

Supplement No. 1 published with Gazette No. 16 of 3rd August, 2009

**TERRORISM LAW**

**(2009 Revision)**

Law 14 of 2003 consolidated with Law 10 of 2008 (part).

Revised under the authority of the Law Revision Law (1999 Revision).

Originally enacted -

Law 14 of 2003-24th July, 2003  
Law 10 of 2008-30th June, 2008.

Consolidated and revised this 16th day of June, 2009.



**TERRORISM LAW**

**(2009 Revision)**

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**TERRORISM LAW**

**(2009 Revision)**

**PART I- Introductory**

1. This Law may be cited as the Terrorism Law (2009 Revision). Short title
  
2. In this Law- Definitions
  - “act” and “action” includes omission;
  - “Authority” means the Cayman Islands Monetary Authority established under section 5(1) of the Monetary Authority Law (2008 Revision) and includes any employee of the Authority acting under the Authority’s authorisation; 2008 Revision
  - “constable” means any member of the Force, and includes a recruit constable;
  - “court” means the Grand Court;
  - “customs officer” means an officer appointed by the Governor under section 6 of the Customs Law (2007 Revision); 2007 Revision
  - “document” includes information recorded in any form and in relation to information recorded otherwise than in a legible form references to its production include references to producing a copy of the information in legible form;
  - “dwelling” means a building or part of a building used as a dwelling, and a vehicle which is habitually stationary and which is used as a dwelling;
  - “explosive” means a substance or combination of substances which are chemically or physically unstable or are kept in a manner by which they can readily be rendered unstable so that, upon the application of heat, detonation or other triggering agent or device they are liable violently to disintegrate, chemically or physically, with shattering destructive effect, and includes any such substance or substances declared to be an explosive by regulations made under the Explosives Law (2008 Revision); 2008 Revision
  - “firearm” means artillery, machine gun, sub-machine gun, rifle, shot gun, pistol, air gun, air pistol or any lethal barrellled weapon from which any shot, bullet or other missile can be discharged or noxious fumes can be emitted except any air rifle, air gun or air pistol of a type prescribed by the Governor under the Firearms Law (2008 Revision) and of a calibre so prescribed, and includes any component part of any such weapon and such accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon, and includes any ammunition capable of being used in any firearm and any reloader which is capable of or designed for the reloading of shotgun cartridges or any other type of 2008 Revision

ammunition;

2006 Revision “Force” means the Royal Cayman Islands Police Force referred to in section 3 of the Police Law (2006 Revision);

“Governor” means the person for the time being holding the office of Governor of the Islands, and includes any person for the time being lawfully performing the functions of that office under the Cayman Islands (Constitution) Orders 1972 to 1993, and to the extent to which a Deputy appointed under the Cayman Islands (Constitution) Orders 1972 to 1993 is authorised to act, that Deputy;

“Governor in Cabinet” means the Governor acting in accordance with the advice of the Cabinet of the Islands;

“Grand Court” means the Grand Court constituted under the Cayman Islands (Constitution) Orders 1972 to 1993;

2009 Revision “immigration officer” means the Chief Immigration Officer and any other immigration officer holding office under section 3 (1) of the Immigration Law (2009 Revision);

“organisation” includes any association or combination of persons;

“premises” includes any place and in particular includes-

- (a) a vehicle; and
- (b) a tent or moveable structure;

“property” includes money and all other property, real or personal, including things in action and other intangible property;

“public place” means any place to which the public has access as of right or upon payment or upon invitation express or implied;

“regulated sector” means that part of the business community in the Islands which is regulated by any one or more of the following laws-

- 2009 Revision (a) Banks and Trust Companies Law (2009 Revision);
- 2001 Revision (b) Building Societies Law (2001 Revision);
- 2003 Revision (c) Companies Management Law (2003 Revision);
- 2001 Revision (d) Cooperative Societies Law (2001 Revision);
- 2008 Revision (e) Insurance Law (2008 Revision);
- 2003 Revision (f) Money Services Law (2003 Revision);
- 2009 Revision (g) Mutual Funds Law (2009 Revision);
- 2004 Revision (h) Securities Investment Business Law (2004 Revision); and
- (i) any other laws that may be prescribed by the Governor by regulations made under section 45 of the Monetary Authority Law (2008 Revision);

2008 Revision

Law 10 of 2003 “Reporting Authority” means the Reporting Authority appointed under section 3 of the Proceeds of Crime Law, 2008;

“road” means any public place where a vehicle may be driven or parked and such areas adjacent thereto as may be prescribed under the Traffic Law (2003 Revision);

2003 Revision

“service provider” means a person licensed under the Information and Communications Technology Authority Law (2006 Revision) to provide any information technology service, telecommunications service, electronic media and broadcast service, internet service, digital library and commercial information service, network-based information service and related specialised professional service provided by electronic means and any other similar service;

2006 Revision

“terrorism” means the use or threat of action where-

- (a) (i) the action falls within paragraph (b);  
(ii) the use or threat is designed to influence the government or to intimidate the public or a section of the public; and  
(iii) the use or threat is made for the purpose of advancing a political, religious or ideological cause;
- (b) action falls within this paragraph if it -
  - (i) involves serious violence against a person;
  - (ii) involves serious damage to property;
  - (iii) endangers a person’s life, other than that of the person committing the action;
  - (iv) creates a serious risk to the health or safety of the public or a section of the public; or
  - (v) is designed seriously to interfere with or seriously to disrupt an electronic system;
- (c) the use or threat of action falling within paragraph (b) which involves the use of firearms or explosives is terrorism whether or not paragraph (a)(ii) is satisfied;
- (d) in paragraphs (a), (b) and (c)-
  - (i) “action” includes action outside the Islands;
  - (ii) a reference to any person or to property is a reference to any person, or to property, wherever situated; and
  - (iii) a reference to the public includes a reference to the public of a territory or country other than that of the Islands; and

“vehicle”, includes an aircraft, hovercraft, train or vessel.

## **PART II - Terrorist Offences and Weapons of Mass Destruction**

3. (1) A person who commits an act of terrorism is guilty of an offence and liable on conviction on indictment to imprisonment for life.

Terrorism

(2) 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.

Weapons training

4. (1) Subject to sections 8 and 9, a person commits an offence if he provides instruction or training in the making or use of-

- (a) firearms;
- (b) explosives; or
- (c) chemical, biological or nuclear weapons.

(2) A person commits an offence if he receives instruction or training in the making or use of-

- (a) firearms;
- (b) explosives; or
- (c) chemical, biological or nuclear weapons.

(3) 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) whether or not it takes place inside or outside of 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) Subsections (1) to (3) do not apply to the Royal Cayman Islands Police Force or to any person permitted by law to carry out any of those actions specified in those subsections.

(6) Whoever is guilty of an offence under this section is liable-

- (a) on summary conviction, to a fine of four thousand dollars and to imprisonment for six months; or
- (b) on conviction on indictment, to a fine and to imprisonment for ten years.

(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 shall 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).

5. (1) Subject to sections 8 and 9, a person shall not develop, produce, stockpile, acquire or retain-

Restriction on development, etc. of certain biological weapons and toxins

- (a) any biological agent or toxin of a type and in a quantity that has no justification for prophylactic, protective or 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.

(2) A person shall not-

- (a) transfer any biological agent or toxin to another person or enter into an agreement to do so; or
- (b) make arrangements under which another person transfers any biological agent or toxin or enters into an agreement with a third person to do so,

if the biological agent or toxin is likely to be kept or used (whether by the transferee or any other person) otherwise than for prophylactic, protective or other peaceful purposes and he knows or has reasons to believe that that is the case.

(3) This section applies to acts done inside or outside of the Islands.

(4) Proceedings for an offence committed under this section outside the Islands may be taken and the offence may for incidental purposes be treated as having been committed in the Islands.

(5) Whoever is guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.

6. (1) Subject to sections 8 and 9, whoever-

Use of nuclear weapons

- (a) knowingly causes a nuclear weapons explosion;
- (b) develops or produces or participates in the development or production of a nuclear weapon;
- (c) has a nuclear weapon in his possession;
- (d) participates in the transfer of a nuclear weapon; or
- (e) engages in military preparations or in preparation of a military nature intending to use or threaten to use a nuclear weapon,

is guilty of an offence.

(2) For the purposes of subsection (1)(b) a person participates in the development or production of a nuclear weapon if he does any act which-

- (a) facilitates the development by another of the capability to produce or use a nuclear weapon; or
- (b) facilitates the making by another of a nuclear weapon knowing or having reason to believe that his act has or will have that effect.

(3) For the purposes of subsection (1)(d) a person participates in the transfer of a nuclear weapon if-

- (a) he buys or otherwise acquires it or agrees with another to do so;
- (b) he seeks or otherwise disposes of it or agrees with another to do so; or
- (c) he makes arrangements under which another person either acquires or disposes of it or agrees with a third person to do so.

(4) For the purposes of subsection (3)-

- (a) to acquire an object is to buy it, hire it, borrow it or accept it as a gift;
- (b) to dispose of an object is to sell it, let it on hire, lend it or give it.

(5) This section applies to acts done inside or outside of the Islands.

(6) Proceedings for an offence committed under this section outside the Islands may be taken and the offence may for incidental purposes be treated as having been committed in the Islands.

(7) Whoever is guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.

Use, etc. of chemical weapons

7. (1) Subject to sections 8 and 9, whoever-

- (a) uses a chemical weapon;
- (b) develops or produces or participates in the development or production of a chemical weapon;
- (c) has a chemical weapon in his possession;
- (d) participates in the transfer of a chemical weapon; or
- (e) engages in military preparations, or in preparations of a military nature, intending to use a chemical weapon,

is guilty of an offence.

(2) For the purposes of subsection (1)(b) a person participates in the development or production of a chemical weapon if he does any act which-

- (a) facilitates the development by another of the capability to produce or use a chemical weapon; or

- (b) facilitates the making by another of a chemical weapon knowing or having reason to believe that his act has or will have that effect.

(3) For the purposes of subsection (1)(d) a person participates in the transfer of an object if-

- (a) he acquires or disposes of the object or enters into a contract to acquire or dispose of it, or
- (b) he makes arrangements under which another person acquires or disposes of the object or another person enters into a contract to acquire or dispose of it.

(4) For the purposes of subsection (3)-

- (a) to acquire an object is to buy it, hire it, borrow it or accept it as a gift;
- (b) to dispose of an object is to sell it, let it on hire, lend it or give it.

(5) This section applies to acts done inside or outside of the Islands.

(6) Proceedings for an offence committed under this section outside the Islands may be taken and the offence may for incidental purposes be treated as having been committed in the Islands.

(7) Whoever is guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.

8. (1) Nothing in section 4, 5, 6 or 7 applies-

Exceptions

- (a) to an act which is authorised under subsection (2); or
- (b) to an act done in the course of an armed conflict in the defence of the Islands or for the purpose of preserving law and order in the Islands.

(2) The Governor may-

- (a) authorise any act which would otherwise contravene section 4, 5, 6 or 7 in such manner and on such terms as he thinks fit; and
- (b) withdraw or vary any authorisation given under this subsection.

(3) Any question arising in proceedings for an offence under section 4, 5, 6 or 7 as to whether anything was done in the course of an armed conflict shall be determined by the Governor.

