

CHAPTER 140A

**MUTUAL ASSISTANCE IN CRIMINAL
MATTERS**

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CHAPTER 140A

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

An Act to make provision with respect to the scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth and to facilitate its operation in Barbados, and to make provision concerning mutual assistance in criminal matters between Barbados and countries other than Commonwealth countries.

1992-8.
2001-33.
2002-6.

[2nd April, 1992] Commence-
ment.

PART I

Preliminary

1. This Act may be cited as the *Mutual Assistance in Criminal Matters Act*. Short title.

2. (1) In this Act Interpreta-
tion.
"article" includes document;

"benefit" has the meaning assigned thereto in the *Proceeds of Crime Act*; Cap. 143.

"central authority" means,

- (a) in relation to Barbados, the person or authority specified in or designated pursuant to section 3;
- (b) in relation to any Commonwealth country, the person or authority designated by that country for the purpose of transmitting and receiving requests under the scheme;

"Commonwealth country" means

- (a) a sovereign and independent country within the Commonwealth;

(b) a dependent country within the Commonwealth;

"criminal matter"

(a) in Part II means

(i) an investigation certified by the central authority for Barbados to have commenced; or

(ii) proceedings so certified to be criminal proceedings which have been instituted,

in Barbados in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of Barbados;

(b) in Part III, in relation to a Commonwealth country, means

(i) an investigation certified by the central authority for that country to have commenced; or

(ii) proceedings so certified to be criminal proceedings which have been instituted,

in the Commonwealth country in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of that country; and

(c) in Part II and Part III includes forfeiture proceedings, proceedings to restrain dealings with property, proceedings for the confiscation of property, and proceedings for the imposition of pecuniary penalties calculated by reference to the value of property or benefits, arising out of criminal proceedings, whether such proceedings be characterised as criminal or civil proceedings;

"document" includes

(a) anything on which there is writing;

(b) a map, drawing or photograph;

- (c) a thing from which sounds or visual images are capable, with or without the aid of a device, of being reproduced;
- (d) a copy, reproduction or duplicate of a document as so defined; and
- (e) a part of a document as so defined;

"judicial records" means judgments, orders and decisions of courts, and other records held by judicial authorities;

"official records" means documents held by government departments or agencies or prosecution authorities;

"property" includes money and all other property, real or personal, immovable or movable, including things in action and other intangible or incorporeal property, whether situated in Barbados or elsewhere, and includes any interest in any such property;

"relevant proceedings" means proceedings under or pursuant to this or any other Act arising directly or indirectly from a request for assistance under this Act by a Commonwealth country;

"restraining order" means a restraining order made under the *Proceeds of Crime Act*. Cap. 143.

"scheme" means the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth adopted by Commonwealth Law Ministers at their meeting in Harare in July to August 1986 and endorsed by the Commonwealth Heads of Government at their meeting in Vancouver in October, 1987;

"serious offence" means

- (a) in relation to Barbados, an offence against the law of Barbados
 - (i) for which the sentence is fixed by law,
 - (ii) for which a person may, under or by virtue of any enactment, be sentenced to 5 or more years imprisonment,

- (iii) the value of the property or benefits derived or obtained from the commission of which is, or is likely to be, not less than \$20 000 or such greater amount as may be prescribed; or
- (b) in relation to a Commonwealth country, an offence against the law of the country
 - (i) for which a sentence of death may be imposed,
 - (ii) for which a person may, under or by virtue of any enactment, be sentenced to 5 or more years imprisonment, or
 - (iii) the value of the property or benefits derived or obtained from the commission of which is certified by the central authority for the country to be, or to be likely to be, not less than such amount as is prescribed by or under the law of the country;

"transmitted" in relation to a request means

- (a) in Part II, transmitted by the central authority for Barbados to the central authority for the Commonwealth country from which assistance is requested; or
 - (b) in Part III, transmitted by the central authority for the Commonwealth country making a request for assistance to the central authority for Barbados.
- (2) A reference in this Act to the law of a Commonwealth country includes a reference to the law of a part of, or the law in force in a part of, that country.
- (3) For the purposes of this Act, a ship or aircraft of, or registered in Barbados or a Commonwealth country shall be deemed to be part of Barbados or, as the case may be, the Commonwealth country.
- (4) For the purposes of this Act, a person shall be deemed to have been charged with a serious offence in Barbados or, in a Commonwealth country, if any information or indictment has been laid or filed against the person for the offence, whether or not

(a) a summons to require the attendance of the person to answer to the information or indictment; or
 (b) a warrant for the apprehension of the person,
 has been issued.

(5) Where, in Barbados or a Commonwealth country

(a) a person is convicted by a court of a serious offence; and

(b) with his consent another serious offence, of which he has not been found guilty is taken into account by the court in passing sentence for the offence referred to in paragraph (a)

the person shall, for the purposes of this Act, be deemed to have been convicted by the court of the offence, so taken into account, on the date on which the sentence was so passed.

