

ANTIGUA AND BARBUDA



CRIMINAL PROSECUTIONS SERVICE BILL, 2017

No. 2017

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CRIMINAL PROSECUTIONS SERVICE BILL, 2017
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ANTIGUA AND BARBUDA

CRIMINAL PROSECUTIONS SERVICE BILL, 2017

No. 2017

AN ACT to provide for the establishment of the Criminal Prosecutions Service in Antigua and Barbuda and for matters connected therewith.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I

PRELIMINARY

1. Short title and Commencement

- (1) This Bill may be cited as the Criminal Prosecutions Service Act, 2017.
- (2) This Act comes into force on such date as the Attorney General determines by notice published in the *Gazette*.

2. Interpretation

In this Act—

“Chief Justice” means the Chief Justice of the Eastern Caribbean Supreme Court;

“code of practice” means a guide approved by the Director of Public Prosecutions for prosecutors on general principles to be applied when making decisions pertaining to prosecutions;

“Commissioner of Police” means the Commissioner of the Royal Police Force of Antigua and Barbuda;

“Constitution” means the Constitution of Antigua and Barbuda;

“Court of Appeal” means the Court of Appeal of the Eastern Caribbean Supreme Court;

“criminal proceedings” include—

- (a) any criminal proceedings in a Magistrate Court or High Court (except a court martial);
- (b) proceedings by way of coroner’s inquest or inquiry conducted under the Coroners Act, Cap.105; and

- (c) an appeal from the determination of any court in criminal proceedings or review or rehearing or proceedings of the same nature as review or rehearing or a case stated or a question of law reserved in respect of those proceedings.

“Deputy Director of Public Prosecutions” (“Deputy DPP”) means the person appointed under clause 9 as the Deputy Director of Public Prosecutions;

“Director of Public Prosecutions” (“DPP”) means the Director of Public Prosecutions appointed under section 87 of the Constitution;

“Office” means the Office of Criminal Prosecutions Service established by clause 4 of this Act;

“para-legal training” means training at a tertiary institution covering the major branches of law and their relation to each other, and the Constitution;

“Police Force” includes the Royal Police Force of Antigua and Barbuda established by the Police Act, Cap. 330 and any other body established by an Act of Parliament.

3. Purpose of the Act

The purpose of this Act is to give effect to section 88 of the Constitution by establishing an institutional framework in which is vested the power to institute and undertake all criminal proceedings in any court, except a court martial, in respect of an offence against any law in force in Antigua and Barbuda; and to secure the protection of the law to persons charged with criminal offences by ensuring that such offenders receive a fair hearing within a reasonable time.

PART II

OFFICE OF THE CRIMINAL PROSECUTIONS SERVICE

4. Establishment of the Office of Criminal Prosecutions Service

(1) There is hereby established an Office to be known as the Criminal Prosecutions Service headed by the Director of Public Prosecutions, which shall have responsibility to institute criminal proceedings in Antigua and Barbuda.

(2) Subject to the provisions of this Act, the Office of the Criminal Prosecutions Service shall have the staff presently attached to the Office of the Director of Public Prosecutions and such other staff as the Cabinet determines.

5. Legal status of the Director of Public Prosecutions

(1) There shall be a Director of Public Prosecutions, who shall be the principal Legal Officer of the Office of the Criminal Prosecutions Service and, subject to section 89 of the Constitution, exercise the powers conferred upon him by section 88 of the Constitution to the exclusion of any person or authority.

(2) For the purpose of the performance of his functions, the DPP may prosecute in his official title any offence against the laws of Antigua and Barbuda.

PART III

PRINCIPAL OFFICER AND STAFF OF THE CRIMINAL PROSECUTIONS SERVICE

6. Director of Public Prosecutions as principal officer

(1) The DPP shall have responsibility for the conduct of criminal cases in the Magistrate's Court, the High Court, the Court of Appeal, the Judicial Committee of the Privy Council, or any other appellate court established by law.