(4) A certificate purporting to set out any such determination and to be signed by the Governor shall be received in evidence in any such proceedings and shall be presumed to be so signed unless the contrary is shown.

- Defences
9. (1) In proceedings for an offence under section 4, 5, 6 or 7 relating to an object it is a defence for the accused to show that he did not know and had no reason to believe that the object was a weapon for the purposes of those sections.
- (2) Notwithstanding subsection (1), an accused person shall be taken to have shown that fact if-
- (a) sufficient evidence is adduced to raise an issue with respect to it; and
  - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (3) In proceedings for such an offence it is also a defence for the accused to show that he knew or believed that the object was a weapon but, as soon as reasonably practicable after he first knew or believed that fact, he took all reasonable steps to inform the Governor or a constable of his knowledge or belief.
- Extraterritorial application
10. Proceedings for an offence committed under section 4, 5, 6 or 7 outside the Islands may be taken, and the offence may for incidental purposes be treated as having been committed, in any part of the Islands.
- Powers of entry
11. (1) If a Justice of the Peace is satisfied on information on oath that there are reasonable grounds for suspecting that evidence of the commission of an offence under section 4, 5, 6 or 7 is to be found on any premises he may issue a warrant authorising an authorised officer to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search the premises.
- (2) The powers of a person who enters the premises under the authority of the warrant include power-
- (a) to take with him such other persons and such equipment as appear to him to be necessary;
  - (b) to inspect, seize and retain any substance, equipment or document found on the premises;
  - (c) to require any document or other information which is held in electronic form and is accessible from the premises to be produced in a form-
    - (i) in which he can read and copy it; or
    - (ii) from which it can readily be produced in a form in which he can read and copy it; and
  - (d) to copy any document which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under section 4, 5, 6 or 7.

(3) A constable who enters premises under the authority of a warrant or under subsection (2)(a) may-

- (a) give such assistance as an authorised officer may request for the purpose of facilitating the exercise of any power under this section; and
- (b) search or cause to be searched any person on the premises who the constable has reasonable cause to believe may have in his possession any document or other thing which may be required as evidence for the purposes of proceedings in respect of an offence under sections 4, 5, 6 or 7.

(4) No constable shall search a person of the opposite gender.

(5) The powers conferred by a warrant under this section shall only be exercisable, if the warrant so provides, in the presence of a constable.

(6) Whoever-

- (a) wilfully obstructs an authorised officer in the exercise of a power conferred by a warrant under this section; or
- (b) fails without reasonable excuse to comply with a reasonable request made by an authorised officer or a constable for the purpose of facilitating the exercise of such a power,

is guilty of an offence.

(7) Whoever is guilty of an offence under subsection (6) is liable-

- (a) on summary conviction, to a fine of four thousand dollars; and
- (b) on conviction on indictment to a fine and to imprisonment for two years.

(8) In this section-

“authorised officer” means an authorised officer appointed by the Governor.

12. (1) Where an offence under section 4, 5, 6 or 7 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to-

Offences by body  
corporate

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

such person as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In subsection (1)-

“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Definitions in this Part

13. (1) In this Part-

“biological weapon” means any weapon, equipment or means of delivery designed to use biological agents or toxins for hostile purposes or in armed conflict;

“chemical weapon” means-

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

“nuclear weapon” means a weapon which contains nuclear material within the meaning of Article 1(a) and (b) of the Convention on the Physical Protection of Nuclear Material opened for signature at Vienna and New York on the 3rd March, 1980.

(2) For the purposes of subsection (1), an object is not a biological or chemical weapon if the person uses the object only for permitted purposes; and in deciding whether permitted purposes are intended the types and quantities of objects shall be taken into account.

(3) Permitted purposes are-

- (a) peaceful purposes;
- (b) purposes related to protection against toxic chemicals;
- (c) legitimate military purposes; and
- (d) purposes of enforcing this Law.

(4) Legitimate military purposes are all military purposes except those which depend on the use of the toxic properties of chemicals as a method of warfare in circumstances where the main object is to cause death, permanent harm or temporary incapacity to humans or animals.

(5) A toxic chemical is a chemical which through its chemical action on life processes can cause death, permanent harm or temporary incapacity to humans or animals; and the origin, method of production and place of production are immaterial.

(6) A precursor is a chemical reactant which takes part at any stage in the production (by whatever method) of a toxic chemical.

(7) References to an object include references to a substance.

14. (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. Directing terrorist organisation

(2) Whoever is guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.

15. (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. Possession for terrorist purposes

(2) 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.

(3) In this section-

“record” includes a photographic or electronic record.

(4) In proceedings for an offence under this section, if it is proved that an article, document or record-

- (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, document or record, unless he proves that he did not know of its presence on the premises or that he had no control over it.

(5) Whoever is guilty of an offence under this section is liable-

- (a) on summary conviction, to a fine of four thousand dollars and to imprisonment for six months; and
- (b) on conviction on indictment, to a fine and to imprisonment for ten years.

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

(7) Before making an order under subsection (6), a court shall 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.

(8) An order under subsection (6) 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  
overseas

16. (1) A person commits an offence if he incites another person to commit an act of terrorism wholly or partly outside the Islands.

(2) 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.

(3) Nothing in this section imposes criminal liability on any person acting on behalf of the Government or a public officer acting in an official capacity.

Duty to disclose  
information relating to  
offences and terrorist  
acts

17. (1) Whoever has any information which may be of assistance in-

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

shall, as soon as reasonably possible after receiving such information, disclose the information at a police station to a constable not below the rank of inspector.

(2) Nothing in subsection (1) requires the disclosure of any information which is protected by privilege.

(3) No civil or criminal proceedings shall lie against any person for disclosing any information in good faith under subsection (1).

(4) Whoever fails to comply with subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine and to imprisonment for ten years.

### **PART III- Terrorist Property**

Terrorist property

18. (1) In this Law-

“terrorist property” means property which is likely to be used for the purposes of terrorism and proceeds from the commission of acts of terrorism.

(2) In subsection (1) 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).

19. (1) A person commits an offence if he- Soliciting terrorist property
- (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) 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.

20. (1) A person commits an offence if he uses property for the purposes of terrorism. Use and possession
- (2) A person commits an offence if-
- (a) he uses property for the purpose of terrorism;
  - (b) he possesses property and intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism;
  - (c) he possesses or acquires property which he knows or has reasonable cause to suspect has been used, directly or indirectly, in the commission of an act of terrorism; or
  - (d) acquires property as a result of or in connection with acts of terrorism.

21. A person commits an offence if- Arranging for property to be used for terrorist purposes
- (a) he 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) he knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

Money laundering 22. (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 by concealment, by removal from the jurisdiction or by transfer to nominees.

(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.

Disclosure of information: duty 23. (1) This section applies where a person-

- (a) believes or suspects that another person has committed an offence under sections 19 to 22; and
- (b) bases his belief or suspicion on information which comes to his attention in the course of a trade, profession, business or employment.

(2) This section does not apply if the information came to the person in the course of a business in the regulated sector.

(3) A person commits an offence if he does not disclose to the Reporting Authority or to a constable as soon as is reasonably practicable his belief or suspicion and 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 employed by another person;
- (b) his 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 him 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 he obtains in privileged circumstances; or
- (b) a belief or suspicion based on information which he obtains in privileged circumstances.

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

- (a) a client or a client's representative, in connection with the provision of legal advice by the adviser to the client;
- (b) a person seeking legal advice from the adviser, or from the person's representative; or
- (c) 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 sections 19 to 22 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 he had been in the Islands at the time when he took the action or was in possession of the thing.

(9) Whoever is guilty of an offence under this section is liable-

- (a) on summary conviction, to a fine of four thousand dollars and to imprisonment for six months; and
- (b) on conviction on indictment to a fine and to imprisonment for five years.

24. (1) A person may disclose to the Reporting Authority or to a constable-

Disclosure of information: permission.

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

(2) A person may make a disclosure to the Reporting Authority or to a constable in the circumstances mentioned in section 23(1) and (2).

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

(4) Where-

- (a) a person is employed by another person; and
- (b) his employer has established a procedure for the making of disclosures of the kinds mentioned in subsection (1) and section 23(2),

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

25. The First Schedule, which makes special provision for the disclosure of information by persons in the regulated and public sectors, shall have effect.

Disclosure of information: regulated and public sectors

Co-operating with  
Reporting Authority and  
the police

26. (1) A person does not commit an offence under sections 19 to 22 if he is acting with the express consent of the Reporting Authority or of a constable.

(2) Subject to subsections (3) and (4), a person does not commit an offence under sections 19 to 22 by involvement in a transaction or arrangement relating to property if he discloses to the Reporting Authority or to a constable-

- (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 after he becomes involved in the transaction concerned, on his own initiative and as soon as is reasonably practicable.

(4) Subsection (2) does not apply to a person if the Reporting Authority or the constable forbids him to continue his involvement in the transaction or arrangement to which the disclosure relates and he continues his involvement.

(5) It is a defence for a person charged with an offence under any of sections 19(2), 19 (3) or 20 to 22 to prove that-

- (a) he 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 employed by another person; and
- (b) his employer has established a procedure for the making of disclosures of the same kind as may be made to the Reporting Authority or to a constable under subsection (2),

this section shall have effect in relation to that person as if any reference to disclosure to the Reporting Authority or to the constable 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 its use or possession.

Penalties

27. Whoever is guilty of an offence under sections 19 to 22 is liable-

- (a) on summary conviction, to a fine of four thousand dollars and to imprisonment for two years; and
- (b) on conviction on indictment, to a fine and to imprisonment for fourteen years.

Forfeiture

28. (1) The court by or before which a person is convicted of an offence under sections 19 to 22 may make a forfeiture order in accordance with this section.

(2) Where a person is convicted of an offence under section 19(1) or (2) or 20, the court may order the forfeiture of any property-

- (a) which, at the time of the offence, he had in his possession or under his control; and
- (b) which, at that time, he 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 19(3) the court may order the forfeiture of any property-

- (a) which, at the time of the offence, he had in his possession or under his control; and
- (b) which, at that time, he 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 21, 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, he 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 22, 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 sections 19 to 22, 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) The Second Schedule which makes further provision in relation to forfeiture orders under this section shall have effect.

29. (1) The Third Schedule 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 summary court shall have effect.

(2) The powers conferred by the Third Schedule are exercisable in relation

Forfeiture of terrorist cash

to any cash whether or not proceedings have been brought for an offence in connection with the cash.

#### **PART IV - Account Monitoring Orders**

Account monitoring orders

30. The Fourth Schedule which makes provision for account monitoring orders shall have effect.

#### **PART V - Terrorist Finances Offences-Jurisdiction**

Terrorist finance- things done outside the Islands

31. (1) Whoever does anything outside the Islands and his action would have constituted the commission of an offence under sections 19 to 22 if it had been done in the Islands is guilty of the offence.

(2) For the purposes of subsection (1), section 22 (1)(b) shall be read as if for “the jurisdiction” there were substituted “a jurisdiction”.

