

TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN

EXPLANATORY MEMORANDUM NATIONAL POLICE ORDINANCE

I GENERAL

1. Introduction

This draft national ordinance serves to regulate the subject of the police force for the country of Sint Maarten from the transition date, to the extent that this is left partially or fully to Sint Maarten on the basis of the Regulation of the structure, organisation, authority and management of the police force of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba (the Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba). This concerns the matters regarding which the Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba provides that these should be regulated by (or pursuant to) national ordinance. A number of additional rules have also been included that do not originate directly from the Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba, but e.g. from the 1999 Police Regulation of the Country of the Netherlands Antilles.

The Netherlands Antilles Police Force will cease to exist and three new forces will be formed on the basis of the Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba, i.e. the Curaçao police force, the Sint Maarten police force and the police force of Bonaire, Sint Eustatius and Saba. In addition, a Common Police Facility will be set up. The principle of the Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba is that the new forces will develop into fully-fledged, high quality, professional forces that are organised and structured in such a way that they can perform the police tasks – enforcement of the criminal law system, maintenance of public order and provision of assistance – independently and as effectively and efficiently as possible.

The Political Steering Group for Political Change, by an order of 1 October 2008, issued directions for further professionalisation and organisation of the Antillean police forces. The three individual forces have drawn up an organisational plan. The organisational plan of the Sint Maarten Police Force forms the basis for a professional police organisation in the country of Sint Maarten.

This draft builds on the aforementioned Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba. The Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba is based on the Closing Declaration of the administrative talks on the future political position of Curaçao and Sint Maarten of 2 November 2006. The Closing Declaration states that the structure, organisation, authority and management of the police force will be regulated by a consensus Kingdom Act. The Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba is based partly on the 1999 Police Regulation and the 1993 Police Act.

2. The draft in outline

The Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba contains rules concerning the structure, organisation, authority and management of the police and the cooperation between the forces of Curaçao, of Sint Maarten and of Bonaire, Sint Eustatius and Saba. The local embedding takes precedence here. The police tasks are assigned to the forces and the police acts under national authority.

The Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba also provides a framework for the cooperation between the countries of Curaçao, Sint Maarten and the Netherlands with regard to Bonaire, Sint Eustatius and Saba.

This draft contains rules on the structure and organisation of the force and the legal status of the police officers.

II ARTICLE BY ARTICLE SECTION

§ 1 General

Article 1

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This Article defines a number of terms that are regularly used in the national ordinance and the provisions based on it.

§ 2 Structure and organisation

Article 2

Pursuant to Article 7(2) of the Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba, rules must be imposed by or pursuant to the national ordinance concerning the structure and organisation of the police force, with a view to the performance of the police tasks as effectively and efficiently as possible. Provision must also be made for the task fields further specified. The proposed Article provides a framework for the organisation of the Sint Maarten Police Force. By national decree containing general measures, further rules may be imposed.

Article 3

This Article serves to secure the best possible cooperation between the regular police force and the special detectives, as referred to in Article 185 of the Code of Criminal Procedure, and special agents of the police.

Article 4

Pursuant to this Article, the Minister may designate objects and services requiring police surveillance and protection in the interests of the security of Sint Maarten or relations with other powers, or in view of serious public interests.

The surveillance and protection task is part of the police task. Article 4(1) refers to the terms surveillance and protection in one breath. It is relevant whether the measures are taken to maintain public order or for enforcement of the criminal law system, as this is a determining factor for the question of authority. This depends on the purpose for which the measures are taken.

With regard to the surveillance and protection of civil objects by the police, who exercises the authority is an important issue. This is also shown by paragraphs 2 and 3, in which the Minister is assigned to implement a ministerial order if this concerns the maintenance of public order, while implementation is assigned to the Attorney-General if the enforcement of the criminal law system is involved.

Article 5

The proposed Article 5 assigns authority to officers designated by the Minister for the transportation of persons who have been deprived of their liberty by law. This concerns the transportation of persons detained in a police cell.

Article 6

Article 51 of the Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba affords the countries the possibility of imposing further rules regarding management and financial accounting and the reporting. Pursuant to the proposed Article 6, these rules may be laid down by national decree, containing general measures.

§ 3 Legal status

Article 7

Pursuant to Article 45 of the Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba, the authority authorised to appoint, promote, suspend and dismiss police officers shall be designated by national ordinance. The Minister of Justice is designated as that authority. The police officers referred to here include the director of the common police facility, to the extent that his appointment order provides that Sint Maarten is the country of his appointment (Article 29(4) of the Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba) as well as the other police officers made available by means of the common police facility (second sentence of Article 29(5)). Police officers will be appointed, promoted, suspended and dismissed by national decree. With regard to the legal status, the original 2000 Order concerning the legal status of the Police Force of the Netherlands Antilles will continue to apply for police officers in modified form. Paragraph 2 contains grounds to impose rules in that regard by national decree, containing general measures. The intention is that Articles included in the mutual arrangement concerning the quality criteria and the education and training requirements for police officers, referred to in Article 41(1) of the Police Kingdom Act of Curaçao, of Sint

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Maarten, and of Bonaire, Sint Eustatius and Saba should be laid down in that national decree, containing general measures.

§ 4 Transitional and final provisions

Article 8

Pursuant to this transitional provision, which originates from the 1999 Police Regulation, the regulations and implementing orders based on the Police Regulation (PB 1962, No. 64) and on the 1999 Police Regulation (PB 1999, No. 79) shall remain in force following the date on which this national ordinance enters into force until they are replaced by other regulations and implementing orders pursuant to this national ordinance or the Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba. Until new regulations and implementing orders have been realised, the existing regulations and implementing orders shall be interpreted and applied in accordance with this national ordinance as far as possible. In the event of any conflict, this national ordinance applies.

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