

VISITING FORCES ACT

Act 34 of 1968 – 12 March 1968

ARRANGEMENT OF SECTIONS

SECTION

- | | |
|--|--------------------------------------|
| 1. Short title | 7. Offenders tried by Service Courts |
| 2. Interpretation | 8. Arrest and custody of offenders |
| 3. Application | 9. Restriction on proceedings |
| 4. Service Courts and service authorities | 10. Privileges |
| 5. Offenders connected with visiting force | 11. Security |
| 6. Visiting force for security or training | 12. Exemption from labour law |
| | 13. Evidence |
| | SCHEDULE |

VISITING FORCES ACT

1. Short title

This Act may be cited as the Visiting Forces Act.

2. Interpretation

(1) In this Act—

“civilian component” means the civilian personnel accompanying a visiting force and employed by the service authorities of the sending country, who are not citizens of, nor ordinarily resident in, Mauritius;

“contractor” means a person who has entered into a contract or sub-contract to execute works or perform services in Mauritius for service authorities or a service organisation;

“dependent”, in relation to a member of a visiting force or civilian component, means—

- (a) the spouse of that member;
- (b) a person who is wholly or mainly maintained by him or in his custody, charge or care;
- (c) a person who forms part of his family; or
- (d) a person in domestic employment of his household, not being a citizen of, nor ordinarily resident in, Mauritius;

“member”, in relation to a visiting force, means a member of the forces of a sending country appointed to serve with that visiting force;

“Minister” means the Minister to whom responsibility for the subject of internal affairs is assigned;

“sending country”, in relation to a visiting force, means a country specified in or designated under section 3;

“service authorities” means naval, military or air force authorities empowered by the law of a sending country to exercise command or jurisdiction over the members of a visiting force or civilian component of that country and their dependants;

“Service Court” means a Court established under the service law of a sending country and includes an authority of that country which under its law is empowered to review the proceedings of such a Court or to try or investigate charges brought against persons subject to the service law of that country;

“service establishment” means land held or occupied by the service authorities of a sending country for the purposes of a visiting force;

“service installation” means a building, structure or other work, whether or not on a service establishment, constructed or adapted for use for the purposes of a visiting force;

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

“service organisation” means an organisation authorised by the service authorities to accompany a visiting force in order to provide for the needs of the members, civilian component and dependants;

“visiting force” means a body, contingent or detachment of the forces of a sending country, being a body, contingent or detachment stationed in Mauritius on the invitation or with the consent of Government of Mauritius.

(2) In determining for the purposes of this Act whether a person is, or was at any time, ordinarily resident in Mauritius, no account shall be taken of any period during which he has been or intends to be present in Mauritius while he is a member of a visiting force or civilian component or a dependent of that person.

(3) References in this Act to members of a visiting force or civilian component of a sending country and their dependants or service organisations include members of a visiting force or civilian component of that country and their dependants or service organisations who are present in Mauritius while in transit to any other country.

3. Application

- (1) The countries in relation to which this Act shall have effect are—
- (a) the United Kingdom; and
 - (b) a country designated under subsection (2).

(2) Where it appears to the President, as respects any country other than the United Kingdom, that, having regard to any arrangements for mutual defence to which Government and the Government of that country are parties, it is expedient that this Act should have effect in relation to that country, the President may by Order designate that country for that purpose.

(3) An Order under subsection (2) may provide that in so far as this Act has effect in relation to a country designated in the Order, it shall have effect subject to such limitations, adaptations or modifications as may be specified in the Order.

[S. 3 amended by Act 48 of 1991.]

4. Service Courts and service authorities

(1) The Service Courts and service authorities of a sending country may, within Mauritius, exercise over persons subject to their jurisdiction in accordance with this section all the powers that are exercisable by them according to the law of that country.

(2) The persons subject to the jurisdiction of the Service Courts and service authorities of a sending country in accordance with this section are—

- (a) members of a visiting force of that country; and
- (b) all other persons who, being neither citizens of, nor ordinarily resident in, Mauritius, are subject to the service law of that country otherwise than as members of that country's forces.

(3) Where a sentence has, in or outside Mauritius, been passed by a Service Court of a sending country on a person who, immediately before the sentence was passed, was subject to the jurisdiction of that Court in accordance with this section, for the purposes of any proceedings in a Court of Mauritius, the Service Court shall be deemed to have been properly constituted, and the sentence shall be deemed to be within the jurisdiction of that Court, and in accordance with the law of that country, and if executed according to the tenor of the sentence, shall be deemed to have been lawfully executed.

(4) Notwithstanding subsection (3), a sentence of death passed by a Service Court of a sending country shall not be carried out in Mauritius unless under the law of Mauritius a sentence of death could have been passed in a similar case.

(5) For the purpose of enabling the Service Courts and service authorities of a sending country to exercise more effectively the powers referred to in subsection (1), the Commissioner of Police, where so requested by the service authorities of that country, may by general or special orders direct members of the Mauritius Police Force to arrest any person, being a member of a visiting force of that country, who is alleged to have committed an offence punishable under the law of that country, and to hand him over to the service authorities of that country.