(6) A reference in this Act to property or benefits derived or obtained from the commission of an offence shall be deemed to include a reference to property used in, or in connection with, the commission of the offence.

3. (1) Subject to subsection (2), the Attorney-General shall be the central authority for Barbados.

Central
authority for
Barbados.

(2) The Attorney-General may by order published in the *Gazette*, designate any person or authority as the central authority for Barbados.

4. (1) Subject to subsection (2), this Act other than Part IV, shall apply in relation to all Commonwealth countries.

Application
of Act.

(2) The Attorney-General may by order published in the *Gazette*, direct that the application of this Act in relation to a particular Commonwealth country shall be subject to such conditions, exceptions or qualifications as are specified in the order and in that event this Act shall apply accordingly.

(3) The Attorney-General may by order published in the *Gazette*, amend or revoke an order made under this section.

Restrictions
with respect
to operation
of Act.

5. (1) Nothing in this Act derogates from existing forms, or prevents the development of other forms of co-operation (whether formal or informal) in respect of criminal matters between Barbados and any Commonwealth country, or between Barbados, or any enforcement agencies or prosecuting authorities in Barbados, and the International Criminal Police Organisation or any such agencies or authorities outside Barbados.

(2) Nothing in this Act authorises the extradition or the arrest or detention with a view to extradition, of any person.

PART II

Requests by Barbados to Commonwealth Countries for Assistance

Assistance
in obtaining
evidence.

6. Where there are reasonable grounds to believe that evidence or information relevant to a criminal matter may be obtained if, in a Commonwealth country

- (a)** evidence is taken from a person;
- (b)** information is provided;
- (c)** any
 - (i)** person,
 - (ii)** sample, specimen or other item from, or provided by a person, or
 - (iii)** remains which are, or may be human,is or are subjected to any examination or test;
- (d)** judicial records or official records are produced, copied or examined;
- (e)** any record or article is produced, copied or examined;
- (f)** samples of any matter or thing are taken, examined or tested; or
- (g)** any building, place or thing is viewed or photographed,

a request may be transmitted requesting that assistance be given by the country in so obtaining the evidence or information.

7. Where there are reasonable grounds to believe that a person who

(a) is or might be concerned in or affected by; or

(b) could give or provide evidence or assistance relevant to,

any criminal matter, is in a Commonwealth country, a request may be transmitted requesting that assistance be given by the country in locating that person or, if his identity is unknown, in identifying and locating him.

Assistance in locating or identifying persons.

8. Where there are reasonable grounds to believe that an article or thing is in a Commonwealth country and would, if produced, be relevant to any criminal matter, a request may be transmitted requesting that assistance be given by the country in obtaining, by search and seizure if necessary, the article or thing.

Assistance in obtaining article or thing by search and seizure if necessary.

9. Where there are reasonable grounds to believe that a person in a Commonwealth country could give or provide evidence or assistance relevant to a criminal matter, a request may be transmitted requesting that assistance be given by the country in arranging the attendance of the person in Barbados to give or provide that evidence, or assistance.

Assistance in arranging attendance of person.

10. (1) Where there are reasonable grounds to believe that a person who is a prisoner in a Commonwealth country could give or provide evidence or assistance relevant to a criminal matter, a request may be transmitted requesting the country to transfer the prisoner to Barbados to give or provide that evidence or assistance.

Assistance by transferring prisoner.

(2) Where, pursuant to a request under subsection (1), a prisoner is transferred to Barbados from a Commonwealth country subject to conditions with respect to his custody, release or return, or with respect to any other matter, the central authority for Barbados shall, unless and to the extent that the Commonwealth country waives their observance, take the necessary steps to ensure that the conditions are observed.

(3) Where any condition such as is referred to in subsection (2) requires that a prisoner be kept in custody while in Barbados, the prisoner shall, while in Barbados or travelling to or from Barbados pursuant to the request, be kept in such custody as may be prescribed.

(4) Nothing in this section shall be construed as conferring rights on a prisoner.

(5) In this section "prisoner" in relation to a Commonwealth country, means

(a) a person who

(i) is being held in custody pending trial for or sentence for,
or

(ii) is under sentence of imprisonment for
an offence against the law of that country; or

(b) is subject to any limitation on his personal liberty pursuant to that law.

Assistance
in serving
documents.

11. Where, for the purposes of, or in connection with, a criminal matter, it is necessary or desirable to serve any document on a person or an authority in a Commonwealth country, a request may be transmitted requesting that assistance be given by the country in effecting the service.

Restriction
on use of
evidence.