#### **PART VI - Extradition and Mutual Assistance in Criminal Matters**

Exchange of information relating to terrorist groups and terrorist acts

32. (1) Subject to subsection (2), the Reporting Authority and the Commissioner of Police may, on a request made by the appropriate authority of a foreign state, disclose to that authority, any information in its possession or in the possession of any other government department or agency relating to any of the following-

- (a) the actions and movements of terrorist groups suspected of involvement in the commission of terrorist acts;
- (b) the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist acts;
- (c) traffic in weapons and sensitive materials by terrorist groups or persons suspected of involvement in the commission of terrorist acts; or
- (d) the use of communications technologies by terrorist groups.

(2) A disclosure under subsection (1) may only be made-

- (a) if it is not prohibited by any other law;
- (b) subject to any other law regulating the procedure to be followed when making such a disclosure; and
- (c) if, in opinion of the Reporting Authority, after consulting with the Attorney General, and the Commissioner of Police, it would not be prejudicial to national security or public safety.

Counter-terrorism Convention to be used as basis for extradition

33. (1) Where-

- (a) the United Kingdom becomes a party to a counter-terrorism Convention and it extends such Convention to the Islands; and
- (b) there is in force, an extradition arrangement between the United Kingdom and another state which is a party to that counter-terrorism Convention,

the extradition arrangement shall be deemed for the purposes of giving effect to this Law to include provision for extradition in respect of offences falling within the scope of that counter-terrorism Convention.

(2) Where-

- (a) the United Kingdom becomes a party to a counter-terrorism Convention and it extends such Convention to the Islands; and
- (b) there is no extradition arrangement between the United Kingdom and another state which is a party to that counter-terrorism Convention,

the Governor in Cabinet may, by order published in the Gazette, treat the counter-terrorism Convention for the purposes of giving effect to this Law, as an arrangement between the United Kingdom and that state for providing for extradition in respect offences falling within the scope of the counter-terrorism Convention.

34. (1) Where-

- (a) the United Kingdom becomes party to a counter-terrorism Convention and it extends such Convention to the Islands; and
- (b) there is in force an arrangement between the United Kingdom and another state which is a party to that counter-terrorism Convention, for mutual assistance in criminal matters,

Counter-terrorism  
Convention to be used as  
basis for mutual  
assistance in criminal  
matters

the arrangement shall be deemed for the purposes of mutual legal assistance legislation in the Islands to include provisions for mutual legal assistance in criminal matters falling within the scope of the counter-terrorism Convention.

(2) Where-

- (a) the United Kingdom becomes party to a counter-terrorism Convention and it extends such Convention to the Islands; and
- (b) there is no arrangement between the United Kingdom and another state which is a party to that counter-terrorism Convention, for mutual assistance in criminal matters,

the Governor in Cabinet may, by order published in the Gazette, treat the counter-terrorism Convention for the purposes of giving effect to this Law, as an arrangement between the United Kingdom and that state for providing for mutual

legal assistance in criminal matters falling within the scope of the counter-terrorism Convention.

Offences under this Law deemed not to be offences of a political character for purposes of extradition

35. Notwithstanding any provision in any other Law in the Islands relating to extradition, an offence under this Law shall for the purposes of extradition be deemed not to be an offence of a political character or an offence connected with a political offence or an offence inspired by political motives.

### **PART VII - Terrorist Investigations**

Terrorist investigations

36. In this Part-

“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; or
- (c) the commission, preparation or instigation of an offence under this Law.

Cordoned areas

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

(2) A designation may be made only if the person making it considers it necessary for the purposes of a terrorist investigation.

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

(4) The person 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 a constable considers appropriate.

Power to designate cordoned areas

38. (1) Subject to subsection (2), a designation under section 37 may only be made by an officer who is of at least the rank of inspector.

(2) A constable who is not of the rank required by subsection (1) may make a designation if he considers it necessary by reason of urgency.

(3) Where a constable makes a designation in reliance on subsection (2) 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.

(4) An officer who is informed of a designation in accordance with subsection (3)(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.

39. (1) A designation under section 37 has effect, subject to subsections (2) to (5), during the period- Duration

- (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 person who could have made it (otherwise than under section 38(2)).

(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.

40. (1) A constable in uniform or a constable who produces identification that he is a constable may- Police powers

- (a) order a person in a cordoned area to leave such area 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 immediately from the area;
- (d) arrange for the removal of a vehicle from a cordoned area;
- (e) arrange for the movement of a vehicle within a cordoned area; or
- (f) prohibit or restrict access to a cordoned area by pedestrians or vehicles.

(2) A person commits an offence if he fails to comply with an order, prohibition or restriction imposed under subsection (1).

(3) Whoever is guilty of an offence under subsection (2) is liable on summary conviction to a fine of two thousand dollars and imprisonment for three months.

Powers

41. The Fifth Schedule which deals with the power to obtain information shall have effect.

Disclosure of information, etc.

42. (1) Subsection (2) applies where a person knows or has reasonable cause to suspect that a constable 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 has reasonable cause to suspect that a disclosure has been or will be made under sections 3 to 16 and 19 to 22.

(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 that he did not know and had no reasonable cause to suspect that the disclosure or interference was likely to affect a terrorist investigation.

(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) Whoever is guilty of an offence under this section is liable-

- (a) on summary conviction, to a fine of four thousand dollars and to imprisonment for six months; and
- (b) on conviction on indictment, to a fine and to imprisonment for five years.

- (8) In 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 VIII - Counter-Terrorist Powers**

43. (1) In this Part-

Terrorist: definition

“terrorist” means a person who-

- (a) has committed an offence under sections 3 to 7, 14 to 16 and 19 to 22; 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 the passing of this Law concerned in the commission, preparation or instigation of acts of terrorism within the meaning given by subsection (1).

44. (1) A constable may arrest without a warrant a person whom he reasonably suspects to be a terrorist.

Arrest without warrant

(2) Where a person is arrested under this section the provisions of the Sixth Schedule, which deals with the detention and treatment of terrorist suspects, shall apply.

(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 with the time of his arrest under this section.

(4) If on a review of a person’s detention under Part III of the Sixth Schedule 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 22 of the Sixth Schedule 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 22 or 29 of the Sixth Schedule 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 22 or 29 of the Sixth Schedule is granted in respect of a person's detention, he may be detained, subject to paragraph 30 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 22 or 29 of the Sixth Schedule shall not prevent his continued detention in accordance with this section.

Search of premises

45. (1) A Justice of the Peace may, on the application of a constable, issue a warrant in relation to specified premises if he is satisfied that there are reasonable grounds for suspecting that a person whom the constable reasonably suspects to be a person falling within section 43 is to be found there.

(2) A warrant under this section shall authorise any constable to enter and search the specified premises for the purpose of arresting the person referred to in section 44 (1)

Search of person

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

(2) A constable may search a person arrested under section 44 to discover whether he has in his possession anything which may constitute evidence that he is a terrorist.

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

(4) A constable 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.

Authorisations- power to stop and search

47. (1) An authorisation under this subsection authorises any constable in uniform 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; or
- (d) anything in or on the vehicle or carried by the driver or a passenger.

(2) An authorisation under this subsection authorises any constable in uniform to stop a pedestrian in an area or at a place specified in the authorisation and to search the pedestrian or 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 who is of at least the rank of inspector of police.

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

48. (1) The power conferred by an authorisation under section 47(1) or (2)- Exercise of power

- (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 constable has grounds for suspecting the presence of articles of that kind.

(2) A constable may seize and retain an article which he discovers in the course of a search under section 47(1) or (2) and which he reasonably suspects is intended to be used in connection with terrorism.

(3) A constable 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) Where a constable proposes to search a person or vehicle under section 47(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.

(5) Where-

- (a) a vehicle or pedestrian is stopped under section 47(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, under section 51(1) or (2),

the written statement shall be provided.

(6) An application under subsection (5) must be made within the period of twelve months beginning with the date on which the vehicle or pedestrian was stopped.

- Duration of authorisation
49. (1) An authorisation under section 48 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 person 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 he 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 the person who gave it or by a person who could have given it; and subsections (1) to (6) shall apply as if a new authorisation were given on each occasion on which the authorisation is renewed.
- Offences under this Part
50. (1) A person commits an offence if he-
- (a) fails to stop a vehicle when required to do so by a constable in the exercise of the power conferred by an authorisation under section 47(1);
  - (b) fails to stop when required to do so by a constable in the exercise of the power conferred by an authorisation under section 47(2); or
  - (c) wilfully obstructs a constable in the exercise of the power conferred by an authorisation under section 47(1) or (2).
- (2) Whoever is guilty of an offence under this section is liable on summary conviction to a fine of four thousand dollars and imprisonment for six months.

51. (1) An authorisation under this section authorises any constable in uniform to prohibit or restrict the parking of vehicles on a road specified in the authorisation. Authorisations-parking

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

(3) An authorisation may be given by a police officer who is 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.

52. (1) The power conferred by an authorisation under section 51 shall be exercised by placing a traffic sign on the road concerned. Exercise of power

(2) A constable exercising the power conferred by an authorisation under section 49 may suspend a parking place.

53. (1) An authorisation under section 51 has effect, subject to subsections (2) and (3), during the period specified in the authorisation. Duration of 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.

54. (1) A person commits an offence if he parks a vehicle in contravention of a prohibition or restriction imposed under section 51. Offences

(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 under section 51; and
- (b) he fails to move the vehicle when ordered to do so by a constable in uniform.

(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) Whoever is guilty of an offence under subsection (1) is liable on summary conviction to a fine of two thousand dollars.

(6) Whoever is guilty of an offence under subsection (2) is liable on summary conviction to a fine of two thousand dollars and imprisonment for three months.

Power to intercept communications and the admissibility of intercepted communications

55. (1) Subject to subsection (2), a constable who is of at least the rank of inspector may, for the purposes of obtaining evidence of the commission of an offence under this Law, apply to the Governor in writing for an interception of communications order.

(2) The constable may make an application under subsection (1) only with the prior written consent of the Attorney-General.

(3) The Governor may make an order-

- (a) requiring a service provider to intercept and retain a specified communication or communications of a specified description received or transmitted or about to be received or transmitted by that service provider;
- (b) authorising the constable to enter any premises and to install on such premises any device for the interception and retention of a specified communication or communication of a specified description and to remove and retain such device,

if the Governor is satisfied that the written consent of the Attorney-General has been obtained as required by subsection (2) and that there are reasonable grounds to believe that material information relating to-

- (i) the commission of an offence under this Law; or
- (ii) the whereabouts of the person suspected by the constable to have committed the offence,

is contained in that communication or communications of that description.

(4) Any information contained in a communication-

- (a) intercepted and retained pursuant to an order under subsection (3); or
- (b) intercepted and retained in a foreign state in accordance with the law of that foreign state and certified by a judge of that foreign state to have been so intercepted and retained,

shall be admissible in proceedings for an offence under this Law, as evidence of the truth of its contents notwithstanding the fact that it contains hearsay.

56. In sections 51 to 54-

Definitions in this Part

“disabled person’s badge” means a badge issued, or having effect as if issued, under any regulations for the time being in force under the Traffic Law (2003 Revision);

2003 Revision

“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; and

“parking” means leaving a vehicle or permitting it to remain at rest.

