



## ST. CHRISTOPHER AND NEVIS

### CHAPTER 4.02

## ANTI-TERRORISM ACT and Subsidiary Legislation

### Revised Edition

showing the law as at 31 December 2017

This is a revised edition of the law, prepared by the Law Commission under the authority of the Law Commission Act, Cap 1.03.

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**CHAPTER 4.02**

**ANTI-TERRORISM ACT**

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**CHAPTER 4.02**  
**ANTI-TERRORISM ACT**

AN ACT TO GIVE EFFECT TO THE SEVERAL UNITED NATIONS CONVENTIONS AND PROTOCOLS ON THE SUPPRESSION AND ELIMINATION OF INTERNATIONAL TERRORISM; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

**PART I**  
**PRELIMINARY**

**Short title.**

1. This Act may be cited as the Anti-Terrorism Act.

**Interpretation.**

2. (1) In this Act, unless the context otherwise requires—

“act” and “action” include omission;

“ANF” means the Al-Nusrah Front;

*(Inserted by Act 10 of 2015)*

“article” includes a substance;

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

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

“cash” means—

- (a) coins and notes in any currency;
- (b) postal orders;
- (c) cheques of any kind, including travellers’ cheques;
- (d) banker’s drafts;
- (e) bearer bonds and bearer shares;
- (f) any kind of monetary instrument specified as such by the Minister responsible for finance,

found at any place in Saint Christopher and Nevi;

“conduct” includes acts, omissions and statements;

“court” includes the High Court;

“criminal conduct” means conduct which constitutes one or more criminal offences under the law of Saint Christopher and Nevis, or conduct which is or corresponds to conduct which, if it all took place in Saint Christopher and Nevis, would constitute one or more criminal offences under the law of Saint Christopher and Nevis;

“criminal investigation” means an investigation of any criminal conduct, including an investigation of alleged or suspected criminal conduct, and an investigation of whether criminal conduct has taken place;

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

“dwelling” means—

- (a) a building or part of a building used as a dwelling; or
- (b) a vehicle that is habitually stationary and used as a dwelling;

“examining officer” means a police officer, an immigration officer, or a customs officer;

“financial intelligence unit” means the Financial Intelligence Unit as defined under the Financial Intelligence Unit Act, Cap 21.09;

*(Inserted by Act 27 of 2008)*

“forfeiture order” means an order made under section 37;

“forfeited property” means property to which a forfeiture order applies;

“funds” means assets of every kind whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in, such assets, including but not limited to, bank, credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credits;

*(Inserted by Act 27 of 2008)*

“information” includes documents, and, in relation to a disclosure authorised by this Act, anything that falls to be treated as information for the purpose of the disclosure;

“interest”—

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

“ISIL” means the Islamic State in Iraq and Levant;

*(Inserted by Act 10 of 2015)*

“ISIS” means the Islamic State of Iraq and Syria;

*(Inserted by Act 10 of 2015)*

“Minister” means the Minister responsible for national security;

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

“part”, in relation to property, includes a portion;

“port” includes an airport and a hover port;

“premises” include any place and, in particular—

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

“property”, regardless of where it is situated, includes—

- (a) money;
- (b) any form of property, real or personal, heritable or moveable;



- (c) anything in action or other intangible or incorporeal property;
- (d) any interest a person holds or has in the property;
- (e) proceeds from, instrumentalities used in and instrumentalities intended for use in the commission of any terrorist financing offence but in particular those offences set out in sections 12, 13 and 14 of this Act.  
*(Paragraph (e) inserted by Act 13 of 2009)*

“property earmarked as terrorist property” has the meaning given by section 56;

“property obtained through terrorism” has the meaning given by section 55;

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

“Registrar” means the Registrar of the High Court;

“road” has the meaning assigned to it by section 2 of the Roads Act, Cap. 15.05;

“ship” includes a hovercraft;

“terrorist”, for the purposes of Part VII, means a person who

- (a) has committed an offence under sections 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27, 28, 29, 30 or 31;
- (b) is or has been concerned in the commission, preparation or instigation of acts of terrorism; and the reference 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 Act, concerned in the commission, preparation or instigation of acts of terrorism within the meaning of this definition;

“terrorist act” means—

- (a) an act or threat of action in or outside Saint Christopher and Nevis which—
  - (i) involves serious bodily harm to a person;
  - (ii) involves serious damage to property;
  - (iii) endangers a person’s life;
  - (iv) creates a serious risk to the health or safety of the public or a section of the public;
  - (v) involves the use of firearms or explosives;
- (b) an act or threat of action in or outside Saint Christopher and Nevis which involves releasing into the environment or any part thereof or disturbing or exposing the public or any part thereof to—
  - (i) any dangerous, hazardous, radioactive or harmful substance;
  - (ii) any toxic chemical;
  - (iii) any microbial or other biological agent or toxin;
- (c) an act or threat of action in or outside Saint Christopher and Nevis which is designed or intended to disrupt—

- (i) any computer system or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;
  - (ii) the provision of essential emergency services such as police, civil defence or medical services;
- (d) an act or threat of action in or outside Saint Christopher and Nevis which involves prejudice to national security or public safety, and is intended, or by its nature and context, may reasonably be regarded as being—
- (i) intended to intimidate the public or a section of the public;
  - (ii) intended to compel a government or an international organisation to do, or refrain from doing, any act; and
  - (iii) made for the purpose of advancing a political, ideological, or religious cause.

*(Inserted by Act 28 of 2005)*

“terrorist activity” means an action that takes place either within or outside of Saint Christopher and Nevis that—

- (a) is an offence under any of the United Nations Anti-terrorism Conventions and Protocols specified in subsection (2) of this section;
- (b) is taken or threatened for political, religious, or ideological purposes and threatens the public or national security by—
  - (i) killing;
  - (ii) seriously harming or endangering any person;
  - (iii) causing substantial property damage that is likely to seriously harm people; or
  - (iv) interfering with or disrupting an essential service, activity or system; or
- (c) recruiting, organising, transporting or equipping of individuals who travel to a State other than their State of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities,

and terrorism shall be construed accordingly;

*(Inserted by Act 10 of 2015)*

“terrorist cash” means cash which—

- (a) is intended to be used for terrorist purposes;
- (b) consists of resources of a group which is a designated terrorist group;
- (c) is, or represents, cash obtained through terrorism; or
- (d) is marked as terrorist property;

“terrorist group” means a group of persons designated as a terrorist group under section 3 of this Act whose activities meet the definition of terrorist activity;

“terrorist investigation” means the investigation of—

- (a) the commission, preparation or instigation of acts of terrorism;

- (b) an act which appears to have been done for the purpose of terrorism;
- (c) the resources of a terrorist group;
- (d) the possibility of making an Order under section 3(1);
- (e) the commission, preparation or instigation of an offence under this Act; or
- (f) a terrorist offence pursuant to a request for assistance from a jurisdiction outside of Saint Christopher and Nevis;  
*(Inserted by Act 35 of 2012)*

“terrorist property” means—

- (a) money or other property which is likely to be used for the purpose of terrorism;
- (b) any resources of a designated terrorist group which is applied or made available, or is to be applied or made available, for use by the terrorist group;
- (c) proceeds of acts carried out of the purposes of terrorism;

and for the purposes of this definition, 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;

“terrorist purposes” means a goal or objective that is aimed at the promotion, advancement, furtherance or carrying out of a terrorist act, terrorist activity or the financing of terrorism;

*(Inserted by Act 10 of 2015)*

“traffic sign” has the meaning assigned to it by section 2 of the Vehicles and Road Traffic Act, Cap. 15.06;

“vehicle” has the meaning assigned to it by section 2 of the Vehicles and Road Traffic Act, Cap. 15.06;

“weapon” includes a firearm, explosive, chemical, biological, or nuclear weapon.

(2) For the purposes of the definition of “terrorist act” in subsection (1), an act which—

- (a) disrupts any services; and
- (b) is committed in pursuance of a protest, demonstration, or stoppage or work, shall be deemed not to be a terrorist act within the meaning of this definition, so long and so long only as the act is not intended to result in any harm referred to in paragraphs (a)(i), (ii), (iii) or (iv) of that definition.

*(Inserted by Act 28 of 2005)*

(3) The Conventions and Protocols referred to in the definition of terrorist activity in subsection (1) are the following—

- (a) Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on December 16, 1970;
- (b) Convention for Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

- (c) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973;
  - (d) International Convention Against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979;
  - (e) Convention on the Physical Protection of Nuclear Material, done at Vienna and New York on March 3, 1980;
  - (f) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on February 24, 1998;
  - (g) Convention for Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988;
  - (h) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988;
  - (i) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997; and
  - (j) International Convention for the Suppression on the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999.
- (4) For the purposes of this Act, proceedings for an offence are instituted—
- (a) when a summons or warrant is issued under the Magistrate's Code of Procedure Act, Cap. 3.17 in respect of the offence;
  - (b) when a person is charged with an offence after being taken into custody without a warrant;
  - (c) when an indictment is filed by virtue of section 20 of the Criminal Procedure Act, Cap. 4.06;

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

- (5) For the purposes of this Act, proceedings for an offence are concluded—
- (a) when a forfeiture order has been made in the proceedings and effect has been given to it in respect of all the forfeited property; or
  - (b) when no forfeiture order has been made in the proceedings and there is no further possibility of one being made as a result of an appeal, disregarding any power of the court to grant leave to appeal out of time.

PART II

TERRORIST GROUP, ETC.

*Designation of Terrorist Groups*

**Designation of terrorist groups.**

3. (1) For the purposes of this Act, the Minister may, acting on the advice of the Attorney-General, by Order, designate any person or group of persons, whose activities fall within the definition of terrorist activity, as a terrorist or terrorist group.

(2) The Minister, acting on the advice of the Attorney-General, may, in accordance with the provisions of this Act, and from time to time, add or remove any person or group of persons from the list of designated terrorists or terrorist groups made under subsection (1).

**Removal of a terrorist group from the list.**

4. (1) An application may be made to the Minister for the exercise of his or her powers under section 3(2), and the application may be made by the designated person or designated groups of persons, or a person affected by the group's designation.

(2) The Minister shall, by regulations made under this Act, prescribe the procedure for applications required to be made under this section.

