

PARLIAMENT OF CEYLON

2nd Session 1961-62



Immigrants and Emigrants (Amendment) Act, No. 68 of 1961

Date of Assent : December 7, 1961

Printed on the Orders of Government

Printed at the GOVERNMENT PRESS, CEYLON. To be purchased at the GOVERNMENT PUBLICATIONS BUREAU, COLOMBO.

Annual Subscription (including Bills) Rs. 30 (Local), Rs. 40 (Foreign), payable to the SUPERINTENDENT, GOVERNMENT PUBLICATIONS BUREAU, P. O. Box 520, Colombo 1, before 20th December each year in respect of the year following. Late subscriptions will be accepted on the condition that Bills issued before the date of payment will not be supplied.

Price : 45 cents

Postage : 10 cents

Immigrants and Emigrants (Amendment) Act,
No. 68 of 1961

L. D.—O. 6/61.

AN ACT TO AMEND THE IMMIGRANTS AND EMIGRANTS
ACT, No. 20 OF 1948.

[Date of Assent: December 7, 1961]

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 of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Immigrants and Emigrants (Amendment) Act, No. 68 of 1961.

Short title.

2. The following new section is hereby inserted immediately after section 7 of the Immigrants and Emigrants Act, No. 20 of 1948, hereinafter referred to as the "principal Act", and shall have effect as section 7A of that Act:—

Insertion of
new section
7A in Act
No. 20 of 1948.

" Powers
and
duties of
authorized
members of
the Forces.

7A. (1) The Governor-General may, for the purposes of this Act, by Order published in the *Gazette*, designate all or any of—

(a) the members of the army raised and maintained in accordance with the provisions of the Army Act, No. 17 of 1949,

(b) the members of the Royal Ceylon Navy raised and maintained in accordance with the provisions of the Navy Act, No. 34 of 1950, and

(c) the members of the Royal Ceylon Air Force raised and maintained in accordance with the provisions of the Air Force Act, No. 41 of 1949,

as authorized members of the Forces.

(2) The powers and duties conferred and imposed upon authorized members of the Forces by this section shall be exercised and discharged notwithstanding that such powers and duties are not conferred or imposed upon them by

**2 Immigrants and Emigrants (Amendment) Act,
No. 68 of 1961**

the provisions of the Army Act, No. 17 of 1949, the Navy Act, No. 34 of 1950 or the Air Force Act, No. 41 of 1949.

(3) The Minister may, by Order published in the *Gazette*, specify the area or areas in which the powers and duties under this Act may be exercised and discharged by authorized members of the Forces.

(4) Within the area specified under sub-section (3), an authorized member of the Forces shall, in respect of—

(a) any offence under paragraph (a) of sub-section (1) of section 45,

(b) any offence under sub-section (2) of section 45 so far as it relates to paragraph (a) of sub-section (1) of that section, and

(c) any offence under sub-section (1) or sub-section (2) of section 45A,

be deemed to be a peace officer within the meaning of the Criminal Procedure Code for the purpose only of exercising any power conferred upon a peace officer by that Code.

(5) An authorized member of the Forces making an arrest without warrant shall without delay hand the person so arrested to the custody of a police officer."

3. Section 38 of the principal Act is hereby repealed and the following new section substituted therefor:—

" Identification
of persons.

38. For purposes of this Act it shall be lawful for any person authorized by the Controller, or for a police officer not below the rank of a sergeant, or for an authorized member of the Forces not below the rank of a corporal or leading seaman, to take all such steps as may

Cap. 16.

Replacement
of section 38
of the
principal Act.

Immigrants and Emigrants (Amendment) Act, 3
No. 68 of 1961

be reasonably necessary for photographing, measuring, finger-printing and otherwise identifying—

(a) any person who is not a citizen of Ceylon, or

(b) any person who is suspected or alleged to have committed an offence under this Act. ”.

4. Section 45 of the principal Act is hereby amended—

Amendment of
section 45 of
the principal
Act.

