

ANTIGUA AND BARBUDA
OFFICE OF NATIONAL DRUG AND MONEY
LAUNDERING CONTROL POLICY ACT, 2003

ARRANGEMENT OF SECTIONS

Sections

PART I — PRELIMINARY

1. Short title.
2. Interpretation.

**PART II — ESTABLISHMENT AND FUNCTIONS,
ETC. OF THE ONDCP**

3. Establishment of the Office of National Drug and Money Laundering Control Policy.
4. Appointment of Director and Deputy Director.
5. Delegation of functions.
6. Disqualification for appointment and vacation of office of Director or Deputy Director.
7. Removal of Director or Deputy Director from office.
8. Appointment and discipline of employees.
9. Continuation of tenure of office of Director, Deputy Director, etc.
10. Functions of the ONDCP.
11. Performance of ONDCP functions.
12. Co-operation and liaison with other authorities in and outside Antigua and Barbuda.
13. Financial resources of ONDCP.
14. Estimates of income and expenditure, etc.

PART III — POWERS OF ONDCP OFFICERS

15. Appointment of officers.
16. Requirement to give name and address.
17. Power of arrest and search without warrant.
18. Detention of person in custody.
19. Bail by recognisance.
20. Right to communicate with a friend, relative and legal practitioner.
21. Right of foreign national to communicate with consular office.
22. Fingerprinting and photographing.
23. Recording of interviews.
24. Authority to carry and use firearms.

PART IV — WARRANTS

25. Warrants.
26. Arrest warrants.
27. Arrest of person against whom a warrant to arrest has been issued.
28. Search warrants.
29. Recall and cancellation of warrant.
30. Persons to whom a warrant may be directed.

PART V — MISCELLANEOUS

31. Offences against ONDCP Officers.
32. Confidentiality of ONDCP information.
33. Disclosure of information.
34. Impersonating an ONDCP Officer.
35. Penalties for offences.
36. Protection from personal liability.
37. Regulations.

PART VI

38. Amendment of the Money Laundering (Prevention) Act 1996.



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

5th December, 2003.

ANTIGUA AND BARBUDA

No. 11 of 2003

AN ACT to establish the Office of National Drug and Money
Laundering Control Policy, to provide for its functions and
powers and for other related matters. °

[18th December, 2003]

ENACTED by the Parliament of Antigua and Barbuda as
follows:

PART I

PRELIMINARY

1. This Act may be cited as the Office of National Drug and Money Laundering Control Policy Act, 2003. Short title.

2. In this Act — Interpretation.

“appropriate facility” means a police station, prison or other facility designated by the Director in writing as an appropriate facility for the purposes of this Act.

"Deputy Director" means the Deputy Director of the ONDCP appointed under section 4;

"Director" means the Director of the ONDCP appointed under section 4;

Cap. 283. "drug trafficking offence" has the same meaning as in the Misuse of Drugs Act;

Act No. 9 of 1996. "financial institution" has the same meaning as in the Money Laundering (Prevention) Act 1996;

"member of the ONDCP" means the Director and Deputy Director and any person appointed pursuant to section 7;

"Minister" means the Prime Minister unless specifically provided otherwise;

Act No. 9 of 1996. "money laundering offence" has the same meaning as in the Money Laundering (Prevention) Act 1996;

"Officer of the ONDCP" means the Director and Deputy Director and any person appointed to be an Officer of the ONDCP pursuant to section 15;

"ONDCP" means the Office of National Drug and Money Laundering Control Policy established under section 3;

Act No. 9 of 1996. "proceeds of crime" has the same meaning as in the Money Laundering (Prevention) Act 1996;

"specified offence" means any of the following offences:

- (a) a money laundering offence;
- (b) a drug trafficking offence;
- (c) an offence or a conspiracy to commit an offence involving fraud or obtaining property by deception;
- (d) an offence under section 4, 5, 6, 7, 8, or 9, of the Prevention of Terrorism Act 2001; or
- (e) an offence under this Act.

Act No. 15 of 2001.

