



TURKS AND CAICOS ISLANDS

## **CHAPTER 3.21**

# **PREVENTION OF TERRORISM ORDINANCE**

**Revised Edition**  
showing the law as at 31 March 2021

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance.

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Ordinance 9 of 2014 .. in force 17 October 2014 (L.N. 43/2014)

Amended by Ordinances: 17 of 2016 .. in force 1 June 2016 (L.N. 36/2016)

28 of 2018 .. in force 15 August 2018 (L.N. 52/2018)

No Subsidiary Legislation has been made under this Ordinance.





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PREVENTION OF TERRORISM ORDINANCE**

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**CHAPTER 3.21**  
**PREVENTION OF TERRORISM ORDINANCE**

*(Ordinances 9 of 2014, 17 of 2016 and 28 of 2018)*

AN ORDINANCE TO IMPLEMENT THE UNITED NATIONS CONVENTION RESPECTING THE SUPPRESSION OF THE FINANCING OF TERRORISM, TO PROVIDE MEASURES TO PREVENT AND COMBAT ACTS OF TERRORISM AND FOR CONNECTED PURPOSES

**Commencement**

*[17 October 2014]*

PART I

PRELIMINARY

**Short title**

1. This Ordinance may be cited as the Prevention of Terrorism Ordinance.

**Interpretation**

2. (1) In this Ordinance—

“act” and “action” include omission;

“act or action taken for the purposes of terrorism” shall be construed in accordance with section 3(5);

“acts of terrorism” shall be construed in accordance with section 3;  
*(Inserted by Ord. 17 of 2016)*

“Anti-Money Laundering and Prevention of Terrorist Financing Regulations” means the regulations made under the Proceeds of Crime Ordinance;

“article” includes substance and any other thing;

“authorised officer” means any police officer, customs officer or immigration officer;

“biological weapon” means—

- (a) any biological agent or toxin of a type and in a quantity that has no justification for prophylactic, protective or other peaceful purposes; or
- (b) any weapon, equipment or means of delivery designed to use biological agents or toxins for hostile purposes or in armed conflict;

“chemical weapon” means a weapon, other than one whose intended use is only for peaceful purposes, purposes related to protection against toxic chemicals, legitimate military purposes or purposes of enforcing the law, consisting of—

- (a) toxic chemicals and their precursors;
- (b) munitions and other devices designed to cause death or harm through the toxic properties of toxic chemicals released by them; or
- (c) equipment designed for use in connection with munitions and devices falling within paragraph (b);

“cordoned area” shall be construed in accordance with section 25;

“court” means the Magistrate’s Court or the Supreme Court;

“customs officer” means any officer appointed pursuant to the Customs Ordinance;

“designated customs officer” means a customs officer who is designated under section 24 or, if no one is for the time being designated, the Collector of Customs;

“designated police officer” means any member of the police force of or above the rank of inspector;

“driver” means, in relation to a vehicle which has been left on any road, the person who was driving it when it was left there;

“dwelling” means a building or part of a building used as a dwelling and a vehicle which is habitually stationary and is used as a dwelling;

“explosive” means—

- (a) an article or substance manufactured for the purpose of producing a practical effect by explosion;
- (b) materials for making an article or substance within paragraph (a);
- (c) anything used or intended to be used for causing or assisting in causing an explosion; and
- (d) a part of anything within paragraph (a) or (c);

“financial business” has the meaning specified in the Anti-Money Laundering and Prevention of Terrorist Financing Regulations;

“financial institution” means a person carrying on any financial business;

“firearm” includes an air gun or air pistol;

“Governor” means the Governor acting in his discretion;

“immigration officer” means a person appointed as an immigration officer pursuant to the Immigration Ordinance;

“inspector” has the meaning given to that term under section 2 of the Police Force Ordinance;

“items subject to legal privilege” means—

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made in connection with the giving of legal advice or in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them;

but items held with the intention of furthering a criminal purpose are not items subject to legal privilege;

“judge” means a judge of the Supreme Court; (*Inserted by Ord. 17 of 2016*)

“Financial Intelligence Agency” means the Agency established under section 3 of the Financial Intelligence Agency Ordinance;

“Financial Services Commission” means the Commission established under the Financial Services Commission Ordinance;

“legal representative” means a person who has been admitted as an Attorney under the Legal Professions Ordinance;

“National Forfeiture Fund” means Fund established by section 152 of the Proceeds of Crime Ordinance;

“nuclear weapon” includes a nuclear explosive device that is not intended for use as a weapon;

“organisation” includes any association or combination of persons;

“police officer” means a member of the Royal Turks and Caicos Island Police Force constituted under section 7 of the Police Force Ordinance;

“premises” includes any place and in particular includes—

- (a) a vehicle;
- (b) an offshore installation; and
- (c) a tent or moveable structure;

“property” includes money, goods, things in action, land and every description of property, whether real or personal, movable or immovable, vested or contingent and whether situated in the Islands or elsewhere;

“public place” means a place to which members of the public have or are permitted to have access, whether or not for payment;

“radioactive material” means radioactive material capable of endangering life or causing harm to human health.

“terrorism” shall be construed in accordance with section 3;

“terrorist finance offence” means an offence under sections 10 to 12;

“terrorist investigation” means an investigation of—

- (a) the commission, preparation or instigation of acts of terrorism;
- (b) an act which appears to have been done for the purposes of terrorism;
- (c) the resources of a proscribed organisation;
- (d) the possibility of making an order under section 7(3); or
- (e) the commission, preparation or instigation of an offence under this Ordinance;

“terrorist organisation” means an organisation proscribed under section 5 or an entity, group of persons or an organisation that—

- (a) commits an act of terrorism by any means, directly or indirectly, unlawfully and wilfully;
- (b) participates as an accomplice in acts of terrorism or the financing of terrorism;
- (c) organises or directs others to commit acts of terrorism or the financing of terrorism; or
- (d) contributes to the commission of acts of terrorism or the financing of terrorism by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering acts of terrorism or the financing of terrorism with the knowledge of the intention of the group to commit acts of terrorism or the financing of terrorism;

*(Inserted by Ord. 17 of 2016)*

“terrorist property” shall be construed in accordance with section 4;

“vehicle”, except in sections 41 to 44 and Schedule 6, includes an aircraft, hovercraft, vessel or any conveyance or structure which is designed to be propelled or drawn on land.

(2) In this Ordinance a reference to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of this Ordinance.

(3) For the purposes of subsection (2), “enactment” includes an Act of the United Kingdom.

**Terrorism: interpretation**

**3.** (1) In this Ordinance “terrorism” means the use or threat of action where—

- (a) the action falls within subsection (2);
  - (b) the use or threat is designed to influence the government of the Islands, the government of any other place or country or an international organisation or to intimidate the public or a section of the public; and
  - (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.
- (2) Action falls within this subsection if it—
- (a) constitutes an offence within the scope of a counter-terrorism related convention or protocol listed in Schedule 1;
  - (b) endangers or is likely to endanger the life, physical integrity or freedom of any person or any number or group of persons;
  - (c) causes or is likely to cause serious injury or death to any person;
  - (d) causes or is likely to cause damage to property, natural resources, environmental or cultural heritage;
  - (e) creates a serious risk to national security;
  - (f) involves the use of explosives or other lethal devices;
  - (g) involves the use of, or transportation of, biological weapons;
  - (h) involves the handling of, or use of, radioactive material or nuclear material;
  - (i) interferes with the operation of or damages a nuclear facility, or does anything directed against the nuclear facility, in a manner which releases or risks to release radioactive material;
  - (j) causes damage to a ship or is likely to endanger the safe navigation of a ship in territorial or international waters;
  - (k) causes damage to a fixed platform or is likely to endanger the safety of the fixed platform; or
  - (l) causes damage to any aircraft or aerodrome, or is intended to or is likely to cause damage to any air navigation facility or endanger the safety and lives of persons and property or affect the operations of air services or undermine the confidence of the public in the safety of civil aviation, and

includes any promotion, sponsorship, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organising, or procurement of any person, with the intent to commit any act referred to in paragraphs (a) to (l).

(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

(4) In this section—

- (a) “action” includes action outside the Islands;
- (b) a reference to any person or to property is a reference to any person, or to property wherever situated; and
- (c) a reference to the public includes a reference to the public of a place or country other than the Islands.

(5) In this Ordinance a reference to an act or action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.

### **Terrorist property: interpretation**

4. (1) In this Ordinance “terrorist property” means—

- (a) money or other property which is likely to be used for the purposes of terrorism (including any resources of a proscribed organisation);
- (b) proceeds of the commission of acts of terrorism; and
- (c) proceeds of acts carried out for the purposes of terrorism.

(2) In subsection (1)—

- (a) a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission); and
- (b) the reference to an organisation’s resources includes a reference to any property which is applied or made available, or is to be applied or made available, for use by the organisation.

## PART II

### PROSCRIBED ORGANISATIONS AND OFFENCES RELATING TO PROSCRIBED ORGANISATIONS

### **Proscription**

5. (1) For the purposes of the Ordinance, an organisation is proscribed if—

- (a) the Governor has, by notice, under this section, declared the organisation to be engaged in terrorism; or  
*(Amended by Ord. 17 of 2016)*
- (b) the organisation has been declared a terrorist organisation by the Security Council of the United Nations.

(2) The Governor may, where the Governor has reasonable grounds to believe that an organisation is engaged in terrorism, by notice published in the *Gazette* declare that the specified organisation is engaged in terrorism.

(3) For the purposes of subsection (2), an organisation is engaged in terrorism if it—

- (a) commits or participates in acts of terrorism;
- (b) prepares for terrorism;
- (c) promotes or encourages terrorism; or
- (d) is otherwise concerned in terrorism.

*(Amended by Ord. 17 of 2016)*

(4) An organisation declared in terms of subsection (1)(b), refers to the list that exists in the Security Council of the United Nations on 17 October 2014, and any other reviews and subsequent amendments made to the list.

### **Decription: application and appeal**

6. (1) An organisation declared to be engaged in terrorism in terms of section 5(1)(a) may apply to the Governor, within ninety days of the publication of the notice in the *Gazette*, requesting the revocation of a notice made in respect of that organisation.

(2) If, on an application made under subsection (1), the Governor—

- (a) decides that there are reasonable grounds for revoking the notice, he shall revoke the notice; or
- (b) decides that there are no reasonable grounds for revoking the notice, he shall refuse the application.

(3) Where an application under subsection (1) has been refused, the applicant may, within sixty days of receiving information of the decision, appeal to a judge for a review of that decision.

(4) Upon an application being made under subsection (3), the judge shall—

- (a) examine any security or intelligence reports considered in making a notice under section 5(2) in respect of the applicant and hear any other evidence or information that may be presented by or on behalf of the Governor, and may, at the request of the Governor, hear all or part of that evidence or information in the absence of the applicant or any counsel representing the applicant, if the judge is of the opinion that the disclosure of the information would be prejudicial to national security or endanger the safety of any person;
- (b) provide the applicant with a statement summarising the information available to the judge, so as to enable the applicant to be reasonably informed of the reasons for the decision, without disclosing any information the disclosure of which would, in the

judge's opinion, be prejudicial to national security or endanger the safety of any person;

- (c) provide the applicant with a reasonable opportunity to be heard; and
- (d) determine whether the decision is reasonable on the basis of the information available to the judge and, if found not to be reasonable, make an order that the notice should be revoked.

(5) The judge may receive in evidence, anything (including information obtained from the government or institution or agency of a foreign state or an international organisation), that, in the opinion of the judge, is reliable and relevant, even if the thing would not otherwise be admissible in law, and may base his decision on that evidence.

(6) The judge shall not make any order in respect of the payment of costs of a successful applicant unless he is satisfied that the Governor, properly directing himself, could not reasonably have refused the application under subsection (1).

(7) In hearing an appeal under subsection (3), the Court shall sit in private and its decisions shall only be made available to the parties to the appeal.

*(Inserted by Ord. 17 of 2016)*

### **Membership in proscribed organisation**

7. (1) A person commits an offence if he belongs or professes to belong to a proscribed organisation.

(2) It is a defence for a person charged with an offence under subsection (1) to prove—

- (a) that the organisation was not proscribed on the last (or only) occasion on which the person became a member or began to profess to be a member; and
- (b) that the person has not taken part in the activities of the organisation at any time while it was proscribed.

(3) A person who commits an offence under this section is liable on conviction on indictment to a fine or to imprisonment for a term of ten years, or to both.

(4) In subsection (2) “proscribed” means proscribed for the purposes of this Ordinance.

### **Support for proscribed organisation**

8. (1) A person commits an offence if—

- (a) he invites support for a proscribed organisation; and
- (b) the support is not, or is not restricted to, the provision of property (within the meaning of section 10).



(2) A person commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is—

- (a) to support a proscribed organisation;
- (b) to further the activities of a proscribed organisation; or
- (c) to be addressed by a person who belongs or professes to belong to a proscribed organisation.

(3) A person commits an offence if he addresses a meeting and the purpose of his address is to encourage support for a proscribed organisation or to further its activities.

(4) Where a person is charged with an offence under subsection (2)(c) in respect of a private meeting it is a defence for the person to prove that he had no reasonable cause to believe that the address mentioned in subsection (2)(c) would support a proscribed organisation or further its activities.

(5) In subsections (2) to (4)—

- (a) “meeting” means a meeting of three or more persons, whether or not the public are admitted; and
- (b) a meeting is private if the public are not admitted.

(6) A person who commits an offence under this section is liable on conviction on indictment to a fine or to imprisonment for a term of ten years, or to both.

### **Using items or clothes, etc. for proscribed organisation**

9. (1) A person in a public place commits an offence if he—

- (a) wears an item of clothing; or
- (b) wears, carries or displays an article,

in such a way or in such circumstances as to arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation.

(2) A person who commits an offence under this section is liable to a fine of \$20,000 or to imprisonment for a term of twelve months, or to both.

## PART III

### OFFENCES RELATING TO FINANCING TERRORISM, ETC.

### **Raising or arranging funds for terrorism**

10. (1) A person commits an offence if he—

- (a) invites another to provide property; and
- (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

- (2) A person commits an offence if he—
- (a) receives property; and
  - (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.
- (3) A person commits an offence if he—
- (a) provides property; and
  - (b) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.
- (4) A person commits an offence if he—
- (a) enters into or becomes concerned in an arrangement as a result of which property is made available or is to be made available to another; and
  - (b) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

(5) A person who commits an offence under this section is liable on conviction on indictment to a fine or to imprisonment for a term of fourteen years, or to both.

(6) In this section, a reference to the provision of property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

### **Use and possession of money or other property for terrorism**

**11.** (1) A person commits an offence if he uses property for the purposes of terrorism.

- (2) A person commits an offence if he—
- (a) possesses property; and
  - (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

(3) A person who commits an offence under this section is liable on conviction on indictment to a fine or to imprisonment for a term of fourteen years, or to both.

### **Arrangement for retention or control of terrorist property**

**12.** (1) A person commits an offence if he enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property—

- (a) by concealment;
- (b) by removal from the jurisdiction;
- (c) by transfer to nominees; or

(d) in any other way.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

(3) A person who commits an offence under this section is liable on conviction on indictment to a fine or to imprisonment for a term of fourteen years, or to both.

**Attempt to commit a terrorist financing offence etc.**

13. A person who—

- (a) attempts to commit a terrorist financing offence;
- (b) promotes or participates in the commission of a terrorist financing offence or attempted offence;
- (c) organises or directs others to commit a terrorist financing offence or attempted offence; or
- (d) contributes to the commission of a terrorist financing offence or attempted offence by a group of persons acting with a common purpose,

commits an offence and is liable on conviction to the same punishment as if the offence itself has been committed.

*(Inserted by Ord. 28 of 2018)*

**Disclosure of information: duty**

14. (1) This section applies where a person—

- (a) believes or suspects that another person has committed or attempted to commit an offence under any of sections 10 to 12; and *(Amended by Ord. 17 of 2016)*
- (b) bases his belief or suspicion on information which comes to his attention in the course of a trade, profession, business or employment.

(2) But this section shall not apply if the information came to the person in the course of the business of a financial institution.

(3) The person commits an offence if he does not disclose to a police officer or customs officer as soon as is reasonably practicable—

- (a) his belief or suspicion; and
- (b) the information on which it is based.

(4) It is a defence for a person charged with an offence under subsection (3) to prove that he had a reasonable excuse for not making the disclosure.

