

DEFENCE (AMENDMENT) BILL, 2020*(Bill No. 16 of 2020)***OBJECTS AND REASONS**

The primary object of the Defence (Amendment) Bill, 2020, is to provide a legislative framework to govern the activities of the Seychelles Coast Guard. Further, the Bill seeks to repeal both the Seychelles People's Navy and the Seychelles People's Militia.

The Bill seeks to give the Seychelles Coast Guard those powers, duties, authorities and immunities that coast guards in other countries have. For instance, the coast guards will have the same powers of arrest in the maritime zones as the police, and the coast guards will be able to make arrests and gather evidence on land, in particular the outer islands, in connection with an offence committed in the maritime zones. Indubitably, these powers are essential to enable the coast guards to fight criminal activity, and to protect the environmental and economic interests of Seychelles, in the maritime zones. The Bill also consolidates some of existing powers that the coast guards have under the laws of Seychelles, namely: the Fisheries Act, 2014; the Maritimes Zones Act, Cap 122; and the Penal Code, Cap 158.

Many of the duties that are included in this Bill are already performed by the Seychelles Coast Guard but the Bill seeks to further promote administrative arrangements, resource-sharing and operational coordination amongst the Seychelles Coast Guard and any relevant authority.

Further, the Bill seeks to repeal both the Seychelles People's Navy and the Seychelles People's Militia, which were two branches of the Seychelles People's Defence Force that once existed from 1981 to the early 1990's; these two branches no longer exists in the Seychelles People's Defence Force.

Dated this 16th day of April, 2020.

**FRANK D. R. ALLY
ATTORNEY GENERAL**

DEFENCE (AMENDMENT) BILL, 2020

(Bill No. 16 of 2020)



A BILL

FOR

AN ACT to amend the Defence Act, Cap 58; to provide a legislative framework for the Seychelles Coast Guard; to repeal both the Seychelles People's Navy and the Seychelles People's Militia; and for matters incidental thereto.

ENACTED by the President and the National Assembly.

1. This Act may be cited as the Defence (Amendment) Act, 2020.

Short title

Amendment of
Cap 58 as last
amended by
Act 13 of 2006

2. The Defence Act is amended as follows —
- (a) by repealing the word “Navy”, wherever it appears in the Act, and substituting therefor with the words “Coast Guard”;
 - (b) in section 2 —
 - (i) by inserting in the proper alphabetical order the following definition —

““Coast Guard” means Seychelles Coast Guard;”
 - (ii) in the definition of “enrolled” by deleting the words “or Militia”;
 - (iii) by repealing the definition of “Militia”;
 - (iv) by repealing the definition of “Navy”;
 - (c) in section 3 —
 - (i) in paragraph (b) by repealing the words “The Seychelles People's Navy” and substituting therefor with the words “The Seychelles Coast Guard”;
 - (ii) by repealing paragraph (d);
 - (d) in section 4 by repealing the words “, Air Force and Militia” and substituting therefor with the words “and Air Force”;
 - (e) in section 5 in paragraph (b) by repealing the words “in section 30 and 32” and substituting therefor with the words “in sections 30, 32 and 35B.”
 - (f) in section 16 in subsection (3) by repealing the words “or to the Militia”;

- (g) by repealing section 19;
- (h) in section 25 in subsection (2) by repealing the words “or Militia”;
- (i) in section 28 by repealing the words “or of the Militia”;
- (j) in section 29 in subsection (1) by repealing the words “or the Militia”;
- (k) in section 31 by inserting immediately after the words “under section 30” the words “, 35B. or 35C.”;
- (l) by inserting immediately after section 35 the following new Part —

“PART VIA - THE SEYCHELLES COAST GUARD

Interpretation **35A.(1)** In this Part unless the context otherwise requires —

“hot pursuit” means hot pursuit as defined under Article 111 of the United Nations Convention on the Law of the Sea, 1982;

“innocent passage” means innocent passage as defined under the Maritime Zones Act, Cap 122;

“maritime zones” means the internal waters, the territorial sea, the exclusive economic zone, the contiguous zone, the archipelagic waters and the continental shelf of the Republic within the meaning of the Maritime Zones Act;

“narcotic drugs” shall be construed as meaning a controlled drug as defined by the Misuse of Drugs Act, 2016;

“piracy” means piracy as defined under the Penal Code Cap, 158;

“ship” means every description of vessel used in navigation, whether self-propelled or not, and it includes barges, jet skis, seaplanes and any other craft and similar vessels;

“trafficking in person” means trafficking in person as defined under the Prohibition of Trafficking in Persons Act, 2014.

Duties of
Coast
Guard

35B.(1) The Coast Guard shall, subject to the provisions of this Act, primarily be employed as a military service organization of the Defence Force for the defence of Seychelles and protection of its sovereignty and territorial integrity and rights in relation to the maritime zones of Seychelles.