12. Any

(a) evidence or information obtained or, as the case may be, given or provided, by any person pursuant to a request such as is referred to in section 6, 9 or 10; or

(b) article, record or thing obtained pursuant to a request such as is referred to in section 6 or 8,

shall be used, by or on behalf of Barbados, only for the purposes of the criminal proceedings to which the request related or, any criminal proceedings consequent on the investigation to which the request related, unless the Commonwealth country to which the request was

made consents to the evidence or information being used for the purposes of any other criminal proceeding.

13. (1) Subject to subsection (2), a person in Barbados pursuant to a request such as is referred to in section 9 or 10

Immunities
and
privileges.

- (a) is not liable to be detained, prosecuted or punished in Barbados for any offence that is alleged to have been committed, or that was committed, before that person's departure, pursuant to the request, from the Commonwealth country to which the request was made;
- (b) may refuse to answer any questions or to produce any article, record or thing if the refusal is based on the law of Barbados; and
- (c) shall not be compelled to give or provide evidence, information or assistance for the purposes of, or in connection with, a criminal matter other than that to which the request relates.

(2) Subsection (1)(a) or (c) does not apply in relation to a person

- (a) if he leaves Barbados and then returns otherwise than pursuant to the same or another request; or
- (b) who has been notified by the central authority for Barbados that his presence is no longer required for the purposes of the request and who then remains in Barbados for more than 15 days after the first date on which he had a reasonable opportunity to leave Barbados.

(3) For the purposes of subsection (1)(a), an offence shall be treated as having been committed only on the date when the conduct constituting the offence was complete, notwithstanding that the offence concerned may be a continuing offence.

14. Where

(a) in Barbados a person

- (i) has been charged with, or convicted of, a serious offence;
- or

Assistance in
tracing
property.

- (ii) is suspected, on reasonable grounds, of having committed such an offence; and
- (b) property or benefits derived or obtained, directly or indirectly, from the commission of that offence is suspected, on reasonable grounds, to be in a Commonwealth country,

a request may be transmitted requesting that assistance be given by the Commonwealth country in accordance with the law of that country in identifying, locating or assessing the value or amount of the property or benefits.

Assistance
in relation to
certain
orders.

15. (1) Where

(a) in Barbados

- (i) a restraining order has been made restraining dealings with identified property which is, or is suspected on reasonable grounds of being, property derived or obtained, directly or indirectly, from the commission of a serious offence, or
 - (ii) a confiscation order or a forfeiture order has been made confiscating or forfeiting property or benefits derived or obtained, directly or indirectly, from the commission of a serious offence, or
 - (iii) a confiscation order has been made imposing on a person a pecuniary penalty calculated by reference to the value of property or benefits derived or obtained, directly or indirectly, by the person from the commission of a serious offence; and
- (b) property to which the restraining order would apply or, which is available for the satisfaction of the forfeiture order or confiscation order or pecuniary penalty under the confiscation order, is suspected, on reasonable grounds, to be in a Commonwealth country,

then subject to subsection (3), a request may be transmitted requesting that the order concerned be enforced in accordance with the law of the Commonwealth country and that, to that end, the country give appropriate assistance.

(2) Where a request to a Commonwealth country under this section has been accepted, the central authority for Barbados shall inform the central authority for that country if the confiscation order or forfeiture order or restraining order concerned is thereafter varied or ceases to have effect.

(3) A request shall not be made under this section for the enforcement of a confiscation order if the amount specified in the order or the total value of property required to satisfy the order or the pecuniary penalty under the order would be less than \$25 000 or such other amount as may be prescribed.

16. Where

(a) in Barbados,

- (i) a person has been, or is likely to be, charged with, or has been convicted of, a serious offence; and
- (ii) a confiscation order or a forfeiture order has been, or is likely to be, made confiscating or forfeiting property or benefits derived or obtained directly or indirectly from the commission of the serious offence; and

(b) property or benefits referred to in paragraph (a)(ii) are suspected, on reasonable grounds, to be in a Commonwealth country,

Assistance
in obtaining
order in
nature of
restraining
order.

a request may be transmitted requesting that an order be made, in accordance with the law of the Commonwealth country, restraining dealings with identified property or benefits and that, to that end, the country give appropriate assistance.

PART III

*Requests by Commonwealth Countries
to Barbados for Assistance*

17. (1) Subject to subsection (2), the *Schedule* applies in relation to a request for assistance under this Act made by a Commonwealth country.

Form of
requests.
Schedule

(2) Subsection (1) does not apply in relation to an informal request for assistance under this Act which is transmitted orally, but in the event that such a request is accepted

- (a) it is required to be implemented only to the extent that the central authority for Barbados considers reasonable; and
- (b) it shall be deemed to have been withdrawn if a request in accordance with subsection (1) for the assistance concerned is not transmitted within such period as the central authority for Barbados considers reasonable.