(2) The DPP shall be responsible to appear or cause a designated officer to appear, on his behalf, in any proceedings in which the DPP is named as a party.

(3) The DPP shall have responsibility for all administrative functions relating to the carrying out of the functions of the Office of the Criminal Prosecutions Service.

(4) The DPP may, in writing, delegate some of his functions, except the power to delegate, to such officers in the Office of the Criminal Prosecutions Service as he thinks fit.

7. Deputy Director of Public Prosecutions and other staff

(1) There shall be a Deputy Director of Public Prosecutions (Deputy DPP), who shall perform such functions as the DPP may assign to him, including the prosecution of criminal cases in any court.

(2) There shall be other professional staff, including persons with para-legal training, and non-professional staff for the purposes of the Office of the Criminal Prosecutions Service.

8. Appointment of the Director of Public Prosecutions

(1) The DPP shall, subject to section 87(4) of the Constitution, be appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission.

(2) For the avoidance of doubt, the person holding the office of DPP at the commencement of this Act shall, subject to section 87 of the Constitution, continue to hold that office on the terms and conditions of his appointment.

9. Appointment of Deputy Director of Public Prosecutions and other staff

(1) The Deputy DPP, the prosecutors and the administrative staff of the Office of the Criminal Prosecutions Service shall be appointed by the Judicial and Legal Service

Commission, or in the case of non-professional staff, by the Public Service Commission, in accordance with sections 100 and 103 of the Constitution.

(2) Other staff of the Office of The Criminal Prosecutions Service shall hold office on such terms and conditions as provided in their letters of appointment.

PART IV

GUIDELINES

10. Guidelines for prosecutors

(1) The DPP may, for the sole purpose of assisting prosecutors generally, prepare a code of practice to guide Prosecutors in determining—

- (a) whether proceedings for an offence should be instituted;
- (b) whether proceedings that have been instituted should be discontinued;
- (b) what charges should be preferred; and
- (c) whether to make representation to a Magistrate’s court about the mode of trial suitable for that case.

(2) The DPP may amend the code of practice prepared under subsection (1), taking into account amendments made to the law or decisions made by the Court of Appeal of the Eastern Caribbean Supreme Court, the Judicial Committee of the Privy Council or any appellate court established by law in which a legal issue, evidence or legislation is in *pari materia* with the issue and the law which concern the prosecution.

11. Guidelines to the Commissioner of Police or other investigating Authority

Where the DPP is of the opinion that a matter connected with an offence requires further investigation, the DPP may by instrument in writing, request the Commissioner of Police to conduct further investigations before instituting, taking over or carrying on a prosecution for the offence, and in so far as is practicable, the Commissioner of Police shall comply with the request.

PART V

POWERS AND FUNCTIONS OF THE DIRECTOR OF PUBLIC PROSECUTIONS AND OTHER MEMBERS OF STAFF

12. Powers and the Functions of the Director of Public Prosecutions

- (1) The DPP shall, subject to sub-section (2), exercise the following powers—
- (a) have overall conduct of criminal proceedings in Antigua and Barbuda;

- (b) institute and undertake criminal proceedings against any person before any court in respect of any offence against any law;
- (c) take over and continue any criminal proceedings that may have been instituted by any other person or authority;
- (d) discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority;
- (e) appear in proceedings before the International Criminal Court or in any court under the provisions of the Mutual Assistance in Criminal Matters Act 1993, No. 2 of 1993;
- (f) issue directions in relation to any criminal matter at any stage of the proceedings;
- (g) direct the appeal of a case where an accused is discharged by a Magistrate.

(2) Notwithstanding the provisions of subsection (1), the DPP shall exercise the powers conferred upon him by section 88 of the Constitution in accordance with the directions of the Attorney General in relation to offences against—

- (a) official secrets;
- (b) mutiny or incitement to mutiny, and
- (c) any offence under any law relating to any right or obligation of Antigua and Barbuda under international law.