PART II

ESTABLISHMENT AND FUNCTIONS OF THE
OFFICE OF NATIONAL DRUG AND MONEY
LAUNDERING CONTROL POLICY

3. (1) There is established by this Act the Office of National Drug and Money Laundering Control Policy (in this Act referred to as the ONDCP).

Establishment of the Office of National Drug and Money Laundering Control Policy.

(2) The Director shall be a corporation sole in whom are vested the legal personality and capacity of the ONDCP under this Act.

(3) The House of Representatives shall appoint a Standing Committee for the purposes of subsection (3) of section 4.

4. (1) The Minister shall on the advice of Cabinet appoint —

(a) a Director; and

(b) a Deputy Director,

Appointment of Director and Deputy Director.

of the ONDCP on such terms and conditions, including remuneration and allowances, as are determined by the Cabinet.

(2) The Director shall be responsible for the day-to-day management and administration of the ONDCP and for the performance of its functions under this Act and of the functions conferred upon him under any other written law.

(3) The Director shall, from time to time, make written reports to the Minister and to the Standing Committee established pursuant to subsection (3) of section 3 on the performance of the functions of the ONDCP and the Committee may make recommendations on those reports.

(4) During any period when the Director or an Acting Director is absent from Antigua and Barbuda or is, for any reason, unable to perform the functions of the office of Director, the Deputy Director shall be responsible for the performance of those functions.

5. The Director may, either generally or in any particular case, in writing delegate to the Deputy Director or to an officer

Delegation of functions.

of the ONDCP, any of the following functions of the Director under this Act or under any other law which confers functions on the Director.

Disqualification for appointment, and vacation of office of Director or Deputy Director.

6. (1) A person shall not be qualified to be appointed Director or Deputy Director if that person —

- (a) is a member of the Senate or the House of Representatives;
- (b) is a director, officer or employee of any financial institution;
- (c) holds, directly or by proxy a shareholding of more than five percent of the issued capital in a financial institution; or
- (d) has been convicted of an offence in respect of which a penalty of imprisonment for twelve months or more is provided for.

(2) The Director or the Deputy Director shall vacate office —

- (a) if any of the circumstances set out in subsection (1) arise; or
- (b) on attaining the age of seventy-five.

Removal of Director or Deputy Director office.

7. (1) A person holding the office of Director or Deputy Director may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour.

(2) If the Minister represents to the House of Representatives that the question of removing the Director or the Deputy Director under subsection (1) should be investigated, the Speaker shall, in accordance with the Standing Orders of the House, appoint a Select Committee of the House consisting of a Chairperson and two other members to enquire into the matter and to submit a report and a recommendation to the House whether the Director or the Deputy Director, as the case may be, ought to be removed from office.

(3) If the Committee appointed under subsection (2) recommends that the Director or the Deputy Director ought to be removed from office, the Minister shall remove that person from office.

8. (1) The Director —

Appointment and discipline of employees.

- (a) may appoint to the service of the ONDCP such suitable persons, including persons seconded from other sectors of the public service, as he may consider appropriate for the performance of the functions of the ONDCP; and
- (b) may engage such other persons as may be required from time to time by the ONDCP in the performance of its functions,

on such terms and conditions, including remuneration and allowances, as the Cabinet may determine.

(2) Persons appointed or engaged pursuant to subsection (1) shall be referred to as members of the ONDCP.

(3) The Director shall be responsible for the conduct and disciplinary control, including the suspension, termination or dismissal from office, for good cause, of members of the ONDCP.

(4) The Director shall establish standards, procedures and processes governing the appointment, conduct and disciplinary control of members of the ONDCP.

(5) Nothing in the Civil Service Act shall be construed as affecting the right or authority of the Director in respect of the matters referred to in subsection (3).

Cap. 87.

9. (1) A person who, on the commencement of this Act, holds office as Director or Deputy Director or holds any other office in the ONDCP shall, on that date, become a member of the ONDCP and shall continue to hold that office in accordance with the terms and conditions of his appointment immediately before the commencement of this Act.