(3) Where a Commonwealth country making a request for assistance under this Act wishes the request, or any part of it, to be kept confidential, it shall so state, giving reasons, in the request, or in a document accompanying, but not forming part of, the request.

Acceptance
or refusal of
requests.
2002-6.

18. (1) Subject to this section and to the provisions of the *Anti-Terrorism Act*, a request for assistance under this Act duly made by a Commonwealth country shall be accepted.

(2) A request for assistance under this Act made by a Commonwealth country shall be refused if, in the opinion of the central authority for Barbados,

- (a) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
- (b) there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;
- (c) there are substantial grounds for believing that the request was made for the purpose of presecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality, place of origin or political opinions;

-
- (d) the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in Barbados, would not have constituted an offence under the criminal law of Barbados;
 - (e) the granting of the request would be contrary to the *Constitution* of Barbados, or would prejudice the security, international relations or any substantial interest related to national security or other essential public policy of Barbados;
 - (f) the request relates to conduct by a person which constitutes an offence in respect of which the person has already been convicted or acquitted by a court or tribunal in Barbados;
 - (g) the prisoner is not prepared to give his consent to the transfer in the case of a request such as is referred to in section 23(1);
 - (h) the request is for assistance of a kind which cannot be given under the Act, or would require steps to be taken for its implementation that could not be lawfully taken; or
 - (i) the implementation of the request would require an individual to act, or refrain from acting, in a certain way and the individual is not willing to do so and cannot be lawfully compelled to do so.

(3) A request for assistance under this Act made by a Commonwealth country may be refused if, in the opinion of the central authority for Barbados

- (a) the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in Barbados, would not have constituted an offence against the law of Barbados;
- (b) a request relates to the prosecution or punishment of a person in respect of conduct that occurred, or is alleged to have occurred, outside the country making the request and similar conduct occurring outside Barbados in similar circumstances would not have constituted an offence against the law of Barbados;
- (c) the request relates to the prosecution or punishment of a person

in respect of conduct where, if it had occurred in Barbados at the same time and had constituted an offence against the law of Barbados, the person responsible could no longer be prosecuted by reason of lapse of time or for any other reason;

- (d) the provision of the assistance would impose an excessive burden on the resources of Barbados;
- (e) the conditions, exceptions or qualifications imposed pursuant to section 4(2) in relation to the country prevent the request being accepted;
- (f) the request, not being one such as is referred to in section 17(2) does not meet the requirements of the *Schedule*;
- (g) there are reasonable grounds for doing so in the case of a request such as is referred to in section 23(1); or
- (h) the request cannot be accommodated within relevant legal practices and procedures in Barbados.

(4) If, in the opinion of the central authority for Barbados, the expense involved in complying with a request for assistance under the Act made by a Commonwealth country, and accepted, would be of an extraordinary nature, the central authority for Barbados shall consult with the central authority for the country as to the terms and conditions under which compliance with the request may continue and, in the absence of agreement in that regard, the central authority for Barbados may refuse to continue further with the request.

(5) Where any of the grounds referred to in subsection (2) or (3) apply in relation to some, but not all, of the matters in respect of which a request for assistance under this Act is made, nothing in this section operates to prevent the request being accepted to the extent that no such ground applies.

(6) If a request for assistance under the Act made by a Commonwealth country, other than an informal one made pursuant to section 17(2) is refused, the fact of and, subject to subsection (7), the grounds for, the refusal shall be given by the central authority for Barbados to the central authority for that country.

(7) In the case of a refusal of a request such as is referred to in section 23(1) the central authority for Barbados is not required to give grounds for the refusal.

(8) After giving preliminary consideration to a request for assistance under this Act made by a Commonwealth country, the central authority for Barbados may require the central authority for that country to furnish information relative to the request, and if that information is not furnished within such period as the central authority for Barbados considers reasonable the request shall be deemed to have been withdrawn.

(9) For the purposes of this section, an offence is not an offence of a political character if it is an offence within the scope of an international convention to which both Barbados and the Commonwealth country making the request are parties and which imposes on the parties thereto an obligation to afford mutual assistance in criminal matters relating to the offence.

19. (1) This section applies where a request is transmitted requesting assistance by Barbados in obtaining, by any of the means stated in section 6, evidence or information relevant to a criminal matter in relation to the Commonwealth country making the request, and the request is accepted.

Assistance to
country in
obtaining
evidence.

(2) Subject to this section, regulations may prescribe practices and procedures for obtaining evidence or information pursuant to a request for assistance under this section by a Commonwealth country.

(3) A person from whom evidence is taken in Barbados pursuant to a request for assistance under this section by a Commonwealth country

(a) may refuse to answer a question if

(i) the refusal is based on the law of Barbados,

(ii) to require the person to answer the question would constitute a breach of privilege recognised by the law of the Commonwealth country, or

(iii) to answer the question would constitute the commission by the person of an offence against the law of the Commonwealth country; and

(b) shall not be compelled to give or provide evidence or information for the purposes of, or in connection with, a criminal matter other than that to which the request relates.