(3) Without prejudice to anything contained in subsection (1), the DPP shall have conduct of all extradition proceedings in Antigua and Barbuda.

(4) The DPP shall, at the end of each law term, prepare a report for the Attorney General, of cases prosecuted during the preceding law term together with the result of each case and any comments and observations he may deem appropriate to bring to the attention of the Attorney General.

13. Functions of the Deputy Director of Public Prosecutions

The Deputy DPP shall perform such duties as the DPP may, in writing, assign to him.

14. Functions of other staff

The other staff, whether professional or non-professional, shall perform such duties as the DPP may, in writing assign to them.

PART VI

TRAINING, SUPERVISION AND REMOVAL OF STAFF

15. Training

- (1) The DPP shall—
 - (a) include in the annual budget of the Office of the Criminal Prosecutions Service, funds for the training and improvement of the staff; and
 - (b) with the approval of the Attorney General, secure funds from sources, other than the Government, to meet the cost of training of the staff of the Office of the Criminal Prosecutions Service .

(2) The DPP may, from time to time, arrange seminars for the benefit of all prosecutors to address complex cases or new decisions given by the Court of Appeal, the Privy Council, or any other appellate court established by law or any other court in the Commonwealth Caribbean.

(3) The DPP may designate a suitably qualified member of staff, as a Research Officer, to conduct research on the internet and to keep prosecutors abreast of new criminal cases from Caribbean Courts and elsewhere and download such cases for distribution to the DPP and all prosecutors.

(4) The Research Officer must also keep prosecutors informed of the enactment of new criminal offences or any amendments to the existing criminal statutes and to secure copies thereof for distribution to the DPP and all prosecutors in the Office of the Criminal Prosecutions Service.

(5) The Research Officer must, where an existing statute is amended, make appropriate notes in the margin of the section amended in the laws of Antigua and Barbuda for the professional and non-professional staff.

16. Supervision

(1) Class I prosecutors shall be supervised by the most Senior Prosecutor or such other prosecutor as the DPP determines.

(2) Class II prosecutors shall be supervised by the Deputy DPP or such other Senior Prosecutor as the DPP determines.

(3) All supervisors shall prepare weekly reports of the totality of cases prosecuted and their outcomes; and such reports must identify any contentious, factual or novel legal issues that may have arisen in any case prosecuted.

(4) All prosecutors must comply with the standard operating code of practice developed by the DPP.

- (5) The DPP may, in writing, vary the time period for the submission of such reports.

(6) The DPP shall designate a suitably qualified person to be the supervisor of the administrative staff.

(7) All supervisors shall be answerable to the DPP.

(8) For the purposes of this Part—

“Class I prosecutor” means—

- (a) a person who holds a certificate in para-legal studies and is employed in that capacity in the Office of the Criminal Prosecutions Service to prosecute criminal cases at the Magistrate Courts; or
- (b) a person with experience as a police prosecutor and is employed in that capacity in the Office of the Criminal Prosecutions Service to prosecute less complex cases at Magistrate Courts.

“Class II prosecutor” means a person who is an Attorney-at-Law employed in the Office of the Criminal Prosecutions Service to conduct criminal prosecution in all courts, and appear, on behalf of the DPP, in any appellate court.

17. Removal of the Director of Public Prosecutions from office

The DPP may be removed from office in accordance with the provisions of sections 87(7) to 87(10) of the Constitution.

18. Resignation

(1) The DPP may resign his office in writing and delivered to the Governor General and such resignation shall take effect as from the date of the receipt of such instrument by the Governor-General.

(2) The Deputy DPP or any member of staff may terminate his appointment in writing and delivered to the appointing authority.

19. Removal of other staff from office

(1) The removal of other officers of Office of the Criminal Prosecutions Service from office shall be in accordance with the procedure prescribed by the Judicial and Legal Service Commission, or in the case of non-professional staff, by the Public Service Commission.