**Appeal against Minister's decision.**

5. (1) Where an application made under section 4 is refused by the Minister, the applicant may appeal to the High Court.

(2) The judge shall allow the appeal if he or she considers that the decision of the Minister was flawed when the decision is considered in the light of the principles applicable on an application for judicial review.

(3) Where the judge allows an appeal under this section by or in respect of a terrorist or a terrorist group, he or she may make an order to that effect.

(4) Where an order is made under subsection (3), the Minister shall, as soon as reasonably practicable, lay before the National Assembly a draft of an Order made under section 3(2) removing the person or group from the list, and thereafter the Minister shall have the Order gazetted in the *Official Gazette*.

**Appeal to the Court of Appeal.**

6. (1) A party to an appeal determined by the High Court in accordance with the provisions of section 5 may bring a further appeal on a question of law to the Court of Appeal.

(2) An appeal under subsection (1) may be brought only with the permission of the High Court, or where the High Court refuses to give the permission, with the permission of the Court of Appeal.

(3) An order made pursuant to the provisions of section 5(4) shall not require the Minister to take any action until the final determination or disposal of an appeal under this section.

**Effect of appeal on conviction.**

7. (1) This section applies where—

- (a) an appeal made under section 5 is allowed in respect of a designated terrorist group;
- (b) an Order is made under section 3 (2) in respect of a designated terrorist group in accordance with an order of the High Court made under section 5 (3);
- (c) a person is convicted of an offence in respect of the terrorist group under sections 9, 10, 11, 12, 13, 14, 15, 17, or 25; and
- (d) the activity to which the charge refers took place on or after the date of the refusal to remove a name of a group from the list of designated terrorist groups against which the appeal made under section 5 is brought.

(2) Where a person referred to in subsection (1)(c) is convicted of an offence on indictment, he or she may, within a period of twenty eight days beginning with the date on which the Order referred to in subsection (1)(b) comes into force, appeal against the conviction to the Court of Appeal, and that Court shall hear the appeal on its own merits.

(3) Where a person referred to in subsection (1)(c) is convicted of an offence by a Magistrate's Court, he or she may, within a period of twenty-one days beginning with the date on which the Order referred to in subsection (1)(b) comes into force, appeal against the conviction to the High Court, and that Court shall hear the appeal on its own merits.

#### **Certain evidence not to be admissible.**

**8.** (1) The following shall not be admissible as evidence in proceedings for an offence under sections 9, 10, 11, 13, 14, 15, 16, 17, or 18, that is to say—

- (a) evidence of anything done in relation to an application made to the Minister under section 4;
- (b) evidence of anything done in relation to proceedings under sections 5 and 6; and
- (c) any document submitted for purposes of proceedings mentioned in paragraphs (a) and (b).

(2) Notwithstanding the provisions of subsection (1), that subsection shall not prevent evidence from being adduced on behalf of the accused person.

#### *Offences Under This Part*

#### **Offence of belonging to a terrorist group.**

**9.** (1) A person who belongs or professes to belong to a designated terrorist group commits an offence and is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years, or a fine or both;
- (b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine or both.

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

- (a) the designated terrorist group was not a designated group on the last occasion on which he or she became a member or began to profess to be a member; and
- (b) he or she has not taken part in the activities of the terrorist group at any time while it was a designated terrorist group.

**Offence of supporting a terrorist group, etc.**

- 10.** (1) A person commits an offence if that person—
- (a) invites support for a terrorist group, and the support is, or is not restricted to, the provision of money or property or other property within the meaning of section 13;
  - (b) arranges, manages or assists in arranging or managing a meeting which he or she knows is to support a terrorist group—
    - (i) further the activities of a terrorist group; or
    - (ii) be addressed by a person who belongs or professes to belong to a terrorist group;
  - (c) addresses a meeting and the purpose of the address is to encourage support for a terrorist group or to further its activities.
- (2) Where a person is charged of an offence under subsection (1)(c), it is a defence for him or her to prove that he or she had no reasonable cause to believe that the address would support or further the activities of a terrorist group.
- (3) A person convicted of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine, or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine, or both.
- (4) In this section, “meeting” means a meeting of three or more persons, whether or not the public are admitted.

**Wearing a uniform, etc. of a terrorist group.**

- 11.** (1) A person who, in a public place, wears an item of clothing, or wears, carries, or displays an article, in a way or in circumstances that arouse reasonable suspicion that he or she is a member or supporter of a designated terrorist group commits an offence and is liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand dollars or both.
- (2) A police officer may arrest a person without a warrant if the officer has reasonable grounds to suspect that the person has committed an offence under this section.

*(Amended by Act 28 of 2005)*

PART III  
TERRORIST FINANCING  
OFFENCES

**Offence of fund-raising for terrorist activities, etc.**

12. (1) A person commits an offence if that person—
- (a) invites another person, directly or indirectly, to provide property;
  - (b) intends that the property is to be used, or has reasonable cause to suspect that property is to be used, for the purposes of terrorism; and
  - (c) solicits support for, or gives support to, a terrorist or terrorist group.
- (2) For the purposes of subsection (1)(c), an offer to provide, or the provision of, forged or falsified travel documents to a terrorist or member of a terrorist group constitutes giving of support to a terrorist or terrorist group.
- (3) A person who receives property, directly or indirectly, and intends that the property is to be used, or has reasonable cause to suspect that the property is to be used, for the purposes of terrorism commits an offence.
- (4) A person commits an offence if that person—
- (a) provides or collects funds, directly or indirectly, knowing or having reasonable cause to suspect that the funds are to be used, in whole or in part, for the purpose of carrying out a terrorist activity;
  - (b) deals in any property, directly or indirectly, knowing or having reasonable cause to suspect that the property is owned or controlled by or on behalf of a person or group engaged in terrorist activities;
  - (c) knowingly enters into, or facilitates, directly or indirectly, any transaction in respect of property referred to in paragraph (b);
  - (d) provides financial or other services in respect of property referred to in paragraph (b) at the direction of a terrorist or terrorist group; or
  - (e) wilfully provides or collects, by any means, directly or indirectly, funds, with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.
- (Inserted by Act 10 of 2015)*
- (5) A person who acts reasonably in taking or omitting to take measures not to contravene the provisions of subsection (1) shall not be liable in any civil action from having taken or omitted to have taken those measures if the person proves that he or she took all reasonable measures to satisfy himself or herself that the relevant property was owned or controlled by or on behalf of a person or group of persons engaged in terrorist activities.
- (6) A person convicted of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine not exceeding seven hundred and fifty thousand dollars, or both;



*(Amended by Acts 3 of 2012 and 10 of 2015)*

- (b) on summary conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand dollars, or both;

*(Amended by Act 13 of 2009)*

- (c) in the case of a body corporate or an unincorporated body to a fine not exceeding one million dollars.

*(Inserted by Act 13 of 2009)*

*(Amended by Acts 3 of 2012 and 10 of 2015)*

### **Use and Possession of property for terrorist purposes.**

- 13.** (1) A person commits an offence if that person—

- (a) uses property, directly or indirectly, in whole or in part, for the purposes of engaging in, or facilitating, terrorism; or

- (b) possesses property and intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of engaging in, or facilitating, terrorism.

- (2) A person convicted of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine not exceeding five hundred thousand dollars, or both; or

*(Amended by Acts 3 of 2012 and 10 of 2015)*

- (b) on summary conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand dollars, or both;

*(Amended by Act 28 of 2005)*

- (c) in the case of a body corporate or an unincorporated body to a fine not exceeding seven hundred and fifty thousand dollars.

*(Inserted by Act 13 of 2009)*

*(Amended by Acts 3 of 2012 and 10 of 2015)*

### **Entering into funding arrangements for terrorist purposes.**

- 14.** (1) A person commits an offence if that person enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available, and the person knows or has reasonable cause to suspect that the money or other property is to be used for terrorist purposes.

- (2) A person who is charged of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine not exceeding seven hundred and fifty thousand dollars, or both; or

*(Amended by Acts 3 of 2012 and 10 of 2015)*

- (b) on summary conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand dollars, or both;

*(Amended by Act 28 of 2005)*

- (c) in the case of a body corporate or unincorporated body, to a fine of one million dollars.

*(Inserted by Act 13 of 2009)*

*(Amended by Acts 3 of 2012 and 10 of 2015)*

**Engaging in money laundering for terrorist purposes.**

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

- (a) by concealment;
- (b) by removal from the jurisdiction;
- (c) by transfer to nominees; or
- (d) in any other way.

(2) A person who is charged with an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding twenty years or to a fine of two million dollars or to both such fine and imprisonment; or
- (b) in the case of a body corporate or unincorporate to a fine of one million dollars

*(Substituted by Act 3 of 2012 and amended by Act 10 of 2015)*

**Jurisdiction to hear terrorist financing offences committed overseas.**

16. (1) A person who does anything outside Saint Christopher and Nevis, and the action of that person would have constituted the commission of an offence under section 12, 13, 14, or 15 if the action had been done in Saint Christopher and Nevis commits an offence, and may, if the person is found in Saint Christopher and Nevis, be prosecuted.

(2) The power to prosecute a person under subsection (1) shall be exercised without prejudice to the provisions of the Extradition Act, Cap. 4.08.

(3) For the purpose of this section, section 15(1)(b) shall be read as if for “jurisdiction” there were substituted “a jurisdiction”.

**Duty to disclose information relating to a person who has committed a terrorist financing offence.**

17. (1) A person who believes or suspects that the funds of another person are being, have been or are likely to be used for purposes related to the financing of terrorism, and bases his or her belief or suspicion on information that comes to his or her attention in the course of a trade, profession, business, or employment shall, as soon as reasonably practicable, disclose his or her belief or suspicion, and the information on which it is based to a police officer, except that this subsection shall not apply to information which comes to a person in the course of a business in the regulated sector.

*(Amended by Act 36 of 2008)*

(2) A person who fails to comply with subsection (1) commits an offence and is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine of seventy thousand dollars or both; or
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding fifty thousand dollars or both.

*(Amended by Act 3 of 2012)*

(3) It shall be a defence for a person charged with an offence under subsection (2)—

- (a) to prove that he or she had a reasonable excuse for not making the disclosure; or
- (b) if he or she is in employment where there are established procedures for the making of the disclosures specified in subsection (1), to prove that he or she disclosed the matters specified in that subsection in accordance with the procedure.