(a) in sub-section (1) of that section—

(i) by the omission of paragraphs (b) and (c), and

(ii) by the re-lettering of paragraphs (d), (e), (f), (g), (h), (i), (j) and (k) as paragraphs (b), (c), (d), (e), (f), (g), (h) and (i) respectively;

(b) by the repeal of sub-sections (3) and (4) of that section;

(c) by the re-numbering of sub-section (2) of that section as sub-section (3);

(d) by the insertion, immediately after sub-section (1) of that section, of the following new sub-section:—

“ (2) Any person who attempts to commit, or does any act preparatory to the commission of, or aids or abets the commission of, an offence under sub-section (1), shall be guilty of an offence under this Act and shall on conviction be liable to the same punishment as if he had been guilty of an offence and been convicted under sub-section (1). ”;

(e) in the re-numbered sub-section (3) of that section, by the substitution, for the words “ except by the Controller or with his written sanction ”, of the words “ except by the Controller or by a police officer of a rank not below that of Assistant Superintendent or with the written sanction of the Controller or such police officer ”; and

(f) by the re-numbering of sub-section (5) of that section as sub-section (4).

4 *Immigrants and Emigrants (Amendment) Act,*
No. 68 of 1961

Insertion of
new sections
45A and 45B
in the
principal Act.

5. The following new sections are hereby inserted immediately after section 45 of the principal Act, and shall have effect as sections 45A and 45B of that Act:—

“ Offences of
bringing
persons into
Ceylon in
contravention
of Act, etc.

45A. (1) Any person who—

(a) brings any other person into Ceylon by any means whatsoever, knowing that the entry into Ceylon of that other person is or would be in contravention of any provision of this Act or of any Order or regulation made thereunder;

(b) conceals or harbours any other person in any place whatsoever, or transports any other person or causes any other person to be transported by any means whatsoever, knowing that such other person has entered Ceylon or is remaining in Ceylon in contravention of any provision of this Act or of any Order or regulation made thereunder; or

(c) employs any other person, knowing that such other person has entered Ceylon or is remaining in Ceylon in contravention of any provision of this Act or of any Order or regulation made thereunder,

shall be guilty of an offence under this Act and shall on conviction be liable to rigorous imprisonment for a term of not less than two years and of not more than five years.

(2) Any person who—

(a) attempts to commit or aids or abets the commission of an offence under sub-section (1),
or

(b) does any act preparatory to the commission of an offence under paragraph (a) or paragraph (b) of sub-section (1),

shall be guilty of an offence under this Act and shall on conviction be liable to rigorous imprisonment for a term of not less than two years and of not more than five years.

(3) Where a person is charged with an offence under sub-section (1) or sub-section (2), it shall be presumed that he acted knowing that the entry of that other person into Ceylon was or would have been, or that the other person had entered Ceylon or was remaining in Ceylon, as the case may be, in contravention of a provision of this Act or of any Order or regulation made thereunder, and the burden of rebutting the presumption of such knowledge shall lie upon the person so charged.

(4) For the purpose of every prosecution under paragraph (c) of sub-section (1) of this section, a person alleged to have entered Ceylon or to be remaining in Ceylon in contravention of any provision of this Act or of any Order or regulation made thereunder,—

(a) who is in the service of a body of persons shall—

(i) where the body of persons is a body corporate, be deemed to be employed by the manager, secretary and every director of that body corporate, and

(ii) where the body of persons is a firm, be deemed to be employed by every partner of the firm.

6 *Immigrants and Emigrants (Amendment) Act,*
No. 68 of 1961

unless such manager, secretary, director or partner, as the case may be, proves, having regard to the nature of his functions and to all the circumstances, that such person was employed without his knowledge; and

(b) who is in the service of a business registered under the Business Names Ordinance, shall, as regards every individual, every firm and every body corporate registered under that Ordinance in respect of that business, be deemed to be employed by such individual, every partner of such firm and every manager, secretary and director of such body corporate,

unless such individual, partner, manager, secretary or director, as the case may be, proves, having regard to the nature of his functions and to all the circumstances, that such person was employed without his knowledge.

Presumption
with regard
to certain
certificates.

45B. If in any prosecution for any offence under this Act there is produced a certificate issued by a police officer of a rank not below that of an Assistant Superintendent to the effect that he believes any person named in the certificate to be a person who has entered or remained in Ceylon in contravention of any provision of this Act or of any Order or regulation made thereunder, it shall be presumed that the person so named entered or remained in Ceylon in contravention of such provision, unless it is proved by the accused that the person so named—

(a) is a person to whom Part III of this Act does not apply; or

- (b) entered Ceylon, or remained in Ceylon, as the case may be, in conformity with such provision; or
- (c) was in Ceylon prior to the appointed date and did not thereafter leave Ceylon; or
- (d) was born in Ceylon on or after the appointed date and did not thereafter leave Ceylon. ”.