(2) Where an officer was not appointed by the Public Service Commission, his or her removal shall be in accordance with the terms and conditions of his employment.

PART VII

REMUNERATION

20. Remuneration of the Director of Public Prosecutions and other staff

(1) The DPP shall be paid such remuneration and allowances as determined by the Cabinet.

(2) The Deputy DPP and other members of the professional staff shall be paid such remuneration on the terms and conditions agreed to in their contract of employment.

21. Scales for upward mobility of certain officers of Office of the Criminal Prosecutions Service

Without prejudice to anything contained in section 15, the Cabinet may, for the purpose of upward mobility, establish offices in the Office of the Criminal Prosecutions Service in accordance with the Civil Service Act Cap. 87 for the purpose of classification of the offices so established.

PART VIII

FUNDS OF THE OF OFFICE OF THE CRIMINAL PROSECUTIONS SERVICE

22. Funds of the Office of the Criminal Prosecutions Service

The funds of the Office of the Criminal Prosecutions Service shall consist of such moneys as may be appropriated by Parliament for the purposes of the Office of the Criminal Prosecutions Service.

23. Estimates of income and expenditure

The provisions of the Finance Administration Act, 2006, relating to estimates of income and expenditure, annual reports, accounts and audit of Departments of Government apply to the Office of the Criminal Prosecutions Service.

PART IX

MISCELLANEOUS

24. Oath or affirmation of office

(1) The DPP or other members of staff of the Office of the Criminal Prosecutions Service shall not perform the duties of the office unless an oath or affirmation is made in relation to that office in accordance with the form of oath or affirmation in the Schedule.

(2) An oath or affirmation under this section shall be made before a judge of the High Court.

25. Secondment or transfer

(1) At the commencement of this Act, any police officer, who is attached to the Office of the Criminal Prosecutions Service on transfer or secondment must make a determination as to whether he intends to continue in employment, on transfer or secondment to the Office of the Criminal Prosecutions Service, or return the Police Force.

(2) Any such determination must be made within three months after the commencement of this Act, or such further period approved by the Attorney General, after consultation with the DPP.

(3) Where an officer decides to continue on transfer to the Office of the Criminal Prosecutions Service, the pension and other benefits that have accrued at the date of transfer shall be carried over to his service in the Office of the Criminal Prosecutions Service.

(4) Without prejudice to anything contained in subsections (1) to (3), any police officer who is a prosecutor on transfer to the Office of the Criminal Prosecutions Service may be transferred to the Office of the Criminal Prosecutions Service, if the officer agrees to such transfer.

(5) Where an officer indicates that it is his intention to return to the Police Force, his service at the Office of the Criminal Prosecutions Service or Office of the Criminal Prosecutions Service shall be counted as service for the purposes of pension and other benefits.

26. Service of process on the Director of Public Prosecutions

A process addressed to the DPP is effective if served on a member of the staff who is a member of the professional staff of the Office of the Criminal Prosecutions Service.

27. Electronic technology

The Attorney General must ensure that the Office of the Criminal Prosecutions Service is fully equipped with cutting-edge electronic technology so as to permit the electronic filing of documents, the scheduling of different stages of criminal cases before the court, and other functions that may ensure the efficient operation of the Office of the Criminal Prosecutions Service.

28. Transitional Provisions

(1) At the coming into force of this Act—

- (a) any criminal case commenced in any Magistrate Court prior to the commencement of this Act shall continue and be deemed to have been authorised in writing by the DPP;
- (b) any police prosecutor assigned to prosecute any criminal case, prior to the commencement of this Act, shall continue to prosecute the case assigned to him and be deemed to have been authorised, in writing, by the DPP; and
- (c) any public officer, who is authorised by any law to prosecute offences against that law, shall continue to prosecute any such offence commenced prior to the commencement of this Act.