(5) Where—

- (a) a person is in employment;

- (b) the person's employer has established a procedure for the making of disclosures of the matters specified in subsection (3); and
- (c) he is charged with an offence under that subsection,

it is a defence for the person to prove that he disclosed the matters specified in that subsection in accordance with the procedure.

(6) Subsection (3) does not require disclosure by a professional legal adviser of—

- (a) information which the professional legal adviser obtains in privileged circumstances; or
- (b) a belief or suspicion based on information which the professional legal adviser obtains in privileged circumstances.

(7) For the purpose of subsection (6) information is obtained by an adviser in privileged circumstances if it comes to him, otherwise than with a view to furthering a criminal purpose—

- (a) from a client or a client's representative, in connection with the provision of legal advice by the adviser to the client;
- (b) from a person seeking legal advice from the adviser, or from the person's representative; or
- (c) from any person, for the purpose of actual or contemplated legal proceedings.

(8) For the purposes of subsection (1)(a) a person shall be treated as having committed an offence under one of sections 12 to 15 if—

- (a) he has taken an action or been in possession of a thing; and
- (b) he would have committed an offence under one of those sections if the person had been in the Islands at the time when he took the action or was in possession of the thing.

(9) A person who commits an offence under this section is liable on conviction on indictment to a fine or to imprisonment for a term of seven years, or to both.

### **Disclosure of information: permission**

15. (1) A person may disclose to a police officer or customs officer—

- (a) a suspicion or belief that any property is terrorist property or is derived from terrorist property;
- (b) any matter on which the suspicion or belief is based.

(2) A person may make a disclosure to a police officer or customs officer in the circumstances mentioned in section 14(1) and (2).

(3) Subsections (1) and (2) shall have effect notwithstanding any restriction on the disclosure of information imposed by any enactment or otherwise.

(4) Where—

- (a) a person is in employment; and
- (b) the person's employer has established a procedure for the making of disclosures of the kinds mentioned in subsection (1) and section 14(3),

subsections (1) and (2) shall have effect in relation to that person as if any reference to disclosure to a police officer included a reference to disclosure in accordance with the procedure.

### **Co-operation with the authorities**

**16.** (1) A person does not commit an offence under any of sections 10 to 12 if he is acting with the express consent of the Financial Intelligence Agency or a police officer.

(2) Subject to subsections (3) and (4), a person does not commit an offence under any of sections 10 to 12 by involvement in a transaction or arrangement relating to property if the person discloses to the Financial Intelligence Agency or a police officer—

- (a) his suspicion or belief that the property is terrorist property; and
- (b) the information on which his suspicion or belief is based.

(3) Subsection (2) applies only where a person makes a disclosure—

- (a) after the person becomes involved in the transaction concerned;
- (b) on his own initiative; and
- (c) as soon as reasonably practicable.

(4) Subsection (2) does not apply to a person if—

- (a) the Financial Intelligence Agency or a police officer forbids him to continue his involvement in the transaction or arrangement to which the disclosure relates; and
- (b) the person continues his involvement.

(5) It is a defence for a person charged with an offence under any of sections 10(2) and (3) and 11 to 13 to prove that—

- (a) the person intended to make a disclosure of the kind mentioned in subsections (2) and (3); and
- (b) there is reasonable excuse for his failure to do so.

(6) Where—

- (a) a person is in employment; and
- (b) the person's employer has established a procedure for the making of disclosures of the same kind as may be made to the Financial Intelligence Agency or the police under subsection (2),

this section shall have effect in relation to that person as if any reference to disclosure to the Financial Intelligence Agency or police included a reference to disclosure in accordance with the procedure.

(7) A reference in this section to a transaction or arrangement relating to property includes a reference to use or possession.

### **Duty to disclose: financial institution**

17. (1) A person commits an offence if each of the following three conditions is satisfied.

(2) The conditions are—

(a) that the person—

(i) knows or suspects; or

(ii) has reasonable grounds for knowing or suspecting,

that another person has committed or attempted to commit an offence under any of sections 10 to 12;

*(Amended by Ord. 17 of 2016)*

(b) that the information or other matter—

(i) on which the person's knowledge or suspicion is based; or

(ii) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of the business of a financial institution; and

(c) that the person does not disclose the information or other matter to a designated police officer, designated customs officer or a nominated officer as soon as is practicable after it comes to him.

(3) A person does not commit an offence under this section if—

(a) the person has a reasonable excuse for not disclosing the information or other matter; or

(b) the person is a professional legal adviser and the information or other matter came to him in privileged circumstances.

(4) A person does not commit an offence under this section by failing to disclose any information or other matter that has come to his attention, if—

(a) it comes to the person in the course of his employment in the financial institution or designated non-financial business and profession;

(b) the financial institution or designated non-financial business and profession was required under the Proceeds of Crime Ordinance or the Anti-Money Laundering and Prevention of Terrorist Financing Regulations to provide the employee with training, but had not done so;

- (c) the training, if it had been given, would have been material; and
- (d) the employee does not know or suspect that the other person concerned had committed an offence under any of sections 10 to 12.

(5) In deciding whether a person has committed an offence under this section, the court—

- (a) shall take account of any relevant Code or guidance that applies to that person or the business carried on by that person and is issued by the supervisory body or supervisory authority exercising supervisory functions in respect of that person;
- (b) if no such Code or guidance applies, shall take into account any relevant Code or guidance that is issued by another supervisory body or authority; or
- (c) if there is no such relevant Code or guidance, may take account of any other relevant guidance issued by a body that is representative of that person or any regulated financial business or designated non-financial business and profession carried on by that person.

(6) For the purposes of subsection (5), “Code”; “supervisory authority”, “supervisory body”, “regulated financial business” and “designated non-financial business and profession” have the same meaning as in the Proceeds of Crime Ordinance.

(7) A disclosure to a nominated officer is a disclosure which—

- (a) is made to a person nominated by the employer of the person making the disclosure to receive disclosures under this section; and
- (b) is made in the course of the discloser’s employment and in accordance with the procedure established by the employer for the purpose.

(8) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him—

- (a) by (or by a representative of) a client of the legal adviser in connection with the giving by the adviser of legal advice to the client;
- (b) by (or by a representative of) a person seeking legal advice from the adviser; or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(9) Subsection (8) does not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose.

(10) For the purposes of subsection (2), a person is to be taken to have committed an offence if—

- (a) the person has taken action or been in possession of a thing; and
- (b) the person would have committed the offence if he had been in the Islands at the time when he took the action or was in possession of the thing.

(11) A person who commits an offence under this section is liable on conviction on indictment to a fine or to imprisonment for a term of seven years, or to both.

(12) In this section—

- (a) “nominated officer” includes a Money Laundering Reporting Officer; and
- (b) “Money Laundering Reporting Officer” means a person appointed as such pursuant to the Anti-Money Laundering and Prevention of Terrorist Financing Regulations.

### **Duty to disclose information relating to property of terrorist organisation, etc.**

**18.** (1) Where a financial institution suspects or has reasonable grounds to suspect that any property in its possession or control, is owned or controlled by an individual or organisation who—

- (a) commits acts of terrorism or participates in or facilitates the commission of acts of terrorism or the financing of terrorism; or
- (b) is a terrorist organisation,

the financial institution shall report the existence of such property and any information which the financial institution has reasonable grounds to suspect is information regarding a transaction or proposed transaction in respect of such property to the Financial Intelligence Agency.

(2) Where a financial institution suspects or has reasonable grounds to suspect that property is connected with or related to, or to be used for acts of terrorism or by a terrorist organisation or those who finance terrorism, the financial institution shall report to the Financial Intelligence Agency the particulars relating to the persons, accounts and transactions involved, whether completed or not, and the total value of such property.

(3) A report to which subsection (1) or (2) refers shall be made as soon as reasonably practicable, and in any event within twenty-four hours of the date on which the financial institution knew or has reasonable grounds to suspect that the property is linked or related to, or is to be used for terrorism, acts of terrorism, by terrorist organisations or those who finance terrorism.

(4) Criminal or civil proceedings shall not lie against a person for making a report in good faith under this section.



(5) A financial institution which fails to comply with subsection (1) or (2) commits an offence and is liable on conviction on indictment to a fine or to imprisonment for a term of seven years, or to both.

*(Inserted by Ord. 17 of 2016)*

### **Protected disclosures**

**19.** (1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).

(2) The conditions are—

(a) that the information or other matter disclosed came to the person making the disclosure in the course of the business of a financial institution;

(b) that the information or other matter—

(i) causes the discloser to know or suspect; or

(ii) gives him reasonable grounds for knowing or suspecting,

that another person has committed an offence under any of sections 10 to 12; and

(c) that the disclosure is made to a designated police officer, designated customs officer or nominated officer as soon as is practicable after the information or other matter comes to the discloser.

(3) A disclosure to a nominated officer is a disclosure which—

(a) is made to a person nominated by the discloser's employer to receive disclosures under this section; and

(b) is made in the course of the discloser's employment and in accordance with the procedure established by the employer for the purpose.

(4) In this section—

(a) "nominated officer" includes a Money Laundering Reporting Officer; and

(b) "Money Laundering Reporting Officer" means a person appointed as such pursuant to the Anti-Money Laundering and Prevention of Terrorist Financing Regulations.

### **Restrictions on disclosure**

**20.** (1) Information which is disclosed to a police officer or customs officer under section 14, 15, 16, 17 or 19 shall not be disclosed by that officer, or by any person who obtains the information directly or indirectly from the officer, unless its disclosure is permitted under section 21 or 22.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$20,000 or to imprisonment for a term of twelve months, or to both.

(3) It is a defence for a person charged with an offence under this section to prove that the person took all reasonable steps and exercised due diligence to avoid committing the offence.

### Disclosure for purposes within the Islands

**21.** (1) Section 20 does not prohibit the disclosure of information to a person in the Islands for the purposes of the investigation of crime in the Islands or of criminal proceedings in the Islands.

(2) Section 20 does not prohibit the disclosure of information, for other purposes in the Islands, to—

- (a) the Attorney General or Director of Public Prosecutions;
- (b) the Financial Services Commission;
- (c) a police officer or customs officer; or
- (d) any other person who is for the time being authorised in writing by the Attorney General or the Director of Public Prosecutions to obtain that information.

### Disclosure for purposes outside the Islands

**22.** (1) Section 20 does not prohibit the disclosure of information if—

- (a) the Attorney General has consented to the disclosure and has not withdrawn that consent; and
- (b) the information is disclosed—
  - (i) for the purposes of the investigation of crime outside the Islands or of criminal proceedings outside the Islands; or
  - (ii) to an authority outside the Islands which is a foreign regulatory authority for the purposes of section 2 of the Financial Services Commission Ordinance.

(2) The Attorney General may give consent—

- (a) generally or specifically; and
- (b) unconditionally or subject to such conditions as the Attorney General may stipulate.

(3) Without prejudice to the generality of subsection (2), consent may be given in terms which permit the disclosure from time to time (as the occasion requires) of such a class of information as is specified in the consent to such a person or authority or class of persons or authorities as is so specified.

(4) Without prejudice to the generality of subsection (2), a condition—

- (a) may be expressed generally or in respect of any specified information;
- (b) may provide that information may only be disclosed in specified circumstances or for a specified purpose; or

- (c) may provide that any person or authority to whom information is disclosed shall not disclose it to any other person or body without the prior consent of the Attorney General.

### **Forfeitures in connection with offences under sections 10 to 12**

**23.** (1) The court by or before which a person is convicted of an offence under any of sections 10 to 12 may make a forfeiture order in accordance with this section.

(2) Where a person is convicted of an offence under section 10(1) or (2) or section 11 the court may order the forfeiture of any property—

- (a) which, at the time of the offence, the person had in his possession or under his control; and
- (b) which, at that time, the person intended should be used, or had reasonable cause to suspect might be used, for the purposes of terrorism.

(3) Where a person is convicted of an offence under section 10(3) the court may order the forfeiture of any property—

- (a) which, at the time of the offence, the person had in his possession or under his control; and
- (b) which, at that time, the person knew or had reasonable cause to suspect would or might be used for the purposes of terrorism.

(4) Where a person is convicted of an offence under section 12 the court may order the forfeiture of the property—

- (a) to which the arrangement in question related; and
- (b) which, at the time of the offence, the person knew or had reasonable cause to suspect would or might be used for the purposes of terrorism.

(5) Where a person is convicted of an offence under section 10(4) the court may order the forfeiture of the property to which the arrangement in question related.

(6) Where a person is convicted of an offence under any of sections 10 to 12, the court may order the forfeiture of any property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.

(7) Where a person other than the convicted person claims to be the owner of or otherwise interested in anything which can be forfeited by an order under this section, the court shall give him an opportunity to be heard before making an order.

(8) Schedule 2 shall have effect to make further provision for forfeiture orders under this section.

### Designated customs officers

24. The Collector of Customs may, by notice published in the *Gazette*, designate one or more customs officers for the purposes of sections 17 and 19.

## PART IV

### TERRORIST INVESTIGATIONS

#### *Cordons*

### Cordoned areas for the purposes of terrorist investigation

25. (1) An area is a cordoned area for the purposes of the Ordinance if it is designated under this section.

(2) A designation may be made by a police officer of at least the rank of inspector and only if he considers it expedient for the purposes of a terrorist investigation.

(3) If a designation is made orally, the officer making it shall confirm it in writing as soon as is reasonably practicable.

(4) The officer making a designation shall arrange for the demarcation of the cordoned area, so far as is reasonably practicable—

(a) by means of tape marked with the word “police”; or

(b) in such other manner as the officer considers appropriate.

(5) A police officer who is not of the rank required by subsection (2) may make a designation if he considers it necessary by reasons of urgency.

(6) Where a police officer makes a designation in reliance on subsection (5) he shall as soon as is reasonably practicable—

(a) make a written record of the time at which the designation was made; and

(b) ensure that a police officer of at least the rank of inspector is informed.

(7) A police officer who is informed of a designation in accordance with subsection (6)(b)—

(a) shall confirm the designation or cancel it with effect from such time as he may direct; and

(b) shall, if he cancels the designation, make a written record of the cancellation and the reason for it.

### Duration of designation under section 25

26. (1) A designation under section 25 has effect, subject to subsections (2) to (5), during the period—

(a) beginning at the time when it is made; and

(b) ending with a date or at a time specified in the designation.

(2) The date or time specified under subsection (1)(b) must not occur after the end of the period of fourteen days beginning with the day on which the designation is made.

(3) The period during which a designation has effect may be extended in writing from time to time by—

(a) the person who made it; or

(b) a police officer of at least the rank of inspector.

(4) An extension shall specify the additional period during which the designation is to have effect.

(5) A designation shall not have effect after the end of the period of twenty-eight days beginning with the day on which it is made.

### **Police powers**

27. (1) A police officer may—

(a) order a person in a cordoned area to leave it immediately;

(b) order a person immediately to leave premises which are wholly or partly in or adjacent to a cordoned area;

(c) order the driver or person in charge of a vehicle in a cordoned area to move it from the area immediately;

(d) arrange for the removal of a vehicle from a cordoned area;

(e) arrange for the movement of a vehicle within a cordoned area;

(f) prohibit or restrict access to a cordoned area by pedestrians or vehicles.

(2) A police officer not in uniform shall, if requested by a person given an order or affected by the exercise of any other power under subsection (1), produce proof of his authority.

(3) A person commits an offence if the person fails to comply with an order, prohibition or restriction imposed by virtue of subsection (1).

(4) It is a defence for a person charged with an offence under subsection (3) to prove that he had a reasonable excuse for his failure.

(5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months, or to both.

### *Information and Evidence*

### **Powers**

28. Schedule 3 shall have effect to confer powers required for the purposes of a terrorist investigation.

**Financial information**

29. Schedule 4 shall have effect to confer powers required to obtain financial information.

**Account monitoring orders**

30. Schedule 5 shall have effect to confer further powers to obtain information regarding terrorist finance.

**Information about acts of terrorism**

31. (1) This section applies where a person has information which he knows or believes might be of material assistance—

- (a) in preventing the commission by another person of an act of terrorism; or
- (b) in securing the apprehension, prosecution or conviction of another person, in the Islands, for an offence involving the commission, preparation or instigation of an act of terrorism.

(2) The person commits an offence if he does not disclose the information as soon as reasonably practicable in accordance with subsection (3).

(3) Disclosure is in accordance with this subsection if it is made to a police officer.

(4) It is a defence for a person charged with an offence under subsection (2) to prove that he had a reasonable excuse for not making the disclosure.

