:

Witnessed By:

Witnessed By:

Signature:.....

Director of the Centre

SCHEDULE 4

(Sections 11 and 19)

TERRITORIES THAT MAY PARTICIPATE IN THE JUSTICE PROTECTION PROGRAMME OR BE DESIGNATED FOR THE PURPOSE OF RELOCATION

- Bermuda
- British Virgin Islands
- Cayman Islands
- Montserrat
- Turks and Caicos Islands

SCHEDULE 5

(Section 22)

JUSTICE PROTECTION PROGRAMME CERTIFICATE

JUSTICE PROTECTION ACT, 2016

For the purposes of section 22(5) of the Justice Protection Act, 2016, the Attorney General hereby certifies that

Name:

Date of Birth:.....

Address:.....

.....

is a participant in the Justice Protection Programme.

Given under my hand this day of , 20

.....

Attorney General

NOTE: *Under section 22(6) of the Justice Protection Act, 2016, this certificate is conclusive evidence in legal proceedings that the person named herein is a participant in the Programme.*

OBJECTS AND REASONS

This Bill seeks to establish a programme to give protection to witnesses, certain other persons and for incidental purposes.

Part 1 – Preliminary

Clause 1 is the Interpretation clause where certain words and phrases are defined such as approved authority, Board of Management, designated territory, Centre, Investigative Agency and Protective Agency.

The following are also thus defined-

“associate” means a person who, by virtue of his relationship or association with a participant or prospective participant, may be considered for protection and assistance under the Programme;

“participant” means a person from the categories of persons designated in Schedule 1 and includes judicial and legal officers, jurors and law enforcement personnel;

“risk assessment” means an evaluation of the risk or danger which a participant is likely to pose for the receiving community, having regard to the matters specified in the definition of “threat assessment” and any other factor considered relevant in a particular case;

“threat assessment” means an evaluation of the danger to a prospective participant based on, but not limited to, information on—

- (a) any criminal organisation interested in the relevant proceedings;
- (b) the immediacy of the threat;
- (c) the names and other identifying data of all persons who are likely to pose a danger to the prospective participant;
- (d) the nature of the threat to the prospective participant;
- (e) persons who are the subject of judicial or administrative proceedings concerning the case in relation to which the prospective participant has given evidence or is required to give evidence; and
- (f) where appropriate, the prospective participant’s association with persons referred to in paragraph (c) or his involvement in the illegal activity giving rise to the proceedings referred to in that paragraph; and

“witness” means a person who has given, is obliged to give or has agreed to give a statement or evidence or both—

- (a) in relation to a crime that has been committed or in respect of which there are reasonable grounds to believe has been committed or will be committed;

- (b) to an approved authority in relation to a crime that has been committed or in respect of which there are reasonable grounds to believe has been committed or will be committed;
- (c) in any criminal proceedings; or
- (d) in any civil proceedings.

Part 2 – The Programme

Under clause 2 the Governor in Council shall establish a Justice Protection Programme for the purpose of providing to participants protection and assistance.

For the purposes of administering the Programme a Centre and two Agencies are established in the—

- (a) Attorney General’s Chambers the Justice Protection Administrative Centre; and
- (b) Police Force a—
 - (i) Justice Protection Investigative Agency, and
 - (ii) Justice Protection Protective Agency.

Part 3 – The Centre

Under clause 3 the Governor in Council shall appoint the following persons as officers of the Centre—

- (a) a person holding a public office in the Attorney General’s Chambers shall be appointed the Director of the Centre; and
- (b) any other persons holding public office as the Attorney General may consider necessary to provide services to the Centre.

The Centre shall develop, manage and administer the Programme and shall, subject to the categories of persons designated in Schedule 1, be responsible for deciding whether a prospective participant is to be afforded protection and assistance.

Under section 4 where the Attorney General is satisfied that the circumstances so warrant he shall prepare and submit an application to the Centre for a prospective applicant’s entry into the Programme.