(2) Despite the provisions of any law in force in Antigua and Barbuda, and subject to subsection (1), no public officer shall, after the commencement of this Act, institute any criminal proceedings or undertake the prosecution of any criminal case in any court, unless he is authorised so to do, in writing by the DPP.

29. Rules and Regulations

The Chief Justice may make rules and regulations to give effect to the provisions of this Act, and the procedures to be followed in criminal trials.

30. Repeal

Section 31 of the Police Act, Cap. 330 is repealed.

SCHEDULE

(Section 24)

OATH

I, do swear that I will exercise the functions of the Office of Criminal Prosecutions without fear or favour, affection or ill-will according to the Constitution and laws of Antigua and Barbuda.

So help me God!

Sworn before me this day of
20.....

.....
JUSTICE OF THE HIGH COURT

AFFIRMATION

I, do solemnly and sincerely affirm that I will exercise the functions of the Office of Criminal Prosecutions without fear or favour, affection or ill-will according to the Constitution and laws of Antigua and Barbuda.

Affirmed before me this day of
20.....

.....
JUSTICE OF THE HIGH COURT

Passed the House of Representatives
this the day of 2017.

Passed the Senate
this day of 2017

Speaker

President

Clerk to the House of Representatives

Clerk to the Senate

EXPLANATORY MEMORANDUM

This Bill seeks to establish the Office of the Criminal Prosecutions Service under the direction of the Director of Public Prosecutions, who is appointed under sections 87 to 89 of the Constitution of Antigua and Barbuda. The Bill further addresses the powers and functions of the Director of Public Prosecution (DPP) in relation to the prosecution of criminal cases in Antigua and Barbuda.

The office which the Bill proposes to establish is designed to be independent of any person or authority in so far as it relates to the exercise of the powers conferred upon the Director of Public Prosecutions by the Constitution.

The Bill also addresses the powers and functions conferred upon police prosecutors and public officers by law to institute criminal proceedings against offenders of those laws. These powers are transferred to the Criminal Prosecutions Service Department in fulfilment of the powers vested in the DPP by the Constitution.

Provision is made in the Bill to deal with criminal proceedings initiated or pending before the coming into force of the establishment of the proposed Office of the Criminal Prosecutions Service. The Bill proposes that all criminal cases initiated by police prosecutors or public officers and pending in any court shall continue under the authority of the DPP.

The Bill further addresses and proposes fair and reasonable arrangement to enable police officers, currently attached to the Office of the Criminal Prosecutions Service to decide whether to transfer permanently to the Office of the Criminal Prosecutions Service or return to the Police Force.

The Bill is divided into nine (9) Parts and contains 30 clauses. Clause 1 proposes that the Bill be shortly entitled Criminal Prosecutions Service Bill.

Clause 2 of the Bill defines, for purposes of clarity and certainty, certain words and terms referred to in the Bill such as “criminal proceedings” and “Director of Public Prosecutions” to name a few.

Clause 3 clearly states the general objective behind the bill.

Clause 4 establishes the Office of the Criminal Prosecutions Service and vests it with the responsibility to institute criminal proceedings and to address other legal related matters arising out of such proceedings. Clause 4 also continues the services of the current staff of the Office of the Criminal Prosecutions Service in the proposed Office of the Criminal Prosecutions Service

In clause 5, the status of the Director of Public Prosecution as enshrined in the Constitution is reaffirmed and the current holder of that office continues to be the principal legal officer of the Office of the Criminal Prosecutions Service. This clause restates the powers and

functions, which section 88 of the Constitution conferred upon the DPP, and authorised to exercise those powers to the exclusion of any person or authority.

Clause 6 restates the status of the DPP, his powers and functions and his responsibility for the conduct of criminal cases in all courts, including the Privy Council and any other appellate court that may, in future, be established by law. In addition, to his responsibility over all criminal cases, the DPP is also charged with the administrative responsibility of the Office of the Criminal Prosecutions Service. This clause gives the DPP the discretion to delegate some of his responsibilities to officers of the Office of the Criminal Prosecutions Service.