### PART IX- General

57. (1) A power conferred under this Law on a constable-

Police powers

- (a) is additional to powers which he has at common law or under any other enactment; and
- (b) shall not be taken to affect those powers.

(2) A constable may if necessary use reasonable force for the purpose of exercising a power conferred on him under this Law.

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

58. (1) A power to search premises conferred under this Law shall be taken to include power to search a container.

Powers to stop and search

(2) A power conferred under this Law 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 under this section.

(4) Whoever is guilty of an offence under subsection (3) is liable on summary conviction to a fine of four thousand dollars and to imprisonment for six months.

59. (1) A document which purports to be-

Evidence

- (a) a notice or direction given or order made by the Governor for the purposes of a provision of this Law; and
- (b) signed by him or on his behalf,

shall be received in evidence and shall, until the contrary is proved, be deemed to have been given or made by the Governor.

- (2) A document bearing a certificate which-
  - (a) purports to be signed by or on behalf of the Governor; and
  - (b) states that the document is a true copy of a notice or direction given or order made by the Governor for the purposes of a provision of this Law,

shall be evidence of the document in legal proceedings.

(3) In subsections (1) and (2), a reference to an order does not include a reference to an order made by statutory instrument.

Regulations

60. The Governor in Cabinet may make such regulations as are required for the effective implementation of this Law, and such regulations may contain savings and transitional provisions, and may make different provisions for different purposes.

Directions

61. A direction given under this Law may be varied or revoked by a further direction.

Provision as to offences under this Law and the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001

62. Where any act or omission constitutes an offence under this Law and the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 the offender is, unless the contrary intention appears, liable to be prosecuted and punished under either this Law or the Order but is not liable to be punished twice for the same offence.

Report to Legislative Assembly

63. The Attorney-General shall lay before the Legislative Assembly at least once in every twelve months a report on the working of this Law.

**FIRST SCHEDULE**

section 25

DISCLOSURE OF INFORMATION: REGULATED AND PUBLIC SECTORS

PART 1

REGULATED SECTOR

*Failure to disclose*

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

(2) The first condition is that he knows or suspects, or has reasonable grounds for knowing or suspecting, that another person has committed an offence under sections 19 to 22.

(3) The second condition is that the information or other matter on which his knowledge or suspicion is based or which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a business in the regulated sector.

(4) The third condition is that he does not disclose the information or other matter to a constable or a nominated officer as soon as is practicable after it comes to him.

(5) A person does not commit an offence under this paragraph if he is a professional legal adviser and the information or other matter came to him in privileged circumstances.

(6) In deciding whether a person committed an offence under this paragraph the court must consider whether he followed any relevant guidance which was at the time concerned-

- (a) issued by the Authority or any other appropriate body;
- (b) approved by the Governor in Cabinet; and
- (c) published in a manner approved by the Governor in Cabinet as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(7) A certificate signed by or behalf of the Governor in Cabinet or a true copy of such a certificate that a matter was, or was not, approved by the Governor in Cabinet at any material time for the purposes of subparagraph (6) shall be

conclusive evidence of that fact in any legal proceedings, and a document which purports to be such a certificate or to be a true copy of such a certificate) shall be received in evidence in any legal proceedings and shall, until the contrary is proved, be deemed to be such a certificate or such a copy.

(8) A disclosure to a nominated officer is a disclosure which is made-

- (a) to a person nominated by the alleged offender's employer to receive disclosures under this paragraph; and
- (b) in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose.

(9) 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 his 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.

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

(11) For the purposes of subparagraph (2) a person is taken to have committed an offence there mentioned if-

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

(12) For the purposes of this paragraph an appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

(13) Whoever is guilty of an offence under this paragraph is liable-

- (a) on summary conviction, to a fine of four thousand dollars and to imprisonment for six months; or
- (b) on conviction on indictment, to a fine and to imprisonment for five years.

*Protected disclosures*

2. (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 first condition is that the information or other matter disclosed came to the person making the disclosure (“the discloser”) in the course of a business in the regulated sector.

(3) The second condition is that the information or other matter causes the discloser to know or suspect or gives him reasonable grounds for knowing or suspecting, that another person has committed an offence under sections 19 to 22.

(4) The third condition is that the disclosure is made to a constable or nominated officer as soon as is practicable after the information or other matter comes to the discloser.

(5) A disclosure to a nominated officer is a disclosure which is made-

- (a) to a person nominated by the discloser's employer to receive disclosures under this paragraph; and
- (b) in the course of the discloser's employment and in accordance with the procedure established by the employer for that purpose.

PART 2

PUBLIC SECTOR

*Authorised or required disclosures*

3. (1) Notwithstanding any restriction otherwise imposed by any Law on the disclosure by a specified public officer or a specified public authority of information obtained in an official capacity by that officer or authority, that officer or authority may, and shall if so directed by the Governor in Cabinet under this paragraph, disclose such information for any of the purposes to which this paragraph applies.

(2) A direction given by the Governor in Cabinet under this paragraph may specify the information to be disclosed, the person or authority to whom it is to be disclosed and the manner in which and any conditions subject to which it is to be disclosed.

(3) The information that may, or may be directed to be, disclosed under this paragraph includes information obtained before the commencement of this paragraph.

(4) Whoever fails to comply with a direction given by the Governor in Cabinet under this paragraph is guilty of an offence and liable-

- (a) on summary conviction to a fine of four thousand dollars and to imprisonment for six months; or
- (b) on conviction on indictment to a fine and to imprisonment for five years.

(5) The purposes to which this paragraph applies are-

- (a) the purposes of any terrorist finance criminal investigation which may be carried out, whether in the Islands or elsewhere;
- (b) the purposes of any terrorist finance criminal proceedings which have been or may be initiated, whether in the Islands or elsewhere;
- (c) the purposes of the initiation or bringing to an end of any such investigation or proceedings; and
- (d) the purpose of facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.

(6) Nothing in this paragraph shall be taken to prejudice any power to disclose information which exists apart from this paragraph.

(7) In this paragraph-

“specified public authority” means any authority that is specified for the purposes of this paragraph by an order made by the Governor in Cabinet;

“specified public officer” means any person holding or acting in any office that is specified for the purposes of this paragraph by an order made by the Governor in Cabinet;

“terrorist finance criminal investigation” means an investigation of any conduct which-

- (i) constitutes one or more terrorist finance offences; or
- (ii) is, or corresponds to, conduct which, if it took place in the Islands, would constitute such an offence or such offences; and includes an investigation of any such alleged or suspected such conduct and an investigation of whether any such conduct has taken place;

“terrorist finance criminal proceedings” means proceedings for a terrorist finance offence or for terrorist finance offences or, if they are proceedings outside the Islands, for an offence or offences substantially corresponding to a terrorist finance offence or to terrorist finance offences; and

“terrorist finance offence” means an offence under sections 19 to 22.

*Restriction on disclosure of information for overseas purposes*

4. (1) The Governor in Cabinet may give a direction which-
- (a) specifies any overseas proceedings or overseas investigation or any description of such proceedings or investigations, and
  - (b) prohibits, either absolutely or in such cases, or subject to such conditions as to consent or otherwise, as may be specified in the direction, the making of any relevant disclosures for the purposes of those proceedings or that investigation or, as the case may be, proceedings or investigations of that description.
- (2) In subparagraph (1) the reference, in relation to a direction, to a relevant disclosure is a reference to a disclosure which-
- (a) is authorised by paragraph 3 or by or under any other law in the Islands; and
  - (b) is a disclosure of such information as is described in the direction.
- (3) Whoever discloses any information in contravention of a direction under this paragraph is guilty of an offence and is liable-
- (a) on summary conviction, to a fine of four thousand dollars and to imprisonment for three months; or
  - (b) on conviction on indictment, to a fine and to imprisonment for two years.
- (4) In this paragraph-

“overseas investigation” means a terrorist finance criminal investigation as defined in paragraph 3(7) which is being, or will or may be, conducted by an authority of a country or territory outside the Islands; and

“overseas proceedings” means terrorist finance criminal proceedings as defined in paragraph 3(7) which are taking place, or will or may take place, in a country or territory outside the Islands.

**SECOND SCHEDULE**

section 28

**FORFEITURE ORDERS**

**PART 1**

**Orders in the Islands**

*Definitions*

1. In this Schedule-

“forfeiture order” means an order made by a court under section 28; and

“forfeited property” means the money or other property to which a forfeiture order applies.

*Implementation of forfeiture orders*

2. (1) Where a court makes a forfeiture order it may make such other provision as appears to it to be necessary for giving effect to the order, and in particular it may-

- (a) require any of the forfeited property to be paid or handed over to the proper officer specified in the order;
- (b) direct any of the forfeited property other than money or land to be sold or otherwise disposed of in such manner as the court may direct and the proceeds if any to be paid to the proper officer;
- (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 such property in such manner as the court may direct and to pay the proceeds to the proper officer; or
- (d) direct a specified part of any forfeited money, or of the proceeds of the sale, disposal or realisation of any forfeited property, to be paid by the proper officer to a specified person falling within section 28(7).

(2) A forfeiture order 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).

(3) In subparagraph (1)(b) and (d) a reference to the proceeds of the sale, disposal or realisation of property is a reference to the proceeds after deduction of

the costs of sale, disposal or realisation.

3. (1) A receiver appointed under paragraph 2 shall be entitled to be paid his remuneration and expenses by the proper officer out of the proceeds of the property realised by the receiver and paid to the proper officer under paragraph 2(1)(c).

(2) Where and so far as those proceeds are insufficient, the receiver shall be entitled to be paid his remuneration and expenses out of the revenue of the Islands.

(3) A receiver appointed under paragraph 2 is not liable to any person in respect of any loss or damage resulting from action which-

- (a) he takes in relation to property which is not forfeited property, but which he reasonably believes to be forfeited property;
- (b) he would be entitled to take if the property were forfeited property; and
- (c) he reasonably believes that he is entitled to take because of his belief that the property is forfeited property.

(4) Subparagraph (3) does not apply where the loss or damage is caused by the receiver's negligence.

4. (1) In paragraph 2-

“the proper officer” means the Clerk of the Grand Court.

(2) The proper officer shall issue a certificate in respect of a forfeiture order if an application is made by-

- (a) the prosecutor in the proceedings in which the forfeiture order was made;
- (b) the defendant in those proceedings, or
- (c) a person whom the court heard under section 28(7) before making the order.

(3) The certificate shall state the extent if any to which, at the date of the certificate, effect has been given to the forfeiture order.