(5) A person who commits an offence under this section is liable on conviction to a fine or to imprisonment for a term of five years, or to both.

(6) Proceedings for an offence under this section may be taken, and the offence may for the purposes of those proceedings be treated as having been committed, in any place where the person charged is or has at any time been since he first knew or believed that the information might be of material assistance as mentioned in subsection (1).

(7) Where—

- (a) a disclosure is made; and
- (b) a failure to have made it would have constituted an offence under this section,

the disclosure is not to be taken to breach any restriction on the disclosure of information (however imposed).

**Tipping off and interference with material**

32. (1) Subsection (2) applies where a person knows or has reasonable cause to suspect that a police officer is conducting or proposes to conduct a terrorist investigation.

- (2) The person commits an offence if he—
- (a) discloses to another anything which is likely to prejudice the investigation; or
  - (b) interferes with material which is likely to be relevant to the investigation.
- (3) Subsection (4) applies where a person knows or had reasonable cause to suspect that a disclosure has been or will be made under any of sections 14 to 16.
- (4) The person commits an offence if he—
- (a) discloses to another anything which is likely to prejudice an investigation resulting from the disclosure under that section; or
  - (b) interferes with material which is likely to be relevant to an investigation resulting from the disclosure under that section.
- (5) It is a defence for a person charged with an offence under subsection (2) or (4) to prove—
- (a) that he did not know and had no reasonable cause to suspect that the disclosure or interference was likely to affect a terrorist investigation; or
  - (b) that he had a reasonable excuse for the disclosure or interference.
- (6) Subsections (2) and (4) do not apply to a disclosure which is made by a professional legal adviser—
- (a) to his client or to his client's representative in connection with the provision of legal advice by the adviser to the client and not with a view to furthering a criminal purpose; or
  - (b) to any person for the purpose of actual or contemplated legal proceedings and not with a view to furthering a criminal purpose.
- (7) A person who commits an offence under this section is liable on conviction on indictment to a fine or to imprisonment for a term of ten years, or to both.
- (8) For the purposes of this section—
- (a) a reference to conducting a terrorist investigation includes a reference to taking part in the conduct of, or assisting, a terrorist investigation; and
  - (b) a person interferes with material if he falsifies it, conceals it, destroys it or disposes of it, or if he causes or permits another to do any of those things

## PART V

## COUNTER-TERRORIST POWERS

*Suspected Terrorists***Interpretation of Part V: “terrorist”**

- 33.** (1) In this Part “terrorist” means a person who—
- (a) has committed an offence under any of sections 7, 8, 10 to 12, or 46 to 53; or
  - (b) is or has been concerned in the commission, preparation or instigation of acts of terrorism.

(2) The reference in subsection (1)(b) to a person who has been concerned in the commission, preparation or instigation of acts of terrorism includes a reference to a person who has been, whether before or after 22 May 2014 concerned in the commission, preparation or instigation of acts of terrorism within the meaning of section 3.

**Arrest and detention of suspected terrorists**

**34.** (1) A police officer may arrest a person whom he reasonably suspects to be a terrorist.

(2) Where a person is arrested under this section Schedule 6 shall apply to regulate his detention.

(3) Subject to subsections (4) to (7), a person detained under this section shall (unless detained under any other power) be released not later than the end of the period of forty-eight hours beginning—

- (a) with the time of his arrest under this section; or
- (b) if the person was being detained under Schedule 6 when he was arrested under this section, with the time when his examination under that Schedule began.

(4) If on a review of a person’s detention under Part II of Schedule 6 the review officer does not authorise continued detention, the person shall (unless detained in accordance with subsection (5) or (6) or under any other power) be released.

(5) Where a police officer intends to make an application for a warrant under paragraph 25 of Schedule 6 extending a person’s detention, the person may be detained pending the making of the application.

(6) Where an application has been made under paragraph 25 or 32 of Schedule 6 in respect of a person’s detention, he may be detained pending the conclusion of proceedings on the application.

(7) Where an application under paragraph 25 or 32 of Schedule 6 is granted in respect of a person’s detention, he may be detained, subject to paragraph 33 of that Schedule, during the period specified in the warrant.



(8) The refusal of an application in respect of a person's detention under paragraph 25 or 32 of Schedule 6 shall not prevent his continued detention in accordance with this section.

### **Warrant for search of premises for terrorist**

**35.** (1) A magistrate or judge may on the application of a police officer issue a warrant in relation to specified premises if he is satisfied that there are reasonable grounds for suspecting that a person whom the police officer reasonably suspects to be a terrorist is to be found there.

(2) A warrant under this section shall authorise any police officer to enter and search the specified premises for the purpose of arresting the person referred to in subsection (1) under section 34.

### **Search of suspected terrorist**

**36.** (1) A police officer may stop and search a person whom he reasonably suspects to be a terrorist to discover whether the person has in his possession anything which may constitute evidence that the person is a terrorist.

(2) A police officer may search a person arrested under section 34 to discover whether the person has in his possession anything which may constitute evidence that the person is a terrorist.

(3) A search of a person under this section must be carried out by someone of the same sex.

(4) A police officer may seize and retain anything which he discovers in the course of a search of a person under subsection (1) or (2) and which he reasonably suspects may constitute evidence that the person is a terrorist.

### *Power to Stop and Search*

### **Authorisation to stop and search to prevent acts of terrorism**

**37.** (1) An authorisation under this subsection authorises a police officer to stop a vehicle in an area or at a place specified in the authorisation and to search—

- (a) the vehicle;
- (b) the driver of the vehicle;
- (c) a passenger in the vehicle; and
- (d) anything in or on the vehicle or carried by the driver or a passenger.

(2) An authorisation under this subsection authorises any police officer to stop a pedestrian in an area or at a place specified in the authorisation and to search—

- (a) the pedestrian; and
- (b) anything carried by him.

(3) An authorisation under subsection (1) or (2) may be given only if the person giving it considers it expedient for the prevention of acts of terrorism.

(4) An authorisation may be given by a police officer of at least the rank of inspector.

(5) If an authorisation is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.

(6) A police officer not in uniform shall, if requested by a person affected by the exercise by him of the power conferred by an authorisation under this section, produce proof of his authority.

### Exercise of power

38. (1) The power conferred by an authorisation under section 37(1) or (2)—

- (a) may be exercised only for the purpose of searching for articles of a kind which could be used in connection with terrorism; and
- (b) may be exercised whether or not the police officer has grounds for suspecting the presence of articles of that kind.

(2) A police officer may seize and retain an article which he discovers in the course of a search by virtue of section 37(1) or (2) and which he reasonably suspects is intended to be used in connection with terrorism.

(3) A police officer exercising the power conferred by an authorisation may not require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.

(4) A search of a person under this section must be carried out by someone of the same sex.

(5) Where a police officer proposes to search a person or vehicle by virtue of section 37(1) or (2) he may detain the person or vehicle for such time as is reasonably required to permit the search to be carried out at or near the place where the person or vehicle is stopped.

(6) Where—

- (a) a vehicle or pedestrian is stopped by virtue of section 37(1) or (2); and
- (b) the driver of the vehicle or the pedestrian applies for a written statement that the vehicle was stopped, or that he was stopped, by virtue of section 37(1) or (2),

the written statement shall be provided.

(7) An application under subsection (6) must be made within the period of twelve months beginning with the date on which the vehicle or pedestrian was stopped.

### **Duration of authorisation**

**39.** (1) An authorisation under section 37 has effect, subject to subsections (2) to (7), during the period—

- (a) beginning at the time when the authorisation is given; and
- (b) ending with a date or at a time specified in the authorisation.

(2) The date or time specified under subsection (1)(b) must not occur after the end of the period of twenty-eight days beginning with the day on which the authorisation is given.

(3) The officer who gives an authorisation shall inform the Governor as soon as is reasonably practicable.

(4) If an authorisation is not confirmed by the Governor before the end of the period of forty-eight hours beginning with the time when it is given—

- (a) it shall cease to have effect at the end of that period; but
- (b) its ceasing to have effect shall not affect the lawfulness of anything done in reliance on it before the end of that period.

(5) Where the Governor confirms an authorisation the Governor may substitute an earlier date or time for the date or time specified under subsection (1)(b).

(6) The Governor may cancel an authorisation with effect from a specified time.

(7) An authorisation may be renewed in writing by any police officer of at least the rank of inspector and subsections (1) to (6) shall apply as if a new authorisation were given on each occasion on which the authorisation is renewed.

### **Offences**

**40.** (1) A person commits an offence if he—

- (a) fails to stop a vehicle when required to do so by a police officer in the exercise of the power conferred by an authorisation under section 37(1);
- (b) fails to stop when required to do so by a police officer in the exercise of the power conferred by an authorisation under section 37(2); or
- (c) wilfully obstructs a police officer in the exercise of the power conferred by an authorisation under section 37(1) or (2).

(2) A person who commits an offence under this section is liable on summary conviction to a fine of \$20,000 or to imprisonment for a term of twelve months, or to both.

### *Parking*

#### **Authorisation to prohibit or restrict parking**

**41.** (1) An authorisation under this section authorises a police officer to prohibit or restrict the parking of vehicles on a road specified in the authorisation.

(2) An authorisation may be given only if the officer giving it considers it expedient for the prevention of acts of terrorism.

(3) An authorisation may be given by a police officer of at least the rank of inspector.

(4) If an authorisation is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.

(5) In this section, “parking” means leaving a vehicle or permitting it to remain at rest.

#### **Exercise of powers**

**42.** (1) The power conferred by an authorisation under section 41 shall be exercised by placing a traffic sign on the road concerned.

(2) A police officer exercising the power conferred by an authorisation under section 41 may suspend a parking place.

(3) Where a parking place is suspended under subsection (2), the suspension shall be treated as a restriction imposed by section 41 for the purposes of section 44 of the Road Traffic Ordinance.

(4) A police officer not in uniform shall, if requested by a person affected by the exercise by him of the power conferred by an authorisation under section 41, produce proof of his authority.

(5) In this section—

“parking place” means a place where vehicles may be parked other than a place under the administration of a private person; and

“road” and “traffic sign” have the same meaning as in the Road Traffic Ordinance.

#### **Duration of authorisation**

**43.** (1) An authorisation under section 41 has effect, subject to subsection (2) and (3), during the period specified in the authorisation.

(2) The period specified shall not exceed twenty-eight days.

(3) An authorisation may be renewed in writing by the person who gave it or by a person who could have given it and subsections (1) and (2) shall apply as if a new authorisation were given on each occasion on which the authorisation is renewed.

## **Offences**

**44.** (1) A person commits an offence if he parks a vehicle in contravention of a prohibition or restriction imposed by virtue of section 41.

(2) A person commits an offence if—

(a) he is the driver or other person in charge of a vehicle which has been permitted to remain at rest in contravention of any prohibition or restriction imposed by virtue of section 41; and

(b) he fails to move the vehicle when ordered to do so by a police officer.

(3) It is a defence for a person charged with an offence under this section to prove that he had a reasonable excuse for the act or omission in question.

(4) Possession of a current disabled person's badge shall not itself constitute a reasonable excuse for the purposes of subsection (3).

(5) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of \$10,000.

(6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months, or to both.

## *Port Controls*

### **Port controls**

**45.** (1) Schedule 7 shall have effect to confer powers exercisable at ports.

(2) The Governor may by Order repeal paragraph 13 of Schedule 7.

(3) The powers conferred by Schedule 7 shall be exercisable notwithstanding the rights conferred under the Immigration Ordinance in respect of certain persons having right of abode, freedom to live in and to come and go into and from the Islands.

## PART VI

### TERRORIST OFFENCES

### **Prohibition of terrorism**

**46.** (1) A person shall not commit an act of terrorism.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for life.

**Weapons training**

47. (1) Subject to subsection (5), a person commits an offence if he provides instruction or training in the making or use of—

- (a) firearms;
- (b) radioactive material or weapons designed or adapted for the discharge of any radioactive material;
- (c) explosives; or
- (d) chemical, biological or nuclear weapons.

(2) Subject to subsection (5), a person commits an offence if he receives instruction or training in the making or use of—

- (a) firearms;
- (b) radioactive material or weapons designed or adapted for the discharge of any radioactive material;
- (c) explosives; or
- (d) chemical, biological or nuclear weapons.

(3) Subject to subsection (5), a person commits an offence if he invites another to receive instruction or training and the receipt—

- (a) would constitute an offence under subsection (2); or
- (b) would constitute an offence under subsection (2) but for the fact that it is to take place outside the Islands.

(4) For the purpose of subsections (1) and (3)—

- (a) a reference to the provision of instruction includes a reference to making it available either generally or to one or more specific persons; and
- (b) an invitation to receive instruction or training may be either general or addressed to one or more specific persons.

(5) It is a defence for a person charged with an offence under this section in relation to instruction or training to prove that his action or involvement was wholly for a purpose other than assisting, preparing for or participating in terrorism.

(6) A person who commits an offence under this section is liable on conviction on indictment to a fine or to imprisonment for a term of ten years, or to both.

(7) A court by or before which a person is convicted of an offence under this section may order the forfeiture of anything which the court considers to have been in the person's possession for purposes connected with the offence.

(8) Before making an order under subsection (7) a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner of or otherwise interested in anything which can be forfeited under that subsection.

(9) An order under subsection (7) shall not come into force until there is no further possibility of it being varied, or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time).

### **Directing terrorist organisation**

**48.** (1) A person commits an offence if he directs, at any level, the activities of an organisation which is concerned in the commission of acts of terrorism.

(2) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for life.

### **Possession of articles for terrorist purposes**

**49.** (1) A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.

(2) It is a defence for a person charged with an offence under this section to prove that his possession of the article was not for a purpose connected with the commission, preparation or instigation of an act of terrorism.

(3) In proceedings for an offence under this section, if it is proved that an article—

- (a) was on any premises at the same time as the accused; or
- (b) was on premises of which the accused was the occupier or which he habitually used otherwise than as a member of the public,

the court may assume that the accused possessed the article, unless the accused proves that he did not know of its presence on the premises or that the accused had no control over it.

(4) A person who commits an offence under this section is liable on conviction on indictment to a fine or to imprisonment for a term of fourteen years, or to both.

### **Collection of information**

**50.** (1) A person commits an offence if—

- (a) he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism; or
- (b) he possesses a document or record containing information of that kind.

(2) In this section “record” includes a photographic or electronic record.

(3) It is a defence for a person charged with an offence under this section to prove that he had a reasonable excuse for his action or possession.

(4) A person who commits an offence under this section is liable on conviction on indictment to a fine or to imprisonment for a term of ten years, or to both.

(5) A court by or before which a person is convicted of an offence under this section may order the forfeiture of any document or record containing information of the kind mentioned in subsection (1)(a).

(6) Before making an order under subsection (5) a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner of or otherwise interested in anything which can be forfeited under that subsection.

(7) An order under subsection (5) shall not come into force until there is no further possibility of it being varied, or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time).

### **Inciting terrorism outside the Islands**

**51.** (1) A person commits an offence if—

- (a) he incites another person to commit an act of terrorism wholly or partly outside the Islands; and
- (b) the act would, if committed in the Islands, constitute one of the offences listed in subsection (2).

(2) The offences referred to in subsection (1) are—

- (a) murder;
- (b) an offence under sections 11 of the Offences Against the Person Ordinance (wounding or causing grievous bodily harm);
- (c) an offence under section 15 of the Offences Against the Person Ordinance (poison);
- (d) an offence under section 20, 21 or 22 of the Offences Against the Person Ordinance (causing explosions); and
- (e) malicious damage to property.

(3) A person who commits an offence under this section is liable to any penalty to which he would be liable on conviction of the offence listed in subsection (2) which corresponds to the act which the person incites.

(4) For the purposes of subsection (1) it is immaterial whether or not the person incited is in the Islands at the time of the incitement.

(5) Nothing in this section imposes criminal liability on any person acting on behalf of, or holding office under, the Crown.

### **Hoaxes**

**52.** A person who knowingly makes a false report or issues any false communication purporting that a terrorist offence has been or is intended to or is likely to be committed commits an offence and is liable, upon conviction, to imprisonment for a term of seven years.



### **Harbouring, concealing etc. of terrorist**

**53.** A person who harbours, conceals or provides a safe haven to a terrorist or another person who finances or supports a terrorist or the commission of a terrorist act commits an offence and is liable, upon conviction, to imprisonment for life.

