

# A BILL

## ENTITLED

AN ACT to Make interim provision extending the powers of arrest and detention under sections 50B and 50F of the Constabulary Force Act.

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As introduced by the Honourable Minister of National Security.

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AND WHEREAS section 50 of the Constitution provides that an Act of Parliament to which that section applies (namely, one the Bill for which has been passed by both Houses and at the first vote thereon in each House has been supported by the votes of not less than two-thirds of all the members of that House) shall not be void to the extent of any inconsistency with the provisions of sections 13 to 26 (inclusive) of the Constitution but shall, notwithstanding any inconsistency, prevail over those provisions.

AND WHEREAS it is necessary and expedient that the provisions of this Act have effect notwithstanding any inconsistency with the provisions of sections 13 to 26 (inclusive) of the Constitution.

NOW THEREFORE 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 Jamaica in accordance with the provisions of section 50 of the Constitution of Jamaica, and by the authority of the same, as follows—

## A BILL

ENTITLED

AN ACT to Make interim provision extending the powers of arrest and detention under sections 50B and 50F of the Constabulary Force Act.

WHEREAS sections 13 to 26 (inclusive) of the Constitution of Jamaica (hereinafter referred to as the Constitution) set out certain fundamental rights and freedoms of the individual, subject to limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest:

AND WHEREAS it is desirable for the protection of the rights of others or the public interest to introduce more stringent conditions regarding the arrest and detention of persons under the special powers given by Part IIA of the Constabulary Force Act:

AND WHEREAS section 50 of the Constitution provides that an Act of Parliament to which that section applies (namely, one the Bill for which has been passed by both Houses and at the final vote thereon in each House has been supported by the votes of not less than two-thirds of all the members of that House) shall not be void to the extent of any inconsistency with the provisions of sections 13 to 26 (inclusive) of the Constitution but shall, notwithstanding any inconsistency, prevail over those provisions:

AND WHEREAS it is necessary and expedient that the provisions of this Act have effect notwithstanding any inconsistency with the provisions of sections 13 to 26 (inclusive) of the Constitution:

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NOW, THEREFORE, 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 Jamaica in accordance with the provisions of section 50 of the Constitution of Jamaica, and by the authority of the same, as follows:—

Short title. 1. This Act may be cited as the Constabulary Force (Interim Provisions for Arrest and Detention) Act, 2008.

Duration of this Act. 2. This Act shall continue in force for a period of one year from the date of its commencement and shall then expire.

Interim provisions in relation to sections 50B and 50F of the Constabulary Force Act. 3.—(1) While this Act continues in force, the provisions specified in subsections (2) and (3) shall have effect in relation to the Constabulary Force Act (hereinafter referred to as the Act).

(2) Section 50B(4) of the Act shall be read and construed as if the words “, whether within or outside of the particular locality,” were inserted immediately after the word “exercise”.

(3) The Act shall be read and construed as if the following provision were substituted for section 50F—

“Arrest and detention. 50F.—(1) Where the Security Forces are carrying out any operations in any particular locality in relation to which action is taken under section

50B, no person shall be arrested or detained under the powers given by this Part unless a Divisional Commander, or a member of the Force not below the rank of Assistant Commissioner, is satisfied that—

- (a) there is reasonable ground for the arrest or detention of such person; or
- (b) in the case of a person who is outside of that locality, there is reasonable ground to suspect that the person is, or has been, or is about to be, involved in the commission of a criminal offence in the locality.

(2) Where any person is arrested or detained pursuant to the powers conferred by section 50B(4), that person shall—

- (a) immediately be told the reason for his arrest or detention;
- (b) forthwith be taken before a Justice of the Peace who shall determine whether or not there is reasonable ground—

- (i) for the arrest or detention; and
- (ii) in the case of a person who is arrested or detained outside of the locality in relation to which action is taken under section 50B, there is reasonable ground to suspect that the person is, or has been, or is about to be, involved in the commission of a criminal offence in the locality.

(3) If a Justice of the Peace is satisfied that the arrest or detention of any person is

reasonably required in the interest of justice he may, having regard to such further investigations as may be necessary, order that the person—

(a) notwithstanding the provisions of section 22 of the Bail Act, be remanded in custody for a period not exceeding seventy-two hours; and

(b) at the expiration of the period of remand ordered under paragraph (a), be taken before a Resident Magistrate.

(4) Notwithstanding subsection (3)(b), where it is intended to hold an identification parade in respect of the person so arrested or detained, the provisions of section 63A of the Judicature (Resident Magistrates) Act shall apply.

(5) Where a Justice of the Peace makes an order pursuant to subsection (3) in respect of any person so arrested or detained, the person shall be taken to a police station or lock-up without delay, and an entry shall be made in accordance with the Prisons (Lock-ups) Regulations, 1980.

(6) Where a Justice of the Peace is not satisfied that the arrest or detention of any person is reasonably required in the interest of justice, he shall order that the person be released forthwith.”

## MEMORANDUM OF OBJECTS AND REASONS

Part IIA of the Constabulary Force Act sets out special powers for preventing or detecting crime, including the power of the Commissioner of Police to establish a cordon, and impose a curfew, in any locality where it appears to him that there is reasonable ground to believe that, in the interest of public safety or public order, or for the purpose of detecting crime, it is necessary so to do.

Because of the current level of crime, a decision has been taken to temporarily extend (for a period of one year) the provisions of sections 50B and 50F of the Constabulary Force Act so as to—

- (a) provide for the arrest and detention of a person outside of the locality in which the special cordon and curfew powers are being exercised, if a Divisional Commander or a member of the Force not below the rank of Assistant Commissioner is satisfied that there is reasonable ground for suspecting that the person is, or has been, or is about to be, involved in the commission of a criminal offence in the locality; and
- (b) increase, from twenty-four to seventy-two hours, the period for which a Justice of the Peace may, if satisfied that the detention or arrest of any person is reasonably required in the interest of justice, order that person, notwithstanding the provisions of section 22 of the Bail Act, to be remanded in custody before being released or taken before a Resident Magistrate. This Bill seeks to give effect to that decision and is a companion to other proposed legislation aimed at reducing crime.

The Bill expires after one year from the date of its commencement.

TREVOR MACMILLAN  
Minister of National Security.