(2) The Coast Guard and each member of the Defence Force thereof shall, without derogating from the investigatory or law enforcement powers of the police or any other authority, exercise and have —

- (a) all the powers, authorities, privileges and immunities of the police, under the Police Act, Cap 172, and any other law, and when acting as such shall be deemed to be acting as police for the purposes of the Police Act and any other law;

- (b) the powers of arrest, apprehension and detention conferred on authorized persons under section 23 of the Maritime Zones Act; and
- (c) the powers of arrest, investigation, inspection and detention conferred on an authorized fisheries officer, under the Fisheries Act, 2014, and when acting as such shall be deemed to be an authorized fisheries officer for the purposes of the Fisheries Act.

(3) The powers conferred by subsections (1) and (2) shall be for the purpose of the enforcement of Seychelles' maritime laws, maritime security, maritime safety and marine resource protection in relation to the maritime zones of Seychelles, and in particular the enforcement, or assistance in the enforcement of the provisions of any law relating to —

- (a) customs and revenue collection;
- (b) immigration and nationality;
- (c) quarantine;
- (d) ports and harbours;
- (e) fisheries protection;

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- (f) marine resources and environmental protection;
 - (g) safety of navigation;
 - (h) marine pollution;
 - (i) search and rescue;
 - (j) port security and safety;
 - (k) recreational boating safety;
 - (l) Port State Control;
 - (m) piracy, maritime crime and violence;
 - (n) trafficking of narcotic drugs;
 - (o) arms or ammunition trafficking;
 - (p) trafficking in person;
 - (q) transnational criminal activity;
 - (r) maritime terrorism;
 - (s) maintaining territorial integrity and sovereignty of Seychelles maritime zones;
 - (t) defence of Seychelles;
 - (u) protecting archaeological or history objects or sites;

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- (v) enforcement of all maritime conventions or agreements that the Republic is party to, including but not limited to those such as or, as the case may be, relating to the following —
- (i) Safety of Life at Sea (SOLAS);
 - (ii) Maritime Pollution (MARPOL);
 - (iii) Oil Spill Prevention Response and Cooperation (OPRC);
 - (iv) the International Load Lines Convention (ILA);
 - (v) United Nations Convention on the Law of the Sea (UNCLOS);
 - (vi) the Tonnage Convention.
- (w) to perform any other function that may be conferred by this Act or any other written law.

(4) In performing its functions under subsection (3) in relation to any matter, where the Coast Guard is not the authority with responsibility for that matter, the Coast Guard and its members shall act in consultation and coordination with the responsible Ministry, Department or

Agency, except in a case of emergency, as determined by the Commandant or other member of the Defence Force who at the time is in command of the Coast Guard.

(5) The Coast Guard shall cooperate with and assist any other public authority during emergencies or disasters or in the execution of a public authority's mandates in the maritime zones.

Powers of
Coast
Guard

35C.(1) The Coast Guard shall have the power to undertake all the actions necessary for the performance of its duties under this Act or any other written law.

(2) Notwithstanding the generality of subsection (1), the Coast Guard shall have the powers, consistent with international law, within the maritime zones, to —

- (a) receive and consider any report of the commission of an offence;
- (b) stop, enter, board, inspect or search any structure, place, ship or aircraft engaged in or suspected to be engaged in any unlawful activity;
- (c) seize or detain any ship or aircraft engaged in or suspected to be engaged in any unlawful activity;
- (d) demand the production of

any licence, permit, record or any other relevant document and to examine such licence, permit, record or document or make copies or take extracts from such licence, permit, record or document;

- (e) investigate any offence which it has reason to believe is being committed, is about to be committed or has been committed;
- (f) exercise the right of hot pursuit;
- (g) dispose of any fish, article, device, goods, ship, aircraft or any other item that is connected to the commission of an offence, subject to the provisions of this Act or any other written law;
- (h) arrest any person, in the maritime zones or on land, who it has reason to believe has committed an offence in the maritime zones, and secure or preserve evidence, whether in the maritime zones or on land, relating to the offence for which the person is under arrest:

provided that the arrested person and any

evidence preserved shall be handed over to a member of the Police Force as soon as practicable;

- (i) conduct research, study or any training necessary for the performance of its functions;
- (j) record statements or make inquiries, inspections or examinations as may be necessary under this Act or any other written law;
- (k) assist in environmental protection and anti-poaching; and
- (l) expel any ship or aircraft whose presence in the maritime zones is detrimental to the national interests of Seychelles, or is likely to endanger order and safety in the maritime zones.

(3) Subsection (2) shall be without prejudice to the performance by any authority of similar duties under any enactment enabling it to do so.

Innocent
passage

35D. The Coast Guard shall not stop, enter, board, search, inspect or detain a ship or aircraft in the maritime zones if the passage of the ship or aircraft in the maritime zones is innocent passage.

Immunity of
members of the
Defence Force

35E. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Defence Force in respect of any act done in good faith in pursuance or execution of the member's duties or powers under this Act.”;

- (m) in section 36 by repealing the words “and Militia”.