An application shall be made after the Attorney General has—

- (a) in the case of a prospective participant who is likely to be a witness, formed the opinion that the—
 - (i) testimony of the prospective participant is credible and essential, and
 - (ii) prospective participant can be relied upon to give the testimony; or

- (b) formed the opinion that a witness or his or her associate is in need of protection and assistance.

Under clause 6 a prospective participant shall make full disclose to the Centre of relevant, stipulated information and the Centre is empowered to make inquiries and investigations as it considers necessary for the purpose of assessing whether the prospective participant should be included in the Programme.

Under clause 7 a prospective participant must satisfy certain criteria before he is included in the programme such as-

he or she understands and signs a Memorandum of Understanding in accordance with the provisions of the Act or where he or she has not attained the age of 18 years or otherwise lacks legal capacity to sign the Memorandum—

- (i) it is signed by his or her parent or guardian,
- (ii) where there is no parent or guardian, it is signed by a person appointed by the High Court to be his or her guardian, or
- (iii) where there is an application before the High Court to appoint a legal guardian by the attorney at law on record in that application.

Part 4 – The Investigative Agency

Under clause 8 the Governor in Council shall appoint the following persons as officers of the Investigative Agency—

- (a) the Commissioner; and
- (b) any other persons holding office in the Police Force as the Commissioner may consider necessary to provide services to the Investigative Agency.

In relation to the possible inclusion of a prospective participant in the Programme, the Investigative Agency—

- (a) shall conduct investigations and submit to the Centre the prospective participant's application form which shall be accompanied by the following documents prepared by the Investigative Agency—
 - (i) an assessment of the application,
 - (ii) a threat assessment including a prison report where the prospective participant is in prison, and
 - (iii) a risk assessment;
- (b) shall provide protection for the prospective participant in the period prior to the determination of the request; and
- (c) may, in a case of an emergency, apply to the Centre for provisional entry into the Programme by the prospective participant prior to the determination of the request.

The Governor in Council may make rules governing the procedure of the Investigative Agency but subject to those rules the Investigative Agency shall regulate its own procedure.

Part 5 – The Protective Agency

Under clause 9 the Governor in Council shall appoint the following persons as officers of the Protective Agency—

- (a) the Commissioner; and
- (b) any other persons holding office in the Police Force as the Commissioner may consider necessary to provide services to the Protective Agency.

Among the functions of the Protective Agency are to-

- (a) prepare and submit a report to the Centre on the suitability of a prospective participant for entry into the Programme;
- (b) relocate participants where necessary; and
- (c) carry out periodic reviews of threat assessments and risk assessments.

The Governor in Council may make rules governing the procedure of the Protective Agency but, subject to those rules the Protective Agency shall have power to regulate its own procedure.

Part 6 – Memorandum of Understanding

Under clause 10 the Centre shall, subject to the approval of the Attorney General, prepare a Memorandum of Understanding in Form 1 of Schedule 3.

Where a participant attains the age of 18 years while in the Programme the Centre shall require him or her to sign a Memorandum of Understanding on his or her own behalf.

Part 7 – Memorandum of Agreement

Under clause 11 Anguilla and the designated territories may enter into a Memorandum of Agreement which shall form the basis of cooperation between Anguilla and the designated territories in relation to the Programme.

However Anguilla may enter into an agreement or arrangement with any country or territory for the purposes of—

- (a) establishing a system of cooperation for the treatment and security of a participant of Anguilla;
- (b) exchanging any information as may be necessary for the administration of justice in Anguilla as it relates to any specified witness; or
- (c) receiving assistance from or rendering assistance to that country or territory in relation to the relocation of a participant.

Part 8 – Register of Participants

Under clause 12 the Centre shall maintain a register of participants which shall be accorded a security classification not below “Top Secret” in addition to keeping specified, relevant documents in its custody.