Continuation of tenure of office of Director, Deputy Director, etc.

(2) The provisions of this Act relating to vacation of office, removal from office and disciplinary control, as the case may be, shall apply to persons referred to in subsection (1).

Functions of the
ONDCP.

10. (1) The functions of the ONDCP are —

- (a) to enforce the provisions of the Money Laundering (Prevention) Act 1996;
- (b) to investigate reports of suspicious activity concerning specified offences and the proceeds of crime;
- (c) to collect, receive, collate, analyse and act upon suspicious transaction reports and reports of suspicious activity;
- (d) to liaise with law enforcement agencies and Financial Intelligence Units outside Antigua and Barbuda concerning drug trafficking, money laundering and specified offences whether committed in Antigua and Barbuda or elsewhere;
- (e) to disseminate information concerning suspicious transactions or other activities suspected of being criminal in nature with the Commissioner of Police, the Comptroller of Customs; the Financial Sector Regulatory Commission or the heads of other government departments or agencies;
- (f) to co-ordinate the implementation of policies for the reduction of demand for illicit drugs;
- (g) to provide training for the public service and financial institutions within Antigua and Barbuda as to their duties and responsibilities to prevent, detect, report and deter the commission of specified offences and to facilitate the tracing and confiscation of the proceeds of crime.

(2) The Minister may give written directions on Government policy to the ONDCP concerning the performance of its functions.

Performance of
ONDCP
functions.

11. Upon receipt of information leading to a suspicion that a specified offence has been or may be committed or that pro-

ceeds of crime are or may be located within Antigua and Barbuda, the ONDCP may, in the performance of its functions, do any one or more of the following:

- (a) investigate the commission of the offence; or
- (b) take whatever steps may be appropriate to freeze and confiscate the proceeds of crime; or
- (c) submit a report referring the matter to the Commissioner of Police or the Comptroller of Customs or any other Government Department for investigation.

12. (1) The ONDCP shall, in the performance of its functions, co-operate and liaise with —

- (a) the Royal Antigua and Barbuda Police Force, the Antigua and Barbuda Defence Force, the Customs Department, Financial Sector Regulatory Commission and other Government and local authorities in Antigua and Barbuda; and
- (b) the relevant authorities specified by or under a treaty for co-operation on any matter provided for in this Act and to which Antigua and Barbuda is a party.

Co-operation and liaison with other authorities and persons in and outside Antigua and Barbuda.

(2) The Director may, for the purpose of facilitating the performance of the functions of the ONDCP and with the approval of the Cabinet, enter into an agreement or arrangement in writing with the public authority or authorities of a foreign State which have similar functions to those of the ONDCP.

(3) The Director may, in any particular case in the performance of his functions, co-operate or liaise with any other entity or individual in or outside Antigua and Barbuda that, in the opinion of the Director, is properly concerned in the matter under investigation or in legal proceedings relating to that matter under this Act.

13. The funds of the ONDCP shall consist of —

- (a) such moneys as may be appropriated by Parliament for the purposes of the ONDCP;

Financial resources of ONDCP.

- (b) such grants and donations from any source as may be approved by the Minister; and
- (c) such other moneys as may vest in or accrue to the ONDCP in the performance of its functions under this Act or under any other law.

Estimates of
income and
expenditure, etc.
Cap. 168.

14. The provisions of Part VII of the Finance and Audit Act relating to the estimates of income and expenditure, annual reports, accounts and audit of statutory bodies shall apply to the ONDCP.

PART III

POWERS OF OFFICERS

Appointment of
officers.

15. (1) The Director may appoint a person who is a member of the ONDCP to be an officer of the ONDCP for the purpose of exercising the powers provided for in this Part.

(2) The exercise of the powers provided for under this Part by ONDCP officers shall be subject to the supervision and direction of the Director.

Requirement to
give name and
address.

16. (1) An ONDCP Officer may, upon presentation of his or her official identification, request a person to state his or her name and address if the Officer believes on reasonable grounds that the person —

- (a) has committed or is about to commit a specified offence, or
- (b) may be able to assist in the investigation of a specified offence which has been committed or is suspected of having been committed.