(4) Where the request for assistance under this section is to the effect that evidence or information be obtained by the means stated in section 6(d) copies of records not publicly available may be produced, copied or examined only to the extent that they could be produced to, or examined by, enforcement agencies or prosecuting or judicial authorities in Barbados.

Assistance to country in locating or identifying person.

20. (1) This section applies where a request is transmitted requesting assistance by Barbados in locating or identifying and locating a person believed to be in Barbados, who

(a) is or might be concerned in or affected by; or

(b) could give or provide evidence or assistance relevant to,

a criminal matter in relation to the Commonwealth country making the request, and the request is accepted.

(2) Where this section applies, the central authority for Barbados shall use its best endeavours to have the person located, or identified and located, and shall inform the central authority of the Commonwealth country making the request as to the outcome of those endeavours.

Assistance to country in obtaining article or thing by search and seizure if necessary.

21. (1) This section applies where a request is transmitted requesting assistance by Barbados in obtaining, by search and seizure if necessary, an article or thing in Barbados for the purposes of, or in connection with, a criminal matter in relation to the Commonwealth country making the request, and the request is accepted.

(2) Where this section applies, the Attorney-General shall, unless the article or thing concerned is otherwise lawfully obtained, authorise the Commissioner of Police, in writing, to apply to a magistrate for a search warrant in respect of the article or thing.

(3) For the purposes of subsection (2), the Commissioner of Police may apply for the issue of a search warrant to a magistrate having jurisdiction in the area where the article or thing is believed to be located.

(4) The authorisation given to the Commissioner of Police pursuant to subsections (1) and (2) may be executed on his behalf by any member of the Police Force.

(5) The laws of Barbados with respect to the procedure for

(a) the making and disposal of an application for a search warrant;
and

(b) the execution of a search warrant,

apply, so far as they are capable of applying, to an application under subsection (3) and to the execution of any warrant issued pursuant to the application.

(6) The central authority for Barbados shall provide such certification as may be required by the central authority for the Commonwealth country making the request concerning the result of a search, the place and circumstances of any seizure, and the subsequent custody of the property seized.

(7) Where this section applies, the Attorney-General may give, in writing, authority to enable any article or thing obtained pursuant to a request to be removed to the Commonwealth country that made the request.

22. (1) This section applies where a request is transmitted requesting that assistance be given by Barbados in arranging the attendance in the Commonwealth country making the request, of a person in Barbados to give or provide evidence or assistance relevant to any criminal matter in relation to that Commonwealth country, and the request is accepted.

Assistance to
country in
arranging
attendance of
person.

(2) Where this section applies, the central authority for Barbados shall

- (a) inquire whether or not the person concerned is willing to attend as requested;
- (b) inform the central authority for the Commonwealth country making the request as to the outcome of the inquiry; and
- (c) if the person is willing to attend as requested, make appropriate arrangements to facilitate that attendance.

Assistance
to country
transferring
prisoner.

23. (1) This section applies where a request is transmitted requesting Barbados to transfer a prisoner in Barbados to the Commonwealth country making the request to give or provide evidence or assistance relevant to a criminal matter in relation to that Commonwealth country, and the request is accepted.

(2) Where this section applies, the central authority after consultation with the Minister responsible for Justice shall cause a prisoner to be transferred to the Commonwealth country making the request for the purpose of giving effect to the request.

(3) The central authority for Barbados may state, and inform the central authority for the Commonwealth country making the request as to, conditions subject to which a prisoner is to be transferred including conditions with respect to the custody, release or return of the prisoner.

(4) A period during which a prisoner is in custody in a Commonwealth country, pursuant to a request, shall be deemed for all purposes, to be time served in custody in Barbados.

(5) In this section, "prisoner" means a person who is being held in custody pending trial for, or sentence for, or is under imprisonment for, an offence, or is subject to any limitation on his personal liberty pursuant to any law.

Assistance
to country in
serving
documents.

24. (1) This section applies where a request is transmitted requesting assistance by Barbados in effecting the service of a document on a person or an authority in Barbados for the purposes of, or in connection with, a criminal matter in relation to the Commonwealth country making the request, and the request is accepted.

(2) Where this section applies, the central authority for

Barbados shall

- (a) use its best endeavours to have the document served
 - (i) in accordance with procedures proposed in the request, or
 - (ii) if those procedures would be unlawful or inappropriate, or no procedures are so proposed, in accordance with the law of Barbados; and
- (b) if the document
 - (i) is served, transmit to the central authority for the Commonwealth country making the request a certificate as to service, or
 - (ii) is not served, transmit to the central authority a statement of the reasons which prevented the service.
- (3) In this section, "document" does not include
 - (a) a subpoena; or
 - (b) a process
 - (i) requiring the attendance of a person before a court or tribunal in the Commonwealth country making the request, or
 - (ii) which attracts a criminal penalty or sanction for non-compliance with its requirements.