### **Duty to disclose information relating to offences and acts of terrorism**

**54.** (1) A person who has information which will be of assistance in—

- (a) preventing the commission or attempted commission by another person, of an act of terrorism; or
- (b) securing the arrest or prosecution of another person for an offence under this Ordinance,

shall without delay disclose the information to a police officer.

(2) Nothing in subsection (1) requires the disclosure of items subject to legal privilege.

(3) Criminal or civil proceedings shall not lie against a person for disclosing any information in good faith under subsection (1).

(4) A person who fails to comply with subsection (1) commits an offence and is liable on conviction on indictment to a fine or to imprisonment for a term of seven years, or to both.

*(Inserted by Ord. 17 of 2016)*

## PART VII

### MISCELLANEOUS

### **Terrorist bombing: jurisdiction**

**55.** (1) If—

- (a) a person does anything outside the Islands as an act of terrorism or for the purposes of terrorism; and
- (b) his action would have constituted the commission of one of the offences listed in subsection (2) if it had been done in the Islands,

he commits the offence.

(2) The offences referred to in subsection (1)(b) are—

- (a) an offence under section 3 of the Explosives Ordinance;
- (b) an offence under section 18, 19 or 20 of the Offences Against the Persons Ordinance (causing explosions, etc.);

- (c) an offence under section 1 of the Biological Weapons Act 1974 of the United Kingdom, as extended to the Islands by Order in Council (*S.I. 1975 No.240*);
- (d) an offence under section 2 of the Chemical Weapons Act 1996 of the United Kingdom, as extended to the Islands by Order in Council (*S.I. 2005 No.854*).

### **Terrorist finance offence: jurisdiction**

56. (1) If—

- (a) a person does anything outside of the Islands; and
- (b) the person's action would have constituted the commission of an offence under any of sections 10 to 12 if it had been done in the Islands,

he commits the offence.

(2) For the purposes of subsection (1)(b), section 13(1)(b) shall be read as if for “the jurisdiction” there were substituted “a jurisdiction”.

### **Forfeiture of terrorist cash**

57. (1) Schedule 8 which makes provision for enabling cash which—

- (a) is intended to be used for the purposes of terrorism; or
- (b) is, or represents, property obtained through terrorism,

to be forfeited in civil proceedings before a Magistrate's court shall have effect.

(2) The powers conferred by Schedule 8 are exercisable in relation to any cash whether or not proceedings have been brought for an offence in connection with the cash.

(3) Expressions used in this section have the same meanings as in Schedule 8.

### **Police powers**

58. (1) A power conferred by virtue of this Ordinance on a police officer—

- (a) is additional to powers which he has under the Police Force Ordinance or by virtue of any other enactment; and
- (b) shall not be taken to affect those powers.

(2) A police officer may use such force as may be necessary for the purpose of exercising a power conferred on him by virtue of this Ordinance (apart from paragraph 2 of Schedule 6).

(3) Where anything is seized by a police officer under a power conferred by virtue of this Ordinance, it may (unless the contrary intention appears) be retained only for so long as is necessary in all the circumstances.

### **Exercise of police officers' powers**

**59.** An authorised officer or an examining officer within the meaning of Schedule 6 may—

- (a) enter a vehicle for the purpose of exercising any functions conferred on him by virtue of this Ordinance; and
- (b) use reasonable force for the purpose of exercising a power conferred on him by virtue of this Ordinance (apart from paragraph 2 of Schedule 6).

### **Powers to stop and search**

**60.** (1) A power to search premises conferred by virtue of this Ordinance shall be taken to include power to search a container.

(2) A power conferred by virtue of this Ordinance to stop a person includes power to stop a vehicle (other than an aircraft which is airborne).

(3) A person commits an offence if he fails to stop a vehicle when required to do so by virtue of this section.

(4) A person who commits an offence under subsection (3) is liable on summary conviction to a fine of \$20,000 or to imprisonment for a term of twelve months, or to both.

### **Defences**

**61.** (1) Subsection (2) applies where in accordance with a provision mentioned in subsection (5) it is a defence for a person charged with an offence to prove a particular matter.

(2) If the person adduces evidence which is sufficient to raise an issue with respect to the matter the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(3) Subsection (4) applies where in accordance with a provision mentioned in subsection (5) a court—

- (a) may make an assumption in relation to a person charged with an offence unless a particular matter is proved; or
- (b) may accept a fact as sufficient evidence unless a particular matter is proved.

(4) If evidence is adduced which is sufficient to raise an issue with respect to the matter mentioned in subsection (3)(a) or (b) the court shall treat it as proved unless the prosecution disproves it beyond reasonable doubt.

(5) The provisions in respect of which subsections (2) and (4) apply are sections 8(4), 32(5)(a), 47, 49 and 50.

### **Evidence**

**62.** (1) A document which purports to be a notice or direction given under this Ordinance by and signed on behalf of the Governor shall be received in

evidence and shall, unless the contrary is proved, be deemed to be made or given by them.

(2) A document bearing a certificate or purporting to be signed on behalf of the Governor, stating that the document is a true copy of such a notice or direction mentioned in subsection (1) shall, in any legal proceedings, be conclusive evidence of the notice or direction.

### **Public servants, regulators, etc.**

63. (1) The Governor may by Order provide for any of sections 10 to 12, 14 to 19, 23 and 32 to apply to persons in the public service of the Crown.

(2) The Governor may by Order provide for either or both of sections 15 and 31 not to apply to persons who are in the Governor's opinion performing or connected with the performance of regulatory, supervisory, investigative or registration functions of a public nature.

(3) Orders under this section—

- (a) may make different provision for different purposes;
- (b) may make provision which is to apply only in specified circumstances; and
- (c) may make provision which applies only to particular persons or to persons of a particular description.

### **Aiders, abettors, etc.**

64. Any person who aids, abets, counsels or procures the commission of an offence under this Ordinance also commits the offence and is liable in the same manner as a principal offender to the penalty provided for that offence.

### **Offences by body corporate, etc.**

65. (1) Where an offence under this Ordinance committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity,

the person also commits the offence and, save as provided in paragraph 8 of Schedule 4, liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to acts and defaults of a member in connection with his functions of management as if the member were a director of the body corporate.

### **Consent to prosecution**

**66.** Proceedings for an offence under this Ordinance may only be instituted by the Director of Public Prosecutions.

### **Orders**

**67. (1)** The Governor may by Order amend the definition “financial institution” in section 2 (1).

**(2)** The Governor may by Order prescribe anything that shall or may be prescribed for the purposes of this Ordinance.

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**SCHEDULE 1***(Section 3)***LIST OF CONVENTIONS AND PROTOCOLS**

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963.
2. Convention for the Suppression of Unlawful Seizure of Aircraft, 1970.
3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971.
4. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973.
5. International Convention against the Taking of Hostages, 1979.
6. Convention on the Physical Protection of Nuclear Material, 1979.
7. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, 1988.
8. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988.
9. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988.
10. Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991.
11. International Convention for the Suppression of Terrorist Bombings, 1997.
12. International Convention for the Suppression of the Financing of Terrorism, 1999.
13. International Convention for the Suppression of Acts of Nuclear Terrorism, 2005.
14. Amendment to the Convention on the Physical Protection of Nuclear Material, 2005.
15. Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005.
16. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005.
17. Convention on the Suppression of Unlawful Acts relating to International Civil Aviation, 2010.
18. Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft, 2010.

**SCHEDULE 2**

*(Section 23(8))*

**FORFEITURE ORDERS RELATING TO PROPERTY**

**Implementation and enforcement of forfeiture orders made under section 23**

1. (1) Where the court makes an order under section 23 (in this Schedule referred to as a “forfeiture order”), it may make an order—

- (a) requiring any property to which the forfeiture order applies to be paid or handed over to the clerk to the court or a police officer;
- (b) directing any such property other than money or immovable property to be sold or otherwise disposed of in such manner as the court may direct and the proceeds paid to the clerk to the court;
- (c) appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property, to realise it in such manner as the court may direct and to pay the proceeds to the clerk to the court;
- (d) directing that any such property which is immovable property shall vest in the Crown, subject to such conditions and exceptions as may be specified by the court;
- (e) directing a specified part of any property which is money, or of the proceeds of sale, disposal or realisation of any property to be paid by the clerk to the court to or for a specified person falling within section 23(7);
- (f) making such other provision as appears to the court to be necessary for giving effect to the forfeiture order or to any order made by virtue of clause (a), (b), (c) or (e).

(2) A forfeiture order shall not come into force until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of the order being set aside.

(3) The balance of any sums in the hands of the clerk to the court by virtue of an order made under subparagraph (1) shall, after making payment (where appropriate) under subparagraph (1)(d), be paid into the National Forfeiture Fund.

(4) The clerk to the court shall, on the application of Attorney General, the Director of Public Prosecutions or the defendant in the proceedings in which the forfeiture order was made, certify in writing the extent (if any) to which, at the date of the certificate, effect has been given to the order in respect of the property to which it applies.

(5) In this paragraph references to the proceeds of sale, disposal or realisation of property are references to the proceeds after deduction of the costs of sale, disposal or realisation.

**Liability etc. of receiver**

2. Where the receiver takes any action—

- (a) in relation to property which is not subject to forfeiture being action which he would be entitled to take if it were such property;

- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

the receiver shall not be liable to any person in respect of any loss or damage resulting from his action unless he is shown to have acted negligently or in bad faith.

### Restraint orders

3. (1) The Supreme Court may, in accordance with this paragraph, by order (in this Schedule referred to as a “restraint order”) prohibit any person, subject to such conditions and exceptions as may be specified therein, from dealing with any property liable to forfeiture, that is to say any property in respect of which a forfeiture order has been made or could be made in any proceedings mentioned in subparagraph (3) or (4).

(2) A restraint order may apply—

- (a) to all property in the possession of or under the control of a specified person, whether the property is described or not;
- (b) to property coming into the possession of or under the control of a specified person after the making of the order.

(3) A restraint order may be made where—

- (a) proceedings have been instituted against a person for an offence under any of sections 10 to 12;
- (b) the proceedings have not been concluded; and
- (c) either a forfeiture order has been made or it appears to the Supreme Court that a forfeiture order may be made in the proceedings.

(4) A restraint order may also be made where—

- (a) a criminal investigation has been started in the Islands with regard to an offence under any of sections 10 to 12; and
- (b) it appears to the Supreme Court that a forfeiture order may be made in any proceedings for the offence.

(5) For the purposes of this paragraph, dealing with property includes, without prejudice to the generality of that expression—

- (a) where a debt is owed to the person concerned, making a payment to any person in reduction of the amount of the debt; and
- (b) removing property from the Islands.

(6) In exercising the powers conferred by this paragraph, the Supreme Court shall not take account of any obligations of any person having an interest in the property subject to the restraint order which might frustrate the making of a forfeiture order.

(7) In this paragraph, “criminal investigation” means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.



- (8) For the purposes of this paragraph proceedings for an offence are instituted—
- (a) when a warrant is issued in respect of the offence for the arrest of a person who is out of the Islands;
  - (b) when a person is arrested for and charged with the offence;
  - (c) when a summons in respect of the offence is served on a person,

and where the application of this subparagraph would result in there being more than one time for the institution of proceedings, they shall be taken to be instituted at the earliest of those times.

- (9) For the purposes of this paragraph and paragraph 5(2) proceedings are concluded—
- (a) when a forfeiture order has been made in those proceedings and effect has been given to it in respect of all the property to which it applies; or
  - (b) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a forfeiture order being made in the proceedings.

#### **Procedure for restraint order**

4. A restraint order—

- (a) may be made only on an application by or on behalf of the Director of Public Prosecutions;
- (b) may be made on an *ex parte* application to a judge in chambers (and references in paragraphs 3, 6 and 7 to the Supreme Court shall be construed accordingly); and
- (c) shall provide for notice to be given to persons affected by the order.

#### **Discharge or variation of restraint order**

5. (1) A restraint order may be discharged or varied by the Supreme Court on the application of a person affected by it.

(2) A restraint order made by virtue of paragraph 3(3) shall, in particular, be discharged on an application under subparagraph (1) if the proceedings for the offence have been concluded.

(3) A restraint order made by virtue of paragraph 3(4) shall, in particular, be discharged on an application under subparagraph (1)—

- (a) if no proceedings in respect of offences under any of sections 10 to 12 are instituted within such time as the Supreme Court considers reasonable; and
- (b) if all proceedings in respect of offences under any of sections 10 to 12 have been concluded.

#### **Effect of restraint order**

6. (1) Where the Supreme Court has made a restraint order, a police officer may seize any property subject to the order for the purpose of preventing it from being removed from the Islands.

(2) Property seized under this paragraph shall be dealt with in accordance with the Supreme Court's directions.

**Further effect and registration of order affecting immovable property**

7. (1) A restraint order in respect of immovable property shall have effect as an injunction restraining any person from disposing of or creating a charge (however expressed) over the property.

(2) Where the Supreme Court makes a restraint order affecting immovable property in the Islands, it shall constitute an inhibition for the purposes of section 124 of the Registered Land Ordinance and it shall forthwith be communicated to the Registrar of Lands, and, notwithstanding section 124(2) of the Registered Land Ordinance, have effect immediately the order is made.

**Compensation**

8. (1) Where—

- (a) a restraint order is discharged under paragraph 5(3); or
- (b) proceedings are instituted against a person for an offence under any of sections 10 to 12 and either—
  - (i) the proceedings do not result in his conviction for any such offence; or
  - (ii) where the person is convicted of one or more such offences, the conviction or convictions are quashed,

the Supreme Court may, on application by a person who had an interest in any property which was subject to a forfeiture or restraint order made in or in relation to those proceedings, and subject to subparagraphs (2) and (3), order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to do so.

(2) The Supreme Court shall not order compensation to be paid in any case unless it is satisfied that—

- (a) there is some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned; and
- (b) the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of a forfeiture order or restraint order.

(3) The amount of compensation to be paid under this paragraph shall be such as the Supreme Court thinks just in all the circumstances of the case.

(4) Compensation payable under this paragraph shall be paid out of the Consolidated Fund.

**Enforcement of external orders**

9. (1) The Governor may, by Regulations, make provision for the purpose of enabling the enforcement in the Islands of external orders.

(2) An “external order” means an order—

- (a) which is made in a country or territory outside the Islands; and
- (b) which makes relevant provision.

(3) “Relevant provision” means—

- (a) provision for the forfeiture of terrorist property (“an external forfeiture order”);
- or

- (b) provision, made in a country or territory outside the Islands, prohibiting dealing with property—
  - (i) which is subject to an external forfeiture order; or
  - (ii) in respect of which such an order could be made in proceedings which have been or are to be instituted in that country or territory (“an external restraint order”).
- (4) Regulations under this paragraph may, in particular, include provision—
  - (a) which, for the purpose of facilitating the enforcement of any external order that may be made, has effect at times before there is an external order to be enforced;
  - (b) for matters corresponding to those for which provision is made by, or can be made under, paragraph 10(1) to (8) in relation to the orders to which that paragraph applies; and
  - (c) for the proof of any matter relevant for the purposes of anything falling to be done in pursuance of the Regulations.
- (5) Regulations under this paragraph may also make provision with respect to anything falling to be done on behalf of the Islands in a country or territory outside the Islands in relation to proceedings in that country or territory for or in connection with the making of an external order.
- (6) Regulations under this paragraph may make different provision for different cases.

#### **Procedures and enforcement for external orders**

- 10.** (1) An external order shall, subject to this paragraph, have effect in the law of the Islands but shall be enforced in the Islands only in accordance with this paragraph and any rules of court as to the manner in which and the conditions subject to which such orders are to be enforced in the Islands.
- (2) The Supreme Court shall on an application made to it in accordance with rules of court for the registration of an external order, direct that the order shall, in accordance with such rules, be registered in the Supreme Court.
- (3) Rules of court shall also make provision—
  - (a) for cancelling or varying the registration of an external forfeiture order when effect has been given to it (whether in the Islands or elsewhere) in respect of all or, as the case may be, part of the property to which the order applies;
  - (b) for cancelling or varying the registration of an external restraint order which has been discharged or varied by the court by which it was made.
- (4) If an external forfeiture order is registered under this paragraph, the Supreme Court shall have, in relation to that order, the same powers as it has under paragraph 1(1) in relation to a forfeiture order made by it (and paragraph 2 applies accordingly).
- (5) The balance of any sums received by the clerk to the court by virtue of an order made under subparagraph (4) shall, after making payment (where appropriate) under paragraph 1(1)(d) or 2(2), be paid by him to the National Forfeiture Fund.
- (6) Paragraphs 3(5), 6 and 7 apply as they apply to a restraint order, and the Supreme Court shall have the same power to make an order for or in relation to the arrest of any property in

relation to proceedings brought or likely to be brought for a restraint order as it would have if those proceedings had been brought or were likely to be brought in the Supreme Court.