(4) A professional legal adviser shall not be required by subsection (1) to disclose—

- (a) information; or
- (b) a belief or suspicion based on information,

which he or she obtains in privileged circumstances.

(5) For the purposes of subsection (4), information is obtained by a professional legal adviser in privileged circumstances if it comes to him or her, otherwise than with a view to furthering a criminal purpose—

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

(6) A person commits an offence if that person, in the course of his or her business within a regulated sector—

- (a) knows or suspects or has reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism; and
- (b) does not disclose the information or other matter to the Financial Intelligence Unit within twenty-four hours from knowing or forming the suspicion.

(7) No civil or criminal proceedings shall be brought, and no proceedings for breach of banking or professional confidentiality shall be instituted or professional sanction taken against any director or employee of a financial institution or business entity or any other person who, in good faith, transmits information or submits a report to the Financial Intelligence Unit.

*(Amended by Act 13 of 2009)*

(8) It shall be a defence for a person charged with an offence under subsection (6) to prove that—

- (a) he or she had a reasonable excuse for not disclosing the information or other matter; or
- (b) he or she is a professional legal adviser and that the information or other matter came to him or her in privileged circumstances.

(9) The court shall, in deciding whether a person committed an offence under subsection (6), consider whether the person followed any relevant guidance which was, at the time concerned—

- (a) issued by a supervisory authority or any other appropriate body;
  - (b) approved by the Ministry responsible for finance; and
  - (c) published in a manner approved as appropriate to bring the guidance to the attention of persons likely to be affected by it.
- (10) A person who commits an offence under subsection (6) shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine not exceeding five hundred thousand dollars;
  - (b) on summary conviction to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand dollars, or both; and
  - (c) in the case of a body corporate or an unincorporated body to a fine not exceeding one million dollars.
- Substituted by Act 3 of 2012 and amended by Act 10 of 2015)*

- (11) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him or her by—
- (a) a client or client's representative in connection with the giving by the adviser of legal advice to the client; or
  - (b) a person or person's representative seeking legal advice; or
  - (c) a person in connection with the legal proceedings or contemplated legal proceedings,

except that this subsection shall not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose.

(12) For the purpose of subsection (9)(a), appropriate body is any body which regulates or is representative of any trade, profession, business, or employment carried on by the alleged offender.

(13) Notwithstanding any law to the contrary, a disclosure which is made in accordance with the provisions of this section shall not be taken to be a breach of any restriction on the disclosure of information imposed by any law or otherwise.

(14) For the purposes of subsection (6), a person shall be deemed to have committed the offence provided for in that subsection if the person—

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

**Discretionary disclosure of information relating to a person who has committed a terrorist financing offence.**

**18.** (1) A person may disclose to a police officer a suspicion or belief that money or other property is terrorist property or is derived from terrorist property, and any matter or information on which the suspicion is based.

(2) A person may make a disclosure to a police officer in the circumstances specified in section 17(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) Subsections (1) and (2) shall have effect in relation to a person who is in employment where there are established procedures for making the type of disclosures specified in subsection (1) and section 17(1) as if any reference to disclosure to a police officer included a reference to disclosure in accordance with the procedure.

**Offences by body corporate.**

\*19. (1) Where an offence under sections 12, 13, 14, 17, 21, 32 or 33 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to—

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

*(Inserted in as section 18A by Act 13 of 2009.)*

**Disclosure of information relating to property owned or controlled by a terrorist.**

20. (1) Subsection (2) of this section applies to a person who is a citizen of Saint Christopher and Nevis but is outside Saint Christopher and Nevis.

(2) A person referred to in subsection (1) who—

- (a) has possession, custody or control of property that belongs to a terrorist or a designated terrorist group owned or controlled by a terrorist; or
- (b) has information about a transaction or proposed transaction in respect of the property referred to in paragraph (a),

shall immediately inform the Chief of Police, or such other person as the Minister may designate, of that fact or information and provide such further information relating to the property, or transaction, as the Chief of Police or designated person may require.

(3) A person shall forthwith disclose to the Financial Intelligence Unit—

- (a) the existence of any property in his or her possession or control, which is to his or her knowledge, owned or controlled by or on behalf of a terrorist or terrorist group;
- (b) any information regarding a transaction or proposed transaction in respect of any property referred to in paragraph (a).

(4) A financial institution shall report to the Financial Intelligence Unit and the Financial Services Commission—

- (a) every three months that it is not in possession or control of any property owned or controlled by or held on behalf of a terrorist or terrorist group; or

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\* NOTE: It has been renumbered as section 19 and consequently sections 19 to 21 have been renumbered accordingly

- (b) forthwith that it is in possession or control of any property owned or controlled by or on behalf of a terrorist or terrorist group, and in that case it shall submit the particulars relating to the persons, accounts, transactions involved, and the total value of the property in question.

(5) A report submitted pursuant to subsection (4)(a) shall be delivered within ten business days from the end of the reporting period.

*(Amended by Act 13 of 2009)*

(6) A person who contravenes subsection (2) commits an offence and is liable—

- (a) on summary conviction, to a fine not exceeding thirty thousand dollars or to imprisonment for a term not exceeding one year, or both;
- (b) on conviction on indictment, to a fine not exceeding sixty thousand dollars or to imprisonment for a term not exceeding three years, or both.

(7) A person who contravenes subsection (3) or (4) and (5) commits an offence and is liable—

- (a) on summary conviction, to a fine not exceeding forty thousand dollars or to imprisonment for a term not exceeding three years or both;
- (b) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding fourteen years or to both, or such fine and imprisonment.

*(Amended by Acts 28 of 2005 and 13 of 2009)*

(8) No civil or criminal proceedings shall lie against any person for making a disclosure or report, in good faith, under this section.

*Cooperation With Police, and Defences*

**Cooperation with police.**

**21.** (1) A person who is acting with the express consent of the police shall not be charged of any offence specified in section 12, 13, 14, or 15.

(2) A person who involves himself or herself in a transaction or arrangement relating to money or other property which he or she suspects to be terrorist property and discloses to a police officer his or her suspicion or belief and the information on which his or her suspicion or belief is based shall not be charged of any offence specified in section 12, 13, 14, or 15.

(3) Subsection (2) shall only apply to a person who makes a disclosure—

- (a) after he or she has become concerned in the transaction or arrangement concerned;
- (b) on his or her own initiative; and
- (c) as soon as is reasonably practicable.

(4) Subsection (2) shall not apply to a person who continues his or her involvement in the transaction or arrangement to which the disclosure relates after a police officer has forbidden him or her to continue his or her involvement.

(5) In this section, a reference to a transaction or arrangement relating to property includes a reference to use or possession.

**Defences to offences under sections 12(1) and (3), 13, 14, and 15.**

**22.** (1) It shall be a defence to a person charged with an offence under section 12(1) and (3), 13, 14, or 15 to prove that he or she intended to make a disclosure provided for in section 17(2) and (3), and that there is reasonable excuse for his or her failure to do so.

(2) This section shall have effect in relation to a person who is in employment where there are established procedures for making the type of disclosures specified in subsection (1) and section 17(1) as if any reference to disclosure to a police officer included a reference to disclosure in accordance with the procedure.

## PART IV

## \*TERRORIST OFFENCES

**Participating, etc. in terrorist activities**

**23.** (1) A person commits an offence if that person knowingly—

- (a) participates in, contributes to, or facilitates the activities of a terrorist group; or
- (b) aids or abets a terrorist group to facilitate the activities of the terrorist group.

(2) A person who is convicted of an offence under—

- (a) subsection (1)(a) is liable to imprisonment for a term not exceeding ten years;
- (b) subsection (1)(b) is liable to imprisonment for a term not exceeding fourteen years.

**Recruiting persons into a terrorist group.**

**24.** A person who knowingly recruits another person into a terrorist group, for the purpose of enhancing the ability of the terrorist group to aid, abet, or commit any offence, commits an offence, and is liable, on conviction, to imprisonment for a term not exceeding fifteen years.

*(Amended by Act 28 of 2005)*

**Instructing a person to carry out a terrorist activity, etc.**

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

- (a) instructs another person to carry out a terrorist activity on behalf of a terrorist group;
- (b) knowingly harbours or conceals a terrorist;
- (c) commits an indictable offence under any enactment for the benefit of, or at the direction of, or in association with, a terrorist group.

(2) A person who is convicted of an offence under—

- (a) subsection (1)(a) and (c) is liable to imprisonment for a term not exceeding life sentence;

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\* NOTE: As a result of renumbering sections 19 to 21, sections 22, 23, 24, 25, 26, 27, 28, 29, 30, 30A, and 31 have been renumbered accordingly

- (b) subsection (1)(b) is liable to imprisonment for a term not exceeding ten years.

### **Training of terrorists.**

**26.** (1) A person commits an offence if that person knowingly agrees to provide instructions or training, or provides instructions or training—

- (a) in the making or use of any weapon;
- (b) in carrying out terrorist activities; and
- (c) in the practice of military exercises or movements, to a terrorist or a person engaging in, or preparing to engage in, terrorism.

(2) A person who receives instructions or training referred to in subsection (1) commits an offence.

(3) A person who invites another person to receive instructions or training and the receipt would constitute an offence under subsection (2) but for the fact that it is to take place outside Saint Christopher and Nevis commits an offence.

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

(5) A person who is convicted of an offence under this section shall be liable—

- (a) on conviction on indictment, to a life sentence; or
- (b) on summary conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding seventy-five thousand dollars or both.

*(Amended by Act 28 of 2005)*

(6) 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.

(7) The court shall, before making an order under subsection (6), 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 made under subsection (6) shall not come into force until there is no further possibility of the order being varied, or set aside, on appeal.

(9) For the purposes 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.

### **Directing a terrorist group.**

**27.** A person who directs, at any level, the activities of a terrorist group commits an offence, and is liable, on conviction on indictment to imprisonment for life.



**Possession of articles for terrorist purposes.**

**28.** (1) A person who possesses an article in circumstances that give rise to reasonable suspicion that the possession of the article is for a purpose connected with the commission, preparation, or instigation of an act of terrorism commits an offence, and is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine not exceeding seven hundred and fifty thousand dollars or both; or
- (b) on summary conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand dollars or both.