25. (1) This section applies where

- (a) the central authority for a Commonwealth country transmits to the central authority for Barbados a certificate given, for the purpose of a request for assistance under this section, by a person legally qualified in the Commonwealth country, to the effect that in the country a named person
 - (i) has been charged with, or convicted of, a specified serious offence, or

Assistance to
country in
tracing
property.

- (ii) is suspected, on reasonable grounds of having committed such a specified offence;
- (b) property derived or obtained, directly or indirectly, from the commission of that offence is suspected, on reasonable grounds, to be in Barbados;
- (c) a request is transmitted requesting assistance by Barbados in identifying, locating or assessing the value or amount of that property; and
- (d) the request is accepted.
- (2) Where this section applies, the central authority for Barbados shall
- (a) use its best endeavours to give the assistance requested and, in doing so, shall invoke the powers and procedures available for that purpose; and
- (b) inform the central authority for the Commonwealth country making the request as to the outcome of those endeavours.
- 26.** (1) This section applies where
- (a) an order is made in a Commonwealth country
- (i) confiscating or forfeiting property derived or obtained directly or indirectly from the commission of a specified serious offence;
- (ii) imposing on the person against whom the order is made, a pecuniary penalty calculated by reference to the value of property so derived or obtained; or
- (iii) restraining dealings with property which is, or is suspected on reasonable grounds of being, property so derived or obtained;
- (b) property available for the satisfaction of the order or the pecuniary penalty under the order, or to which the order would apply, is suspected, on reasonable grounds, to be in Barbados;

(c) a request is transmitted requesting that the order concerned be enforced in accordance with the law of Barbados and that, to that end, Barbados give appropriate assistance; and

(d) the request is accepted.

(2) Where this section applies, the Attorney-General shall cause an application to be made to the Supreme Court in accordance with the rules of the Supreme Court for the registration of the order concerned.

(3) On application made pursuant to subsection (2), the Supreme Court shall register the order if it is satisfied

(a) that at the time of registration the order is in force; and

(b) in the case of an order such as is referred to in subsection (1)(a)(ii)

(i) that the person against whom the order was made appeared in the proceedings or, if he did not do so, that he received notice of the proceedings in sufficient time to enable him to defend them, or that he had died or absconded before such notice could be given to him, and

(ii) that the order is not subject to appeal.

(4) Where an order is registered in accordance with this section, a copy of an amendment made to the order (whether before or after registration) may be registered in the same way as the order, and the amendments do not, for the purposes of this Act have effect until they are registered.

(5) An order or an amendment of an order shall be registered by the registration, in accordance with the rules of the Supreme Court, of

(a) a copy of the order or amendment sealed by the court or other authority making the order or amendment; or

(b) a copy of the order or amendment duly authenticated in accordance with section 31(2)(a).

(6) The Supreme Court shall, after appropriate notice has been given to the central authority for Barbados, cancel the registration of

an order made in accordance with this section if it appears to the court to have ceased to have effect in the Commonwealth country that made the request for assistance.

(7) Regulations may make provision for and with respect to the enforcement in Barbados of an order registered in accordance with this section and may, for that purpose, direct that any act shall apply in relation to the order, subject to the limitations, exceptions or restrictions (if any) as may be prescribed, and the Act shall apply accordingly.

(8) In this section "appeal" includes any proceedings by way of discharging or setting aside a judgment or an application for a new trial or stay of execution.

Assistance
to country in
obtaining
restraining
order.

27. (1) This section applies where

- (a) the central authority for a Commonwealth country transmits to the central authority for Barbados a certificate given, for the purposes of a request for assistance under this section, by a person legally qualified in the Commonwealth country, to the effect that in the country
- (i) a named person has been, or is likely to be charged with, or has been convicted of, a specified serious offence, and
 - (ii) an order has been, or is likely to be, made that has or, as the case may be, will have, the effect under the law of the country
 - (A) of confiscating or forfeiting property derived or obtained, directly or indirectly, from the commission of the serious offence, or
 - (B) of imposing on that named person a pecuniary penalty calculated by reference to the value of the property so derived or obtained;
- (b) property so derived or obtained, or which would be available to satisfy a pecuniary penalty under the confiscation order, or, under such an order if made, is suspected, on reasonable grounds to be in Barbados;

(c) a request is transmitted requesting that an order be made, in accordance with the law of Barbados, restraining dealings with property and that, to that end, Barbados give appropriate assistance; and

(d) the request is accepted.

(2) Where this section applies, the Attorney-General shall cause an application to be made to the Supreme Court in accordance with the rules of the Supreme Court to secure the making of an order of the kind requested.