(7) Without prejudice to the foregoing provisions, if an external order is registered under this paragraph—

- (a) the Supreme Court shall have in relation to its enforcement, the same power;
- (b) proceedings for or in respect of its enforcement may be taken; and
- (c) proceedings for or in respect of any contravention of it (whether before or after such registration) may be taken,

as if the order had originally been made in the Supreme Court.

(8) The Supreme Court may additionally, for the purpose of—

- (a) assisting the achievement in the Islands of the purposes of an external order; or
- (b) assisting any receiver or other person directed by any such order to sell or otherwise dispose of property,

make such orders or do otherwise as seems to it appropriate.

(9) A document which purports to be a copy of an external Territory order and which purports to be certified as such by a proper officer of the court by which it was made and a document which purports to be a certificate for purposes corresponding to those of paragraph 1(4) and which purports to be certified by a proper officer of the court concerned shall be received in evidence without further proof.

(10) The power to make rules of court under section 16 of the Supreme Court Ordinance shall include power to make rules for the purposes of this paragraph.

#### **Meaning of clerk to the court**

11. In this Schedule “clerk to the court” means the person holding or acting in the office (however styled) of clerk to the court by which the forfeiture order was made.

**SCHEDULE 3**

*(Section 28)*

**TERRORIST INVESTIGATIONS**

*Searches*

**Warrant for search of premises**

1. (1) A police officer may apply to a judge of the Supreme Court for the issue of a warrant under this paragraph for the purposes of a terrorist investigation.

(2) A warrant under this paragraph shall authorise any police officer—

- (a) to enter the premises specified in the warrant;
- (b) to search the premises and any person found there; and
- (c) to seize and retain any relevant material which is found on a search under clause (b).

(3) For the purpose of subparagraph (2)(c) material is relevant if the police officer has reasonable grounds for believing that—

- (a) it is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation; and
- (b) it must be seized in order to prevent it from being concealed, lost, damaged, altered or destroyed.

(4) A warrant under this paragraph shall not authorise—

- (a) the seizure and retention of items subject to legal privilege; or
- (b) a police officer to require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.

(5) Subject to paragraph 2, the judge may grant an application under this paragraph if satisfied—

- (a) that the warrant is sought for the purposes of a terrorist investigation;
- (b) that there are reasonable grounds for believing that there is material on premises specified in the application which is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation and which does not consist of or include items subject to legal privilege; and
- (c) that the issue of a warrant is likely to be necessary in the circumstances of the case.

**Extended power to issue warrant for search of non-residential premises**

2. (1) This paragraph applies where an application is made under paragraph 1 and—

- (a) the application is made by a police officer of at least the rank of inspector;
- (b) the application does not relate to residential premises; and
- (c) the judge is not satisfied of the matter referred to in paragraph 1(5)(c).

(2) The judge may grant the application if satisfied of the matters referred to in paragraph 1(5)(a) and (b).

(3) Where a warrant under paragraph 1 is issued by virtue of this paragraph, the powers under paragraph 1(2)(a) and (b) are exercisable only within the period of twenty-four hours beginning with the time when the warrant is issued.

(4) For the purpose of subparagraph (1), “residential premises” means any premises which the officer making the application has reasonable grounds for believing are used wholly or mainly as a dwelling.

### Search of premises within cordoned area

3. (1) Subject to subparagraph (2), a police officer of at least the rank of inspector may by a written authority signed by him authorise a search of specified premises which are wholly or partly within a cordoned area.

(2) A police officer who is not of the rank required by subparagraph (1) may give an authorisation under this paragraph if he considers it necessary by reason of urgency.

(3) An authorisation under this paragraph shall authorise any police officer—

- (a) to enter the premises specified in the authority;
- (b) to search the premises and any person found there; and
- (c) to seize and retain any relevant material (within the meaning of paragraph 1(3)) which is found on a search under clause (b).

(4) The powers under subparagraph (3)(a) and (b) may be exercised—

- (a) on one or more occasions; and
- (b) at any time during the period when the designation of the cordoned area under section 25 has effect.

(5) An authorisation under this paragraph shall not authorise—

- (a) the seizure and retention of items subject to legal privilege;
- (b) a police officer to require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.

(6) A person commits an offence if he wilfully obstructs a search under this paragraph.

(7) A person who commits an offence under subparagraph (6) is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months, or to both.

### Order for production of material

4. (1) A police officer may, for the purposes of a terrorist investigation, apply to a judge of the Supreme Court for an order under subparagraph (2) in relation to particular material or material of a particular description.

(2) If on such an application the judge is satisfied on information on oath that the conditions referred to in subparagraph (3) are fulfilled, the judge may make an order that the person who appears to the judge to have in his possession, custody or power the material to which the application relates shall—

- (a) produce it to a police officer for the officer to take away; or

(b) give a police officer access to it, within such period as the order may specify or, if the material is not in that person's possession, custody or power (and will not come into his possession, custody or power within that period), that the person shall state to the best of his knowledge and belief where it is.

(3) The conditions referred to in subparagraph (2) are—

(a) that a terrorist investigation is being carried out and that there are reasonable grounds for believing that the material is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made;

(b) that there are reasonable grounds for believing that it is in the public interest, having regard—

(i) to the benefit likely to accrue to the investigation if the material is obtained; and

(ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given; and

(c) that the material does not consist of or include items subject to legal privilege.

(4) An order under subparagraph (2) may relate to material expected to come into existence or to become available to the person concerned in the period of twenty-eight days beginning with the date of the order; and in this case the order shall require that person to notify a named police officer as soon as possible after the material comes into existence or becomes available to that person.

(5) The period to be specified in an order under subparagraph (2) shall be seven days from the date of the order or, in the case of an order made by virtue of subparagraph (4), from the notification to the named police officer, unless it appears in either case to the judge that a longer or shorter period would be appropriate in all the circumstances.

(6) Where the judge makes an order under subparagraph (2)(b) in relation to material on any premises, the judge may, on the application of a police officer, order any person who appears to the judge to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.

#### **Rules of court for orders under paragraph 4**

5. (1) The power to make rules of court under section 17 of the Supreme Court Ordinance shall include a power to make rules as to—

(a) the discharge and variation of orders made under paragraph 4; and

(b) proceedings relating to such orders.

(2) Pending the making of such rules—

(a) an order under paragraph 4 may be discharged or varied by the judge on a written application made by any person subject to the order; and

(b) unless the judge otherwise directs on grounds of urgency, the applicant shall, not less than forty-eight hours before making the application, send a copy of it and a notice in writing of the time and place where it is to be made to the

Director of Public Prosecutions and to the police officer on whose application the order to be discharged or varied was made or to any other police officer.

(3) Where the material to which an application under paragraph 4 relates consists of information contained in a computer—

(a) an order under paragraph 4(2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and

(b) an order under paragraph 4(2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(4) An order under paragraph 4—

(a) confers no right to production of, or access to, items subject to legal privilege;

(b) has effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any enactment or otherwise.

### Explanations of seized or produced material

6. (1) A police officer may apply to a judge of the Supreme Court for an order under this paragraph requiring any person specified in the order to provide an explanation of any material seized in pursuance of a warrant under paragraph 1 or produced or made available to a police officer under paragraph 4.

(2) An order under this paragraph shall not require any person to disclose any information which he would be entitled to refuse to disclose on grounds of legal professional privilege. However, a lawyer may be required to provide the name and address of his client.

(3) A statement by a person in response to a requirement imposed by an order under this paragraph—

(a) may be made orally or in writing; and

(b) may be used in evidence against him only on a prosecution for an offence under paragraph 7.

### Offence

7. (1) A person commits an offence if, in purported compliance with an order under paragraph 6, he—

(a) makes a statement which the person knows to be false or misleading in a material particular; or

(b) recklessly makes a statement which is false or misleading in a material particular.

(2) A person who commits an offence under subparagraph (1) is liable on summary conviction to a fine of \$50,000 or to imprisonment for a term of two years, or to both.

### Urgent cases: authority for search

8. (1) A police officer of at least the rank of inspector may by a written order signed by him give to any police officer the authority which may be given by a search warrant under paragraph 1.



(2) An order shall not be made under this paragraph unless the officer has reasonable grounds for believing—

- (a) that the case is one of great emergency; and
- (b) that immediate action is necessary.

(3) Where an order is made under this paragraph, particulars of the case shall be notified as soon as is reasonably practicable to the Governor, the Chief Justice and the Director of Public Prosecutions.

(4) A person commits an offence if he wilfully obstructs a search under this paragraph.

(5) A person who commits an offence under subparagraph (4) is liable on summary conviction to a fine of \$20,000 or to imprisonment for a term of twelve months, or to both.

### **Urgent cases: explanations**

**9.** (1) If a police officer of at least the rank of inspector has reasonable grounds for believing that the case is one of great emergency the officer may by a written notice signed by him require any person specified in the notice to provide an explanation of any material seized in pursuance of an order under paragraph 8.

(2) Paragraph 6(2) and (3) and paragraph 7 shall apply to a notice under this paragraph as they apply to an order under paragraph 6.

(3) A person commits an offence if he fails to comply with a notice under this paragraph.

(4) It is a defence for a person charged with an offence under subparagraph (3) to show that he had a reasonable excuse for his failure.

(5) A person who commits an offence under subparagraph (3) is liable on summary conviction to a fine of \$20,000 or to imprisonment for a term of twelve months, or to both.

### **Supplementary**

**10.** (1) An application may only be made under paragraph 1(1), 4 or 6 with the consent of the Director of Public Prosecutions.

(2) A police officer may, if necessary, use reasonable force for the purpose of exercising any power conferred on him by this Schedule.

(3) A search of a person under this Schedule may only be carried out by a person of the same sex.

**SCHEDULE 4***(Section 29)***FINANCIAL INFORMATION****Order to provide customer information**

1. (1) Where an order has been made under this paragraph in relation to a terrorist investigation, a police officer named in the order may require a financial institution to which the order applies to provide customer information for the purposes of the investigation.

(2) The order may provide that it applies to—

- (a) all financial institutions;
- (b) a particular description, or particular descriptions, of financial institutions; or
- (c) a particular financial institution or particular financial institutions.

(3) The information shall be provided—

- (a) in such manner and within such time as the police officer may specify; and
- (b) notwithstanding any restriction on the disclosure of information imposed by any enactment or otherwise.

(4) An institution which fails to comply with a requirement under this paragraph commits an offence.

(5) It is a defence for an institution charged with an offence under subparagraph (4) to prove—

- (a) that the information required was not in the institution's possession; or
- (b) that it was not reasonably practicable for the institution to comply with the requirement.

(6) An institution which commits an offence under subparagraph (4) is liable on summary conviction to a fine of \$50,000.

**Who may apply for order**

2. An order under paragraph 1 may be made on the application of a police officer of at least the rank of inspector.

**Who may make order**

3. An order under paragraph 1 may be made only by the Chief Justice.

**Consent of Director of Public Prosecutions required for application**

4. An application for an order under paragraph 1 may only be made with the consent of the Director of Public Prosecutions.

**Rules of court**

5. The power to make rules of court under section 16 of the Supreme Court Ordinance shall include power to make provision about the procedure for an application under paragraph 1.

### **Criteria for making order**

6. The Chief Justice may only make an order under paragraph 1 if satisfied that—
- (a) the order is sought for the purposes of a terrorist investigation;
  - (b) the tracing of terrorist property is desirable for the purposes of the investigation; and
  - (c) the order will enhance the effectiveness of the investigation.

### **Customer information**

7. (1) In this Schedule “customer information” means (subject to subparagraph (3))—
- (a) information whether a business relationship exists or existed between a financial institution and a particular person (“a customer”);
  - (b) a customer’s account number;
  - (c) a customer’s full name;
  - (d) a customer’s date of birth;
  - (e) a customer’s address or former address;
  - (f) the date on which a business relationship between a financial institution and a customer begins or ends;
  - (g) any evidence of a customer’s identity obtained by a financial institution in pursuance of or for the purposes of any legislation relating to money laundering; and
  - (h) the identity of a person sharing an account with a customer.

(2) For the purposes of this Schedule “business relationship” means a business, professional or commercial relationship between a financial institution and a customer where that relationship is expected by the first person, at the time when contact is established, to have an element of duration.

- (3) The Governor may by Regulations—
- (a) provide for a class of information to be customer information, or to cease to be customer information, for the purposes of this Schedule; or
  - (b) extend the meaning of the expression “business relationship” for the purposes of this Schedule.

### **Offence by body corporate, etc.**

8. Where an individual commits an offence under paragraph 1(4) by virtue of this paragraph and section 65, the individual is liable on summary conviction to a fine of \$20,000 or to imprisonment for a term of twelve months, or to both.

### **Self-incrimination**

9. (1) Customer information provided by a financial institution under this Schedule shall not be admissible in evidence in criminal proceedings against the institution or any of its officers or employees.

(2) Subparagraph (1) shall not apply in relation to proceedings for an offence under paragraph 1(4) (including proceedings brought by virtue of paragraph 8).

## SCHEDULE 5

(Section 30)

### ACCOUNTS MONITORING ORDERS

#### Account monitoring orders

1. (1) The Chief Justice may, on an application made to him by a police officer of at least the rank of inspector, make an account monitoring order if he is satisfied that—

- (a) the order is sought for the purposes of a terrorist investigation;
- (b) the tracing of terrorist property is desirable for the purposes of the investigation; and
- (c) the order will enhance the effectiveness of the investigation.

(2) An application for an order under subparagraph (1) may only be made with the consent of the Director of Public Prosecutions.

(3) The application for an account monitoring order must state that the order is sought against the financial institution specified in the application in relation to information which—

- (a) relates to an account or accounts held with the institution by the person specified in the application (whether solely or jointly with another); and
- (b) is of the description so specified.

(4) The application for an account monitoring order may specify information relating to—

- (a) all accounts that the person specified in the application for the order holds with the financial institution so specified;
- (b) a particular description, or particular descriptions, of accounts so held; or
- (c) a particular account, or particular accounts, so held.

(5) An account monitoring order is an order that the financial institution specified in the application for the order must—

- (a) for the period specified in the order;
- (b) in the manner so specified;
- (c) at or by the time or times so specified; and
- (d) at the place or places so specified,

provide information of the description specified in the application to a police officer named in the order.

(6) The period stated in an account monitoring order must not exceed the period of ninety days beginning with the day on which the order is made.

### **Applications**

2. (1) An application for an account monitoring order may be made *ex parte* to the Chief Justice in chambers.

(2) The description of information specified in an application for an account monitoring order may be varied by the officer who applied for the order or another police officer of at least the rank of inspector.

### **Discharge or variation**

3. (1) An application to discharge or vary an account monitoring order may be made to the Chief Justice by—

(a) the police officer who applied for the order or another police officer of at least the rank of inspector; or

(b) any person affected by the order.

(2) The Chief Justice may confirm, vary or discharge the order.

### **Rules of court**

4. The power to make rules of court under section 16 of the Supreme Court Ordinance shall include power to make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

### **Effect of orders**

5. (1) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

(2) An account monitoring order has effect as if it were an order of the Supreme Court.

### **Statements**

6. (1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.

(2) But subparagraph (1) does not apply—

(a) in the case of proceedings for contempt of court;

(b) in the case of proceedings under section 23 where the financial institution has been convicted of an offence under any of sections 10 to 12;

(c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subparagraph (1).

(3) A statement may not be used by virtue of subparagraph (2)(c) against a financial institution unless—

(a) evidence relating to it is adduced; or

(b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

**SCHEDULE 6***(Section 34 and Schedule 7)***DETENTION****PART I****TREATMENT OF PERSONS DETAINED UNDER SECTION 34 OR SCHEDULE 7****Place of detention**

1. (1) The Governor shall designate places at which persons may be detained under section 34 or Schedule 7.

(2) In this Schedule a reference to a police station includes a reference to any place which the Governor has designated under subparagraph (1) as a place where a person may be detained under section 34.