*(Amended by Acts 3 of 2012 and 10 of 2015)*

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

*(Amended by Acts 3 of 2012 and 10 of 2015)*

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

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

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

**Intelligence gathering for terrorist activity.**

**29.** (1) A person who gathers intelligence in Saint Christopher and Nevis for the purpose of using the intelligence to contribute to, facilitate, aid or abet the activities of a terrorist group commits an indictable offence, and is liable, on conviction, to a penalty not exceeding life imprisonment.

(2) A person who collects, makes, or possesses a document or record of information likely to be useful to a person committing or preparing an act of terrorism commits an offence, and is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years or a fine not exceeding seven hundred and fifty thousand dollars or both; or
- (b) on summary conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand dollars or both.

*(Amended by Acts 3 of 2012 and 10 of 2015)*

(3) It shall be a defence for a person charged with an offence under subsection (2) to prove that he or she had reasonable excuse for his or her action or possession.

(4) A court by or before which a person is convicted of an offence under this section may order the forfeiture of any document or record containing the kind of information mentioned in subsection (2).

(5) The court shall, before making an order under subsection (4), 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.

(6) An order made under subsection (4) shall not come into force until there is no further possibility of the order being varied, or set aside, on appeal.

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

### **Preparatory acts offence.**

**30.** A person who knowingly prepares to commit any offence specified in sections 9, 10, 12, 13, 14, 15, 23, 24, 26, 28, 29, 31, or 32, commits an offence, and is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years or a fine of fifty thousand dollars or both; or
- (b) on summary conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand dollars or both.

*(Amended by Act 28 of 2005)*

### **Inciting terrorism abroad.**

**31.** (1) A person who incites another person to commit an act of terrorism wholly or partly outside Saint Christopher and Nevis, and the act would, if committed in Saint Christopher and Nevis, constitute any one of the offences specified in subsection (2) commits an offence.

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

- (a) murder;
- (b) wounding with intent;
- (c) poisoning with intent;
- (d) causing explosions; and
- (e) endangering life by damaging property.

(3) A person who, in Saint Christopher and Nevis—

- (a) knowingly promotes or facilitates the doing of any act in a foreign State for the purpose of achieving any of the following objectives, whether or not the objectives are achieved or not—
  - (i) the overthrow, by force or violence, of the government of that foreign State;
  - (ii) causing by force or violence, the public in that foreign State to be in fear of death or bodily injury;
  - (iii) causing death of, or bodily injury to, a person who is the head of that foreign State, or holds or performs any of the duties of, a public office of that foreign State;
  - (iv) unlawfully destroying or damaging any property belonging to the government of that foreign State;
- (b) accumulates, stockpiles or otherwise keeps, any weapons for the purposes of doing any act referred to in paragraph (a);
- (c) trains or drills, or participates in the training or drilling, of any other person in the use of weapons or in the practice of military exercises or movements to prepare that person to do any act referred to in paragraph (a);

- (d) allows himself or herself to be trained or drilled in the use of weapons or in the practice of military exercises or movements for the purpose of doing any act referred to in paragraph (a);
- (e) gives any money or goods to, or performs services for, any other person or body or association of persons for the purpose of promoting or supporting the doing of any act referred to in paragraph (a);
- (f) receives or solicits money or goods, for the performance of services for the purpose of promoting or supporting the doing of any act referred to in paragraph (a),

commits an offence, and shall be liable, on conviction, to imprisonment for a term not exceeding ten years.

(4) A person who is convicted of an offence under subsection (1) is liable to a penalty to which he or she would be liable on conviction of the offence specified in subsection (2) which corresponds to the act which he or she incited.

(5) For the purposes of subsection (1), it is immaterial whether or not the person incited is in Saint Christopher and Nevis at the time of the incitement.

(6) A person who—

- (a) being the owner, occupier, lessee or person in charge of a building, premises, room, or place, knowingly permits a meeting of persons to be held in that building, premises, room, or place;
- (b) being the owner, charterer, lessee, operator, agent, or master of vessel or the owner, charterer, lessee, operator, agent, or pilot in charge of an aircraft, knowingly permits that vessel or aircraft to be used,

for the purpose of committing an offence under subsection (3), or promoting or supporting the commission of an offence under that subsection commits an offence, and shall be liable, on conviction, to imprisonment for a term not exceeding fifteen years, or to a fine.

*(Amended by Act 13 of 2009)*

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

### **Terrorist bombing and provision of weapons to terrorists.**

**32.** (1) A person who does anything outside Saint Christopher and Nevis as an act of terrorism or for the purposes of terrorism, and the act would, if done in Saint Christopher and Nevis, constitute one of the offences specified in subsection (2) commits an offence.

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

- (a) causing explosions; and
- (b) using any other weapon illegally.

(3) A person who knowingly offers to provide or provides any weapon to a terrorist, terrorist group, or member of a terrorist group, or any other person for use by, or for the benefit of, a terrorist group or a member of a terrorist group commits an offence and shall be liable, on conviction, to imprisonment for life.

(4) A person who is convicted of an offence under subsection (1) is liable to a penalty to which he or she would be liable on conviction of the offence specified in subsection (2) which corresponds to the act which he or she did.

**Tipping off**

**33.** A person who knows or suspects that an investigation into a terrorist offence has been, is being, or is about to be made, and divulges that fact or other information to another person, whereby the disclosure of the fact or other information is likely to prejudice the investigation, commits an offence, and shall be liable, on conviction, to a fine not exceeding five hundred thousand dollars and to imprisonment for a term not exceeding three years.

*(Inserted in as section 30A by Act 36 of 2008 )*

## PART V

## \*FREEZING OF TERRORIST PROPERTY

*Restraint Orders***Application for, and content of, a restraint order, etc.**

**34.** (1) The High Court may, upon application by a police officer, grant a restraint order where—

- (a) proceedings are or have been instituted in Saint Christopher and Nevis for an offence under section 12, 13, 14 or 15 or under Part IV of this Act;

*(Amended by Act 3 of 2012)*

- (b) proceedings have not been concluded;
- (c) a forfeiture order has been made in the proceedings.

(2) Notwithstanding subsection (1), the High Court may grant a restraint order where—

- (a) the court is satisfied that a person is to be charged in Saint Christopher and Nevis with an offence under section 12, 13, 14 or 15 or under Part IV of this Act;

*(Amended by Act 3 of 2012)*

- (b) an application for a restraint order is made to the court by a police officer upon reasonable suspicion that an act of terrorism or financing of terrorism is being, has been or is about to be committed; and

*(Substituted by Act 3 of 2012)*

- (c) it appears to the court that a forfeiture order may be made in the proceedings.

(3) A restraint order shall prohibit a person to whom notice is given, subject to any conditions and exceptions specified in the order, from dealing with any property in respect of which a forfeiture order has been or is likely to be made in the proceedings referred to in subsection (1) or (2).

(4) An application for a restraint order may be made to a judge in chambers without notice.

(5) The court shall, on granting a restraint order, make provision in the order for notice to be given to any person affected by the order.

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\* NOTE: As a result of renumbering sections 22 to 31, sections 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 42A, 43, 44, 45, 46, 47, 47A, 48, 49, 50, 51, 52, 53, 54, and 55 have been renumbered accordingly

(6) A restraint order may be discharged or varied by the court on the application of a person affected by the order, and in particular, the order shall be discharged—

- (a) in the case of an order made under subsection (2), if the proceedings in respect of the offence are not instituted within such time as the court considers reasonable;
- (b) in any case, if the proceedings for the offence have been concluded.

**Application to court to forfeit property in other circumstances.**

**35.** (1) Notwithstanding subsection 37, an application for the forfeiture of any property seized pursuant to section 36 may be made to the court by the Director of Public Prosecutions.

(2) The Director of Public Prosecutions shall give at least fourteen days' notice of an application made pursuant to subsection (1) to the person from whom the property was seized or to any other person that the Director of Public Prosecutions believes may have an interest in that property.

(3) Any person notified under subsection (2) as well as any other person who claims to have an interest in the seized property shall be entitled to appear and to give evidence at the hearing of the application, but the absence of any such person shall not prevent the court from making a forfeiture order.

(4) Upon hearing an application made pursuant to subsection (1) and upon being satisfied that the seized property is—

- (a) being used in, is intended for use in or has been used in a terrorist financing offence, a terrorist offence or any other offence for the promotion of the causes of terrorism;
- (b) an instrumentality of an offence in subparagraph (a), whether or not a person has been convicted of an offence,

the Court may, subject to subsection (5), order that all or part of the property be forfeited to the Government of Saint Christopher and Nevis.

(5) In considering whether to make an order under subsection (4) in respect of the forfeiture of all or part of the seized property, the court may have regard to—

- (a) the use ordinarily made, or intended to be made of the property; and
- (b) the claim of any third party to an interest in the property, where such party is able to show to the satisfaction of the court that the party was not involved or aware of any use or purpose related to terrorist activity with which the money may have been associated.

(6) Any party to an application for forfeiture under subsection (1) may appeal to the High Court by way of rehearing within thirty days of any order having been made pursuant to subsection (4).

*(Inserted by Act 3 of 2012 and following sections renumbered accordingly)*

**Seizure of property subject to a restraint order.**

**36.** (1) A police officer shall seize without delay any property which is subject to a restraint order for the purpose of preventing the property from being removed from Saint Christopher and Nevis.

*(Substituted by Act 3 of 2012)*

(2) Property seized under this section shall be dealt with in accordance with the directions of the High Court.

### *Forfeiture Orders*

#### **Forfeiture order in relation to offences under sections 12, 13, 14 and 15 or Part IV of this Act.**

**37.** (1) A court by or before which a person is convicted of an offence under section 12, 13, 14, 15 or Part IV of this Act may grant a forfeiture order in accordance with the provisions of this section.

*(Substituted by Act 3 of 2012)*

(2) Where a person is convicted of the offences referred to in subsection (1), the court may order the forfeiture of any property which—

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

*(Amended by Act 3 of 2012)*

(3) Where a person is convicted of an offence under section 12 (3), 25, 27, 28 or 30 (3) the court may order the forfeiture of any property which—

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

*(Amended by Act 3 of 2012)*

(4) Where a person is convicted of an offence under section 14, the court may order the forfeiture of any property—

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

(5) Where a person is convicted of an offence under section 15, the court may order the forfeiture of any property to which the arrangement in question related.

