

IMMIGRATION (AMENDMENT) BILL, 2017

EXPLANATORY NOTES

The Bills seeks to amend the Immigration Act CAP. 145 to implement the new approach to facilitate the provision of advanced passenger information relating to passengers and members of crew of an aircraft or vessel and to share the information with other States with a view to identifying persons who may pose risks to security.

Clause 1 provides for the short title and the commencement of the Act for which this is the Bill.

Clause 2 provides for the sections of the principal Act to be organised into Parts.

Clause 3 provides for amendment to section 2 of the principal Act to insert a definition for “passenger” and to revise the definition for “vessel”.

Clause 4 provides for repeal of section 8A of the principal Act.

Clause 5 provides for repeal of section 10 of the principal Act.

Clause 6 provides for insertion of Part III which is numbered from sections 9A to 9I, containing nine (9) new sections.

Clause 7 provides for amendment to subsection (2) of section 39 of the principal Act to insert a new paragraph (j).

Clause 8 provides for repeal of the current First Schedule and replacement with a new First Schedule.

.....
A.K. Cajeton Hood
ATTORNEY-GENERAL

IMMIGRATION (AMENDMENT) BILL, 2017

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Separation of principal Act into Parts
3. Amendment of section 2 of principal Act
4. Repeal of section 8A of principal Act
5. Repeal of section 10 of principal Act
6. Insertion of new Part III to principal Act
7. Amendment of section 39 of principal Act
8. Amendment of First Schedule of principal Act

IMMIGRATION (AMENDMENT) BILL, 2017

GRENADA

ACT NO. OF 2017

AN ACT to amend the Immigration Act, Chapter 145 to improve the procedure to facilitate the provision of Advanced Passenger Information relating to passengers and members of crew of an aircraft or vessel and to share the information with other States with a view to identifying persons who may pose risks to security; and for matters connected therewith.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives and by the authority of the same as follows—

Short title and commencement

1. (1) This Act may be cited as the

IMMIGRATION (AMENDMENT) ACT, 2017,

and shall be read as one with the Immigration Act, Chapter 145 hereinafter referred to as the “principal Act”.

- (2) This Act shall come into effect on a date appointed by the Minister by Order published in the *Gazette*.

Separation of principal Act into Parts

2. The principal Act is amended by separating and grouping the sections into Parts as follows—

- (a) sections 1 to 3 shall constitute **PART I – PRELIMINARY;**
- (b) sections 4 to 9, excluding section 8A, shall constitute **PART II – ALIENS AND PROHIBITED ALIENS;**
- (c) sections 11 to 23 shall constitute **PART IV – GRANT OF PERMITS TO VISITORS AND PASSENGERS;**
- (d) sections 24 to 25 shall constitute **PART V – PERMANENT RESIDENCE;**
- (e) sections 26 to 35 shall constitute **PART VI – ORDERS;**

- (f) sections 36 to 37 shall constitute **PART VII – OFFENCES**;
- (g) sections 38 to 39 shall constitute **PART VIII – MISCELLANEOUS**.

Amendment of section 2 of principal Act

3. Section 2 of the principal Act is amended as follows—

- (a) by inserting the following new definition in the appropriate alphabetical position—

“**passenger**” means any person not being a bona fide member of the crew, travelling or seeking to travel on an aircraft or vessel;”;

- (b) by repealing the definition for “vessel” and substituting therefor the following new definition—

“**vessel**” means any ship, boat, yacht, air cushion or other floating or submersible transportation, including amphibious vehicles, hydrofoil craft and hovercraft, by means of which persons and goods can travel across international borders.”.