(2) A person who, in response to a request made by an ONDCP Officer in accordance with this section —

- (a) refuses or fails to comply with the request; or
- (b) states a name that is false in a material particular;
or

- (c) states an address other than the full and correct address of his or her ordinary place of residence or business

is guilty of an offence.

17. (1) An ONDCP Officer may, at any time without a warrant, arrest any person that he suspects on reasonable grounds is committing or has committed a specified offence or that he is escaping or has escaped from lawful custody in connection with any offence.

Power of arrest
and search
without warrant.

(2) Upon arresting a person pursuant to subsection (1) an ONDCP officer may search that person and any vehicle or premises occupied or controlled by that person or upon which that person was located at the time of or immediately prior to arrest and seize any document or thing found in the course of the search which appears to be evidence of an offence.

(3) In addition to the powers contained in this section an ONDCP Officer may exercise the powers conferred upon a police officer pursuant to section 23 of the Misuse of Drugs Act.

Cap. 283.

18. (1) Every person taken into custody by an ONDCP Officer for a specified offence or any other offence must be —

Detention of
person in
custody.

- (a) released unconditionally; or
- (b) released on bail; or
- (c) brought before a magistrate within forty-eight hours.

(2) An ONDCP Officer who has custody of a person may request the officer in charge of any appropriate facility to hold that person until required for the purpose of taking him before a magistrate.

(3) Before any questioning (other than a request for the person's name and address) commences, an ONDCP Officer must inform the person in custody that he or she does not have to say or do anything but that anything the person does say or do may be given in evidence.

Bail by
recognizance.

19. (1) Where a person is arrested without warrant by an ONDCP Officer it shall be lawful for the Director or Deputy Director to take bail by recognizance, with or without surety, for the appearance of that person before a magistrate on the day specified in the recognizance to be dealt with according to law.

(2) The provisions of any law relating to the taking of bail by recognizance by police officers shall apply to the taking of bail by recognizance under this section.

Right to
communicate
with a friend,
relative and legal
practitioner.

20. (1) Before any questioning of a person detained in custody commences, the ONDCP Officer must inform the person in custody that he or she —

- (a) may communicate with or attempt to communicate with a friend or relative to inform that person of his or her whereabouts; and
- (b) may communicate with or attempt to communicate with a legal practitioner

and unless the ONDCP Officer believes on reasonable grounds that —

- (i) the communication would result in the escape of an accomplice or the fabrication or destruction of evidence; or
- (ii) the questioning is so urgent having regard to the safety of other people, that it should not be delayed —

the ONDCP Officer must defer the questioning for a time that is reasonable in the circumstances to enable the person to make, or to attempt to make, the communication.

(2) Subject to subsection (1), if a person wishes to communicate with a friend, relative or legal practitioner, the ONDCP Officer in whose custody the person is —

- (a) must afford the person reasonable facilities as soon as practicable to enable the person to do so; and
- (b) must allow the person's legal practitioner or a clerk of the legal practitioner to communicate with the

person in custody in circumstances in which, as far as practicable, the communication will not be overheard.

21. (1) If a person in custody is not a citizen of Antigua and Barbuda, the investigating ONDCP Officer in whose custody the person then is, must inform the person in custody that he or she may communicate with or attempt to communicate with any consular office of the country of which the person is a citizen located within Antigua and Barbuda (if any) and, unless the ONDCP Officer believes on reasonable grounds that —

Right of foreign national to communicate with consular office.

- (a) the communication would result in the escape of an accomplice or the fabrication or destruction of evidence; or
- (b) the questioning is so urgent having regard to the safety of other people, that it should not be delayed —

the ONDCP Officer must defer the questioning for a time that is reasonable in the circumstances to enable the person to make, or to attempt to make, the communication.

(2) Subject to subsection (1), if a person wishes to communicate with the consular office of the country of which the person is a citizen, the ONDCP Officer in whose custody the person is must afford the person reasonable facilities as soon as practicable to enable the person to do so.