The register shall be maintained manually and by electronic means. Specified information shall be included in the register in respect of each participant.

Access and the conditions governing access to the register are governed by clause 13.

Part 9 – Protection under the Programme

Under clause 14 where a participant who is entitled to exercise a right, is under an obligation or is subject to any restriction, the appropriate approved authority shall take reasonably practicable steps to ensure that the—

- (a) participant complies with the restriction; or
- (b) right or obligation is dealt with according to the Act.

The steps may include—

- (a) notifying a party or possible party to legal proceedings, that the authority shall accept process issued by a court or tribunal on his or her behalf and will nominate one of its officers for the purpose; and
- (b) providing protection for the participant while the participant is attending court.

Where the authority is satisfied that a participant who has been provided with a new identity under the Programme is using the new identity to avoid—

- (a) complying with restrictions that were imposed on the participant before the new identity was established; or
- (b) obligations that were incurred before the new identity was established;

the authority shall give notice in writing to the participant stating that unless he or she satisfies it that the obligations are dealt with according to the Act or the restriction is complied with it shall take any action it considers necessary to ensure performance of the obligations or compliance with the restrictions.

Under clause 15 a participant who has been provided with a new identity shall not identify or disclose his former identity unless he has obtained the prior written approval of the Centre.

However the participant shall in any proceedings, be entitled to claim that his new identity is his only identity. For the purposes of this section, “participant” includes a person who is no longer participating in the Programme but retains his new identity.

Clause 16 makes provision for the termination of protection and assistance under the Programme in specified instances.

A participant who receives notification of termination may, within 28 days after receiving the notice, apply in writing to the Attorney General for a review of the decision of the Centre.

Where a participant applies for a review of the decision the Attorney General shall—

- (a) allow the participant a reasonable opportunity to state his case;
- (b) after reviewing the decision confirm, reverse or vary it; and
- (c) inform the participant in writing of the decision.

Under clause 17 where a participant has been provided with a new identity and protection or assistance to the participant is terminated, the Centre may, where it considers it appropriate to do so, take the necessary action to restore the former participant's former identity.

Where the Centre decides to take action to restore the identity of the former participant, he may, within 28 days after receiving the notification, apply in writing to the Attorney General for a review of the decision of the Centre.

Where an application is made, the Attorney General shall—

- (a) allow the former participant a reasonable opportunity to state his case;
- (b) after reviewing the decision of the Centre and confirm, reverse or vary it; and
- (c) inform the former participant in writing of the decision.

Under clause 18 where another approved authority notifies the Centre that a participant who has been provided with a new identity or has been relocated, is under investigation for, or has been arrested or charged with an offence, the maximum penalty for which is or includes imprisonment for more than one year, the Centre may—

- (a) cause the participant to appear before the appropriate authority; and
- (b) provide the appropriate approved authority with—
 - (i) the participant's criminal record and fingerprints,
 - (ii) the participant's former identity, and
 - (iii) any other information relating to the participant and the Programme as the Centre considers appropriate in the circumstances.

Part 10 - External Application of the Programme

Under clause 19 without prejudice to any agreement or arrangement entered under clause 11(2), the Governor in Council may by order—

- (a) designate any territory specified in Schedule 4 as a territory to which the Act applies for the purposes of the relocation of participants under the Programme;

- (b) specify appropriate overseas authorities within designated territories that are to give effect to the provisions of the Act in relation to the relocation of participants under the Programme to designated territories; and
- (c) specify in respect of designated territories, the steps that need to be taken there for the purposes of the relocation of participants under the Programme to designated territories.

Part 11 – Miscellaneous

Clause 20 speaks to immunity - Officers of the Centre, the Investigative Agency or the Protective Agency performing functions in relation to the Programme, shall not be liable to any action, suit or other proceedings in respect of any act done or omitted to be done in good faith in the exercise or purported exercise of a power conferred by the Act.

Clause 21 makes provision for appropriate penalties for breaches in respect of the integrity of the Programme the provisions of the legislation.