#### *Restraint orders*

5. (1) The court may make a restraint order under this paragraph where-

- (a) proceedings have been instituted in the Islands for an offence under sections 19 to 22 and section 200 of the Proceeds of Crime Law, 2008 (Law 10 of 2008);

- (b) the proceedings have not been concluded;
  - (c) an application for a restraint order is made to the court by the prosecutor; and
  - (d) a forfeiture order has been made, or it appears to the court that a forfeiture order may be made, in the proceedings for the offence.
- (2) The court may also make a restraint order under this paragraph where-
- (a) it is satisfied that a person is to be charged in the Islands with an offence under sections 19 to 22;
  - (b) an application for a restraint order is made to the court by the person who the court is satisfied will have the conduct of the proposed proceedings for the offence; and
  - (c) it appears to the court that a forfeiture order may be made in those proceedings.
- (3) A restraint order prohibits a person to whom notice of it is given, subject to any conditions and exceptions specified in the order, from dealing with property in respect of which a forfeiture order has been or could be made in the proceedings referred to in subparagraph (1) or (2).
- (4) A restraint order-
- (a) may be made only on an application by the Attorney-General; and
  - (b) may be made on an *ex parte* application to a judge in chambers without notice.
- (5) In this paragraph, a reference to dealing with property includes a reference to removing the property from the Islands.
6. (1) A restraint order shall provide for notice of it to be given to any person affected by the order.
- (2) A restraint order may be discharged or varied by the court on the application of a person affected by it.
- (3) In particular, a restraint order shall be discharged on an application under subparagraph (2)-
- (a) in the case of an order made under paragraph 5(2), if the proceedings in respect of the offence are not instituted within such time as the court considers reasonable; and
  - (b) in any case, if the proceedings for the offence have been concluded.
7. (1) A constable may seize any property subject to a restraint 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 court's directions.

8. In the case of a restraint order made in respect of land-

- (a) the restraint order shall inhibit for a specified period of time, until the occurrence of a specified event or generally until further order, the registration of any dealing with any interest in the land;
- (b) a copy of the restraint order under the seal of the court, with the particulars of the land, lease or charge thereby affected shall be sent to the Registrar of Lands who shall register it in the Land Register maintained under section 9 of the Registered Land Law (2004 Revision) in respect of the land in question, and no restraint order shall bind or affect any interest in the land until it has been registered; and
- (c) so long as the restraint order remains registered, no instrument which is inconsistent with it shall be registered.

2004 Revision

*Compensation*

9. (1) This paragraph applies where a restraint order is discharged under paragraph 6(3)(a).

(2) This paragraph also applies where a forfeiture order or a restraint order is made in or in relation to proceedings for an offence under sections 19 to 22 and which-

- (a) do not result in conviction for an offence under any of those sections;
- (b) result in conviction for an offence under any of those sections in respect of which the person convicted is subsequently pardoned by the Governor; or
- (c) result in conviction for an offence under any of those sections which is subsequently quashed.

(3) A person who had an interest in any property which was subject to the order may apply to the court for compensation.

(4) The court shall not order compensation to be paid in any case unless the court is satisfied-

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned;
- (b) that the person concerned was or was acting as a member of the Royal Cayman Islands Police Force or was acting under the authority of the Attorney-General;

- (c) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of the forfeiture order or restraint order; and
- (d) that, having regard to all the circumstances, it is appropriate to order compensation to be paid.

(5) The court shall not order compensation to be paid in any case where it appears to the court that the proceedings would have been instituted or continued even if the serious default had not occurred.

(6) The amount of compensation to be paid under this section shall be such as the court thinks just in all the circumstances of the case.

*Proceedings for an offence: timing*

10. (1) For the purposes of this Schedule, proceedings for an offence are instituted-

- (a) when a summons or warrant is issued in respect of the offence;
- (b) when a person is charged with the offence after being taken into custody without a warrant; or
- (c) when a bill of indictment charging a person with the offence is preferred.

(2) Where the application of subparagraph (1) would result in there being more than one time for the institution of proceedings the proceedings shall be taken to be instituted at the earliest of those times.

(3) For the purposes of this Part, 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 of the forfeited property; or
- (b) when no forfeiture order has been made in those proceedings and there is no further possibility of one being made as a result of an appeal (disregarding any power of a court to grant leave to appeal out of time).

PART 2

EXTERNAL ORDERS

*Enforcement of orders made in designated countries*

11. (1) The Governor in Cabinet may, by Order-

- (a) designate countries and territories outside the Islands to whose external orders and proceedings this Law shall apply, subject to subparagraph (2); and
  - (b) specify appropriate authorities within designated countries that are to give effect to the provisions of this Law in relation to external orders and to related proceedings.
- (2) An “external order” means an order-
- (a) which is made in a country or territory designated for the purposes of this paragraph by the order; 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 prohibiting dealing with property which is subject to an external forfeiture order or in respect of which such an order could be made in proceedings which have been or are to be instituted in the designated country or territory (“an external restraint order”).
- (4) An order 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) which disapplies, or qualifies or modifies the application of, any of the provisions of subparagraphs (6)(b) and (7) to (14) to or in relation to any specified external order (or any specified class of such orders) made in a specified designated country or territory; or
  - (c) for the proof of any matter relevant for the purposes of anything falling to be done under the order.
- (5) An order under this paragraph may also make provision with respect to anything falling to be done on behalf of the Islands in a designated country or territory in relation to proceedings in that country or territory for or in connection with the making of an external order.
- (6) An external order shall be enforced in the Islands only in accordance with-
- (a) the provisions of, or any provisions made under, this paragraph, and

- (b) any provisions made by rules of court as to the manner in which, and the conditions subject to which, such orders are to be enforced in the Islands.

(7) On an application made to it in accordance with rules of court for registration of an external order made in a designated country or territory, the court shall direct that the order shall, in accordance with such rules, be registered in that court.

(8) 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 money or other property to which the order applies; and
- (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.

(9) If an external forfeiture order is registered under this paragraph, the court shall have, in relation to that order, the same powers as a court has under paragraph 2(1) to give effect to a forfeiture order made by it, and -

- (a) paragraphs 3 and 4 shall apply accordingly; and
- (b) after making any payments required under paragraph 2(1)(d) or (3), the balance of any sums received by the proper officer as defined by paragraph 4(1) by an order made under this subparagraph shall be paid by him to the Governor in Cabinet.

(10) If an external restraint order is registered under this paragraph -

- (a) paragraphs 7 and 8 shall apply as they apply to a restraint order under paragraph 5; and
- (b) the court shall have the like power, in relation to proceedings brought or likely to be brought for that order, to make an order for inspection of property or for related matters as it would have, under any law for the time being in force in the Islands, if those proceedings had been brought or were likely to be brought in the court.

(11) In addition, if an external order is registered under this paragraph -

- (a) the court shall have, in relation to its enforcement, the same power as if the order had originally been made in the court;
- (b) proceedings for or with respect to its enforcement may be taken as if the order had originally been made in the court; and

- (c) proceedings for or with respect to the contravention of such an order, whether before or after such registration, may be taken as if the order had originally been made in the court.

(12) The court may also make such orders or do otherwise as seems to it appropriate for the purpose of -

- (a) assisting the achievement in the Islands of the purposes of an external order that has been registered under this paragraph; or
- (b) assisting a receiver or other person directed by such an external order to sell or otherwise dispose of property.

(13) The following documents shall be received in evidence in the Islands without further proof -

- (a) a document purporting to be a copy of an external order and to be certified as such by an officer (who is authorised to do so) of the court by which it was made; and
- (b) a document purporting to be a certificate for purposes corresponding to those of paragraph 4(2) and (3) and to be certified by an officer of the court concerned.

(14) Where, under this paragraph, a thing is to be done in accordance with rules of court, it may, if there are for the time being no rules of court in force in the Islands governing that matter, be done in accordance with such directions in that behalf as may be given by a judge of the court on application made *ex parte* to him in chambers.

(15) An order made by the Governor in Cabinet under this paragraph-

- (a) may make different provision for different matters; and
- (b) shall not be made unless a draft of it has been laid before and approved by resolution of the Legislative Assembly.

### PART 3

#### INSOLVENCY

##### *General*

12. In this Part -

“ancillary order” means an order made in connection with a forfeiture, other than the forfeiture order;

“forfeiture order” means an order made in the Islands under section 28 or an external forfeiture order which is enforceable in the Islands under an order made by the Governor in Cabinet under paragraph 11;

“forfeited property” means the money or other property to which a forfeiture order applies, and

“restraint order” means an order made under paragraph 5 or an external restraint order which is enforceable in the Islands under an order made by the Governor in Cabinet under paragraph 11.

*Protection of creditors against forfeiture*

13. (1) During the period of six months beginning with the making of a forfeiture order, the following shall not be disposed of under this Schedule-

- (a) the money to which the order applies; and
- (b) the money which represents any property to which the order applies.

(2) For the purposes of this paragraph, money is finally disposed of under this Schedule when-

- (a) in the case of a forfeiture order made in the Islands, it is paid to the person or authority authorised by law in the Islands to receive the proceeds of fines; or
- (b) in the case of an external forfeiture order, it is paid to the Governor in Cabinet under paragraph 11(9)(b).

14. (1) This paragraph applies where-

- (a) before or after a forfeiture order is made, the commencement of an insolvency occurs in qualifying insolvency proceedings;
- (b) an insolvency practitioner would, but for the forfeiture order, exercise a function in those proceedings in relation to property to which the forfeiture order applies; and
- (c) the insolvency practitioner gives written notice to the relevant officer of the matters referred to in subparagraphs (a) and (b) before the end of the period of six months beginning with the making of the forfeiture order.

(2) Subparagraph (3) shall apply to-

- (a) the property in relation to which the insolvency practitioner would, but for the forfeiture order, exercise a function as described in subparagraph (1)(b); and
- (b) the proceeds of sale of that property.

(3) The property-

- (a) shall cease to be subject to the forfeiture order and any ancillary order; and
- (b) shall be dealt with in the insolvency proceedings as if the forfeiture order had never been made.

- (4) (a) The property to which subparagraph (3) applies is the balance remaining after the relevant officer has exercised his powers under paragraph 17(1), and
  - (b) Subparagraph (3) shall not take effect in respect of property in relation to which the relevant officer, or any person acting in pursuance of an ancillary order, has incurred obligations until those obligations have been discharged.
- (5) In this paragraph-

“the commencement of an insolvency” means-

- (a) the making of a bankruptcy order;
- (b) in the case of the insolvent estate of a deceased person, the making of an insolvency administration order; or
- (c) in the case of a company, the passing of a resolution for its winding up or, where no such resolution has been passed, the making of an order by a court for its winding up.

15. (1) Where under paragraph 14(3) property falls to be dealt with in insolvency proceedings, the Governor in Cabinet shall be taken to be a creditor in those proceedings to the amount or value of the property.

(2) The debt of the Governor in Cabinet shall rank after the debts of all other creditors.

16. (1) This paragraph applies to any property which ceased to be subject to a forfeiture order under paragraph 14(3) in consequence of the making of a bankruptcy order.

(2) The property shall again become subject to the forfeiture order and, if applicable, any ancillary order if the bankruptcy order is annulled.

(3) Where the property is money or has been converted into money-

- (a) the court which ordered the annulment of the bankruptcy shall make an order specifying property comprised in the estate of the bankrupt or debtor to the amount or value of the property; and
- (b) the specified property shall become subject to the forfeiture order, and any applicable ancillary order, in place of the property.

17. (1) Where money or other property falls to be dealt with in accordance with paragraph 14(3), the relevant officer may-

- (a) deduct allowable forfeiture expenses from that money;

- (b) retain so much of that property as he considers necessary for the purpose of realising it and deducting allowable forfeiture expenses from the proceeds of realisation.

(2) Where property is delivered up in pursuance of paragraph 14(3) and the relevant officer has not made provision under subparagraph (1) for all the allowable forfeiture expenses, then -

- (a) a person who has incurred allowable forfeiture expenses for which provision has not been made shall have a claim to their value in the insolvency proceedings, and
- (b) the expenses in question shall be treated for the purposes of the insolvency proceedings as if they were expenses of those proceedings.

