

ANTIGUA AND BARBUDA



ADVANCED PASSENGER INFORMATION (AMENDMENT) BILL, 2018

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CLAUSES

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AN ACT to amend the Advanced Passenger Information Act, No. 3 of 2016.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as the Advanced Passenger Information (Amendment) Act, 2018.

2. Interpretation

In this Act—

“principal Act” means the Advanced Passenger Information Act, No. 3 of 2016.

3. Amendment of section 2 - Interpretation

Section 2 of the principal Act is amended by—

(a) inserting the following definitions in their appropriate alphabetical order—

“ “Agent” means a person who is authorised in writing by the owner, captain or master of the aircraft or vessel to perform any function under this Act on behalf of the owner, captain or master as the case may be;

“Participating Countries” means Member States of the Treaty;

“Treaty” means the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy signed at Nassau, The Bahamas, on 5th July 2001;”

(b) repealing the definitions of “competent authority”, “CONSLE”, “crew member”, “passenger”, “technical stop” and “watch list” and replacing them as follows—

“ “competent authority” means the Chief Immigration Officer or such officer or entity as the Minister may appoint;

“Council for National Security and Law Enforcement” or “CONSLE” has the meaning assigned to it in the Treaty;

“crew member” means—

- (a) in relation to an aircraft, a licensed individual charged with duties essential to the operation of the aircraft during a flight; and
- (b) in relation to a vessel, an individual charged with performing duties essential to the operation of a vessel and the safety, entertainment and well-being of its passengers during a journey.

“passenger” means a person not being a crew, travelling or seeking to travel on an aircraft or vessel;

“technical stop” means the arrival of an aircraft or vessel in Antigua and Barbuda for purposes of refuelling, repairs, or as a result of an accident, unfavourable weather conditions, emergency or a similar purpose other than taking on or discharging passengers, baggage, cargo or mail;

“watch list” means a list that is used to watch or track the current activity or movements of—

- (a) criminals including—
 - (i) terrorists;
 - (ii) persons who have been found guilty of involvement with stolen and lost travel documents; and
 - (iii) criminal deportees; or
- (b) other persons of interest to the intelligence community.”

4. Repeal and replacement of section 3 – Duty to provide advanced passenger information

The principal Act is amended by repealing section 3 and replacing it as follows—

“3. Duty to provide advanced passenger information

- (1) This section applies to an aircraft or vessel which—
 - (a) is expected to arrive in Antigua and Barbuda, or
 - (b) is expected to leave Antigua and Barbuda.
- (2) The captain or master of every aircraft or vessel shall provide to the competent authority and IMPACS, the relevant API and data as set out in Schedule 1 relating to the flight or voyage.

(3) A captain or master who—

- (a) fails to provide API; or
- (b) intentionally or recklessly provides erroneous, faulty, misleading, incomplete or false API or transmits the API in an incorrect format,

commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(4) Where it is not practicable to provide the API within the timeframe set out in Schedule II or where the API provided is inaccurate and the captain, master or agent of the aircraft or vessel satisfies the competent authority that the error was not made knowingly or recklessly then notwithstanding any other provision of this enactment the captain, master or agent may not be charged for an offence.

(5) The Minister may, in consultation with the Minister with responsibility for National Security, waive the requirements of subsection (2) in such circumstances and subject to such conditions as the Minister may prescribe where the aircraft or vessel is—

- (a) a military or law enforcement aircraft or vessel; or
- (b) on official state business.”

5. Repeal and replacement of section 5 – Powers of the Competent Authority to verify

The principal Act is amended by repealing section 5 and replacing it as follows—

“5. Powers of the Competent Authority to verify

(1) The API provided under section 3 shall be verified by the Competent Authority during physical processing at any port of entry or exit by using the travel documents provided by the captain, master or agent or any crew member or passenger.

(2) The Competent Authority shall, if any discrepancy is found in the API, correct the data at the port of entry or exit and update the information in APIS after verifying it from the travel or other relevant documents of the crew member or passenger. In any prosecution for failing to comply with the provisions of this Act, the corrected data shall be *prima facie* evidence of the accuracy of the API.

(3) The captain, master or agent and any crew member or passenger thereof shall—

- (a) answer any question asked by the Competent Authority relating to the aircraft or vessel and its crew, passengers, voyage or flight and any persons that are carried by the aircraft or vessel; and
 - (b) forthwith at the request of the Competent Authority, produce any documents within that person's possession or control relating to any of those matters.
- (4) A person referred to in subsection (3) commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months or to both such fine and imprisonment if that person—
- (a) refuses to answer any question put to that person by the Competent Authority under subsection (3)(a) or knowingly gives a false answer to the question; or
 - (b) fails to comply with any request made under subsection (3)(b)."

6. Amendment of section 6 – vessel or aircraft arriving for non-traffic purposes or making a technical stop

The principal Act is amended in section 6 by—

- (a) repealing subsection (1) and replacing it with the following new subsection—

“(1) Section 3 does not apply to an aircraft or vessel which lands, berths, anchors or otherwise arrives in Antigua and Barbuda if the arrival is—

 - (a) required by any law or other requirement relating to navigation;
 - (b) a technical stop; or
 - (c) authorised by the Competent Authority.”
- (b) repealing subsection (4) and replacing it with the following new subsection—

“(4) A captain, master or agent who fails to comply with or acts in contravention of subsections (2) and/or (3) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year or to both such fine and imprisonment.”