Under clause 22 no officer of the Centre, the Investigative Agency or the Protective Agency shall be required to—

- (a) divulge, communicate or produce to or before any court or to another approved authority, any matter or thing that has come to the notice of the officer in the performance of functions or duties under the Act; or
- (b) produce in any court or to another approved authority, any document that has come into the custody or control of the Centre, the Investigative Agency or the Protective Agency in the course of, or because of, the performance of functions or duties under the Act.

However the prohibition does not apply where—

- (i) it is necessary to do so for the purpose of carrying the provisions of the Act into effect, or
- (ii) the court, on an application, considers that it is necessary to do so in the interest of justice and that the production or disclosure is not likely to adversely affect the intent and purposes of the Act.

Where a court makes an order for production or disclosure, the Attorney General or any person with a legitimate interest who is aggrieved by the order may—

- (a) upon the making of the order, give oral notice; or
- (b) within 7 days of the making of the order, give written notice;

of his intention to appeal against the order and the court shall stay the execution of the order pending the outcome of the appeal.

Where, in the determination of legal proceedings it becomes necessary for the judge or magistrate presiding to be advised of a person's participation in the Programme, the Attorney General may issue a certificate in the form set out in Schedule 5. That certificate shall be conclusive evidence that the person named therein is a participant in the Programme for all purposes of the legal

proceedings and the judge or magistrate shall not disclose the fact of that person's participation in the Programme otherwise than in accordance with the Act.

Clause 23 speaks to where participant becomes a witness in criminal proceedings. Where—

- (a) a person is provided with a new identity;
- (b) the person retains that identity, whether or not he remains a participant; and
- (c) the person is to appear as a witness in criminal proceedings under that identity;

the person shall notify the Centre that he is to appear as a witness in the proceedings.

After being notified the Centre may take any action it considers appropriate in the circumstances, and where the person has a criminal record, the Centre shall disclose that criminal record to the court, the prosecutor and the accused person or the accused person's attorney.

To ensure that the identity of a participant is not disclosed under clause 24 where in any proceedings in any court, the new identity of a person who is a participant is in issue or may be disclosed, the court shall, unless it considers that the interests of justice require otherwise—

- (a) hold that part of the proceedings that relates to the identity of the participant in camera; and
- (b) make any order restricting the publication of evidence given before the court as in its opinion will ensure that the identity of the participant is not disclosed.

Clause 25 speaks to annual reports on the general operation, performance and effectiveness of the Programme which must be submitted by the Centre to the Board of Management. A report shall not contain any matter which in the opinion of the Centre, is likely to prejudice the effectiveness or security of the Programme.

Clause 26 empowers the Governor in Council to make regulations prescribing all matters which are required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

Under clause 27 the Governor in Council may by order designate any person or body as the Governor in Council sees fit as an approved authority for the purposes of the Act.

Under clause 28 the Governor in Council may by Regulation amend the Schedules to the Act.

Whereas under clause 29 the Act shall come into force on the date as the Governor in Council may by Order published in the *Gazette* appoint.

Schedule 1 deals with the **CATEGORIES OF PROSPECTIVE PARTICIPANTS IN THE JUSTICE PROTECTION PROGRAMME.**

Schedule 2 specifies the **OFFENCES WHICH MAY GIVE RISE TO PROTECTION UNDER THE JUSTICE PROTECTION PROGRAMME.**

Schedule 3 reflects the form of the **MEMORANDUM OF UNDERSTANDING** which must be executed by every participant.

Schedule 4 lists the **TERRITORIES THAT MAY PARTICIPATE IN THE JUSTICE PROTECTION PROGRAMME OR BE DESIGNATED FOR THE PURPOSE OF RELOCATION.**

Schedule 5 reflects the form of the **JUSTICE PROTECTION PROGRAMME CERTIFICATE**

Rupert Jones
Honourable Attorney General