*Protection of insolvency practitioners*

18. (1) This paragraph applies where an insolvency practitioner seizes or disposes of property which is subject to a forfeiture order or a restraint order and-

- (a) he reasonably believes that he is entitled to do so in the exercise of his functions; and
- (b) he would be so entitled if the property were not subject to a forfeiture order or a restraint order.

(2) The insolvency practitioner shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence.

(3) The insolvency practitioner shall have a lien on the property seized or the proceeds of its sale-

- (a) for such of his expenses as were incurred in connection with the insolvency proceedings in relation to which the seizure or disposal purported to take place, and
- (b) for so much of his remuneration as may be reasonably assigned for his acting in connection with those proceedings.

(4) Subparagraphs (1) to (3) are without prejudice to the generality of any provision contained in any Law relating to insolvency.

(5) In this paragraph-

“insolvency practitioner” means a person acting as such and, for the purposes of this paragraph, the question whether any person is acting as such shall be determined in accordance with subparagraphs (6), (7) and (8) except that the expression shall also include an Official Receiver (however styled) acting as receiver or manager of property.

(6) For the purposes of this paragraph a person acts as an insolvency practitioner in relation to a company by acting-

- (a) as its liquidator, provisional liquidator, administrator or administrative receiver; or
- (b) as supervisor of a voluntary arrangement approved by it under the Companies Law (2007 Revision).

2007 Revision

(7) For the purposes of this paragraph, a person acts as an insolvency practitioner in relation to an individual by acting-

- (a) as his trustee in bankruptcy or interim receiver of his property; or
- (b) as trustee under a deed which is a deed of arrangement made for the benefit of his creditors; or
- (c) as supervisor of a voluntary arrangement proposed by him and approved under the Bankruptcy Law (1997 Revision); or
- (d) in the case of a deceased individual to whose estate the provisions of the law for the time being in force in the Islands relating to the administration of the insolvent estates of deceased persons apply, as administrator of that estate.

(8) References in subparagraph (7) to an individual include, except in so far as the context otherwise requires, references to a partnership.

19. (1) The Governor in Cabinet may make an order under this paragraph to secure that an external insolvency practitioner has the same rights under this Part of the Schedule in relation to property situated in the Islands as he would have if he were an insolvency practitioner in the Islands.

(2) An order made this paragraph may, in particular, include-

- (a) provision which modifies the rights under this Part of this Schedule which are to be conferred under the order;
- (b) provision as to the manner in which the rights conferred under the order are to be exercised;
- (c) provision as to the conditions subject to which those rights are to be exercised, including the obtaining of leave from a court; and
- (d) provision empowering a court granting such leave to impose such conditions as it thinks fit.

(3) An order under this paragraph may make different provision for different purposes.

(4) In this paragraph-

“external insolvency practitioner” means a person exercising under the insolvency law of a designated country or territory (that is to say, a country or

territory designated as mentioned in paragraph 11) functions corresponding to those exercised by insolvency practitioners under the Bankruptcy Law (1997 Revision);

“insolvency law of the Islands” include the provisions of the Companies Law (2009 Revision), the Bankruptcy Law (1997 Revision) and the provisions of any other law in the Islands which relate to companies and the disqualification of company directors; and

“insolvency law of a designated country or territory” means so much of the law for the time being in force in that country or territory as corresponds to provisions falling within sub-paragraph (b).

*Definitions and interpretation*

20. (1) In this Part (other than in paragraph 18)-

“insolvency practitioner” mean a person acting in any qualifying insolvency proceedings in the Islands as-

- (a) a liquidator of a company or partnership;
- (b) a trustee in bankruptcy;
- (c) an administrator of the insolvent estate or a deceased person; or
- (d) a receiver or manager of any property.

“qualifying insolvency proceedings” means-

- (a) any proceedings, under any law for the time being in force in the Islands relating to insolvency, for the winding up of a company or an unregistered company and includes any voluntary winding up of a company under any such law;
- (b) any proceedings, under any such law, for the winding up of an insolvent partnership;
- (c) any proceedings in bankruptcy; or
- (d) any proceedings, under any such law, in relation to the insolvent estate of a deceased person.

“relevant officer” means the proper officer within the meaning given in paragraph 4.

(2) In this Part, references to the proceeds of sale or realisation of property are references to the proceeds after deduction of the costs of sale or realisation.

**THIRD SCHEDULE**

section 29

**FORFEITURE OF TERRORIST CASH**

**PART I**

**INTRODUCTORY**

*Terrorist cash*

1. (1) This Schedule applies to cash (“terrorist cash”) and property which is earmarked as terrorist property.

(2) In this Schedule-

“cash” means -

- (a) coins and notes in any currency;
- (b) postal orders;
- (c) cheques of any kind, including travellers’ cheques;
- (d) bankers’ drafts; and
- (e) bearer bonds and bearer shares,

found at any place in the Islands.

(3) Cash also includes any kind of monetary instrument found in the Islands if the instrument is specified by the Governor in Cabinet by order.

**PART 2**

**SEIZURE AND DETENTION**

*Seizure of cash*

2. (1) An authorised officer may seize any cash if he has reasonable grounds for suspecting that it is terrorist cash.

(2) An authorised officer may 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.

*Detention of seized cash*

3. (1) While the authorised officer continues to have reasonable grounds for his suspicion, cash seized may be detained initially for a period of forty-eight hours.

(2) The period for which the cash or any part of it may be detained may be extended by an order made by a summary 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 may also exercise the power of a summary court to make the first order under subparagraph (2) extending the period.

(4) An order under subparagraph (2) shall 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 may make the order if satisfied, in relation to any cash to be further detained, that one of the following conditions is met-

- (a) 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 -
  - (i) 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
  - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded; and
- (b) the second condition is that there are reasonable grounds for suspecting that the cash is property earmarked as terrorist property and that either -
  - (i) 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

- (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

*Payment of detained cash into an account*

4. (1) If cash is detained under this Schedule for more than forty-eight 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), the authorised officer shall, on paying it into the account, release so much of the cash then held in the account 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 summary 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 summary court or Justice 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) Cash shall 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; and
- (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 3

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 summary 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 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 court.

(2) An appeal under subparagraph (1) shall be made within the period of thirty days beginning with the date on which the order is made.

(3) The appeal is to be by way of a rehearing.

(4) The court may make any order it thinks appropriate and where 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, shall be paid into the revenue.

(2) Cash shall not be paid in accordance with subparagraph (1)-

(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 4

#### MISCELLANEOUS

##### *Victims*

9. (1) A person who claims that any cash detained under this Schedule, or any part of it, belongs to him may apply to a summary 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) Where it appears to the court concerned 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) Where a forfeiture order is not 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 summary court for compensation.

(2) Where, for any period after the initial detention of the cash for forty-eight 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) Where 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) Where 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 revenue.

(7) Where 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 5

### 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 act was 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) Where 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 under 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) Where a person enters into a transaction by which-

- (a) he disposes of the original property or of property which under this Part represents the original property; and
- (b) he obtains other property in place of it,

the other property represents the original property.

(3) Where 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; or
- (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. (1) Where-

- (a) a person disposes of property earmarked as terrorist property; and
- (a) 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) Where -

- (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) Where -

- (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.

## PART 6

### EXERCISE OF OFFICERS' POWERS

*General*

17. An authorised officer may enter any premises for the purposes of exercising any of the functions conferred on him under this Schedule.

18. An authorised officer may if necessary use reasonable force for the purpose of exercising a power conferred on him under this Schedule.

*Information*

19. Information acquired by an authorised officer may be supplied -

- (a) to a customs officer;
- (b) to a constable;
- (c) to a person specified by order of the Governor for use of in a manner specified in the order.

PART 7

*Obtaining and disposing of property*

20. (1) References to a person disposing of his property include a reference to his disposing of a part of it or 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) Where 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.

*Definitions*

21. (1) In this Schedule-

“authorised officer” means a constable, a customs officer or an immigration officer;

“criminal conduct” means conduct which constitutes an offence in the Islands or would constitute an offence in the Islands if it occurred there;

“interest” means-

- (i) in relation to land, any legal estate and any equitable interest or power, and
- (ii) in relation to property other than land, includes any right (including a right to possession of the property);

“property obtained through terrorism” has the meaning given by paragraph 11; and

“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 the commencement of this Law), 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.

## FOURTH SCHEDULE

section 30

### ACCOUNT MONITORING ORDERS

#### *Definition*

1. (1) In this Schedule-

“financial institution” means-

- (a) a person who carries on a business of taking deposits for which he is authorised under the Banks and Trust Companies Law (2009 Revision) or any other law of the Islands;
- (b) a building society within the meaning of the Building Societies Law (2001 Revision);
- (c) a credit union within the meaning of the Co-operative Societies Law (2001 Revision);
- (d) a Savings Bank or a Development Bank established by or under any law of the Islands; and
- (e) a person who carries on an insurance or reinsurance business under the Insurance Law (2008 Revision).

(2) The Governor in Cabinet may by order provide for a class of person-

- (a) to be a financial institution for the purposes of this Schedule; or
- (b) to cease to be a financial institution for the purposes of this Schedule.

(3) An institution which ceases to be a financial institution for the purposes of this Schedule whether under subparagraph (2)(b) or otherwise shall continue to be treated as a financial institution for the purposes of any requirement under this Schedule to provide information which relates to a time when the institution was a financial institution.

#### *Account monitoring orders*

2. (1) A judge, on application made to him by a constable of at least the rank of inspector, may 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) The application for an account monitoring order shall 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 at the institution by the person specified in the application whether solely or jointly with another; and
- (b) is of the description so specified.

(3) The application for an account monitoring order may specify information relating to-

- (a) all accounts held by the person specified in the application for the order at 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.

(4) An account monitoring order is an order that the financial institution specified in the application for the order shall-

- (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 constable.

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

#### *Applications*

3. (1) An application for an account monitoring order may be made *ex parte* to a judge in Chambers.

(2) The description of information specified in an application for an account monitoring order may be varied by the constable who made the application or by any other constable of a rank equal or superior to that constable.

#### *Discharge or variation*

4. (1) An application to discharge or vary an account monitoring order may be made to the court by the constable who applied for the order or any other constable or by any person affected by the order.

(2) The court may either discharge the order or may vary the order subject

such conditions as it sees fit.

*Rules of court*

5. Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

*Effect of orders*

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

(2) An institution which fails to comply with an account monitoring order commits an offence.

*Statements*

7. (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) Subparagraph (1) does not apply-

- (a) in the case of proceedings for contempt of court;
- (b) in the case of proceedings under section 25 where the financial institution has been convicted of an offence under sections 19 to 22; or
- (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 under 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 of the prosecution.

*Offence by body corporate, etc.*

8. (1) This paragraph applies where an offence under paragraph 6(2) is committed by an institution and it is proved that the offence-

- (a) was committed with the consent or connivance of an officer of the institution; or

(b) was attributable to neglect on the part of an officer of the institution.

(2) The officer of the institution, as well as the institution, shall be guilty of the offence.