Repeal of section 8A of principal Act

4. The principal Act is amended by repealing section 8A.

Repeal of section 10 of principal Act

5. The principal Act is amended by repealing section 10.

Insertion of new Part III to principal Act

6. The principal Act is amended by inserting after section 9 the following new Part—

**“PART III
ADVANCE PASSENGER INFORMATION**

Interpretation for Part III

9A. In this Part—

“**advanced passenger information**” and “**API**” mean the information or data concerning a crew member, passenger or any other person travelling in an aircraft or vessel as set out in Part A of the First Schedule;

“**advanced passenger information system**” and “**APIS**” mean the automated electronic data interchange of API; and the screening of API

by the competent authority, IMPACS and JRCC against a Watch List for any API hit;

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

“aircraft” includes an aeroplane or a helicopter or other means of airborne navigation by means of which persons, goods or both can travel across international borders;

“API hit” means a name present on the Watch List;

“captain” means the pilot of an aircraft designated by the operator, or in the case of general aviation, the owner or pilot designated by the owner, as being in command and charged with the safe conduct of the flight;

“commercial aircraft” means an aircraft which engages in transporting passengers or goods for monetary gain;

“Competent Authority” means the Chief Immigration Officer or someone appointed by him;

“CONSLE” means the Council for Security and Law Enforcement in CARICOM;

“crew” means—

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

“IMPACS” means the Implementing Agency for Crime and Security established under the 2006 Agreement establishing the CARICOM Implementing Agency for Crime and Security;

“INTERPOL” means the International Criminal Police Organisation;

“JRCC” means the Joint Regional Communication Centre which is a sub-agency of IMPACS;

“master” includes every person having command or charge of a vessel other than a pilot;

“private aircraft” means any aircraft which is not a commercial or state owned or leased aircraft;

“Stop for non-traffic purposes” shall carry the same meaning as “technical stop”;

“technical stop” refers to the landing by an aircraft or vessel at any designated port in Grenada for the purpose of refuelling, conducting repairs, or for any emergency or similar purpose not including the taking on or discharging of passengers, baggage, cargo or mail;

“Watch List” means a list that is used to watch or track the activities or movements of criminals and persons who have been found guilty of any offence involving stolen and lost travel documents (SLTD), criminal deportees, suspected terrorists and other persons of interest to the intelligence community.

Duty to provide Advanced Passenger Information

9B. (1) This section applies to an aircraft or vessel which—

- (a) is expected to arrive in Grenada, or
- (b) is expected to depart Grenada.

(2) The captain, master or agent of every aircraft or vessel shall provide to the competent authority and IMPACS, the relevant API and data relating to the flight or voyage as set out in Part A of the First Schedule.

(3) A captain, master or agent who—

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

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

(4) Where the API provided is inaccurate and the captain, master or agent of the aircraft or vessel satisfies the Competent Authority that the error was not made knowingly or recklessly, then notwithstanding any other provision of this enactment, the captain, master or agent, as the case may be, may not be charged for the offence.

(5) In addition to any information provided pursuant to subsection (2) the Competent Authority may—

- (a) question any captain, master or agent, member of crew or passenger in relation to the aircraft or vessel, any member of crew or passenger, the voyage or flight; or
- (b) request any person within the category of persons mentioned in paragraph (a) to forthwith produce any document within that person's possession or control in relation to the questions put to him.

(6) Any captain, master, agent, or member of crew or passenger who—

- (a) refuses to answer or knowingly gives a false answer to any question put to him by the Competent Authority; or
- (b) fails to comply with any requests under subsection (5)
 - (b) commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or to both such fine and imprisonment.

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

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

Timeframe

9C. API data shall be submitted to the Competent Authority in accordance with the timelines set out in Part B of the First Schedule.

Powers of the Competent Authority to verify

9D. (1) The API provided under section 9B (2) shall be verified by the Competent Authority during physical processing of any passenger or member of crew at any port of entry or exit by comparing the API information to the information contained in the travel document presented by the passenger or member of crew.

(2) The Competent Authority shall, if any discrepancy is found in the API, immediately correct the data and update the information in APIS.

Vessel or aircraft arriving

9E. (1) Nothing in section 9B applies to an aircraft or vessel which makes a technical stop or lands, berths, anchors, or otherwise arrives or stops at any port for non-traffic purposes if the arrival is—

- (a) required by any statutory or other requirement relating to navigation;
- (b) compelled by any emergency, accident, unfavourable weather conditions, or other necessity; or
- (c) authorised by the Competent Authority.

(2) Where an aircraft or vessel arrives or stops for any of the reasons outlined in subsection (1) the captain or master shall—

- (a) forthwith report to the Competent Authority;
- (b) with the consent of the Competent Authority, permit any of the crew members or passengers to disembark from the aircraft or vessel; and
- (c) comply with any directions given by the Competent Authority in respect of any crew, or passenger carried on the aircraft or vessel.