(6) Where a person is convicted of an offence under section 12, 13, 14, 15 or the offences under Part IV of this Act the court may order the forfeiture of any property to which, wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the offence.

*(Amended by Act 3 of 2012)*

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

#### **Implementation of a forfeiture order.**

**38.** (1) Where a court grants a forfeiture order under section 37 the court may make such other provisions as appear to the court to be necessary for giving effect to the order, and may, in particular—

- (a) require that any of the forfeited property be paid or handed over to the Registrar;

- (b) direct that any of the forfeited property, other than money and land, be sold or otherwise disposed of in such manner as the court may direct and the proceeds of sale, if any, to be paid to the Registrar;
- (c) appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the Court, of any forfeited property, to realise it in such manner as the court may direct and to pay the proceeds to the Registrar;
- (d) direct that a specified part of any forfeited money, or of the proceeds of the sale, disposal or realisation of any forfeited property, be paid to the Registrar.

(2) A forfeiture order shall not come into force until there is no further possibility that the order may be varied or set aside on appeal.

(3) A receiver appointed under subsection (1) shall be entitled to be paid remuneration and expenses by the Registrar out of the proceeds of the property realised by the receiver in accordance with this section.

(4) A receiver appointed under subsection (1) shall not be liable to any person in respect of any loss or damage resulting from action—

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

(5) Subsection (4) shall not apply in so far as the loss or damage is caused by the receiver's negligence.

(6) For the purposes of subsection (1)(b) and (d), a reference to the proceeds of sale, disposal or realisation of property is a reference to the proceeds after deduction of the costs of sale, disposal or realisation of property.

#### *Seizure And Detention Of Terrorist Cash, Etc.*

#### **Seizure of cash.**

**39.** (1) An authorised officer may seize any cash if he or she has reasonable grounds for suspecting that the cash is terrorist cash.

(2) An authorised officer may also seize cash part of which he or she has reasonable grounds for suspecting to be terrorist cash if it is not reasonably practicable to seize only that part.

#### **Detention of seized cash.**

**40.** (1) An authorised officer may, as long as he or she continues to have reasonable grounds for his or her suspicion, detain cash seized by him or her under section 39, initially, for a period of forty eight hours.

(2) The period referred to in subsection (1) may be extended by an order made by a Magistrates' Court upon an application by an authorised officer, except that the order shall not authorise the detention of any of the cash—

- (a) beyond a period of three months beginning with the date of the order;  
and
  - (b) in the case of a further order under this section, beyond a period of two years beginning with the date of the first order.
- (3) An order made under subsection (2) shall provide for notice to be given to the persons affected by it.
- (4) The court shall not make an order under subsection (2) unless it is satisfied that one of the following conditions is met—
- (a) 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 Saint Christopher and Nevis 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;
  - (b) that there are reasonable grounds for suspecting that the cash consists of resources of a designated terrorist group and that either—
    - (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing, in Saint Christopher and Nevis 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;
  - (c) 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 intended use is further investigated or consideration is given to bringing, in Saint Christopher and Nevis 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.

#### **Detained cash to be kept on account.**

**41.** (1) Where cash is detained under this Part for more than forty eight hours, the cash shall be deposited and held on an interest-bearing account, and the interest accruing on it shall be added to it on its forfeiture or release.

(2) Where cash is seized by virtue of the provisions of section 39(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) Subsection (1) shall not apply where the cash is required as evidence of an offence or evidence in proceedings under this Part.

#### **Release of detained cash.**

**42.** (1) This section applies while any cash is detained under this Part.



(2) A Magistrates' Court may direct the release of the whole or part of the cash if the court is satisfied, on an application by a person from whom the cash was seized, that the conditions set out in section 40(4) for the detention of the cash are no longer met in relation to the cash to be released.

(3) An authorised officer may, after notifying the Magistrates' Court under whose order cash is being detained, release the whole or part of the cash if the officer is satisfied that the detention of the cash to be released is no longer justified.

(4) Notwithstanding subsections (2) and (3), cash shall not be released if—

- (a) an application for the forfeiture of the cash is made in accordance with the provisions of section 40 or an application for the release of the cash is made in accordance with the provisions of section 43, until proceedings in respect of the application, including proceedings on appeal, are concluded;
- (b) proceedings, in Saint Christopher and Nevis or elsewhere, are commenced against any person for an offence with which the cash is connected, until the proceedings are concluded.

#### **Forfeiture of detained cash.**

**43.** (1) An authorised officer may, while cash is detained under this Part, make an application to a Magistrates' Court for the forfeiture of the whole or part of the cash that is reasonably believed to be terrorist cash.

(2) The Court may make an order for the forfeiture of the cash or part of the cash if the court is satisfied that the cash or part of it is terrorist cash.

(3) Where property earmarked as terrorist property belongs to joint tenants, one of whom is an excepted joint owner, the order shall not apply to the property which, in the opinion of the court, 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 or her, be earmarked, and references to his or her share of the earmarked property are to so much of the property as would have been his or hers if the joint tenancy had been severed.

#### **Appeal against a forfeiture order.**

**44.** (1) A party to proceedings in which an order is made under section 43 who is aggrieved by the order may appeal to the High Court, and the appeal shall be by way of rehearing.

(2) Where a forfeiture order is made on the basis that a group of persons is a designated terrorist group, then the affected group may appeal against the order if—

- (a) an appeal made pursuant to the provisions of section 5 to have the terrorist group removed from the list is allowed;
- (b) an order is made under section 3(2) in respect of the terrorist group in accordance with an order made under section 5;
- (c) the forfeited cash was seized under this Part on or before the date of the refusal by the Minister to remove the terrorist group from the list against which decision an appeal is brought under section 5.

(3) An appeal made pursuant to the provisions of—

- (a) subsection (1) shall be made within a period of thirty days beginning on the day on which the order is made;

- (b) subsection (2) shall be made before the end of a period of thirty days beginning with the date on which the order made under section 3(2) comes into force.

(4) The High Court may, upon hearing the appeal referred to it under this section, make any order it thinks appropriate, and may, if it upholds the appeal, order the release of the cash.

#### **Application of forfeited cash.**

**45.** Cash that is forfeited under the provisions of this Part, and any accrued interest on it, shall be paid into Consolidated Fund after—

- (a) a period of seven days, if an appeal is not made under section 44; or
- (b) the appeal is determined or otherwise disposed of, in case of an appeal made under section 44.

#### **Seizure of instrumentalities.**

**46.** The provisions of sections 39 to 45 in relation to the seizure, detention of and disposal of terrorist cash shall apply equally to instrumentalities used in or intended for use in the commission of an offence under this Act.

*(Inserted in as section 42A by Act 13 of 2009)*

#### *Freezing Orders*

#### **Freezing of funds.**

**47.** (1) Where the Director of Public Prosecutions has reasonable grounds to believe that an offence has been committed or is about to be committed under this Act, the Director of Public Prosecutions shall, without delay and subject to subsection (2), apply to the Court for an order freezing the funds in the possession of any person concerned with the commission of the offence or the preparation or facilitation to commit the offence.

*(Amended by Acts 28 of 2005, 13 of 2009 and 10 of 2015)*

(2) Subject to subsection (4) the Court may, where it is satisfied on the application of the Director of Public Prosecutions that—

- (a) a person has been charged or is about to be charged with an offence under this Act;
- (b) a request has been made by a competent authority of a foreign State in accordance with section 105, in respect of a person—
  - (i) about whom there are reasonable grounds for believing that the person has committed an offence specified in this Act;
  - (ii) who has been charged or is about to be charged with an offence specified in this Act; or
  - (iii) who has been identified as being a member of Al-Qaida, ANF, the Taliban, ISIS, ISIL or any other terrorist group designated by the United Nations Sanctions Committees and so recognised by Order of the Minister pursuant to section 3; or
- (c) a person has been identified as being a member of Al-Qaida, the Taliban, ISIS, ISIL or any other terrorist group designated by the United Nations Sanctions Committees,

make an order freezing the funds in the possession of or under the control of that person.

*(Inserted by Act 10 of 2015)*

(3) An application for a freezing order shall be made *ex parte* but in any case shall be made without delay and be accompanied by an affidavit setting out—

- (a) a description of the funds in respect of which the freezing order is sought;
- (b) the grounds for believing that the funds are related to or are used to facilitate an offence referred to in subsection (1);
- (c) the name and address of the person who is believed to be in possession or control of the funds;
- (d) where the person has not been charged, the offence for which he or she is charged.

*(Amended by Act 3 of 2012)*

(4) Where the court makes a freezing order under subsection (1), it shall require that the—

- (a) applicant within twenty-one days of the making of the order, serve a notice of the order together with a copy thereof on every person named by the court;
- (b) order is published within the time and in the manner directed by the court; and
- (c) persons who appear to the court to have an interest in the funds are given an opportunity to be heard,

unless in respect of paragraph (a) the court is of the opinion that the giving of the notice will result in the disappearance, dissipation or reduction in the value of the funds.

(5) On the making of an order under subsection (1) the court may give directions regarding the disposal of the funds for the purpose of—

- (a) determining any dispute relating to the ownership of or other interest in the funds;
- (b) the proper administration of the funds during the period of the order;
- (c) the payment of the costs of the person referred to in subsection (1)—
  - (i) for the reasonable subsistence of that person and his or her family;
  - (ii) to defend criminal proceedings against him or her; and
- (d) the payment of debts incurred in good faith prior to the making of the order.

(6) A freezing order made under this section shall cease to have effect six months after the order is made where the person in respect of whom the order was made has not been charged with an offence under this Act within that period.

(7) An order made under subsection (1) may be renewed for a period not exceeding six months in each particular case but in no case shall the entire period of the renewal exceed eighteen months.

(8) A freezing order granted by the court under this section shall not prejudice the rights of any third party acting in good faith in respect of the frozen assets or any interest therein.

(9) Where the application for a freezing order is made as a result of a request from another State the court shall only make the order if it is satisfied that reciprocal arrangements exist between Saint Christopher and Nevis and that other State in respect of similar freezing orders.