22. (1) An ONDCP Officer may take the fingerprints of or photograph a person who —

Fingerprinting and photographing.

- (a) is suspected on reasonable grounds to have committed; or
- (c) has been charged with; or
- (c) has been summonsed to answer a charge for —

a specified offence.

(2) An ONDCP Officer intending to fingerprint or photograph a person under this section must inform the person in a language that the person understands —

- (a) of the purpose for which the fingerprints or photographs are required; and
- (b) of the offence which the person is suspected of having committed or with which the person has been charged or for which the person has been summonsed to answer to a charge; and
- (c) that the fingerprints or photographs may be used in evidence in court; and
- (d) that if the person refuses to give his or her fingerprints voluntarily or to cooperate in the taking of photographs, an ONDCP Officer may, on the authorisation of the Director, use reasonable force.

(3) An ONDCP Officer may use reasonable force to take the fingerprints of a person or to photograph a person referred to in subsection (1) who refuses to give the fingerprints or cooperate in the taking of photographs voluntarily if the use of reasonable force is authorised by the Director or the Deputy Director.

**Recording of
interviews.**

23. (1) When questioning a person pursuant to subsection 18 (3) or questioning any other person an ONDCP Officer may use audio or video equipment to record the questioning of the person and anything said by the person during their questioning.

(2) Where a recording is made pursuant to subsection (1) a copy of the recording shall be made available to the person questioned, or their legal representative, within 7 days of the recording being made.

(3) Where a transcript is made of a recording made pursuant to subsection (1) a copy of the transcript shall be made available to the person questioned, or their legal representative, within 7 days of the transcript being made.

(4) Any recording made pursuant to this section is admissible in any court as evidence of the questions and statements put to the person being questioned and of anything said by that person during their questioning.

24. Notwithstanding the provisions of the Firearms Act, an ONDCP officer authorised by the Director in writing may carry and, in the course of duty, use a firearm, subject to the same rights and obligations applicable to a police officer under the Firearms Act and any other law, but the requirement under the Firearms Act to be in possession of a firearm user's licence with respect to firearms and ammunition shall not apply to an officer so authorised.

Authority to carry and use firearms.

Cap. 171.

PART IV

WARRANTS

25. The following warrants may be issued — Warrants.

- (a) arrest warrants;
- (b) search warrants.

26. (1) A warrant to arrest in the first instance may be issued by a magistrate — Arrest warrants.

- (a) against a person charged with a specified offence at the time of filing a charge or at any subsequent time;
- (b) against a witness if the person issuing it is satisfied that —
 - (i) it is probable that the witness will not answer a witness summons; or
 - (ii) the witness has absconded, is likely to abscond or is avoiding service of a witness summons that has been issued.

(2) An application for a warrant to arrest in the first instance must be supported by evidence on oath or by affidavit.

(3) A warrant to arrest other than in the first instance may be issued by a High Court Judge or a magistrate —

- (a) when the person charged fails to appear before the Court in answer to the summons; or

- (b) when a person has been duly served with a witness summons and fails to attend before the Court in answer to the witness summons; or
- (c) when the person charged fails to attend before the Court in accordance with his or her bail or otherwise fails to comply with a condition of his or her bail; or
- (d) as authorised by this or any other Act.

(4) A warrant to arrest other than in the first instance must include a statement of the reason for issuing the warrant.

Arrest of person
against whom a
warrant to arrest
has been issued

27. (1) If a warrant to arrest a person charged with a specified offence has been issued, an ONDCP Officer or Police Officer may arrest the person although a copy of the warrant is not at that time in the possession of the arresting officer.

(2) In order to arrest a person in respect of whom a warrant pursuant to section 26 has been issued an ONDCP or Police Officer may use reasonable force to enter and search any place where the ONDCP Officer or Police Officer, on reasonable grounds, suspects him to be.

Search warrants.