(3) Regulations may make provision for and with respect to the implementation of a request under this section, and may for that purpose direct that any Act shall apply in relation to any such request, subject to limitations, exceptions or restrictions (if any) as may be prescribed; and the Act shall apply accordingly.

PART IV

Application of Act to Countries other than Commonwealth Countries

28. In this Part

Definitions.

"country" means a country other than one included in the definition of "Commonwealth country" in section 2(1);

"treaty" includes a convention, protocol, agreement or arrangement.

29. (1) This Act shall apply *mutatis mutandis*

(a) to any country which has a bilateral treaty with Barbados in respect of mutual assistance in criminal matters; and

(b) to any country which is party to the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Pyschotropic Substances, 1988*.

Mutual assistance between Barbados and non-Commonwealth countries. 2001-33.

(2) Unless the Minister otherwise directs, all expenses incurred in respect of any requests made under subsection (1)(b), must be paid by the country making the request.

(3) Any co-operation that is requested under subsection (1)(b) shall be rendered on the basis of reciprocity.

(4) The Attorney-General may by order published in the *Gazette* prescribe any limitation, condition, exception or qualification to the application of this Act as it applies to any country to which subsection (1)(b) relates.

PART V

Miscellaneous

Certificates
given by the
Attorney-
General.

30. (1) Where he is satisfied that it is the case, the Attorney-General may give a certificate in such form as he determines, certifying all or any of the following facts

- (a) that a request for assistance under this Act has been made by a Commonwealth country;
- (b) that the request meets the requirements of this Act;
- (c) that the acceptance of the request was duly made and in accordance with this Act.

(2) In any relevant proceedings a certificate purporting to have been given under subsection (1) shall be received as conclusive proof of the matters certified by the certificate.

Authentic-
ation.

31. (1) In any relevant proceedings a document that is duly authenticated is admissible in evidence.

(2) A document is duly authenticated for the purposes of subsection (1) if it purports to be

- (a) signed or certified by a Judge or magistrate of a Commonwealth country making a request;

- (b) authenticated by the oath of a witness, or of a public officer of a Commonwealth country making a request; or
- (c) sealed with an official or public seal of a Minister of State, or of a department or public office of the Government, of such a country.

(3) In any relevant proceedings, a certificate purporting to have been given

- (a) by the central authority for a Commonwealth country certifying the matters referred to in
 - (i) paragraph (b)(i) or (ii) or paragraph (c) of the definition of "criminal matter" in section 2(1); or
 - (ii) paragraph (b)(iii) of the definition of "serious offence" in section 2(1); or
- (b) by a legally qualified person for the purposes of a request for assistance under section 25 or 27

shall be received as evidence of the matters duly certified by the certificate.

(4) Nothing in this section operates to prevent the proof of any matter, or the admission of any documents, in accordance with the regulations or any other law.

32. (1) Where a person is to be transported in custody from a Commonwealth country through Barbados to another Commonwealth country pursuant to a request for assistance, of the kind referred to in the scheme, by the other Commonwealth country, the person Transit.

- (a) may be transported through Barbados in the custody of another person; and
- (b) if an aircraft or ship by which the person is being transported lands or calls at a place in Barbados, shall be kept in such custody as the Minister directs in writing until the person's transportation is continued.

(2) Where a person is being held in custody pursuant to a direction under subsection (1)(b) and the person's transportation is not, in the opinion of the Minister responsible for Justice, continued within a reasonable time, that Minister may direct that the person be transported in custody to the Commonwealth country from which the person was first transported.

Escaping.

33. A person who escapes from lawful custody while in Barbados pursuant to a request under section 10, or while being kept in custody pursuant to a direction under section 32(1)(b), commits an offence and is liable on conviction to imprisonment for 3 years.

**Arrest of
person who
has escaped
from
custody.**

34. (1) A police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person

(a) has been brought to Barbados pursuant to a request under section 10 or was being kept in custody pursuant to a direction under section 32(1)(b); and

(b) has escaped from lawful custody while in Barbados pursuant to the request, or while being so kept in custody.

(2) A person who has been arrested pursuant to subsection (1) shall be returned to custody in accordance with this Act.

Regulations.

35. (1) The Attorney-General may make regulations prescribing any matter necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular

(a) making provision as to evidence or proof of any matter for the purposes of this Act;

(b) prescribing expenses and allowance payable to a person in Barbados pursuant to a request;

(c) prescribing conditions to be imposed for the protection of an interest in any property to be sent to a requesting country pursuant to a request;

(d) prescribing conditions for the protection of any property sent to or by a Commonwealth country pursuant to a request, and making provision for the return of property in Barbados pursuant to a request;

(e) prescribing anything authorised or required by this Act to be prescribed.