7. Amendment of section 7

The principal Act is amended in section 7 by—

- (a) repealing and replacing paragraphs (d) and (e) of subsection (1) and replacing them with the following new paragraphs—

“(d) withhold clearance for the departure of an aircraft or vessel whose captain or master has not provided the API required pursuant to section 3, pending submission of the API; and

(e) assess the sufficiency, and error rates in review of API transmissions for each journey.”

- (b) inserting the following new subsection after subsection (2)—

“(2) To meet the exigencies of any case to which this Act may not be directly applicable or which is not provided for, the Competent Authority may permit action to be taken in such form and manner as it may direct.”

8. Amendment of section 11 – Amendment of the Schedules

The principal Act is amended in section 11 by repealing subsection (2) and replacing it with the following new subsection—

“(2) An Order made under subsection (1) shall be tabled in Parliament and be approved by Parliament by way of a Negative Resolution.”

9. Repeal and replacement of Schedule II

The principal Act is amended by repealing Schedule II and replacing it with the following new Schedule II—

SCHEDULE II

(Section 4)

Timeframe

1. In case of a commercial vessel or aircraft from a destination within the regional space, no later than 40 minutes prior to its departure from the last port of call;
2. In case of a private vessel or aircraft, arriving from a destination within the regional space, no later than 40 minutes prior to its departure from the last port of call;
3. In case of a vessel or aircraft, arriving from a destination outside the regional space, no later than 24 hours prior to arrival of that vessel or aircraft;

4. In the event of any changes to the vessel or aircraft header data or data relating to an individual on board, an updated API file is required to be submitted to the Competent Authority prior to departure of that aircraft or vessel;
5. In the case of a commercial vessel or aircraft, an API file is required to be submitted to the Competent Authority no later than 5 minutes immediately following the departure of that vessel or aircraft;
6. In the case of a private vessel or aircraft, an API file is required to be submitted to the Competent Authority prior to departure of that vessel or aircraft.

Passed by the House of Representatives
on the day of 2018.

Passed by the Senate on the
day of 2018.

Speaker

President

Clerk to the House of Representative

Clerk to the Senate

EXPLANATORY MEMORANDUM

The main objective behind the Advanced Passenger Information Act, 2016 (principal Act) was to implement a uniform legislative framework which made it mandatory for captains and Masters in command of aircrafts or vessels to provide information relating to the passengers and members of crew on board which is expected to arrive in or leave Antigua and Barbuda. The principal Act also provided timeframes, outlined under Schedule II, within which the relevant information is to be provided. Having put the legislation in place, a review of the Advanced Passenger Information Act 2016 was conducted on a regional level by the Legal Affairs Committee (LAC) of the Organization of Eastern Caribbean States (OECS) and some amendments were discussed and agreed upon. This bill, which contains nine (9) clauses, therefore seeks to amend the principal Act in light of the agreed changes.

Clause 3 of the bill introduces new terms and their definitions as used in the Act: “agent”, Participating Countries” and Treaty. This clause also repeals and replaces definitions which were previously included in the Principal Act. Two notable definitions are “Competent Authority” and “watch list”. Under the principal Act, “Competent Authority” was defined as, “... **the Chief Immigration Officer or someone appointed by him;**” under this amendment, the Competent Authority is defined as “...**the Chief Immigration Officer or such officer or entity as the Minister may appoint**”. It was felt among the members of the LAC that the Minister responsible for Immigration should have the responsibility to appoint a person to act as the Competent Authority instead of the Chief Immigration Officer. The definition of “watch list” although substantially the same, has been laid out differently for ease of understanding.

Clause 4 amends section 3 of the principal Act which makes it mandatory for advanced passenger information to be provided to the Competent Authority. Under the principal Act, the captain or master was under a duty to provide advanced passenger information to the Competent Authority. As a result, an ‘agent’ would escape criminal liability for non-conformity with any requirement that was placed on a captain or Master, although an agent may from time to time, carry out a function on behalf of a captain or a Master. The amendment now requires an agent to also provide advanced passenger information.

Clause 5 amends section 5 of the principal Act by adding two new subsections to what previously obtained. Subsection (3) requires the captain, master or agent as well as any crew member or passenger to either answer any question asked or to produce any document which was requested by the Competent Authority. Subsection (4) which is closely related to subsection (3), makes it an offence if any question which was asked of a person under subsection (3) was not answered, or if the person intentionally gave a false answer to a question which was asked, or if the requested documents were not provided.

Clauses 6 and 7 slightly amend sections 6 and 7 to strengthen the existing provisions. One such amendment in clause 7(3) provides for the Competent Authority to be able to direct certain action to be taken in the event of a situation occurring that the Act may not directly provide for.

Clause 8 amends section 11 of the principal Act and now requires that any Order made by the Minister to amend the Schedule is now subject to Negative Resolution of both Houses of Parliament. Under the principal Act, only the approval of the House of Representatives was needed.

Clause 9 repeals and replaces Schedule II. Consequently, in addition to the timeframes previously in place for the captains and masters of various vessels and aircrafts to submit an API file, it is now a requirement that an API file is to be submitted to the Competent Authority prior to departure of a private vessel or aircraft, or a commercial vessel or aircraft.

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Hon. Charles Fernandez
Minister responsible for
Immigration