6. Section 46A of the principal Act is hereby repealed and the following new section substituted therefor:—

Replacement of
section 46A of
the principal
Act.

“ Certain
offences
to be non-
bailable.

46A. (1) Notwithstanding anything in any other law—

- (a) every offence under paragraph (a) of sub-section (1) of section 45,
- (b) every offence under sub-section (2) of section 45 in so far as it relates to paragraph (a) of sub-section (1) of that section,
- (c) every offence under paragraph (a) or paragraph (b) of sub-section (1) of section 45A,
- (d) every offence under paragraph (a) of sub-section (2) of section 45A in so far as it relates to paragraph (a) or paragraph (b) of sub-section (1) of that section, and
- (e) every offence under paragraph (b) of sub-section (2) of section 45A,

shall be non-bailable and no person accused of such an offence shall in any circumstances be admitted to bail.

(2) Notwithstanding anything in any other law—

- (a) every offence under paragraph (c) of sub-section (1) of section 45A, and

8. *Immigrants and Emigrants (Amendment) Act,*
No. 68 of 1961

(b) every offence under paragraph (a) of sub-section (2) of section 45A in so far as it relates to paragraph (c) of sub-section (1) of that section, shall be non-bailable.”.

Replacement of section 46B of the principal Act.

7. Section 46B of the principal Act is hereby repealed and the following new section substituted therefor:—

“ Detention of persons suspected of or charged with commission of offence under section 45 (1) (a).

46B. Where any person is suspected of the commission of an offence under paragraph (a) of sub-section (1) of section 45, it shall be lawful, notwithstanding anything in any other written law, for the Controller or any police officer of a rank not below that of an Assistant Superintendent, to authorize in writing the detention of that person in any place of detention approved by the Minister for the purpose of this section, until that person has established his innocence or an Order is made against that person by the Minister in terms of section 28 (1A):

Provided that if such person remains in custody at the expiry of a period of two weeks from the date on which he was first taken into custody, he shall be produced forthwith before a Magistrate who shall make such order as he deems appropriate. ”.

Replacement of section 47A of the principal Act.

8. Section 47A of the principal Act is hereby repealed and the following new section substituted therefor:—

“ Power to search any ship for the purpose of arrest.

47A. It shall be lawful for any police officer irrespective of rank, or any authorized member of the Forces not below the rank of a corporal or leading seaman, to search any ship (not being an aircraft) in the territorial waters of Ceylon, and to arrest and take into custody any person on board such ship who is suspected of the commission of any offence under section 45 (1) (a), section 45 (2) in so far as it relates to section 45 (1) (a), or section 45A. ”.

9. Section 47B of the principal Act is hereby amended as follows:—

Amendment of
section 47B of
the principal
Act.

(1) in sub-section (1) of that section—

(a) by the substitution, for the words “any police officer of a rank not below that of inspector”, of the words “any police officer irrespective of rank, or any authorized member of the Forces not below the rank of a corporal or leading seaman”, and

(b) by the substitution, for the words “in paragraph (b) or paragraph (c) of sub-section (1) of section 45” of the words “in paragraph (a) or paragraph (b) of sub-section (1) of section 45A”;

(2) in sub-section (2) of that section, by the substitution, for the words “by the officer making the seizure”, of the words “by the officer making the seizure or, where such officer is an authorized member of the Forces, by any police officer”;

(3) in sub-section (3) of that section—

(a) by the substitution, in paragraph (a) thereof, for the words “upon the expiration of fourteen days after the seizure”, of the words “upon the expiration of six weeks after the seizure”, and

(b) by the substitution, in paragraph (b) thereof, for the words “unless duly declared to be forfeited to Her Majesty under section 47A”, of the words “unless duly declared to be forfeited to Her Majesty or ordered to be destroyed under sub-section (4)”;

(4) by the insertion, immediately after sub-section (3), of the following new sub-section:—

“(4) Where any vehicle, vessel or other means of transport or equipment or accessories, produced before or made available for inspection by a Magistrate's Court under sub-section (2), is proved to have been used in, or in

connection with, the commission of an offence under paragraph (a) or paragraph (b) of sub-section (1) of section 45A, such court shall make order for the forfeiture to Her Majesty or for the destruction of such vehicle, vessel or other means of transport or equipment or accessories. ”; and

(5) by the substitution, for the marginal note thereto, of the following marginal note:—

“ Seizure and detention by police, authorized members of the Forces or authorized officers, of vehicles, etc. suspected of being used in the commission of offences under section 45A (1) (a) or section 45A (1) (b). ”.