(3) Whoever is convicted of an offence under paragraph 1(3) under this paragraph, is liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

(4) In the case of an institution which is a body corporate, in this paragraph-

“officer” includes-

- (a) a director, manager or secretary;
- (b) a person purporting to act as a director, manager or secretary, and
- (c) if the affairs of the body are managed by its members, a member.

(5) In the case of an institution which is a partnership, in this paragraph-

“officer” means a partner.

(6) In the case of an institution which is an unincorporated association (other than a partnership), in this paragraph “officer” means a person concerned in the management or control of the association.

*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(3) including proceedings brought under paragraph 8.

**FIFTH SCHEDULE**

section 41

**TERRORIST INVESTIGATIONS: INFORMATION**

**PART I**

*Searches*

1. (1) A constable of at least the rank of inspector may apply to a Justice of the Peace for the issue of a warrant under this paragraph for the purposes of a terrorist investigation.
- (2) A warrant under this paragraph shall authorise the constable-
  - (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 paragraph (b).
- (3) For the purpose of subparagraph (2)(c) material is relevant if the constable 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) the constable 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, a Justice 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 excepted material within the meaning of paragraph 4; and

- (c) that the issue of a warrant is likely to be necessary in the circumstances of the case.
2. (1) This paragraph applies where an application is made under paragraph 1 and-
- (a) the application is made by a constable of at least the rank of inspector;
  - (b) the application does not relate to residential premises; and
  - (c) the justice to whom the application is made is not satisfied of the matter referred to in paragraph 1(5)(c).
- (2) The Justice 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 under 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) In 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.

3. (1) Subject to subparagraph (2), a constable 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 constable 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 constable-
- (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 paragraph (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 37 has effect.
- (5) An authorisation under this paragraph shall not authorise-
- (a) the seizure and retention of items subject to legal privilege; nor

- (b) the constable to require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.

(6) An authorisation under this paragraph shall not be given unless the person giving it has reasonable grounds for believing that there is material to be found on the premises which-

- (a) is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation; and
- (b) does not consist of or include excepted material.

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

(8) Whoever is guilty of an offence under subparagraph (7) is liable on summary conviction to a fine of three thousand dollars and to imprisonment for three months.

*Excepted material*

4. (1) In this Schedule-

“excepted material” includes-

“excluded material”, “special procedure material” and “items subject to legal privilege;

“excluded material” means-

- (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;
- (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence; and
- (c) journalistic material which a person holds in confidence and which consists of documents and of records other than documents; and

“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-
    - (i) in connection with the giving of legal advice; or
    - (ii) 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.

“special procedure material” means-

- (a) material, other than items subject to legal privilege and excluded material, in the possession of a person who-
    - (i) acquired or created it in the course of trade, business, profession or other occupation or for the purpose of any paid or unpaid office; and
    - (ii) holds it subject-
      - (A) to an express or implied undertaking to hold it in confidence; or
      - (B) to a restriction on disclosure or an obligation of secrecy contained in any enactment including an enactment passed after this Law; and
  - (b) journalistic material, other than excluded material.
- (2) A person holds material other than journalistic material in confidence if he holds it subject-
- (a) to an express or implied undertaking to hold it in confidence; or
  - (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, including an enactment passed after this Law.
- (3) A person holds journalistic material in confidence where-
- (a) he holds it subject to such an undertaking, restriction or obligation; and
  - (b) it has been continuously held by one or more persons subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.
- (4) Where material is acquired-
- (a) by an employee from his employer and in the course of employment; or
  - (b) by a company from an associated company,

it is only special procedure material if it was special procedure material immediately before the acquisition.

(5) Where material is created by an employee in the course of his employment it is only special procedure material if it would have been special procedure had his employer created it.

(6) Where material is created by a company on behalf of an associated company, it is only special procedure material if it would have been special procedure material had the associated company created it.

*Excluded and special procedure material: production and access*

5. (1) A constable of at least the rank of inspector may apply to a magistrate for an order under this paragraph for the purposes of a terrorist investigation.

(2) An application for an order shall relate to particular material, or material of a particular description, which consists of or includes excluded material or special procedure material.

(3) An order under this paragraph may require a specified person-

- (a) to produce to a constable within a specified period for seizure and retention any material which he has in his possession, custody or power and to which the application relates;
- (b) to give a constable access to any material of the kind mentioned in subparagraph (a) within a specified period; or
- (c) to state to the best of his knowledge and belief the location of material to which the application relates if it is not in, and it will not come into, his possession, custody or power within the period specified under subparagraph (a) or (b).

(4) For the purposes of this paragraph-

- (a) an order may specify a person only if he appears to the magistrate to have in his possession, custody or power any of the material to which the application relates; and
- (b) a period specified in an order shall be the period of seven days beginning with the date of the order unless it appears to the magistrate that a different period would be appropriate in the particular circumstances of the application.

(5) Where a magistrate makes an order under subparagraph (3)(b) in relation to material on any premises, he may, on the application of a constable of at least the rank of inspector, order any person who appears to the magistrate to be entitled to grant entry to the premises to allow the constable to enter the

premises to obtain access to the material.

6. (1) A magistrate may grant an application under paragraph 5 if satisfied-
  - (a) that the material to which the application relates consists of or includes excluded material or special procedure material;
  - (b) that it does not include items subject to legal privilege; and
  - (c) that the conditions in subparagraphs (2) and (3) are satisfied in respect of that material.
- (2) The first condition is that-
  - (a) the order is sought for the purposes of a terrorist investigation; and
  - (b) 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 a terrorist investigation.
- (3) The second condition is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or that access to it should be given having regard-
  - (a) to the benefit likely to accrue to a terrorist investigation if the material is obtained, and
  - (b) to the circumstances under which the person concerned has any of the material in his possession, custody or power.
7. (1) An order under paragraph 5 may be made in relation to-
  - (a) material consisting of or including excluded or special procedure material which is expected to come into existence within the period of twenty-eight days beginning with the date of the order; and
  - (b) a person who the magistrate thinks is likely to have any of the material to which the application relates in his possession, custody or power within that period.
- (2) Where an order is made under paragraph 5 under this paragraph, paragraph 5(3) shall apply with the following modifications-
  - (a) the order shall require the specified person to notify a named constable as soon as is reasonably practicable after any material to which the application relates comes into his possession, custody or power;
  - (b) the reference in paragraph 5(3)(a) to material which the specified person has in his possession, custody or power shall be taken as a reference to the material referred to in sub subparagraph (a) which comes into his possession, custody or power; and

- (c) the reference in paragraph 5(3) (c) to the specified period shall be taken as a reference to the period of twenty-eight days beginning with the date of the order.
- (3) Where an order is made under paragraph 5, under this paragraph, paragraph 5(4) shall not apply and the order-
  - (a) may only specify a person falling within subparagraph (1)(b), and
  - (b) shall specify the period of seven days beginning with the date of notification required under sub-paragraph (2)(a) unless it appears to the magistrate that a different period would be appropriate in the particular circumstances of the application.
- 8. (1) An order under paragraph 5-
  - (a) shall not confer any right to production of, or access to, items subject to legal privilege, and
  - (b) shall have effect notwithstanding any restriction on the disclosure of information imposed by statute or otherwise.
  - (2) Where the material to which an application under paragraph 5 relates consists of information contained in a computer-
    - (a) an order under paragraph 5(3)(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 5(3)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.
- 9. (1) An order under paragraph 5 may be made in relation to material in the possession, custody or power of a government department.
  - (2) Where an order is made under subparagraph (1)-
    - (a) it shall be served as if the proceedings were civil proceedings against the department; and
    - (b) it may require any officer of the department, whether named in the order or not, who may for the time being have in his possession, custody or power the material concerned, to comply with the order.
- 10. (1) An order of a magistrate under paragraph 5 shall have effect as if it were an order of the court.
  - (2) Grand Court Rules may make provision for proceedings relating to an order under paragraph 5 and in particular, the rules may make provision with respect to the variation or discharge of an order.

*Excluded or special procedure material: search*

11. (1) A constable of at least the rank of inspector may apply to a magistrate for the issue of a warrant under this paragraph for the purposes of a terrorist investigation.

(2) A warrant under this paragraph shall authorise the constable-

- (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 subparagraph (b).

(3) A warrant under this paragraph shall not authorise-

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

(4) For the purpose of subparagraph (2)(c), material is relevant if the constable has reasonable grounds to believe that it is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation.

12. (1) A magistrate may grant an application under paragraph 11 if satisfied that an order made under paragraph 5 in relation to material on the premises specified in the application has not been complied with.

(2) A magistrate may also grant an application under paragraph 11 if satisfied that there are reasonable grounds for believing that-

- (a) there is material on premises specified in the application which consists of or includes excluded material or special procedure material but does not include items subject to legal privilege; and
- (b) the conditions in subparagraphs (3) and (4) are satisfied.

(3) The first condition is that-

- (a) the warrant is sought for the purposes of a terrorist investigation; and
- (b) the material is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation.

(4) The second condition is that it is not appropriate to make an order under paragraph 5 in relation to the material because-

- (a) it is not practicable to communicate with any person entitled to produce the material;

- (b) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
- (c) a terrorist investigation may be seriously prejudiced unless a constable can secure immediate access to the material.

*Explanations*

13. (1) A constable of at least the rank of inspector may apply to a magistrate for an order under this paragraph requiring any person specified in the order to provide an explanation of any material-

- (a) seized in pursuance of a warrant under paragraph 1 or 11, or
- (b) produced or made available to a constable under paragraph 5.

(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 in proceedings in the court; but an attorney-at-law 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 14.

(4) Paragraph 10 shall apply to orders under this paragraph as it applies to orders under paragraph 5.

14. (1) A person commits an offence if, in purported compliance with an order under paragraph 13, he-

- (a) makes a statement which he 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) Whoever is guilty of an offence under subparagraph (1) is liable-

- (a) on summary conviction, to a fine of four thousand dollars and to imprisonment for six months; or
- (b) on conviction on indictment, to a fine and to imprisonment for two years.

*Urgent cases*

15. (1) A constable of at least the rank of inspector or of at least the rank of inspector may, by a written order signed by him, give to any constable the authority which may be given by a search warrant under paragraph 1 or 11.

(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 Attorney-General.

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

(5) Whoever is guilty of an offence under sub-paragraph (4) is liable on summary conviction to imprisonment for three months and to a fine of four thousand dollars.

16. (1) Where a constable of at least the rank of inspector has reasonable grounds for believing that the case is one of great emergency he 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 15.

(2) Sub-paragraphs (2) to (4) of paragraph 13 and paragraph 14 shall apply to a notice under this paragraph as they apply to an order under paragraph 13.

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

(4) Whoever is guilty of an offence under sub-paragraph (3) is liable on summary conviction to imprisonment for six months and to a fine of four thousand dollars.

SIXTH SCHEDULE

section 44

DETENTION

PART I

TREATMENT OF PERSONS DETAINED UNDER SECTION 44

*Place of Detention*

1. (1) The Governor in Cabinet shall designate places at which persons may be detained under section 44.

(2) In this Schedule a reference to a police station includes a reference to any place which the Governor in Cabinet has designated under sub-paragraph (1) as a place where a person may be detained under section 44.