28. (1) Any magistrate who is satisfied by the evidence on oath or by affidavit of an ONDCP Officer or Police Officer that there is reasonable ground for believing that there is, or will be within the next 72 hours, in any building, receptacle, vehicle or place anything which there is reasonable ground to believe will afford evidence as to the commission of a specified offence may at any time issue a warrant authorising an ONDCP Officer or police officer to search such building, receptacle, vehicle or place for any such thing and to seize it to be dealt with according to law.

(2) In order to enter a place for the purpose of executing a warrant issued pursuant to subsection (1) an ONDCP Officer or police officer may, if it is necessary to do so, use reasonable force.

Recall and
cancellation of
warrant.

29. (1) Upon the application of an ONDCP Officer or police officer a warrant issued by a magistrate may be recalled and cancelled by that or any other magistrate.

(2) Upon the application of an ONDCP officer or police officer a warrant issued by a Judge of the High Court may be recalled and cancelled by that Judge or any other Judge of the High Court.

(3) If a warrant has been recalled and cancelled under subsection (1) or (2), a fresh warrant may be issued for the same purpose as that for which the recalled warrant was issued.

30. (1) A warrant pursuant to sections 26 or 28 shall be directed to a named ONDCP Officer or police officer.

Persons to whom a warrant may be directed.

(2) A warrant pursuant to sections 26 or 28 directed to a named ONDCP Officer or police officer may be executed by any ONDCP Officer or police officer.

PART V

MISCELLANEOUS

31. (1) Any person who obstructs an ONDCP Officer in the course of performing his or her duties commits an offence.

Offences against ONDCP Officers.

(2) Any person who assaults an ONDCP Officer in the course of performing his or her duties commits an offence.

32. Any person who is a member of the ONDCP who divulges information that has come into his possession as a result of his employment in the ONDCP to another person other than in the proper exercise of their duties commits an offence.

Confidentiality of ONDCP information.

33. (1) Subject to subsection (2) any person (other than a member of the ONDCP) who in the course of his business obtains or receives information about the commission of an offence from the ONDCP commits an offence if he knowingly —

Disclosure of information.

(a) discloses the information to any person; or

(b) discloses the fact that an investigation is being conducted by the ONDCP.

(2) Notwithstanding subsection (1) above a person who receives information in accordance with subsection (1) may communicate that information to a legal practitioner for the sole purpose of obtaining legal advice. Any legal practitioner who receives information for this purpose shall be deemed to have received it from the ONDCP and is subject to the provision of subsection (1).

Impersonating an
ONDCP Officer.

34. Any person not being an ONDCP Officer who impersonates an ONDCP Officer or is found in possession of identification or other designation purporting to be the identification or designation of an ONDCP Officer commits an offence.

Penalties for
offences.

35. (1) A person convicted of an offence under subsection 16 (2) or section 34 is liable on summary conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 6 months or both.

(2) A person convicted of an offence under section 31 (1) is liable on summary conviction to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding one year or both.

(3) A person convicted of an offence under subsection 31 (2), or sections 32 or 33 is liable —

(a) on summary conviction, to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding two years or both; or

(b) upon conviction on indictment, to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding five years or both.

Protection from
personal liability.

36. The Director, the Deputy Director, any member of the ONDCP and any other person authorised to perform any function under this Act shall not be personally liable in connection with any act done by him in good faith in the discharge of his functions.

Regulations.

37. The Minister may make regulations necessary or convenient to be prescribed for carrying out or giving effect to this Act.

PART VI

CONSEQUENTIAL AMENDMENTS

38. Section 10 of the Money Laundering (Prevention) Act 1996 is repealed and replaced with the following:

“The person appointed to be Director of the ONDCP pursuant to section 4 of the Office of National Drug and Money Laundering Control Policy Act, 2003 shall be the Supervisory Authority under this Act.”

Amendment of
the Money
Laundering
(Prevention) Act
1996.
Act No. 9 of
1996.

Passed the House of Representatives this 4th
day of September, 2003.

B. Harris,
Speaker.

S. Walker,
Clerk to the House of Representatives.

Passed the Senate this 18th day
of September, 2003.

M. Percival,
President.

S. Walker,
Clerk to the Senate.

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