Insertion of
new sections
47c and 47d in
the principal
Act.

10. The following new sections are hereby inserted immediately after section 47B of the principal Act and shall have effect as sections 47c and 47D of that Act:—

“ Proceedings
under the
Act to have
priority in
court.

47c. (1) The proceedings in any court in respect of an offence alleged to have been committed by any person under this Act shall have priority over all other business of that court, except when circumstances render it necessary for such other business to be disposed of earlier.

(2) Where the trial of a person accused of an offence under this Act cannot be concluded on the day of commencement, such trial shall be continued on the working day immediately following, except where circumstances render such continuation impracticable or render it necessary for other business to be disposed of on the working day immediately following.

Evidence, in
connection
with certain
offences, of
a person
about to
leave the
Island.

47D. (1) Where any person is accused of an offence under section 45 (1) (a), or section 45 (2) in so far as it relates to section 45 (1) (a), or section 45A, any other person who is about to leave the Island may, if he so desires, make a sworn or affirmed statement in connection with the offence before a Justice of the Peace, or a police officer

Immigrants and Emigrants (Amendment) Act, 11
No. 68 of 1961

not below the rank of an Assistant Superintendent of Police, in the presence of the person accused of the offence.

(2) The Justice of the Peace or the police officer before whom the statement is made under sub-section (1) shall—

- (a) record such statement,
- (b) read over such statement in the presence of the accused to the person making the statement,
- (c) explain the statement to the accused,
- (d) afford the accused full opportunity of asking any questions relevant to the statement from the person making the statement,
- (e) record such questions, together with the answers given by the person making the statement,
- (f) secure the signature of the person making the statement to the record of the statement, and
- (g) certify, if such be the case, that the requirements of this section have been complied with.

(3) Any Justice of the Peace, or police officer not below the rank of an Assistant Superintendent of Police is hereby empowered and required—

- (a) to administer an oath or affirmation, in manner authorized for witnesses under the Oaths Ordinance, to any person desiring to make a statement in accordance with this section, and

- (b) thereafter to take proceedings under the provisions of sub-section (2).

Cap. 14.

12 *Immigrants and Emigrants (Amendment) Act,*
No. 68 of 1961

(4) A statement purporting to be certified under this section may, notwithstanding the provisions of any other law, be produced in court and given in evidence against any person accused of any offence under section 45 (1) (a), or section 45 (2) in so far as it relates to section 45 (1) (a), or section 45A, and shall be *prima facie* evidence of the facts therein stated."

Amendment of
section 50 of
the principal
Act.

11. Section 50 of the principal Act is hereby amended as follows:—

(1) in sub-section (1) of that section—

(a) by the insertion, immediately after the definition of "authorized officer", of the following:—

" "Ceylon" includes the territorial waters of Ceylon; ", and

(b) by the insertion, immediately after the definition of "ship", of the following:—

" "territorial waters of Ceylon" means the part of the sea within a distance of six nautical miles from any point of the coast of Ceylon measured from low-water mark of ordinary spring tides; "; and

(2) in sub-section (3) of that section—

(a) by the substitution, for paragraph (a), of the following paragraph:—

" (a) A person who arrives at any aerodrome in Ceylon on board any aircraft shall not be deemed, for the purposes of this Act, to enter Ceylon or to be brought into Ceylon until that person leaves the aerodrome otherwise than by that aircraft.", and

(b) by the substitution, for paragraph (b), of the following paragraph:—

" (b) (i) A person who enters the territorial waters of Ceylon on board any ship (not being an aircraft) as a passenger in

Immigrants and Emigrants (Amendment) Act, 13
No. 68 of 1961

transit, shall not be deemed, for the purposes of this Act, to enter Ceylon or to be brought into Ceylon until that person leaves the ship.

(ii) "passenger in transit" means a passenger who is travelling from a country other than Ceylon to a country other than Ceylon on board the same ship.

(iii) In any prosecution for an offence under this Act, the burden of proving that a person is a passenger in transit shall lie upon the person so asserting it."