(3) A constable who arrests a person under section 44 shall take that person as soon as is reasonably practicable to the police station which the constable considers the most appropriate.

*Identification*

2. (1) An authorised person may take any steps which are reasonably necessary for photographing the detained person, measuring him or identifying him.

(2) In subparagraph (1)-

“authorised person” means any of the following-

- (a) a constable;
- (b) a prison officer; or
- (c) a person authorised by the Commissioner of Police.

(3) This paragraph does not confer the power to take fingerprints, non-intimate samples or intimate samples within the meaning given by paragraph 15.

*Audio and video recording of interviews*

3. (1) The Governor in Cabinet shall-

- (a) issue a code of practice with respect to 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 subparagraph (a).
  - (2) The Governor in Cabinet 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 in Cabinet shall issue a code of practice relating to 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 subparagraph (a).
  - (5) Where the Governor in Cabinet has made an order under subparagraph (2) requiring certain interviews to be video recorded with sound he need not make an order under subparagraph (1)(b) in relation to those interviews but he may do so.
  - (6) This paragraph applies to any interview by a constable of a person detained under section 44 if the interview takes place in a police station.
4. (1) This paragraph applies to a code of practice under paragraph 3.
- (2) Where the Governor in Cabinet proposes to issue a code of practice he shall-
    - (a) publish a draft;
    - (b) consider any representations made to him about the draft; and
    - (c) if it thinks appropriate, modify the draft in the light of any representations made to it.
  - (3) The Chief Secretary shall lay a draft of the code before the Legislative Assembly and shall thereafter bring it into operation by order.
  - (4) The Governor in Cabinet may revise a code and issue the revised code; and subparagraphs (2) to (4) shall apply to a revised code as they apply to an original code.
  - (5) The failure by a constable to observe a provision of a code shall not of itself make him liable to criminal or civil proceedings.

- (6) A code-
  - (a) shall be admissible in evidence in criminal and civil proceedings; and
  - (b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

*Status*

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

*Rights*

6. (1) Subject to paragraph 8, a person detained under section 44 at a police station in the Islands 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) 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.

7. (1) Subject to paragraphs 8 and 9, a person detained under section 44 at a police station in the Islands shall be entitled, if he so requests, to consult an attorney-at-law as soon as is reasonably practicable, privately and at any time.

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

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

- (a) in informing the person named by a detained person under paragraph 6; or
- (b) in permitting a detained person to consult an attorney-at-law under paragraph 7.

(2) Where the person is detained under section 44 he must be permitted to exercise his rights under paragraphs 6 and 7 before the end of the period mentioned in section 44 (3).

(3) Subject to subparagraph (5), an constable 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) The consequences referred to in subparagraph (3) are-

- (a) interference with or harm to evidence of a serious arrestable offence;
- (b) interference with or physical injury to any person;
- (c) the alerting of persons who are suspected of having committed a serious arrestable offence but who have not been arrested for it;
- (d) the hindering of the recovery of property obtained as a result of a serious arrestable offence or in respect of which a forfeiture order could be made under section twenty-eight;
- (e) interference with the gathering of information relating to 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) Where an authorisation under subparagraph (1) is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.

(6) 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.

(7) 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 sub-paragraph (1)

(8) In this paragraph-

“serious arrestable offence” includes-

- (a) an offence under any of the provisions mentioned in section 43(1)(a); and
- (b) an attempt or conspiracy to commit an offence under any of the provisions mentioned in section 43(1)(a).

9. (1) A direction under this paragraph may provide that a detained person who wishes to exercise the right under paragraph 7 may consult an attorney-at-law only in the sight and hearing of a qualified officer.

(2) A direction under this paragraph may be given by a constable of at least the rank of inspector.

(3) A direction under this paragraph may be given only if the constable 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).

(4) In this paragraph-

“a qualified officer” means a constable who-

- (a) is of at least the rank of inspector; and
- (b) in the opinion of the constable 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.

10. (1) This paragraph applies where a person is detained in the Islands under section 44.

(2) Fingerprints may be taken from the detained person only if they are taken by a constable with the appropriate consent given in writing or without that consent under subparagraph (4).

(3) A non-intimate sample may be taken from the detained person only if it is taken by a constable-

- (a) with the appropriate consent given in writing; or
- (b) without that consent under subparagraph (4).

(4) 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 constable of at least the rank of inspector authorises the fingerprints or sample to be taken.

(5) 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 constable of at least the rank of inspector authorises the sample to be taken; and

(d) subject to paragraph 13(2) and (3), the sample is taken by a constable.

(6) An constable may give an authorisation under subparagraph (4)(a) or (5)(c) only if-

- (a) in the case of a person detained under section 44, the constable reasonably suspects that the person has been involved in an offence under any of the provisions mentioned in section 43(1)(a), and the constable reasonably believes that the fingerprints or sample will tend to confirm or disprove his involvement, or
- (b) in any case, the constable 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 43(1)(b).

(7) If an authorisation under subparagraph (4)(a) or (5)(c) is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.

11. (1) Before fingerprints or a sample are taken from a person under paragraph 10, he shall be informed-

- (a) that the fingerprints or sample may be used for the purposes of paragraph 14(4) and section 25 of the Police Law (2006 Revision); and
- (b) where the fingerprints or sample are to be taken under paragraph 10(2)(a), (3)(a) or (5)(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 10(4) or (5)(c), he 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 10, 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 10(4) or (5)(c);
- (d) the grounds upon which that authorisation has been given; and
- (e) the fact that the appropriate consent has been given.

12. (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 10;
  - (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 constable of at least the rank of inspector authorises the sample to be taken; and
  - (c) subject to paragraph 13(2) and (3), the sample is taken by a constable of at least the rank of inspector.
- (3) Paragraphs 10(6) and (7) and 11 shall apply in relation to the taking of an intimate sample under this paragraph; and a reference to a person detained under section 44 shall be taken as a reference to a person who was detained under section 44 when the non-intimate samples mentioned in sub-paragraph (1)(a) were taken.
13. (1) Where appropriate written consent to the taking of an intimate sample from a person under paragraphs 10 or 12 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 10 or 12 only by a registered medical practitioner acting on the authority of a constable.
- (3) An intimate sample which is a dental impression may be taken under paragraph 10 or 12 only by a registered dentist acting on the authority of a constable of at least the rank of inspector.
- (4) Where a sample of hair other than pubic hair is to be taken under paragraph 10 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.
14. (1) This paragraph applies to-
- (a) fingerprints or samples taken under paragraph 10 or 12; 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 other fingerprints or samples taken under paragraph 10 or 12 or information derived from those samples.

15. (1) In the application of paragraphs 10 to 14 in relation to a person detained in the Islands-

“appropriate consent” means-

- (i) in relation to a person who is seventeen years of age or older, the consent of that person;
- (ii) in relation to a person between the ages of fourteen and sixteen, the consent of that person and his parent or guardian; and
- (iii) in relation to a person under the age of fourteen, the consent of his parent or guardian;

“fingerprints” includes palmprints;

“insufficient and sufficient” in relation to a sample, means insufficient or sufficient (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; and
- (iii) a swab taken from a person’s 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; and
- (v) a footprint or a similar impression of any part of a person’s body other than a part of his hand; and

“registered dentist” means a dentist registered under the Health Practice Law (2005 Revision).

PART II

REVIEW OF DETENTION UNDER SECTION 44

*Grounds for continued detention*

16. (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 him or otherwise;
- (b) to preserve relevant evidence;
- (c) pending a decision whether to apply to the Governor for a deportation order to be served on the detained person;
- (d) pending the making of an application to the Governor for a deportation order to be served on the detained person;
- (e) pending consideration by the Governor whether to serve a deportation order 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 under 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 under 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 43(1)(a), or
- (b) indicates that the detained person falls within section 43(1)(b).

(5) In subparagraph (1)-

“deportation order” means a deportation order made under the Immigration Law (2009 Revision).

*Review officer*

17. (1) The review officer shall be a constable of at least the rank of inspector 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 an officer of at least the rank of inspector.

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

*Representations*

18. (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 relating to the detention-

- (a) the detained person; or
- (b) an attorney-at-law representing him who is available at the time of the review,

and such representations may be oral or written.

(3) A review officer may refuse to hear oral representations from the detained person if he considers that the detained person is unfit to make representations because of his condition or behaviour.

*Rights*

19. (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 he 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 the provisions of 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 for which the delay was authorised continue to subsist; and

- (b) where in his opinion the reason have ceased to subsist, he shall inform the officer who authorised the delay of his opinion (unless he was that officer).

*Record*

20. (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 reason for postponement of the review;
- (c) the fact that the detained person has been informed as required under paragraph 19(1);
- (d) the officer's conclusion on the matter considered under paragraph 19(2)(a);
- (e) the fact that he has taken action under paragraph 19(2)(b); and
- (f) the fact that the detained person is being detained under section 44(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 incapable of understanding what is said to him, violent or likely to become violent or in urgent need of medical attention.

PART III

EXTENSION OF DETENTION UNDER SECTION 44

*Warrants of further detention*

21. (1) A constable of at least the rank of inspector may apply to the summary 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 44 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 with the time of his arrest under section 44.

*Time limit*

22. (1) An application for a warrant shall be made during the period mentioned in section 45(3) or within six hours of the end of that period.

(2) The summary court hearing an application made under subparagraph (1)(b) shall dismiss the application if the court considers that it would have been reasonably practicable to make it during the period mentioned in section 44(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 court.

*Notice*

23. 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*

24. (1) A court 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 his commission of an offence under any of the provisions mentioned in section 43(1)(a), or
- (b) indicates that he is a person falling within section 43(1)(b).

*Representation*

25. (1) The person to whom an application relates shall-

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

(2) The court shall adjourn the hearing of an application to enable the person to whom the application relates to obtain legal representation where he wishes to be so represented.

*Information*

26. (1) The constable who has made an application for a warrant may apply to the court for an order that specified information upon which he intends to rely be withheld from the person to whom the application relates and anyone representing him.

(2) Subject to subparagraph (3), the court 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 43(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 20 would be hindered;
- (d) the apprehension, prosecution or conviction of a person who is suspected of falling within section 43(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 relating to 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 court 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 to which Part III of the Proceeds of Crime Law, 2008 (Law 10 of 2008) (confiscation of the proceeds of an offence) applies;
- (b) the detained person has benefited from the offence within the meaning of that Part; and

(c) the recovery of the value of that benefit would be hindered, if the information were disclosed.

(4) 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*

27. (1) The court 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 44(3).

(2) This paragraph shall not apply to an adjournment under paragraph 26(2).

*Extensions of warrants*

28. (1) A constable of at least the rank of inspector may apply to the court 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 with the time of the person's arrest under section 44.

(4) Paragraphs 22(3) and 23 to 26 shall apply to an application under this paragraph as they apply to an application for a warrant of further detention.

(5) The court 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 25(2).

*Detention - conditions*

29. A person detained under a warrant issued under this Part shall unless detained in accordance with section 44(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 25(1)(a) and (b) upon which the court authorised his further detention have ceased to apply.

Publication in consolidated and revised form authorised by the Governor in Cabinet this 16th day of June, 2009.

Carmena Watler  
Clerk of Cabinet





(Price \$ 19.20)