5. Offenders connected with visiting force

(1) Subject to this section, a person charged with an offence against Mauritius law shall not be liable to be tried for that offence by a Court of

Mauritius if at the time when the offence is alleged to have been committed, he was a member of a visiting force or civilian component or a dependant of such member and—

- (a) the alleged offence is an offence against the security of the sending country;
- (b) the alleged offence, if committed by him, arose out of and in the course of his duty as a member of that force or component, as the case may be;
- (c) the alleged offence is an offence against the person, and the person or, if more than one, each of the persons in relation to whom it is alleged to have been committed had at the time a relevant association either with that force or with another visiting force of the same country; or
- (d) the alleged offence is an offence against property, and the whole of the property in relation to which it is alleged to have been committed (or, in a case where different parts of that property were differently owned, each part of the property) was at the time the property either of the sending country or of an authority of that country or of a person having a relevant association with that force or with another visiting force of the same country.

(2) Subsection (1) shall not apply where at the time the offence is alleged to have been committed the alleged offender was a person not subject to the jurisdiction of the Service Courts of the country in question in accordance with section 4.

(3) Nothing in subsection (1)—

- (a) shall prevent a person from being tried by a Court of Mauritius in a case where the Director of Public Prosecutions certifies, before or in the course of the trial, that the service authorities of the sending country have notified him that it is not proposed to deal with the case under the law of that country;
- (b) shall affect anything done or omitted to be done in the course of a trial unless, in the course of the trial, objection has already been made that by reason of that subsection the Court is not competent to deal with the case; or
- (c) shall, after the conclusion of a trial, be treated as having affected the validity of the trial if no such objection was made in the proceedings at any stage before the conclusion of the trial.

(4) Nothing in this section shall be construed as derogating from any other enactment restricting the prosecution of any proceedings or requiring the consent of any authority to the prosecution of the proceedings.

6. Visiting force for security or training

(1) Notwithstanding any other enactment but subject to subsection (2), the Courts of Mauritius shall not exercise jurisdiction in relation to offences

committed by members of a visiting force, the civilian component or dependants, whether committed on duty or otherwise where—

- (a) the visiting force has been made available to Government for the purpose of assistance in the maintenance of internal security; or
- (b) the visiting force is stationed in Mauritius for the purpose of commanding, training and developing the police forces of Mauritius.

(2) Nothing in subsection (1) shall prevent a person from being tried by a Court of Mauritius in a case where the Director of Public Prosecutions certifies that the service authorities of the visiting force in question have waived the immunity accorded to such person under subsection (1).

7. Offenders tried by Service Courts

(1) Without prejudice to sections 5 and 6, where a person has been tried by a Service Court of a sending country in the exercise of the powers referred to in section 4, he shall not be tried for the same offence by a Court of Mauritius.

(2) Where a person who has been convicted by a Service Court of such a country in the exercise of the said powers is convicted by a Court of Mauritius for a different offence, but it appears to that Court that the conviction by the Service Court was wholly or partly in respect of acts or omissions in respect of which he is convicted by the Court of Mauritius, that Court shall have regard to the sentence of the Service Court in determining the sentence to be inflicted.

8. Arrest and custody of offenders

Subject to section 11, nothing in sections 5, 6 and 7 shall affect—

- (a) any powers of arrest, search, entry, seizure or custody exercisable under Mauritius law with respect to offences committed or believed to have been committed, against that law;
- (b) any obligation of any person in respect of a recognisance or bail bond entered into in consequence of his arrest, or the arrest of any other person, for such an offence; or
- (c) any power of any Court to remand (whether on bail or in custody) a person brought before the Court in connection with such an offence.

9. Restriction on proceedings

A member of a visiting force or civilian component shall not be subject to any proceedings in Mauritius in respect of a claim which arises out of the performance of his official duty.

10. Privileges

No tax, fee, rate, duty or similar charge that would otherwise be payable under any enactment shall be imposed on or collected from service authorities,

service organisations, members of a visiting force, the civilian component, dependants and contractors, in respect of any of the matters set forth and for which exemption from such tax, fee, rate, duty or similar charge is provided in the Schedule, to the extent and subject to the conditions specified in it.

11. Security

(1) The service authorities may take such measures as they think necessary to ensure the security of service establishments and service installations and of persons and property in them.

(2) Service authorities may raise and maintain a civil police force for the purposes specified in subsection (1), and every member of that civil police force shall have, within service establishments and service installations, all the powers that are exercisable by members of the Mauritius Police Force according to Mauritius law.

(3) Without prejudice to subsection (2), members of a visiting force and of a civilian police force raised and maintained by the service authorities of that force shall have the sole right to police service establishment and installations and to arrest and search a person suspected of having committed an offence within any such establishment or installation.