(3) Subject to any authorisation granted by the Competent Authority, no member of crew and no passenger on the aircraft or vessel, shall without the consent of that authority disembark from the aircraft or vessel, and all such persons shall comply with any directions given by the Competent Authority.

(4) A captain or master who fails to comply with or acts in contravention of this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year or to both such fine and imprisonment.

(5) Notwithstanding subsection (4), the disembarkation of any member of crew or passenger from the aircraft or vessel shall not constitute an offence, if the disembarkation is necessary for reasons of health, safety or the preservation of life.

Powers and duties of the Competent Authority

9F. (1) The Competent Authority shall—

- (a) co-ordinate with IMPACS on all matters relating to the APIS;
- (b) if requested, allow the crew or passenger from an aircraft or vessel access to his personal identifiable information maintained in the APIS to ensure its correctness; but no member of crew or passenger shall have access to any information provided by IMPACS or JRCC through the screening of API by IMPACS and JRCC against a Watch List for any API hit;
- (c) determine, after consultation with IMPACS, the admissibility or otherwise of any passenger or member of crew into Grenada;
- (d) withhold clearance for the departure of an aircraft or vessel whose captain or master has not provided the API required pursuant to section 9B; and
- (e) assess the sufficiency of API information provided for each journey and review API transmissions to assess error rates.

(2) Notwithstanding paragraphs (a) and (c) of subsection (1), any decision with respect to the admissibility or inadmissibility into Grenada of passengers or members of crew from an aircraft or vessel shall be made solely by the Competent Authority.

Use and sharing of API with regional and international security agencies

9G. (1) IMPACS shall use the APIS to conduct screening against Watch Lists of members of crew and passengers on aircraft and vessels that enter into, depart from and travel within the regional space in order to provide information to assist participating countries.

(2) IMPACS may share the information contained within APIS with INTERPOL and any other national, regional or international intelligence,

law enforcement or security agencies or centres approved by CONSLE in order to further national, regional or international security.

(3) API shall only be used for the purposes mentioned in this Part.

Retention of API

9H. (1) The API collected under this Part for entry screening purposes shall be retained for a period not exceeding three years from the date of travel of the crew or the passenger.

(2) Nothing contained in subsection (1) shall apply to the data copied from the APIS into any other security database system to which a different data retention schedule applies.

Amendment of the First Schedule

9I. (1) The Minister may by Order published in the Gazette amend the First Schedule, in consultation with CONSLE with respect to API.

(2) Any Order made under subsection (1) shall be subject to affirmative resolution.”.

Amendment of section 39 of principal Act

7. Section 39 of the principal Act is amended in subsection (2) as follows—

(a) by deleting the “full-stop” at the end of paragraph (i) and substituting therefor a “semi-colon”; and

(b) by inserting after paragraph (i) the following new paragraph—

“(j) procedures for the gathering of information and for the collaboration and sharing of information with the agencies mentioned in this Act.”.

Amendment of First Schedule of principal Act

8. The principal Act is amended by repealing the First Schedule and substituting therefor the following new schedule—

“FIRST SCHEDULE

PART A

ADVANCED PASSENGER INFORMATION

(section 9B(2))

(I) **Data relating to the flight or voyage (Header Data):**

Flight Identification

(IATA Airline code and flight number)

Vessel Identification

(Vessel name and voyage number)

Country of Registration

(Country where vessel is registered)

Agent/Owner (*where applicable*)

(Name of Agent for the aircraft or vessel or where no Agent, Name of Owner)

Call Sign (If applicable)

Schedule Departure Date

(Date of Scheduled departure of vessel based on local time of departure location)

Scheduled Departure Time

(Time of scheduled departure of vessel based on local time of arrival location)

Scheduled Arrival Date

(Date of scheduled arrival of vessel based on local time of arrival location)

Scheduled Arrival Time

(Time of scheduled arrival of vessel based on local time of arrival location)

Last Place/Port of Call of Aircraft or Vessel

(Vessel departed from this last foreign place/port of call to go to “place/port of vessel initial arrival”)