*(Amended by Act 28 of 2005 and 10 of 2015)*

#### **Undertakings by Crown.**

**48.** (1) Before making an order under section 47, the Court may require the Crown to give such undertakings as the Court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, the Director of Public Prosecutions may, after consultation with the Attorney-General, on behalf of the Crown, give to the court such undertakings with respect to the payment of damages or costs, or both, as are required by the court.

*(Amended by Act 28 of 2005)*

#### **Exemption from liability.**

**49.** (1) Where the court makes an order for the administration of frozen funds the person charged with the administration of the funds is not liable for—

- (a) any damage or loss of the funds;
- (b) the cost of proceedings taken to establish a claim to the funds or to an interest therein;

unless the court in which the claim is made is of the opinion that the person is guilty of negligence in respect of the taking of custody, administration and control of the funds.

(2) Subsection (1) does not derogate from the criminal culpability of any person charged with the administration of funds referred to in that subsection.

*(Amended by Act 28 of 2005)*

#### **Registration of freezing Orders.**

**50.** (1) A copy of a freezing order that affects registered land in Saint Christopher and Nevis shall be registered with the Registrar of Titles who shall record the particulars of the order in the Register Book of Titles and make a notation thereof on the Certificate of Title.

(2) A freezing order is of no effect with respect to registered land unless it is registered.

(3) Where particulars of a freezing order are registered as required by this section, a person who subsequently deals with the property concerned shall, for the purposes of section 43, be deemed to have notice of the order at the time of the dealing.

(4) The registration of a freezing order under this section shall be exempt from the payment of fees under the Title By Registration Act, Cap. 10.19 and stamp duty under the Stamps Act, Cap. 20.40.

*(Amended by Act 28 of 2005)*

**Contravention of freezing Order.**

**51.** (1) A person who knowingly contravenes a freezing order by disposing of, or otherwise dealing with property that is subject to the freezing order commits an offence and is liable—

(a) on summary conviction, in the case of—

(i) an individual, to a fine not exceeding twenty thousand dollars and six months imprisonment; or

(ii) a body corporate, to a fine not exceeding seven hundred and fifty thousand dollars;

(b) on conviction on indictment, in the case of—

(i) an individual, to a fine of seventy-five thousand dollars and two years imprisonment; or

(ii) a body corporate to a fine of seven hundred and fifty thousand dollars.

(2) Where a freezing order is made against property and—

(a) the property is disposed of or otherwise dealt with in contravention of the freezing order;

(b) the disposition or dealing was not sufficient consideration or not in favour of a person who acted in good faith and without notice,

the Director of Public Prosecutions may apply to the Court for an order that the disposition or dealing be set aside.

(3) The Court may, on the application of the Director of Public Prosecutions under subsection (2), set aside the disposition or dealing effective from the day—

(a) on which the disposition or dealing took place; or

(b) the order is made under this subsection,

and declare the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place, and before the day of the order made under this subsection.

*(Amended by Act 28 of 2005)*

**Review of a freezing Order.**

**52.** (1) A person who has an interest in funds in respect of which a freezing order is made may, at any time, apply to the court for—

(a) an order under subsection (5); or

(b) permission to examine the funds.

(2) An application under subsection (1) shall not be heard by the court unless the applicant has given the Director of Public Prosecutions not less than three days' notice in writing of the application.

(3) The court may require notice of the application to be given to, and may hear, any person who, in the opinion of the court, appears to have an interest in the property.

(4) Where an application is made under subsection (1)(a) in respect of any funds, the Court may act in accordance with subsection (5) after hearing the

applicant, the Director of Public Prosecutions or any other person who is notified under subsection (3).

(5) For the purposes of subsection (4), the Court may order that the funds or any part thereof be returned to the applicant, or revoke the freezing order or vary it to exclude the funds or any interest therein or any part thereof from the application of the order, or make the order subject to such conditions as the Court thinks fit—

- (a) if the applicant enters into a recognizance before the court, with or without sureties, in such amount and with such conditions, as the court directs, and where the court considers it appropriate, deposits with the court such sum of money or other valuable security as the court directs;
- (b) if the conditions referred to in subsection (6) are satisfied;
- (c) for the purpose of—
  - (i) meeting the reasonable living expenses of the person who was in possession of the funds at the time the order was made or any person who, in the opinion of the Court, has an interest in the property and of the dependents of that person;
  - (ii) meeting the reasonable business or legal expenses of a person referred to in subparagraph (i).

(6) An order under subsection (5) in respect of funds may be made if the court is satisfied that—

- (a) a freezing order should not have been made in respect of the funds;
- (b) the applicant is the lawful owner, or lawfully entitled to possession of the funds and appears innocent of any complicity in a terrorism offence or of any collusion in relation to such an offence; and
- (c) the funds will no longer be required for the purpose of any investigation or as evidence in any proceedings.

(7) Where an application is made to the Court under subsection (1)(b), the Court may order that the applicant be permitted to examine the funds subject to such terms as appear to the Court to be necessary or desirable to ensure that the funds are safeguarded for the purpose for which they may subsequently be required.

*(Inserted in as section 47A by Act 28 of 2005)*

### *Compensation*

#### **Relief to persons deprived of their cash unlawfully.**

**53.** (1) A person who claims that any cash detained by virtue of the provisions of this Part belongs to him or her may apply to a Magistrates' Court for the cash to be released to him or her.

(2) The application may be made in the course of proceedings under section 42, or section 43, or at any other time.

(3) Where it appears to the Court that—

- (a) the applicant was deprived of the cash claimed, or of property which it represents, by criminal conduct;
- (b) the property he or she was deprived of was not, immediately before he or she was deprived of it, property obtained by or in return for criminal conduct and did not then represent such property; and

(c) the cash belongs to him or her,  
the Court may order the cash to be released to the claimant.

**Compensation in general.**

**54.** (1) A person who has or had an interest in any property which was subject to a restraint order, and—

- (a) a restraint order is discharged under section 34 (6);
- (b) a restraint order or forfeiture order was made in or in relation to proceedings for an offence under section 12, 13, 14, or 15 which—
  - (i) do not result in conviction for an offence under any of those sections;
  - (ii) result in conviction for an offence under any of those sections in respect of which the person convicted is subsequently pardoned;
  - (iii) result in conviction for an offence under any of those sections which is subsequently quashed,

may apply to the High Court for compensation to be paid to him or her in accordance with the provisions of this section.

(2) The High Court may make an order for compensation to be paid to the applicant referred to in subsection (1) if the Court is satisfied that—

- (a) there was a serious default on the part of the person concerned in the investigation or prosecution of the offence;
- (b) the person in default was or was acting as a member of the Police Force, or was a staff of the Director of Public Prosecution;
- (c) 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;
- (d) it is appropriate, having regard to all the circumstances to make an order for compensation to be paid.

(3) The High Court shall not make an order under subsection (1) where it appears to the Court that proceedings for the offence would have been instituted even if the serious default had not occurred.

(4) Where no forfeiture order is made in respect of any cash detained under this Part, the person to whom the cash belongs or from whom it was seized may apply to the Magistrate's Court for compensation.

(5) Where cash, while being detained for any period after the initial detention of the cash for forty eight hours, was not held on an interest bearing account the Court may, upon application, make an order for an amount of compensation to be paid to the applicant.

(6) The amount of compensation to be paid under subsection (5) is the amount the Court thinks would have been earned in interest in the period in question if the cash had been held on an interest bearing account.

(7) Where the Court, taking into account any interest to be paid under this Part or any amount to be paid under subsection (5), is satisfied that the applicant has suffered loss as a result of the detention of the cash and that the circumstances are

exceptional the Court may make an order for compensation to be paid to the applicant.

(8) The amount of compensation to be made under subsection (7) is the amount the court thinks to be reasonable, having regard to the loss suffered and any other relevant circumstances.

(9) Subsections (4), (5), (6), (7), and (8) shall not apply where the Court makes an order under section 44.

#### *Property Earmarked as Terrorist Property*

#### **Property obtained through terrorism.**

**55.** (1) For the purposes of this Part, a person obtains property through terrorism if the person obtains property by or in return for acts of terrorism, or acts carried out for purposes of terrorism.

(2) In deciding whether property is 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;
- (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.**

**56.** (1) For the purposes of this Part, property obtained through terrorism is earmarked as terrorist property.

(2) Where property that is obtained through terrorism is disposed of it is earmarked as terrorist property only if it is held by a person into whose hands it may be followed.

(3) Earmarked property may be followed into the hands of a person who obtained it on disposal—

- (a) by the person who obtained the property through terrorism; or
- (b) by a person into whose hands it may, by virtue of this subsection, be followed.

#### **Tracing of property.**

**57.** (1) Where property that is obtained through terrorism, (in this subsection called the original property), is or has been earmarked as terrorist property, the property that represents the original property shall also be earmarked as terrorist property.

(2) If a person enters into a transaction by which—

- (a) he or she disposes of earmarked property, whether original property or property which, by virtue of subsection (1), represents the original property;
- (b) he or she obtains other property in place of it,

the other property that is obtained represents the original property.



(3) If a person disposes of earmarked property which represents the original property, the property disposed represents the original property, the property disposed of may be followed into the hands of the person who obtains the property, and the property shall continue to represent the original property.

#### **Mixing of property.**

**58.** For the purposes of this Part, if a person's property which is earmarked as terrorist property is mixed with other property, whether the person's property or another person's property, the portion of the mixed property that is attributable to the property earmarked as terrorist property shall represent the property obtained through terrorism.

#### **Property consisting of profits.**

**59.** Where a person who has property earmarked as terrorist property obtains other property consisting of profits accruing in respect of the earmarked property, that other property shall be treated as representing the property obtained through terrorism.

#### **General exceptions to earmarked property.**

**60.** (1) Where a person disposes of property earmarked as terrorist property, and the person who obtains it on disposal does so in good faith, for value and without notice that the property was earmarked, the property may not be followed into that person's hands, and accordingly, the property shall cease to be earmarked.

(2) If—

- (a) in pursuance of a judgment in civil proceedings, whether in or outside Saint Christopher and Nevis, the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant;
- (b) the claimant's claim is based on the defendant's criminal conduct; and
- (c) apart from this subsection, the sum received, or the property obtained, by the claimant would be earmarked as terrorist property,

the property, shall cease to be earmarked.