(3) Where a person is detained under Schedule 7, the person may be taken in the custody of an examining officer or of a person acting under an examining officer's authority to and from any place where his attendance is required for the purpose of—

- (a) his examination under that Schedule;
- (b) establishing his nationality or citizenship; or
- (c) making arrangements for his admission to a country or territory outside the Islands.

(4) A police officer who arrests a person under section 34 shall take him as soon as is reasonably practicable to the police station which the police officer considers the most appropriate.

(5) In this paragraph "examining officer" has the meaning given in Schedule 7.

**Identification**

2. (1) An authorised person may take any steps which are reasonably necessary for—

- (a) photographing the detained person;
- (b) measuring him; or
- (c) identifying him.

(2) In subparagraph (1) "authorised person" means any of the following—

- (a) a police officer;
- (b) a prison officer;
- (c) a person authorised by the Governor; and
- (d) in the case of a person detained under Schedule 7, an examining officer (within the meaning of that Schedule).

(3) This paragraph does not confer the power to take fingerprints, non-intimate samples or intimate samples (within the meaning given by paragraph 16).

### **Recording of interviews**

3. (1) The Governor shall—

- (a) issue a code of practice about the audio recording of interviews to which this paragraph applies; and
- (b) make an Order requiring the audio recording of interviews to which this paragraph applies in accordance with any relevant code of practice under clause (a).

(2) The Governor may make an Order requiring the video recording of interviews to which this paragraph applies.

(3) An Order under subparagraph (2) shall specify whether the video recording which it requires is to be silent or with sound.

(4) Where an Order is made under subparagraph (2)—

- (a) the Governor shall issue a code of practice about the video recording of interviews to which the Order applies; and
- (b) the Order shall require the interviews to be video recorded in accordance with any relevant code of practice under clause (a).

(5) Where the Governor has made an Order under subparagraph (2) requiring certain interviews to be video recorded with sound, the Governor need not, but may, make an order under subparagraph (1)(b) in relation to those interviews.

(6) This paragraph applies to any interview by a police officer of a person detained under section 34 or Schedule 7 if the interview takes place in a police station.

### **Code of practice – supplementary**

4. (1) When the Governor proposes to bring into operation a code of practice, the Governor shall prepare and publish a draft of that code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(2) After the Governor has complied with subparagraph (1), the Governor may bring the code into operation by Order.

(3) The Governor may revise a code and issue the revised code, and subparagraphs (1) and (2) shall apply to a revised code as they apply to the first code brought into operation.

(4) The failure by a police officer to observe a provision of a code shall not of itself make him liable to criminal or civil proceedings.

(5) A code shall be admissible in evidence in all criminal proceedings, and if any provision of a code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.

### **Status**

5. A detained person shall be deemed to be in legal custody throughout the period of his detention.

**Right to have someone informed when detained**

6. (1) Subject to paragraph 8, a person detained under section 34 or Schedule 7 at a police station shall be entitled, if he so requests, to have one named person informed as soon as is reasonably practicable that he is being detained there.

(2) The person named must be—

- (a) a friend of the detained person;
- (b) a relative; or
- (c) a person who is known to the detained person or who is likely to take an interest in his welfare.

(3) Where a detained person is transferred from one police station to another, he shall be entitled to exercise the right under this paragraph in respect of the police station to which he is transferred.

**Access to legal advice**

7. (1) Subject to paragraph 8, a person detained under section 34 or Schedule 7 at a police station shall be afforded facilities, if he so requests, to consult a legal representative in private at any time, by telephone, in writing or in person.

(2) Where a request is made under subparagraph (1), the request and the time at which it was made shall be recorded.

**Authority to delay rights under paragraphs 6 and 7**

8. (1) Subject to subparagraph (2), a police officer of at least the rank of inspector may authorise a delay—

- (a) in informing the person named by a detained person under paragraph 6;
- (b) in affording a detained person the facilities mentioned in paragraph 7(1).

(2) But where a person is detained under section 34 he must be permitted to exercise his rights under paragraphs 6 and 7 before the end of the period mentioned in subsection (3) of that section.

(3) Subject to subparagraph (5), an officer may give an authorisation under subparagraph (1) only if he has reasonable grounds for believing—

- (a) in the case of an authorisation under subparagraph (1)(a), that informing the named person of the detained person's detention will have any of the consequences specified in subparagraph (4); or
- (b) in the case of an authorisation under subparagraph (1)(b), that the exercise of the right under paragraph 7 at the time when the detained person desires to exercise it will have any of the consequences specified in subparagraph (4).

(4) Those consequences are—

- (a) interference with or harm to evidence of a serious offence;
- (b) interference with or physical injury to any person;
- (c) the alerting of persons who are suspected of having committed a serious offence but who have not been arrested for it;



- (d) the hindering of the recovery of property obtained as a result of a serious offence or in respect of which a forfeiture order could be made under section 23;
- (e) interference with the gathering of information about the commission, preparation or instigation of acts of terrorism;
- (f) the alerting of a person and thereby making it more difficult to prevent an act of terrorism; and
- (g) the alerting of a person and thereby making it more difficult to secure a person's apprehension, prosecution or conviction in connection with the commission, preparation or instigation of an act of terrorism.

(5) An officer may also give an authorisation under subparagraph (1) if the officer has reasonable grounds for believing that—

- (a) the detained person has committed an offence mentioned in Schedule 1 to the Proceeds of Crime Ordinance;
- (b) the detained person has benefited from the offence within the meaning of that Ordinance; and
- (c) by informing the named person of the detained person's detention (in the case of an authorisation under subparagraph (1)(a), or by the exercise of the right under paragraph 7 (in the case of an authorisation under subparagraph (1)(b), the recovery of the value of that benefit will be hindered.

(6) If an authorisation under subparagraph (1) is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.

(7) Where an authorisation under subparagraph (1) is given—

- (a) the detained person shall be told the reason for the delay as soon as is reasonably practicable; and
- (b) the reason shall be recorded as soon as is reasonably practicable.

(8) Where the reason for authorising delay ceases to subsist there may be no further delay in permitting the exercise of the right in the absence of a further authorisation under subparagraph (1).

#### **Meaning of “serious offence”**

9. (1) This paragraph has effect for determining whether an offence is a serious offence for the purposes of paragraph 8.

(2) The following offences are serious—

- (a) any offence of—
  - (i) treason;
  - (ii) murder;
  - (iii) manslaughter;
  - (iv) rape;
  - (v) kidnapping;

- (vi) incest with a girl under the age of 13;
- (vii) sodomy with a person under the age of 16;
- (viii) gross indecency;
- (ix) indecent assault;
- (x) publication of obscene material,

whether at common law or under any enactment;

(b) any offence under—

- (i) sections 3 of the Explosives Ordinance;
- (ii) sections 21 and 22 of the Firearms Ordinance;
- (iii) section 1 of the Taking of Hostages Act 1982 of the United Kingdom as extended to the Islands by Order in Council  
(S.I. 1982 No. 1540);
- (iv) section 1 of the Aviation Security Act 1982 of the United Kingdom as extended to the Islands by Order in Council  
(S.I. 2000 No. 3059);
- (v) section 1 of the Aviation and Maritime Security Act 1990 of the United Kingdom as extended to the Islands by Order in Council;
- (vi) sections 25 and 26 of the Road Traffic Ordinance;

(c) any of the offences mentioned in the definition “drug trafficking offence” in section 2(1) of the Proceeds of Crime Ordinance.

(3) Subject to subparagraph (4), any other offence is serious only if its commission—

- (a) has led to any of the consequences specified in subparagraph (5); or
- (b) is intended or is likely to lead to any of those consequences.

(4) An offence which consists of making a threat is serious if carrying out the threat would be likely to lead to any of the consequences specified in subparagraph (5).

(5) The consequences mentioned in subparagraphs (3) and (4) are—

- (a) serious harm to the security of the Islands or to public order;
- (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
- (c) the death of any person;
- (d) serious injury to any person;
- (e) substantial financial gain to any person;
- (f) serious financial loss to any person.

(6) Loss is serious for the purposes of this paragraph if, having regard to all the circumstances, it is serious for the person who suffers it.

(7) In this paragraph “injury” includes any disease and any impairment of a person’s physical or mental condition.

(8) Any offence of conspiring or attempting to commit a serious offence or aiding, abetting, counselling or procuring the commission of a serious offence is a serious offence.

(9) The Governor may, by Regulations, amend subparagraph (2)(a) and (b).

#### **Direction regarding access to legal advice**

**10.** (1) A direction under this paragraph may provide that a detained person who wishes to exercise the right under paragraph 7 may only consult a legal representative in the sight and hearing of a qualified officer.

(2) A direction under this paragraph may be given by a police officer of at least the rank of inspector where the person is detained at a police station.

(3) A direction under this paragraph may be given only if the officer giving it has reasonable grounds for believing that, unless the direction is given, the exercise of the right by the detained person will have any of the consequences specified in paragraph 8(4) or the consequence specified in paragraph 8(5)(c).

(4) In this paragraph “a qualified officer” means a police officer who is of at least the rank of inspector and, in the opinion of the officer giving the direction, has no connection with the detained person’s case.

(5) A direction under this paragraph shall cease to have effect once the reason for giving it ceases to subsist.

#### **Fingerprints and samples**

**11.** (1) Fingerprints may be taken from the detained person only if they are taken by a police officer—

(a) with the appropriate consent given in writing; or

(b) without that consent, under subparagraph (3).

(2) A non-intimate sample may be taken from the detained person only if it is taken by a police officer—

(a) with the appropriate consent given in writing; or

(b) without that consent, under subparagraph (3).

(3) Fingerprints or a non-intimate sample may be taken from the detained person without the appropriate consent only if he is detained at a police station and a police officer of at least the rank of inspector authorises the fingerprints or sample to be taken.

(4) An intimate sample may be taken from the detained person only if—

(a) he is detained at a police station;

(b) the appropriate consent is given in writing;

(c) a police officer of at least the rank of inspector authorises the sample to be taken; and

(d) subject to paragraph 14(2) and (3), the sample is taken by a police officer.

(5) Subject to subparagraph (6), an officer may give an authorisation under subparagraph (3) or (4)(c) only if—

- (a) in the case of a person detained under section 34, the officer reasonably suspects that the person has been involved in an offence under any of the provisions mentioned in section 33(1)(a), and the officer reasonably believes that the fingerprints or sample will tend to confirm or disprove his involvement; or
- (b) in any case, the officer is satisfied that the taking of the fingerprints or sample from the person is necessary in order to assist in determining whether he falls within section 33(1)(b).

(6) An officer may also give an authorisation under subparagraph (3) for the taking of fingerprints if—

- (a) he is satisfied that the fingerprints of the detained person will facilitate the ascertainment of that person's identity; and
- (b) that person has refused to identify himself or the officer has reasonable grounds for suspecting that that person is not who he claims to be.

(7) If an authorisation under subparagraph (3) or (4)(c) is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.

(8) In this paragraph, references to ascertaining a person's identity include references to showing that he is not a particular person.

### Right to be informed

12. (1) Before fingerprints or a sample are taken from a person under paragraph 11, the person shall be informed—

- (a) that the fingerprints or sample may be used for the purposes of paragraph 15(3), or checked against any fingerprints or samples or the information derived from samples taken and contained—
  - (i) in records held by or on behalf of the Police Force;
  - (ii) in any similar records held by any other police force or authority, body or person specified pursuant to subparagraph (4);
- (b) where the fingerprints or sample are to be taken under paragraph 11(1)(a), (2)(a) or (4)(b), of the reason for taking the fingerprints or sample.

(2) Before fingerprints or a sample are taken from a person upon an authorisation given under paragraph 11(3) or (4)(c), the person shall be informed—

- (a) that the authorisation has been given;
- (b) of the grounds upon which it has been given; and
- (c) where relevant, of the nature of the offence in which it is suspected that he has been involved.

(3) After fingerprints or a sample are taken under paragraph 11, there shall be recorded as soon as is reasonably practicable any of the following which apply—

- (a) the fact that the person has been informed in accordance with subparagraphs (1) and (2);

- (b) the reason referred to in subparagraph (1)(b);
  - (c) the authorisation given under paragraph 11(3) or 11(4)(c);
  - (d) the grounds upon which that authorisation has been given; and
  - (e) the fact that the appropriate consent has been given.
- (4) The Governor may prescribe, for the purposes of subparagraph (1)(a)(ii)—
- (a) any police force of a country or territory outside the Islands;
  - (b) any person or public authority in a country or territory outside the Islands having functions which consist of or include the provision of criminal intelligence, the prevention and detection of serious crime, the investigation of crimes and the charging of offences;
  - (c) any person or public authority of a country or territory outside the Islands whose functions correspond to those of a police force or otherwise consist of or include the investigation of conduct contrary to the law of that country or territory, or the apprehension of persons guilty of such conduct;
  - (d) any person with functions under any international agreement which consist of or include—
    - (i) the investigation of conduct which is unlawful under the law of one or more places, prohibited by such an agreement or contrary to international law; or
    - (ii) the apprehension of persons guilty of such conduct.

**Intimate samples: further provisions**

13. (1) This paragraph applies where—
- (a) two or more non-intimate samples suitable for the same means of analysis have been taken from a person under paragraph 11;
  - (b) those samples have proved insufficient; and
  - (c) the person has been released from detention.
- (2) An intimate sample may be taken from the person if—
- (a) the appropriate consent is given in writing;
  - (b) a police officer of at least the rank of inspector authorises the sample to be taken; and
  - (c) subject to paragraph 14(2) and (3), the sample is taken by a police officer.
- (3) Paragraphs 11(5) and (6) and 12 shall apply in relation to the taking of an intimate sample under this paragraph and a reference to a person detained under section 34 shall be taken as a reference to a person who was detained under section 34 when the non-intimate samples mentioned in subparagraph (1)(a) were taken.

**Inference from refusal of consent**

14. (1) Where appropriate written consent to the taking of an intimate sample from a person under paragraph 11 or 13 is refused without good cause, in any proceedings against that person for an offence—

- (a) the court, in determining whether to commit him for trial or whether there is a case to answer, may draw such inferences from the refusal as appear proper; and
- (b) the court or jury, in determining whether that person is guilty of the offence charged, may draw such inferences from the refusal as appear proper.

(2) An intimate sample other than a sample of urine or a dental impression may be taken under paragraph 11 or 13 only by a person registered as a medical practitioner under the acting on the authority of a police officer.

(3) An intimate sample which is a dental impression may be taken under paragraph 11 or 13 only by a person registered as a dentist under the acting on the authority of a police officer.

(4) Where a sample of hair other than pubic hair is to be taken under paragraph 11 the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

**Use of fingerprints or samples**

15. (1) This paragraph applies to—

- (a) fingerprints or samples taken under paragraph 11 or 13; and
- (b) information derived from those samples.

(2) The fingerprints, samples or information may be used only for the purpose of a terrorist investigation.

(3) The fingerprints, samples or information may be checked, subject to subparagraph (2), against—

- (a) other fingerprints or samples taken under paragraph 11 or 13 or information derived from those samples;
- (b) any of the fingerprints, samples and information held by any police force, authority, body or person mentioned in or specified for the purposes of paragraph 12(1)(a).

**Interpretation of paragraphs 11 to 15**

16. In the application of paragraphs 11 to 15—

“appropriate consent” means—

- (i) in relation to a person who has attained the age of 16 years, the consent of that person;
- (ii) in relation to a person who has not attained the age of 16 years but has attained the age of 14 years, the consent of that person and his parent or guardian; and

- (iii) in relation to a person who has not attained the age of 16 years, the consent of his parent or guardian;

“fingerprints” includes palm prints;

“insufficient” and “sufficient” in relation to a sample, means sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample;

“intimate sample” means—

- (i) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (ii) a dental impression;
- (iii) a swab taken from a person’s body orifice other than the mouth;

“non-intimate sample” means—

- (i) a sample of hair other than pubic hair;
- (ii) a sample taken from a nail or from under a nail;
- (iii) a swab taken from any part of a person’s body including the mouth but not any other body orifice;
- (iv) saliva;
- (v) a footprint or a similar impression of any part of a person’s body other than a part of his hand.

## PART II

### REVIEW OF DETENTION UNDER SECTION 34

#### **Requirement for review**

17. (1) A person’s detention shall be periodically reviewed by a review officer.

(2) The first review shall be carried out as soon as is reasonably practicable after the time of the person’s arrest.

(3) Subsequent reviews shall, subject to paragraph 18, be carried out at intervals of not more than twelve hours.