The Bill proposes in clause 7 to create the position of a deputy DPP and other professional staff to assist the DPP in the performance of his functions.

In clause 8, the procedure for the appointment of the DPP as provided for in section 87(4) of the Constitution is restated and continued in office the current holder of the Office of the Director of Public Prosecution, subject only to section 87 of the Constitution.

Provision is also made in clause 9 for the appointment of a Deputy Director of Public Prosecutions and other professional staff of the State Prosecutions Service Department to be appointed by the Judicial and Legal Service Commission in accordance with section 103 of the Constitution. The appointment of non-professional staff are to be made by the Public Service Commission in accordance with sections 100 and 103 of the Constitution.

Under clauses 10 and 11 of the Bill, the Director of Public Prosecutions is authorised to prepare practice code to guide prosecutors in the performance of their duties. The practice code should include matters to be taken into account in determining the sufficiency of the evidence required to institute criminal proceedings and the area of weakness of the evidence revealed during the progress of the prosecution to determine the discontinuance of the case.

Clause 12 restates the powers and functions vested in the Director of Public Prosecutions by section 88 of Constitution, which he exercises to the exclusion of all others. This clause also highlights the powers he exercises in accordance with the direction of the Attorney General. These include offences against official secrets, mutiny, incitement to mutiny, offence under any law relating to the rights and obligations of Antigua and Barbuda under international law and the conduct of extradition proceedings. Furthermore, a duty is imposed upon the Director of Public Prosecutions to prepare a report of all cases prosecuted during each criminal law term for the Attorney General. The report should include any comments he considers appropriate to be brought to Attorney General's attention.

Clauses 13 and 14 provide that the Deputy Director of Public Prosecution and the professional staff of the Office of the Criminal Prosecutions Service shall only perform duties as assigned to them in writing, by the Director of Public Prosecutions.

Clause 15 addresses the program of training for the professional staff in performing their prosecutorial duties. In this regard, the Director of Public Prosecution is required to make

budgetary allocation for the training of staff and, with the approval of the Attorney General, secure funds from sources other than the Government for training of the staff.

Clause 16 creates two classes of prosecutors, namely class I and class II prosecutors. A class I prosecutor is defined as a person who has experience as a police prosecutor without para-legal qualification, such prosecutors are required to be supervised by the most Senior Prosecutor. A class II prosecutor is supervised by either the Deputy DPP or a senior prosecutor designated by the DPP.

Clauses 17, 18 and 19 address the removal of the DPP, the Deputy DPP and other members of staff of the Office of the Criminal Prosecutions Service from office, as well as the resignation of the DPP, Deputy DPP and other staff members. In the case of the DPP, his removal follows the procedure stipulated in sections 87(7) to 87(10) of the Constitution and, in the case of the Deputy DPP and other staff of the Office of the Criminal Prosecutions Service, in accordance with their contract of employment.

Clauses 20 and 21 make provision for fixing the remuneration of the DPP, the Deputy DPP and the other members of staff of the Office of the Criminal Prosecutions Service, as well as their upward mobility. It is proposed by clause 18(1) to request the House of Representatives to determine the salary and allowances of the DPP and, in the case of the Deputy DPP and other staff, as agreed to in the terms and conditions of their contract of employment.

Clause 22 addresses the sources of funding the operations of the State Prosecutions Service Department. These include moneys appropriated by Parliament, endowment and donations. It is proposed that no endowment and donation be accepted by the DPP, unless the endowment or the donation is approval by the Cabinet. Clause 23 applies the provisions of the Finance Administration Act, 2006 relating to estimates and expenditure to the Office of the Criminal Prosecutions Service

The provisions relating to secondment and transfer of officers and other transitional arrangements are extensively addressed in Part IX of the bill.

.....
Hon. Steadroy Benjamin
Attorney General and
Minister of Justice and
Legal Affairs