## PART VI

### \*TERRORIST INVESTIGATIONS

#### *Cordoned Areas*

#### **Cordoned areas.**

**61.** (1) Any area may, in writing, be designated a cordoned area by a police officer, not below the rank of Superintendent of Police, for the purposes of a terrorist investigation.

(2) A police officer who makes a designation under subsection (1) shall arrange for the demarcation of the cordoned area, as soon as is reasonably practicable.

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\* NOTE: As a result of renumbering sections 32 to 55, sections 56 to 78 have been renumbered accordingly

(3) Notwithstanding subsection (1), a police officer below the rank of superintendent may, if he or she considers it necessary by reason of urgency, make a designation required to be made under subsection (1).

(4) Where a police officer makes a designation under subsection (3), the police officer 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 superintendent is informed.

(5) A police officer who is informed of a designation in accordance with the provisions of subsection (4)(b) may confirm the designation or cancel it with effect from such time as he or she may direct, and shall, if he or she cancels the designation, make a written record of the cancellation and the reason for the cancellation.

#### **Duration of designation.**

**62.** (1) Subject to subsection (2), a designation made under section 61 shall have effect during the period beginning at the time when it is made and ending at a time specified in the designation, except that the time specified in the designation shall not exceed fourteen days.

(2) The period during which a designation shall have effect may be extended, in writing, and it shall be specified in the extension the additional period during which the designation shall have effect, except that the designation shall not have effect after the end of a period of twenty eight days beginning with the day on which it was made.

#### **Police powers in relation to a cordoned area.**

**63.** (1) A police officer may—

- (a) order a person in a cordoned area to leave it immediately;
- (b) order a person immediately to leave premises which are wholly or partly in or adjacent to a cordoned area;
- (c) order the driver or person in charge of a vehicle in a cordoned area to move it from the cordoned area immediately;
- (d) arrange for the movement of the vehicle from a cordoned area;
- (e) arrange for the movement of the vehicle within a cordoned area;
- (f) prohibit or restrict access to a cordoned area by pedestrians or vehicles.

(2) A person who refuses or fails to comply with an order, prohibition, or restriction imposed by virtue of subsection (1) commits an offence, except that it shall be a defence for the accused person to prove that he or she had reasonable excuse for his or her failure.

(3) A person who is convicted of an offence under subsection (2) is liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine of four thousand dollars or both.

**Searches.**

- 64.** (1) A police officer may, for the purpose of a terrorist investigation, apply to a court for the issue of a warrant authorising the police officer—
- (a) to enter the premises specified in the warrant;
  - (b) to search the premises and any person found on the premises; and
  - (c) to seize and retain any relevant material which is found as a result of the search carried out under paragraph (b).
- (2) For the purposes of subsection (1)(c), material is relevant if the police officer has reasonable grounds to believe 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.
- (3) A warrant granted under this section shall not authorise—
- (a) the seizure and retention of items which are subject to legal privilege;
  - (b) a police officer to require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket, or gloves.
- (4) Subject to section 65, the court may grant a warrant if it satisfied that—
- (a) the warrant is sought for the purposes of a terrorist investigation;
  - (b) 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;
  - (c) the issue of a warrant is likely to be necessary in the circumstances of the case.

**Grant of warrant on other grounds.**

- 65.** (1) This section shall apply where an application is made under section 60 and the—
- (a) application for the warrant is made by a police officer of at least the rank of inspector;
  - (b) application for the warrant does not relate to residential premises;
  - (c) court to which the application for the warrant is made is not satisfied of the matter referred to in section 64(4)(c).
- (2) The Court may grant the warrant if it is satisfied of the matters referred to in section 64(4)(a) and (b).
- (3) Where an application for the issue of a warrant made under section 60 is granted under this section, the powers conferred by section 64(1)(a) and (b) shall be exercised within a period of twenty-four hours beginning from the time when the warrant is issued or granted.
- (4) For the purposes of subsection (1), “residential premises” mean any premises which the police officer making the application has reasonable grounds to believe that they are used wholly or mainly as a dwelling.

**Searching premises in a cordoned area.**

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

(2) A police officer below the rank referred to in subsection (1) may give an authorisation under this section if he or she considers it necessary by reason of urgency.

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

- (a) to enter the premises specified in the authorisation;
- (b) to search the premises and any person found on the premises; and
- (c) to seize and retain any relevant material, within the meaning of section 64, which is found as a result of the search carried out under paragraph (b).

(4) The powers conferred by subsection (3)(a) and (b) may be exercised on one or more occasions, and at any time during the period when the designation of the cordoned area under this Act is still in force.

(5) An authorisation given under this section shall not authorise—

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

(6) An authorisation required to be given under this section shall not be given unless the officer giving it has reasonable grounds for believing that there is material to be found on the premises which is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation.

(7) A person who wilfully obstructs a search required to be carried out under this section commits an offence, and is liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding five thousand dollars, or both.

*Interception of Communications and Collection of Information*

**Prevention, etc. of electronic crimes.**

**67.** (1) The Chief of Police shall, after consultation with the Minister responsible for National Security and the Attorney-General, take appropriate action to develop a National Network of Electronic Crime Task Force for the purpose of preventing, detecting, and investigating various forms of electronic crimes, including potential terrorist attacks against critical infrastructure and financial payment systems.

(2) For the purposes of subsection (1), the Electronic Crimes Task Force may, in accordance with regulations made in that behalf under this Act, intercept wire, oral, or electronic communications relating to terrorism.

(3) For the purpose of enabling the law enforcement officers to investigate terrorist offences efficiently, a wiretap authorisation referred to in subsection (2) shall be valid for a period of one year.

(4) Notwithstanding subsections (2) and (3), the use of electronic surveillance against any criminal organisation or group shall be subject to the approval of the High Court.

#### **Investigation of terrorist offences.**

**68.** (1) Where a police officer is of the opinion that there is a person with information relevant to an on going investigation of a terrorist offence he or she may, with the approval of the Attorney-General, apply to the court, in chambers, to summon that person to appear before a judge and give the information.

(2) A police officer may, for the purpose of investigating a terrorist offence and with the consent of the Attorney-General, apply *ex parte* to the High Court for an order to gather information.

(3) A judge to whom an application is made under this section may grant the relevant order if he or she is satisfied that the approval or consent of the Attorney-General has been obtained under subsection (1) or (2), as the case may be, and—

(a) that there are reasonable grounds to believe that—

(i) an offence under this Act has been committed; and

(ii) information concerning the offence, or information that may reveal the whereabouts of a person suspected of having committed the offence, is likely to be obtained as a result of the order; or

(b) that—

(i) there are reasonable grounds to believe that an offence under this Act will be committed;

(ii) there are reasonable grounds to believe that a person has direct and material information that relates to an offence referred to in sub-paragraph (i), or that may reveal the whereabouts of a person who the police officer suspects will commit the offence referred to in this paragraph;

(iii) reasonable attempts have been made to obtain the information referred to in sub-paragraph (ii) from the person referred to in that sub-paragraph.

(4) An order made under subsection (3) may—

(a) order the examination, on oath or not, of a person named in the order;

(b) order the person to attend at a place named in the order;

(c) order the person to bring to the examination any document or thing in his or her possession or control, and produce it to the court;

(d) include any other terms and conditions as the judge sees fit, including terms and conditions for the protection of the interests of the person named in the order and of third parties or for the protection of any on going investigation.

*Production of, and Access to, Certain Materials***An order for production and access to material.**

**69.** (1) A police officer may, for the purpose of a terrorist investigation, apply to a court for an order requiring a specified person—

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

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

(3) For the purposes of this section—

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

(4) Where the court makes an order under subsection (1)(b) in relation to a material on any premises, the court may, on the application of the police officer, order any person who appears to the court to be entitled to grant entry to the premises to allow the police officer to enter the premises to obtain access to the material.

**Factors to be taken into account by the court before making an order.**

**70.** (1) The court may grant an order under section 69 if it is satisfied that—

- (a) the material to which the application relates consists of or includes excluded material or special procedure material;
- (b) it does not include items subject to legal privilege;
- (c) the conditions specified in subsection (2) are satisfied in respect of that material.

(2) The conditions referred to in subsection (1) are that—

- (a) the order is sought for the purposes of a terrorist investigation, and there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or together with other material, to the terrorist investigation;
- (b) there are reasonable grounds for believing that it is in the public interest that the material should be produced or access to it should be given having regard—

- (i) to the benefit likely to accrue to the terrorist investigation if the material is obtained; and
- (ii) to the circumstances under which the person concerned has any of the material in his or her possession, custody or power.

**Production order in relation to a material, etc.**

71. (1) An order made under section 69 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 a period of twenty eight days beginning with the date of the order;
- (b) a person whom the court thinks is likely to have any of the material, to which the application relates, in his or her possession, custody or power.

(2) Where an order made under section 69 is made in compliance with the provisions of subsection (1), section 69(2) shall apply with the following modifications—

- (a) the order shall require the specified person to notify a named police officer as soon as is reasonably practicable after any material to which the application relates comes into his or her possession, custody or power;
- (b) the reference in section 69(2)(a) to material which the specified person has in his or her possession, custody or power shall be taken as reference to the material referred to in paragraph (a) of this subsection which comes into his or her possession, custody or power; and
- (c) the reference in section 69(2)(c) to the specified period shall be taken as reference to the period of twenty eight days beginning with the date of the order.

**Effect of order.**

72. (1) An order made under section 69 shall—

- (a) not confer any right to production of, or access to, items subject to legal privilege; and
- (b) have effect notwithstanding any restriction on the disclosure of information imposed by statute or otherwise.

(2) Where material to which an application made under section 44 relates to information contained in a computer—

- (a) an order made under section 69(1)(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 made under section 69(1)(b) shall have effect as an order to give access to the material in a form in which it is visible.

**Production order in relation to Government departments.**

73. (1) An order made under section 69 may be made in relation to material in the possession, custody or power of a government department, and where such an order is made by virtue of this section the order—

- (a) shall be served as if the proceedings were civil proceedings against the department; and
- (b) may require any officer of the department, whether named in the order or not, who may for the time being have in his or her possession, custody or power the material concerned, to comply with the order.