(2) Regulations may, with such limitations, conditions, exceptions or qualifications as may be prescribed, extend the application of any

Act so as to enable any request by a Commonwealth country for assistance under this Act to be implemented or any assistance so requested to be given, and the Act shall apply accordingly.

(3) Regulations made for the purposes of section 19(2) may include procedures for, and powers in relation to, the taking of evidence in Barbados by commissioners from, or nominated by, the Commonwealth country concerned.

(4) Regulations made under this Act shall be subject to negative resolution.

SCHEDULE

Section 17(1)

Request for Assistance made by Commonwealth Countries

1. A request for assistance under this Act made by a Commonwealth country shall

- (a) specify the assistance requested;
- (b) identify the person, agency or authority that initiated the request;
- (c) state any period within which the country wishes the request to be complied with;
- (d) if the request would involve travel by any person from Barbados to the country, give details of allowances and accommodation to which the person would be entitled; and
- (e) contain such information as is available to the central authority for the country as will facilitate compliance with the request.

2. (1) Where the assistance requested by a Commonwealth country is for the purposes of an investigation, the request

- (a) shall be accompanied by the certificate, in relation to the investigation, that is referred to in paragraph (b)(i) of the definition of "criminal matter" in section 2(1); and

-
- (b) shall state when the investigation commenced and the nature of the investigation.
- (2) Where the assistance requested by a Commonwealth country is for the purposes of proceedings, the request
- (a) shall be accompanied by the certificate, in relation to the proceedings, that is referred to in paragraph (b)(ii) of the definition of "criminal matter" in section 2(1); and
- (b) shall
- (i) give details of the proceedings and the offence concerned, including a summary of the known facts;
- (ii) give the identity, if known, of the person to whom the proceedings relate or would relate; and
- (iii) state when the proceedings were instituted, the stage reached in the proceedings and, where applicable, identify the court exercising jurisdiction.
3. Where a request such as is referred to in section 19 is made by a Commonwealth country, the request
- (a) shall give details of the procedure that the country wishes to be followed in giving effect to the request, including details of the manner and form in which any evidence or information is to be supplied to that country;
- (b) shall, where relevant, indicate whether any person, from whom evidence is to be taken, is to be examined
- (i) orally or in writing;
- (ii) under oath;
- (iii) in the presence of his legal representative; or
- (iv) in the presence of the person to whom any relevant proceedings in that country relate;
- (c) shall, where evidence is to be taken from a person, specify the questions to be put to the person or the subject matter about which the person is to be examined;
- (d) shall, where evidence is to be taken from a person, give details of any special requirements of the country as to the manner of taking evidence relevant to its admissibility in the country; and

(e) shall give details of any privileges or exemptions under the law of the country in relation to obtaining evidence or information by the means proposed in the request.

4. Where a request such as is referred to in section 21 is made by a Commonwealth country, the request shall identify the article or thing which is to be obtained and, so far as is reasonably practicable, shall contain all information available to the central authority for the country which may be required to be adduced in an application under the law of Barbados for any necessary warrant or authorization to effect a seizure of that article or thing.

5. Where a request such as is referred to in section 23 is made by a Commonwealth country, the request shall identify the subject on which evidence or information is to be provided and state the reasons for requiring the personal appearance of the prisoner.

6. Where a request such as is referred to in section 24 is made by a Commonwealth country, the request

(a) shall be accompanied by the document to be served; and

(b) shall, where that document relates to the attendance of a person in the country, give such notice as that country is able to provide of outstanding warrants or other judicial orders in criminal matters against that person.

7. Where a request such as referred to in section 25 is made by a Commonwealth country, the request shall

(a) give details of the specified serious offence; and

(b) state the grounds for suspecting that the relevant property is in Barbados and give any information in the possession of the country which will assist in identifying or locating that property.

8. Where a request such as is referred to in section 26 is made by a Commonwealth country, the request shall

(a) be accompanied by a copy of the relevant order made in the country

(i) sealed by the court that made the order; or

(ii) duly authenticated,

and identify the law under which the order was made;

(b) give details of the specified serious offence;

- (c) state the grounds for suspecting that the relevant property is in Barbados and give any information in the possession of the country which will assist in identifying or locating the property; and
- (d) give particulars of any amount paid or recovered under the relevant order.

9. Where a request such as is referred to in section 27 is made by a Commonwealth country, the request

- (a) shall, if relevant, be accompanied by a copy of the order made in the country
 - (i) sealed by the court that made the order; or
 - (ii) duly authenticated,and identify the law under which the order was made;
- (b) shall, if relevant, state the grounds for believing that an order is likely to be made;
- (c) shall give details of the specified serious offence in respect of which the order was or, is likely to be made; and
- (d) state the grounds for suspecting that the relevant property is in Barbados and give any information in the possession of the country which will assist in identifying the property.