Place/Port of Aircraft or Vessel Initial Arrival

(Place or Port in the country of destination where the vessel arrives from the “last place or Port of call of aircraft or vessel)

Subsequent Place/Port of Call within the country/regional space

Number of Passengers on board

(total number of Passengers on Board)

Number of crew on board

(II) **Data relating to each individual on board:**

Official Travel Document Number

(Passport or other Government approved travel document)

Issuing State or Organization of the Official Travel Document

(Name State or Organization responsible for the issuance of the official document)

Official Travel Document Type

(Indicator to identify type of official travel document)

Expiration Date of Official Travel Document

(Expiration date of the official travel document)

Surname/ Given Name(s)

(Family name and given name(s) of the holder as it appears on the travel document)

Nationality

(Nationality of the holder of the travel document)

Date of Birth

(Date of birth of the holder)

Gender

(Gender of the holder)

Place of Birth

(Please give City and Country of birth)

Traveller's Status

(Passenger, crew, in-transit)

Place/Port of Original Embarkation

(Place/Port on that journey where traveller first boarded for foreign travel)

Port/Place of Clearance

(Place/Port where the traveller is cleared by the border control agencies)

Place/Port of Onward Foreign Destination

(Foreign place/port where the traveller is transiting)

Passenger Name Record (PNR) Data

(As available in the traveller's Passenger Name Record in the carrier's Reservation System including all historical changes to the PNR listed)
Must include:

- (1) PNR record locator;
- (2) Date of reservation/issue of ticket;
- (3) Date(s) of intended travel;
- (4) Name(s);
- (5) Address and contact information (telephone number, e-mail address);
- (6) All forms of payment information, including billing address;
- (7) Complete travel itinerary for specific PNR;
- (8) Frequent flyer information;
- (9) Travel agency/Travel agent;
- (10) Travel status of passenger, including confirmations, check-in status, no show or go show information;
- (11) Split/divided PNR information;
- (12) General remarks (including all available information on unaccompanied minors under 18 years, such as name and gender of the minor, language(s) spoken, name and contact details of guardian on departure and relationship to the minor, name and contact details of guardian on arrival and relationship to the minor, departure and arrival agent);
- (13) Ticketing field information, including ticket number, date of ticket issuance and one way tickets, Automated Ticket Fare Quote fields;
- (14) Seat number and other seat information;
- (15) Code share information;
- (16) All baggage information;

- (17) Number and other names of travellers on PNR;
- (18) Any Advance Passenger Information (API) data collected;
- (19) All historical changes to the PNR listed in numbers 1 to 18.

(III) **Additional Data Elements**

Visa Number (if applicable)

Issue Date of Visa

(Place where Visa issued)

Place of Issuance of the Visa

(Place where Visa was issued)

Other Document Number used for Travel (if applicable)

(The other document number used for travel when the official travel document is not required)

Type of Other Document used for Travel

(Indicator to identify type of other document used for travel)

Primary Residence

-Country of Primary Residence

(Country where Passenger resides most of the year)

-Address

(location identification such as: street name and number)

-City

-State/Province/County

-Postal Code

Destination Address

-Address where Passenger will be staying in territory of disembarkation

-City

-State/Province/County

-Postal Code

(d) **Date relating to the Reporting Party**

-Reporting Party Name

-Reporting Party Telephone Number

-Reporting Party Facsimile Number

-Reporting Party Electronic Mail Address

**PART B
TIMEFRAME FOR API**

(section 9C)

1. In case of commercial aircraft, no later than 40 minutes prior to departure from the last port of call;
2. In the case of a private aircraft, no later than 40 minutes prior to departure from the last port of call;
3. In case of a vessel arriving from a destination outside of the regional space, no later than 24 hours prior to the arrival;
4. In case of a vessel arriving from a destination within the regional space, no later than 1 hour prior to the arrival of the vessel from the last port of call;
5. In the event of any changes to the aircraft or vessel header data or data relating to an individual on board, an updated API file is required prior to departure of the aircraft or vessel.”.

Passed by the House of Representatives this day of , 2017.

.....
Clerk to the House of Representatives.

Passed by the Senate this day of , 2017.

.....
Clerk to the Senate.