12. Exemption from labour law

(1) The service authorities of a visiting force shall be exempt from any enactment regulating the engagement and discharge of civilian labour recruited in Mauritius by or on behalf of such service authorities.

(2) The other conditions of service and pay of any workman so employed shall, as far as possible, be not less favourable than those obtaining in comparable employment in Mauritius.

13. Evidence

(1) For the purposes of this Act—

- (a) a certificate issued by or on behalf of the service authorities of a sending country, stating that, at a time specified in the certificate, a person so specified either was or was not a member of a visiting force or civilian component of that country or a dependant of such a member, shall, in any proceedings in a Court of Mauritius, be sufficient evidence of the fact so stated unless the contrary is proved;
- (b) a certificate issued by or on behalf of the service authorities of a sending country stating, as respects a person specified in the certificate—
 - (i) that on a date so specified he was sentenced by a Service Court of that country to such punishment as is specified in the certificate;

- (ii) that he is, or was at a time so specified, detained in custody in pursuance of a sentence passed on him by a Service Court of that country or pending or during the trial by such a Court of a charge brought against him; or
- (iii) that he has been tried, at the time and place specified in the certificate, by a Service Court of that country for an offence so specified,

shall, in any proceedings in any Court of Mauritius, be conclusive evidence of the facts so stated.

(2) Where a person is charged with an offence against Mauritius law and at the time when the offence is alleged to have been committed, he was a member of a visiting force or a member of a civilian component of such a force, a certificate issued by or on behalf of the service authorities of the sending country, stating that the alleged offence, if committed by him, arose out of and in the course of his duty as a member of that force or component, as the case may be, shall in any such proceedings be sufficient evidence of that fact unless the contrary is proved.

SCHEDULE

[Section 10]

1. The presence in Mauritius of members of a visiting force, civilian component or dependants shall not be regarded as constituting residence or domicile in Mauritius for the purposes of determining the incidence of income tax which depends on residence or domicile.
2. Members of a visiting force in Mauritius and civilian component shall be exempt from income tax on their pay, allowances and other emoluments and benefits (whether in cash or in kind) paid to them as such members and shall also be exempt from any other form of direct taxation.
3. No entertainment tax shall be paid in respect of entertainments organised by service authorities or service organisations.
4. (a) Service organisations shall be exempt from taxation on any tangible movable property (excluding private motor vehicles) which is in Mauritius solely as a consequence of the temporary presence of such organisations in Mauritius.
(b) This paragraph shall apply to taxation on such property whether levied in respect of its ownership, possession, use or otherwise.
5. Service organisations shall be exempt from taxes on income and profits and shall not be liable to the laws of Mauritius governing the constitution, management, conduct and taxation of companies or other organisations as such.
6. The service authorities and service organisations shall have the right to import without licence or other restriction equipment, provisions, supplies and other goods required by them or required for the personal consumption or use of members of a visiting force, civilian component and dependants.
7. The following imports into Mauritius under paragraph 6 shall be free of duty—
 - (a) all imports by the service authorities; and

(b) imports by service organisations of reasonable quantities of equipment, provisions, supplies and other goods required for their exclusive use or consumption or for sale to members of a visiting force, civilian component and dependants for their exclusive use or consumption.

8. Members of a visiting force and civilian component may, at the time of their first arrival to take up service in Mauritius, and at the time of first arrival of any dependants to join them, import their personal effects and furniture and their private motor vehicle, free of duty for the term of such service.

9. Items imported under this Schedule—

(a) may be re-exported free of duty; and

(b) may without payment of any duty be sold or otherwise disposed of in Mauritius to the service authorities or members of the visiting force or civilian component, to dependants or to service organisations, but if but for the exemptions conferred by this provision, they would be chargeable to duty on importation they may only be sold or otherwise disposed of in Mauritius to other persons on payment of duty at their current value.

10. (a) Vessels, vehicles and aircraft which are the property of the service authorities or service organisations shall be exempt from any form of registration, licensing, compulsory testing or taxation in respect of their use and vehicles which are the property of the service authorities shall also be exempt from any form of compulsory insurance.

(b) For the purposes of this paragraph a vessel or aircraft on hire or charter to the service authorities and for the period of such hire or charter exclusively in their service shall be treated as being the property of the service authorities.

11. The movement of vessels, vehicles and aircraft belonging to, hired or chartered by the service authorities in or over Mauritius and territorial waters of Mauritius shall be free of compulsory pilotage, harbour charges and all dues or tolls except charges for specific services rendered at the request of the service authorities.

12. For the purposes of paragraphs 6, 7, 8 and 9—

(a) “duty” means customs duties and all other duties, taxes and *ad valorem* registration fees payable on importation and exportation, as the case may be, except dues and taxes which are no more than charges for services rendered;

(b) “importation” includes withdrawal from customs warehouses or contiguous customs custody, provided that the goods concerned have not been grown, produced or manufactured in Mauritius.