(4) No review of a person’s detention shall be carried out after a warrant extending his detention has been issued under Part III of this Schedule.

#### **Postponement**

18. (1) A review may be postponed if at the latest time at which it may be carried out in accordance with paragraph 17—

- (a) the detained person is being questioned by a police officer and an officer is satisfied that an interruption of the questioning to carry out the review would prejudice the investigation in connection with which the person is being detained;
- (b) no review officer is readily available; or

(c) it is not practicable for any other reason to carry out the review.

(2) Where a review is postponed it shall be carried out as soon as is reasonably practicable.

(3) For the purposes of ascertaining the time within which the next review is to be carried out, a postponed review shall be deemed to have been carried out at the latest time at which it could have been carried out in accordance with paragraph 17.

### Grounds for continued detention

19. (1) A review officer may authorise a person's continued detention only if satisfied that it is necessary—

- (a) to obtain relevant evidence whether by questioning the person or otherwise;
- (b) to preserve relevant evidence;
- (c) pending a decision whether to apply to the Minister with responsibility for border control and immigration for a deportation notice to be served on the detained person;
- (d) pending the making of an application to the Minister for a deportation notice to be served on the detained person;
- (e) pending consideration by the Minister whether to serve a deportation notice on the detained person; or
- (f) pending a decision whether the detained person should be charged with an offence.

(2) The review officer shall not authorise continued detention by virtue of subparagraph (1)(a) or (b) unless he is satisfied that the investigation in connection with which the person is detained is being conducted diligently and expeditiously.

(3) The review officer shall not authorise continued detention by virtue of subparagraph (1)(c) to (f) unless he is satisfied that the process pending the completion of which detention is necessary is being conducted diligently and expeditiously.

(4) In subparagraph (1)(a) and (b) "relevant evidence" means evidence which—

- (a) relates to the commission by the detained person of an offence under any of the provisions mentioned in section 33(1)(a); or
- (b) indicates that the detained person falls within section 33(1)(b).

(5) In subparagraph (1) "deportation notice" means notice of a decision to make a deportation order under the Immigration Ordinance.

### Review officer

20. (1) The review officer shall be an officer who has not been directly involved in the investigation in connection with which the person is detained.

(2) In the case of a review carried out within the period of twenty-four hours beginning with the time of arrest, the review officer shall be a police officer of at least the rank of inspector.

(3) In the case of any other review, the review officer shall be a police officer of at least the rank of inspector.



**Directions by officer of higher rank**

21. (1) This paragraph applies when—
- (a) the review officer is of a rank lower than inspector;
  - (b) an officer of higher rank than the review officer gives directions relating to the detained person; and
  - (c) those directions are at variance with the performance by the review officer of a duty imposed on him under this Schedule.
- (2) The review officer shall refer the matter at once to the Commissioner of Police.

**Representations**

22. (1) Before determining whether to authorise a person's continued detention, a review officer shall give either of the following persons an opportunity to make representations about the detention—
- (a) the detained person; or
  - (b) any legal representative representing the detained person who is available at the time of the review.
- (2) Representations may be oral or written.
- (3) A review officer may refuse to hear oral representations from the detained person if the review officer considers that he is unfit to make representations because of his condition or behaviour.

**Rights**

23. (1) Where a review officer authorises continued detention he shall inform the detained person—
- (a) of any of his rights under paragraphs 6 and 7 which the detained person has not yet exercised; and
  - (b) if the exercise of any of his rights under either of those paragraphs is being delayed in accordance with paragraph 8 of the fact that it is being so delayed.
- (2) Where a review of a person's detention is being carried out at a time when his exercise of a right under either of those paragraphs is being delayed—
- (a) the review officer shall consider whether the reason or reasons for which the delay was authorised continue to subsist; and
  - (b) if in his opinion the reason or reasons have ceased to subsist, the review officer shall inform the officer who authorised the delay of his opinion (unless he was that officer).

**Record of review**

24. (1) A review officer carrying out a review shall make a written record of the outcome of the review and of any of the following which apply—
- (a) the grounds upon which continued detention is authorised;
  - (b) the reasons for postponement of the review;

- (c) the fact that the detained person has been informed as required under paragraph 23(1);
  - (d) the officer's conclusions on the matter considered under paragraph 23(2)(a);
  - (e) the fact that he has taken action under paragraphs 23(2)(b); and
  - (f) the fact that the detained person is being detained by virtue of section 34(5) or (6).
- (2) The review officer shall—
- (a) make the record in the presence of the detained person; and
  - (b) inform him at that time whether the review officer is authorising continued detention, and if he is, of his grounds.
- (3) Subparagraph (2) shall not apply where, at the time when the record is made the detained person is—
- (a) incapable of understanding what is said to him;
  - (b) violent or likely to become violent; or
  - (c) in urgent need of medical attention.

### PART III

#### EXTENSION OF DETENTION UNDER SECTION 34

#### **Warrant of further detention**

25. (1) A police officer of at least the rank of inspector may apply to a judge of the Supreme Court for the issue of a warrant of further detention under this Part.
- (2) A warrant of further detention—
- (a) shall authorise the further detention under section 34 of a specified person for a specified period; and
  - (b) shall state the time at which it is issued.
- (3) The specified period in relation to a person shall end not later than the end of the period of seven days beginning—
- (a) with the time of his arrest under section 34; or
  - (b) if the person was being detained under Schedule 7 when he was arrested under section 34, with the time when his examination under that Schedule began.

#### **Time limit for application**

26. (1) An application for a warrant shall be made—
- (a) during the period mentioned in section 34(3); or
  - (b) within six hours of the end of that period.

(2) The judge hearing an application made by virtue of subparagraph (1)(b) shall dismiss the application if he considers that it would have been reasonably practicable to make it during the period mentioned in section 34(3).

(3) For the purposes of this Schedule, an application for a warrant is made when written or oral notice of an intention to make the application is given to the judge.

### **Notice of application**

27. An application for a warrant may not be heard unless the person to whom it relates has been given a notice stating—

- (a) that the application has been made;
- (b) the time at which the application was made;
- (c) the time at which it is to be heard; and
- (d) the grounds upon which further detention is sought.

### **Grounds for extension**

28. (1) The judge may issue a warrant of further detention only if satisfied that—

- (a) there are reasonable grounds for believing that the further detention of the person to whom the application relates is necessary to obtain relevant evidence whether by questioning him or otherwise or to preserve relevant evidence; and
- (b) the investigation in connection with which the person is detained is being conducted diligently and expeditiously.

(2) In subparagraph (1) “relevant evidence” means, in relation to the person to whom the application relates, evidence which—

- (a) relates to the person’s commission of an offence under any of the provisions mentioned in section 33(1)(a); or
- (b) indicates that he is a person falling within section 33(1)(b).

### **Representation**

29. (1) The person to whom an application relates shall—

- (a) be given an opportunity to make oral or written representations to the judge about the application; and
- (b) subject to subparagraph (3), may be legally represented at the hearing.

(2) The judge shall adjourn the hearing of an application to enable the person to whom the application relates to seek legal representation where—

- (a) the person is not legally represented; and
- (b) he wishes to be so represented.

(3) The judge may exclude any of the following persons from any part of the hearing—

- (a) the person to whom the application relates;
- (b) anyone representing him.

(4) The judge may, after giving an opportunity for representations to be made by or on behalf of the applicant and the person to whom the application relates, direct—

- (a) that the hearing of the application must be conducted; and
- (b) that all representations by or on behalf of a person for the purposes of the hearing must be made,

by such means (whether a live television link or other means) falling within subparagraph (5) as may be specified in the direction and not in the presence (apart from by those means) of the applicant, of the person to whom the application relates or of any legal representative of that person.

(5) A means of conducting the hearing and of making representations falls within this subparagraph if it allows the person to whom the application relates and any legal representative of his (without being present at the hearing and to the extent that they are not excluded from it under subparagraph (3))—

- (a) to see and hear the judge and the making of representations to him by other persons; and
- (b) to be seen and heard by the judge.

(6) If the person to whom the application relates wishes to make representations about whether a direction should be given under subparagraph (4), the person must do so by using the facilities that will be used if the judge decides to give a direction under that subparagraph.

(7) Subparagraph (2) applies to the hearing of representations about whether a direction should be given under subparagraph (4) in the case of any application as it applies to the hearing of the application.

(8) The judge shall not give a direction under subparagraph (4) unless he has been informed that facilities are available at the place where the person to whom the application relates is held for the judge to conduct a hearing by means falling within subparagraph (5).

(9) If in a case where he has power to do so the judge decides not to give a direction under subparagraph (4), the judge shall state his reasons for not giving it.

### Information

**30.** (1) The officer who has made an application for a warrant may apply to the judge for an order that specified information upon which he intends to rely be withheld from—

- (a) the person to whom the application relates; and
- (b) anyone representing him.

(2) Subject to subparagraph (3), the judge may make an order under subparagraph (1) in relation to specified information only if satisfied that there are reasonable grounds for believing that if the information were disclosed—

- (a) evidence of an offence under any of the provisions mentioned in section 33(1)(a) would be interfered with or harmed;
- (b) the recovery of property obtained as a result of an offence under any of those provisions would be hindered;

- (c) the recovery of property in respect of which a forfeiture order could be made under section 23 would be hindered;
- (d) the apprehension, prosecution or conviction of a person who is suspected of falling within section 33(1)(a) or (b) would be made more difficult as a result of his being alerted;
- (e) the prevention of an act of terrorism would be made more difficult as a result of a person being alerted;
- (f) the gathering of information about the commission, preparation or instigation of an act of terrorism would be interfered with; or
- (g) a person would be interfered with or physically injured.

(3) The judge may also make an order under subparagraph (1) in relation to specified information if satisfied that there are reasonable grounds for believing that—

- (a) the detained person has committed an offence referred to in Schedule 1 to the Proceeds of Crime Ordinance;
- (b) the detained person has benefited from the offence within the meaning of the Proceeds of Crime Ordinance; and
- (c) the recovery of the value of that benefit would be hindered, if the information were disclosed.

(4) The Clerk to the Court shall direct that the following be excluded from the hearing of the application under this paragraph—

- (a) the person to whom the application for a warrant relates; and
- (b) anyone representing him.

### **Adjournments**

**31.** (1) The judge may adjourn the hearing of an application for a warrant only if the hearing is adjourned to a date before the expiry of the period mentioned in section 34(3).

(2) This paragraph shall not apply to an adjournment under paragraph 29(2).

### **Extensions of warrant**

**32.** (1) A police officer of at least the rank of inspector may apply to the judge for the extension or further extension of the period specified in a warrant of further detention.

(2) Where the period specified is extended, the warrant shall be endorsed with a note stating the new specified period.

(3) The specified period shall end not later than the end of the period of seven days beginning—

- (a) with the time of the person's arrest under section 34; or
- (b) if the person was being detained under Schedule 7 when he was arrested under section 34 with the time when the person's examination under that Schedule began.

(4) Paragraphs 26(3) and 27 to 30 shall apply to an application under this paragraph as they apply to an application for a warrant of further detention.

(5) The judge may adjourn the hearing of an application under subparagraph (1) only if the hearing is adjourned to a date before the expiry of the period specified in the warrant.

(6) Subparagraph (5) shall not apply to an adjournment under paragraph 29(2).

### Effect of warrant or order

33. A warrant given or order made by the judge under this Part of this Schedule shall have effect as if it were an order of the Supreme Court.

### Detention - conditions

34. A person detained by virtue of a warrant issued under this Part shall (unless detained in accordance with section 34(5) or (6) or under any other power) be released immediately if the officer having custody of him becomes aware that any of the grounds under paragraph 28(1)(a) and (b) upon which the clerk to the court authorised his further detention have ceased to apply.

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## SCHEDULE 7

(Section 45)

### PORT CONTROLS

#### Interpretation

1. (1) In this Schedule—

“captain” means master of a ship or commander of an aircraft;

“examining officer” means any of the following—

- (a) a police officer;
- (b) an immigration officer; or
- (c) a customs officer;

“port” includes an airport.

(2) A place shall be treated as a port for the purposes of this Schedule in relation to a person if an examining officer believes that the person—

- (a) has gone there for the purpose of embarking on a ship or aircraft; or
- (b) has arrived there on disembarking from a ship or aircraft.

#### Power to question

2. (1) An examining officer may question a person to whom this paragraph applies for the purpose of determining whether he appears to be a person falling within section 33(1)(b).

(2) This paragraph applies to a person if—

- (a) the person is at a port; and
- (b) the examining officer believes that the person’s presence at the port or in the area is connected with the person’s entering or leaving the Islands.

(3) This paragraph also applies to a person on a ship or aircraft which has arrived in the Islands.

(4) An examining officer may exercise his powers under this paragraph whether or not he has grounds for suspecting that a person falls within section 33(1)(b).

### **Requirement to give information**

3. A person who is questioned under paragraph 2 must—

- (a) give the examining officer any information in his possession which the officer requests;
- (b) give the examining officer on request either a valid passport which includes a photograph or another document which establishes the person's identity;
- (c) declare whether the person has with him documents of a kind specified by the examining officer; and
- (d) give the examining officer on request any document which the person has with him and which is of a kind specified by the officer.

### **Power to stop and detain**

4. (1) For the purposes of exercising a power under paragraph 2 an examining officer may—

- (a) stop a person or vehicle; and
- (b) detain a person.

(2) For the purpose of detaining a person under this paragraph, an examining officer may authorise the person's removal from a ship, aircraft or vehicle.

(3) Where a person is detained under this paragraph, Part I of Schedule 6 shall apply.

(4) A person detained under this paragraph shall (unless detained under any other power) be released not later than the end of the period of nine hours beginning with the time when his examination begins.

### **Search of ship or aircraft**

5. For the purpose of satisfying himself whether there are any persons whom he may wish to question under paragraph 2 an examining officer may—

- (a) search a ship or aircraft;
- (b) search anything on a ship or aircraft; and
- (c) search anything which he reasonably believes has been, or is about to be, on a ship or aircraft.

### **Search of person**

6. (1) An examining officer who questions a person under paragraph 2 may, for the purpose of determining whether he falls within section 33(1)(b)—

- (a) search the person;

- (b) search anything which the person has with him or which belongs to him, and which is on a ship or aircraft;
- (c) search anything which the person has with him, or which belongs to him, and which the examining officer reasonably believes has been, or is about to be, on a ship or aircraft;
- (d) search a ship or aircraft for anything falling within clause (b);
- (e) search a vehicle;
- (f) search anything in or on a vehicle;
- (g) search anything which he reasonably believes has been, or is about to be, in or on a vehicle.

(2) A search of a person under this paragraph must be carried out by someone of the same sex.

#### **Power to examine goods**

7. (1) An examining officer may examine goods to which this paragraph applies for the purpose of determining whether they have been used in the commission, preparation or instigation of acts of terrorism.

(2) This paragraph applies to goods which have arrived in or are about to leave the Island.

(3) In this paragraph “goods” includes—

- (a) property of any description; and
- (b) containers.

(4) An examining officer may board a ship or aircraft or enter a vehicle for the purpose of determining whether to exercise his power under this paragraph.

#### **Person authorised to carry out search etc.**

8. (1) An examining officer may authorise a person to carry out on his behalf a search or examination under any of paragraphs 5 to 7.

(2) A person authorised under this paragraph shall be treated as an examining officer for the purposes of paragraphs 7(4) and 9 of this Schedule.

#### **Detention of property**

9. (1) This paragraph applies to anything which—

- (a) is given to an examining officer in accordance with paragraph 3(d);
- (b) is searched or found on a search under paragraph 6; or
- (c) is examined under paragraph 7.

(2) An examining officer may detain the thing—

- (a) for the purpose of examination, for a period not exceeding seven days beginning with the day on which the detention commences;



- (b) while he believes that it may be needed for use as evidence in criminal proceedings; or
- (c) while he believes that it may be needed in connection with a decision by the Governor whether to make a deportation order under the Immigration Ordinance.

### **Designated ports**

10. (1) This paragraph applies to any journey to or from the Islands.

(2) Where a ship or aircraft is employed to carry passengers for reward on a journey to which this paragraph applies the owners or agents of the ship or aircraft shall not arrange for it to call at a port in the Islands for the purpose of disembarking or embarking passengers unless—

- (a) the port is a designated port; or
- (b) an authorised officer approves the arrangement.

(3) Where an aircraft is employed on a journey to which this paragraph applies otherwise than to carry passengers for reward, the captain of the aircraft shall not permit it to call at or leave a port in the Islands unless—

- (a) the port is a designated port; or
- (b) the captain gives at least twelve hours' notice in writing to a police officer.

(4) A designated port is a port designated as an authorised port under section 5 of the Immigration Ordinance.

### **Designation of control areas**

11. (1) The Governor may by notice in writing to the owners or agents of ships or aircraft—

- (a) designate control areas in any port in the Islands;
- (b) specify conditions for or restrictions on the embarkation or disembarkation of passengers in a control area.

(2) Where owners or agents of a ship or aircraft receive notice under subparagraph (1) in relation to a port they shall take all reasonable steps to ensure, in respect of the ship or aircraft—

- (a) that passengers do not embark or disembark at the port outside a control area; and
- (b) that any specified conditions are met and any specified restrictions are complied with.

(3) The Governor may by notice in writing to persons concerned with the management of a port (“the port managers”)—

- (a) designate control areas in the port;
- (b) require the port managers to provide at their own expense specified facilities in a control area for the purposes of the embarkation or disembarkation of passengers or their examination under this Schedule;
- (c) require conditions to be met and restrictions to be complied with in relation to the embarkation or disembarkation of passengers in a control area;

- (d) require the port managers to display, in specified locations in control areas, notices containing specified information about this Schedule in such form as may be specified.

(4) Where port managers receive notice under subparagraph (3) they shall take all reasonable steps to comply with any requirements set out in the notice.

(5) The Governor shall inform the Minister with responsibility for border control and immigration of any designations made and requirements imposed under this paragraph.

### **Duty of captain on arrival and departure**

**12.** (1) This paragraph applies to a ship employed to carry passengers for reward, or an aircraft, which—

- (a) arrives in the Islands; or  
(b) leaves the Islands.

(2) The captain shall ensure—

- (a) that passengers and members of the crew do not disembark at a port in the Islands unless either they have been examined by an examining officer or they disembark in accordance with arrangements approved by an examining officer;  
(b) that passengers and members of the crew do not embark at a port in the Islands except in accordance with arrangements approved by an examining officer;  
(c) where a person is to be examined under this Schedule on board the ship or aircraft, that he is presented for examination in an orderly manner.

(3) Where regulations 4 or 9 of the Immigration Regulations apply, the requirements of subparagraph (2)(a) are in addition to the requirements of regulations 4 or 9 of the Immigration Regulations.

### **Carding**

**13.** (1) The Governor may by Order make provision requiring a person to whom this paragraph applies, if required to do so by an examining officer, to complete and produce to the officer a card containing such information in such form as the Order may specify.

(2) An Order under this paragraph may require the owners or agents of a ship or aircraft employed to carry passengers for reward to supply their passengers with cards in the form required by virtue of subparagraph (1).

(3) This paragraph applies to a person—

- (a) who disembarks in the Islands from a ship or aircraft; or  
(b) who embarks in the Islands on a ship or aircraft.

### **Provision of passenger information**

**14.** (1) This paragraph applies to a ship or aircraft which arrives or is expected to arrive in the Islands or leaves or is expected to leave the Islands.

(2) If an examining officer gives the owners or agents of a ship or aircraft to which this paragraph applies a written request to provide specified information, the owners or agents shall comply with the request as soon as is reasonably practicable.

(3) A request to an owner or agent may relate—

- (a) to a particular ship or aircraft;
- (b) to all ships or aircraft of the owner or agent to which this paragraph applies; or
- (c) to specified ships or aircraft.

(4) Information may be specified in a request only if it is of a kind which is prescribed by Order of the Governor and which relates—

- (a) to passengers;
- (b) to crew; or
- (c) to vehicles belonging to passengers or crew.

(5) A passenger or member of the crew on a ship or aircraft shall give the captain any information required for the purpose of enabling the owners or agents to comply with a request under this paragraph.

(6) Subparagraphs (2) and (5) shall not require the provision of information which is required to be provided under or by virtue of regulations 4 and 9 of the Immigration Regulations.

### **Offences**

**15.** (1) A person commits an offence if the person—

- (a) wilfully fails to comply with a duty imposed under or by virtue of this Schedule;
- (b) wilfully contravenes a prohibition imposed under or by virtue of this Schedule; or
- (c) wilfully obstructs, or seeks to frustrate, a search or examination under or by virtue of this Schedule.

(2) A person who commits an offence under this paragraph is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months, or to both.

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## **SCHEDULE 8**

*(Section 57)*

### **FORFEITURE OF TERRORIST CASH**

#### **PART I**

*Introductory*

### **Terrorist cash**

**1.** (1) This Schedule applies to cash (“terrorist cash”) which—

- (a) is within section 57(1)(a); or
- (b) is property earmarked as terrorist property.

(2) “Cash” means—

- (a) coins and notes in any currency;
- (b) postal orders;
- (c) cheques of any kind, including travellers’ cheques;
- (d) bankers’ drafts;
- (e) bearer bonds and bearer shares, found at any place in the Islands.

(3) Cash also includes any kind of monetary instrument found at any place in the Islands if the instrument is specified by order made under subparagraph (4).

## PART II

### *Seizure and Detention*

#### **Seizure of cash**

2. (1) An authorised officer shall seize any cash if he has reasonable grounds for suspecting that it is terrorist cash.

(2) An authorised officer shall also seize cash part of which he has reasonable grounds for suspecting to be terrorist cash if it is not reasonably practicable to seize only that part.

*(Amended by Ord. 28 of 2018)*

#### **Detention of seized cash**

3. (1) While the authorised officer continues to have reasonable grounds for his suspicion, cash seized under this Schedule shall be detained initially for a period of 48 hours. *(Amended by Ord. 28 of 2018)*

(2) The period for which the cash or any part of it may be detained may be extended by an order made by a Magistrates’ court; but the order may not authorise the detention of any of the cash—

- (a) beyond the end of the period of three months beginning with the date of the order; and
- (b) in the case of any further order under this paragraph, beyond the end of the period of two years beginning with the date of the first order.

(3) A justice of the peace or magistrate may also exercise the power of a Magistrates’ court to make the first order under subparagraph (2) extending the period.

(4) An order under subparagraph (2) must provide for notice to be given to persons affected by it.

(5) An application for an order under subparagraph (2) may be made by an authorised officer, and the court or justice or magistrate may make the order if satisfied, in relation to any cash to be further detained, that one of the following conditions is met.

(6) The first condition is that there are reasonable grounds for suspecting that the cash is intended to be used for the purposes of terrorism and that either—

- (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the Islands or elsewhere) proceedings against a person for an offence with which the cash is connected; or
- (b) proceedings against any person for an offence with which the cash is connected have been started (in the Islands or elsewhere) and have not been concluded.

(7) The second condition is that there are reasonable grounds for suspecting that the cash is property earmarked as terrorist property and that either—

- (a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in the Islands or elsewhere) proceedings against any person for an offence with which the cash is connected; or
- (b) proceedings against any person for an offence with which the cash is connected have been started (in the Islands or elsewhere) and have not been concluded.

#### **Payment of detained cash into an account**

4. (1) If cash is detained under this Schedule for more than 48 hours, it is to be held in an interest-bearing account and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of cash seized under paragraph 2(2) of this Part, the authorized officer must, on paying it into the account, release so much of it as is not attributable to terrorist cash.

(3) Subparagraph (1) does not apply if the cash is required as evidence of an offence or evidence in proceedings under this Schedule.

#### **Release of detained cash**

5. (1) This paragraph applies while any cash is detained under this Schedule.

(2) A Magistrates' court may direct the release of the whole or any part of the cash if satisfied, on an application by the person from whom it was seized, that the conditions in paragraph 3 for the detention of cash are no longer met in relation to the cash to be released.

(3) An authorised officer may, after notifying the Magistrates' court or justice or magistrate under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

(4) But cash is not to be released—

- (a) if an application for its forfeiture under paragraph 6, or for its release under paragraph 9, is made, until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded;
- (b) if (in the Islands or elsewhere) proceedings are started against any person for an offence with which the cash is connected, until the proceedings are concluded.

## PART III

*Forfeiture***Forfeiture**

6. (1) While cash is detained under this Schedule, an application for the forfeiture of the whole or any part of it may be made to a Magistrates' court by an authorised officer.

(2) The court may order the forfeiture of the cash or any part of it if satisfied that the cash or part is terrorist cash.

(3) In the case of property earmarked as terrorist property which belongs to joint tenants one of whom is an excepted joint owner, the order may not apply to so much of it as the court thinks is attributable to the excepted joint owner's share.

(4) An excepted joint owner is a joint tenant who obtained the property in circumstances in which it would not (as against him) be earmarked; and references to his share of the earmarked property are references to so much of the property as would have been his if the joint tenancy had been severed.

**Appeal against forfeiture**

7. (1) Any party to proceedings in which an order is made under paragraph 6 ("a forfeiture order") who is aggrieved by the order may appeal to the Supreme Court.

(2) An appeal under subparagraph (1) must be made within the period of thirty days beginning with the date on which the forfeiture order is made.

(3) The Court may make any order it thinks appropriate.

(4) If the Court upholds the appeal, it may order the release of the cash.

**Application of forfeited cash**

8. (1) Cash forfeited under this Schedule, and any accrued interest on it, is to be paid into the National Forfeiture Fund.

(2) But it is not to be paid in—

(a) before the end of the period within which an appeal under paragraph 7 may be made; or

(b) if a person appeals under that paragraph, before the appeal is determined or otherwise disposed of.

## PART IV

*Miscellaneous***Victims**

9. (1) A person who claims (including a person who asserts an interest in any property) that any cash detained under this Schedule, or any part of it, belongs to him may apply to a Magistrates' court for the cash or part to be released to him under this paragraph.

(2) The application may be made in the course of proceedings under paragraph 3 or 6 or at any other time.

(3) If it appears to the court that—

- (a) the applicant was deprived of the cash claimed, or of property which it represents, by criminal conduct;
- (b) the property he was deprived of was not, immediately before he was deprived of it, property obtained by or in return for criminal conduct and nor did it then represent such property; and
- (c) the cash claimed belongs to him, the court may order the cash to be released to the applicant.

### **Compensation**

**10.** (1) If no forfeiture order is made in respect of any cash detained under this Schedule, the person to whom the cash belongs or from whom it was seized may make an application to the Magistrates' court for compensation.

(2) If, for any period after the initial detention of the cash for 48 hours, the cash was not held in an interest-bearing account while detained, the court may order an amount of compensation to be paid to the applicant.

(3) The amount of compensation to be paid under subparagraph (2) is the amount the court thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.

(4) If the court is satisfied that, taking account of any interest to be paid under this Schedule or any amount to be paid under subparagraph (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the court may order compensation (or additional compensation) to be paid to him.

(5) The amount of compensation to be paid under subparagraph (4) is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(6) Any compensation ordered to be paid under this paragraph is to be paid out of the National Forfeiture Fund.

(7) If a forfeiture order is made in respect only of a part of any cash detained under this Schedule, this paragraph has effect in relation to the other part.

(8) This paragraph does not apply if the court makes an order under paragraph 9.

## PART V

### *Property Earmarked as Terrorist Property*

#### **Property obtained through terrorism**

**11.** (1) A person obtains property through terrorism if he obtains property by or in return for acts of terrorism, or acts carried out for the purposes of terrorism.

- (2) In deciding whether any property was obtained through terrorism—
- (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the acts; and
  - (b) it is not necessary to show that the acts were of a particular kind if it is shown that the property was obtained through acts of one of a number of kinds, each of which would have been an act of terrorism, or an act carried out for the purposes of terrorism.

### Property earmarked as terrorist property

12. (1) Property obtained through terrorism is earmarked as terrorist property.

(2) But if property obtained through terrorism has been disposed of (since it was so obtained), it is earmarked as terrorist property only if it is held by a person into whose hands it may be followed.

- (3) Property may be followed into the hands of a person obtaining it on a disposal by—
- (a) the person who obtained the property through terrorism; or
  - (b) a person into whose hands it may (by virtue of this subparagraph) be followed.

### Tracing property

13. (1) Where property obtained through terrorism (“the original property”) is or has been earmarked as terrorist property, property which represents the original property is also earmarked.

- (2) If a person enters into a transaction by which—
- (a) he disposes of the original property or of property which (by virtue of this Part) represents the original property; and
  - (b) he obtains other property in place of it,

the other property represents the original property.

(3) If a person disposes of property which represents the original property, the property may be followed into the hands of a person who obtains it (and it continues to represent the original property).

### Mixing property

14. (1) Subparagraph (2) applies if a person’s property which is earmarked as terrorist property is mixed with other property (whether his property or another’s).

(2) The portion of the mixed property which is attributable to the property earmarked as terrorist property represents the property obtained through terrorism.

(3) Property earmarked as terrorist property is mixed with other property if (for example) it is used—

- (a) to increase funds held in a bank account;
- (b) in part payment for the acquisition of an asset;
- (c) for the restoration or improvement of land;
- (d) by a person holding a leasehold interest in the property to acquire the freehold.



### **Accruing profits**

15. (1) This paragraph applies where a person who has property earmarked as terrorist property obtains further property consisting of profits accruing in respect of the earmarked property.

(2) The further property is to be treated as representing the property obtained through terrorism.

### **General exceptions**

16. If—

- (a) a person disposes of property earmarked as terrorist property; and
- (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was earmarked,

the property may not be followed into that person's hands and, accordingly, it ceases to be earmarked.

(2) If—

- (a) in pursuance of a judgment in civil proceedings (whether in the Islands or elsewhere), the defendant makes a payment to the plaintiff or the plaintiff otherwise obtains property from the defendant;
- (b) the plaintiff's claim is based on the defendant's criminal conduct; and
- (c) apart from this subparagraph, the sum received, or the property obtained, by the plaintiff would be earmarked as terrorist property,

the property ceases to be earmarked.

(3) If—

- (a) under any law in force in the Islands, a payment is made to any person, or a person otherwise obtains property, in pursuance of a compensation order or a restitution order made in respect of loss or injury suffered in consequence of criminal conduct or other misconduct; and
- (b) apart from this subparagraph, the sum received, or the property obtained, would be earmarked as terrorist property,

the property ceases to be earmarked.

(4) Where—

- (a) a person enters into a transaction to which paragraph 13(2) applies; and
- (b) the disposal is one to which subparagraph (1) applies,

this paragraph does not affect the question whether (by virtue of paragraph 13(2)) any property obtained on the transaction in place of the property disposed of is earmarked.

## PART VI

*Interpretation***Property**

17. Property is all property wherever situated and includes—

- (a) money;
- (b) all forms of property, real or personal, heritable or moveable;
- (c) things in action and other intangible or incorporeal property.

(2) Any reference to a person's property (whether expressed as a reference to the property he holds or otherwise) is to be read as follows.

(3) In relation to land, it is a reference to any interest which he holds in the land.

(4) In relation to property other than land, it is a reference—

- (a) to the property (if it belongs to him); or
- (b) to any other interest which he holds in the property.

**Obtaining and disposing of property**

18. (1) References to a person disposing of his property include a reference—

- (a) to his disposing of a part of it; or
- (b) to his granting an interest in it,

(or to both); and references to the property disposed of are references to any property obtained on the disposal.

(2) If a person grants an interest in property of his which is earmarked as terrorist property, the question whether the interest is also earmarked is to be determined in the same manner as it is on any other disposal of earmarked property.

(3) A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes.

(4) Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other.

(5) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

**General interpretation**

19. (1) In this Schedule—

“authorised officer” means a police officer, a customs officer or an immigration officer;

“cash” has the meaning given by paragraph 1;

“criminal conduct” means conduct which constitutes an offence in the Islands, or would constitute an offence in the Islands if it occurred there;

“forfeiture order” has the meaning given by paragraph 7;

“interest” means—

- (a) in relation to land, any legal estate and any equitable interest or power; and
- (b) in relation to property other than land, includes any right (including a right to possession of the property);

“part”, in relation to property, includes a portion;

“property earmarked as terrorist property” is to be read in accordance with Part V;

“property obtained through terrorism” has the meaning given by paragraph 11;

“terrorist cash” has the meaning given by paragraph 1;

“value” means market value.

(2) For the purpose of deciding whether or not property was earmarked as terrorist property at any time (including times before 17 October 2014), it is to be assumed that this Schedule was in force at that and any other relevant time.

(3) Proceedings against any person for an offence are concluded when—

- (a) the person is convicted or acquitted;
- (b) the prosecution is discontinued; or
- (c) the jury is discharged without a finding.