(2) In this section, “government department” means an authorised government department for the purposes of the Crown Proceedings Act, Cap. 5.06.

#### **Search warrant for special procedure material.**

**74.** (1) A police officer may, for the purposes of a terrorist investigation, apply to the court for the issue of a warrant authorising the police officer to—

- (a) enter the premises specified in the warrant;
- (b) search the premises and any person found on the premises; and
- (c) seize and retain any relevant material which is found as a result of the search carried out under paragraph (b).

(2) A warrant granted under this section shall not authorise—

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

(3) For the purposes of subsection (1)(c), material is relevant if the police officer has reasonable grounds to believe that the material is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation.

#### **Grant of search warrant under section 74.**

**75.** (1) A court may grant a search warrant under section 74 if the court is satisfied that an order made under section 44 in relation to material on the premises specified in the application has not been complied with.

(2) The court may also grant a search warrant under section 74 if the court is satisfied that there are reasonable grounds to believe 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 specified in subsection (3) are satisfied.

(3) The conditions referred to in subsection (2)(b) are that—

- (a) the warrant is sought for the purposes of terrorist investigation, and the material is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation;
- (b) it is not appropriate to make an order under section 73 in relation to the material because—
  - (i) it is not practicable to communicate with any person entitled to produce the material;
  - (ii) 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



- (iii) a terrorist investigation may be seriously prejudiced unless a police officer can secure immediate access to the material.

*Access to Financial Information*

**An order for access to customer information.**

**76.** (1) A police officer may, for the purpose of a terrorist investigation, apply to the High Court for an order requiring a specified relevant business to provide to the police officer, named in the order, customer information relating to a customer specified in the order.

(2) The High Court may grant the order referred to in subsection (1) if it is satisfied that—

- (a) the order is sought for the purpose 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.
- (3) The information shall be provided—
- (a) in such manner and within such time as the police officer may specify; and
  - (b) notwithstanding any restriction on the disclosure of information imposed by any legislation or otherwise.

(4) Provision may be made by regulations made under this Act respecting the procedure to be followed in making an application under this section.

**Failure to comply with an order.**

**77.** (1) A relevant business which fails to comply with an order made under section 76 commits an offence, and shall be liable, on summary conviction, to a fine not exceeding fifty thousand dollars.

(2) It shall be a defence for a relevant business which is charged with an offence under subsection (1) to prove that—

- (a) the information required was not in the business' possession; or
- (b) it was not reasonably practicable for the relevant business to comply with the order.

**Self-incrimination.**

**78.** Customer information provided by virtue of the provisions of section 71 shall not be admissible in evidence in criminal proceedings against the relevant business or any of its officers or employees, except that this section shall not apply to proceedings for an offence instituted under section 77.

**Meaning of customer information**

**79.** (1) For the purposes of sections 76, 77 and 78, "customer information" means, subject to subsection (2)—

- (a) information as to whether a business relationship exists or existed between a relevant business and a particular person, "a customer";
- (b) a customer account number;

- (c) a customer's full-name;
- (d) a customer's date of birth;
- (e) a customer's address or former address;
- (f) the date on which a business relationship between a relevant business and a customer begins and ends;
- (g) any evidence of a customer's identity obtained by a relevant business in pursuance of or for the purposes of any legislation relating to money laundering; and
- (h) the identity of a person sharing an account with a customer.

(2) The Minister may, by Order, provide for a class of information to be or to cease to be customer information for the purposes of this section.

(3) For the purposes of this section, there is a business relationship between a relevant business and a person only if—

- (a) there is an arrangement between them designed to facilitate the carrying out of frequent or regular transactions between them; and
- (b) the total amount of payments to be made is neither known nor capable of being ascertained when the arrangement is made.

#### *Account Monitoring Orders*

#### **Granting of an account monitoring order.**

**80.** (1) The High Court may, upon an application made by the Director of Public Prosecutions or a police officer authorised by the Director of Public Prosecutions in that behalf, make an account monitoring order if the court is satisfied that—

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

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

(3) The application referred to in subsection (1) shall contain information to the effect that the order is sought against a relevant business specified in the application in relation to information which—

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

(4) Information relating to—

- (a) all accounts held by the person specified in the application for an account monitoring order at the relevant business so specified;
- (b) a particular description, or particular descriptions of accounts so held; or
- (c) a particular account, or particular accounts, so held,

may be specified in the application for an account monitoring order.

(5) The description of information specified in an application for an account monitoring order may be varied by the person who made the application in accordance with the directions of the court.

(6) An account monitoring order may be varied or discharged upon an application made to the High Court by the person who applied for the order, or a person who is affected by the order.

(7) The High Court may, upon receipt of the application, vary or discharge the order.

(8) An account monitoring order is an order that the relevant business specified in the order must—

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

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

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

(10) The Minister may, by regulations made under this Act, make provision with respect to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

#### **Effect of account monitoring orders and statements made by a regulated business activity.**

**81.** (1) An account monitoring order shall have effect in spite of any restrictions on the disclosure of information imposed by legislation or otherwise.

(2) A statement made by a relevant business in response to an account monitoring order shall not be used in evidence against the relevant business in criminal proceedings.

(3) Subsection (2) shall not apply—

- (a) in the case of proceedings for contempt of court;
- (b) in the case of proceedings instituted by virtue of section 37 where a relevant business has been convicted of an offence under sections 12, 13, 14, or 15;
- (c) on a prosecution for an offence where, in giving evidence, a relevant business makes a statement that is inconsistent with the statement referred to in subsection (2).

(4) A statement may not be used by virtue of subsection (3)(c) unless evidence relating to the statement is adduced, or a question relating to that statement is asked, by or on behalf of the relevant business in the proceedings arising out of the prosecution.

*Offences in Respect of Unauthorised Disclosure of Information*

**Offence of unauthorised communication of information.**

**82.** (1) A person who is bound by secrecy commits an offence if he or she unlawfully communicates any special operational information relating to a terrorist investigation to an unauthorised person.

(2) A person who is convicted of an offence under this section is liable to imprisonment for a term not exceeding ten years.

**Offence of unauthorised disclosure of information.**

**83.** (1) A person who knows or has reasonable cause to suspect that a police officer is conducting or proposes to conduct a terrorist investigation commits an offence if the person—

- (a) discloses to another person anything which is likely to prejudice the investigation; or
- (b) interferes with material which is likely to be relevant to the investigation.

(2) A person who knows or has reasonable cause to suspect that a disclosure of information has been or will be made under section 17, 18, or 20 commits an offence if the person—

- (a) discloses to another person 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.

(3) It shall be a defence for a person charged with an offence under subsection (1) or (2) to prove that—

- (a) he or she did not know and had no reasonable cause to suspect that the disclosure or interference was likely to affect a terrorist investigation; or
- (b) he or she had reasonable excuse for the disclosure or interference.

(4) Subsections (1) and (2) shall not apply to a disclosure made by a professional legal adviser—

- (a) to his or her client or to his or her 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.

(5) A person who is convicted of an offence under this section shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding two years or a fine not exceeding seventy-five thousand dollars;
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine not exceeding one hundred thousand dollars or both.

*(Amended by Acts 13 of 2009 and 38 of 2011)*

- (6) For the purposes of this section—
- (a) a reference to conducting a terrorist investigation includes a reference to taking part in the conduct of, or assisting, a terrorist investigation;
  - (b) a person interferes with a material if he or she falsifies it, conceals it, destroys or disposes of it, or he or she causes or permits another person to do any of those things.

### **Tipping Off**

- 84.** (1) Where a person knows or suspects that—
- (a) an investigation into terrorist financing, any other offence specified in this Act or other related investigation; or
  - (b) that a suspicious transaction report,

has been, is being or is about to be made, and divulges that fact or other related information to another person, whereby the disclosure of the fact or other related information is likely to prejudice the investigation, that person commits an offence, and shall be liable, on conviction, to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

*(Inserted by Act 38 of 2011 and following sections renumbered accordingly)*

## PART VII

### \*COUNTER-TERRORIST POWERS

#### *Suspected Terrorists*

#### **Arrest without warrant.**

**85.** (1) A police officer may, without a warrant, arrest a person whom he or she reasonably suspects to be a terrorist.

(2) Where a person is arrested under this section the provisions of sections 99, 100, 101, 102, 103, 104, 105, 106, 107, 108 and 109 shall apply.

(3) Subject to subsection (4), a person detained by virtue of the provisions of this section shall, unless detained under some other power, be released not later than forty eight hours beginning—

- (a) with the time of his or her arrest under this section;
- (b) if he or she was being detained under section 92 when he or she was arrested under this section, with the time when his or her examination under that section began.

(4) If on a review of a person's detention under sections 106, 107, 108 and 109, the police officer does not authorise continued detention, the person shall, unless detained under some other power, be released.

#### **Search of premises.**

**86.** (1) A Magistrate Court may, upon the application of a police officer, issue a search warrant in relation to specified premises if the court is satisfied that there are

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\* NOTE: As a result of renumbering sections 56 to 78, sections 79 to 102 have been renumbered accordingly

reasonable grounds for suspecting that a person whom the police officer reasonably suspects to be a terrorist is to be found there.

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

#### **Search of persons.**

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

(2) A police officer may search a person arrested under section 85 to discover whether he or she has in his or her possession anything which may constitute evidence that he or she is a terrorist.

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

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

#### **Stopping and searching vehicles and pedestrians.**

**88.** (1) A police officer of at least the rank of Inspector may, in writing, authorise a police officer of a lower rank to stop a vehicle in an area or at a place specified in the authorisation and search—

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

(2) A police officer of at least the rank of Inspector may, in writing, authorise a police officer of a lower rank to stop a pedestrian in an area or at a place specified in the authorisation and search the pedestrian and anything carried by him or her.

(3) An authorisation under this section shall only be given if the police officer giving it considers it expedient for the prevention of acts of terrorism.

(4) A power conferred by an authorisation given under this section may be exercised—

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

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

(6) Where a police officer proposes to search a person or vehicle by virtue of the provisions of subsection (1) or (2) he or she 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.

(7) Where a vehicle or pedestrian is stopped by virtue of this section, and the driver of the vehicle or pedestrian requests for a written statement to be given to him or her to the effect that the vehicle was stopped, or that he or she was stopped, as the case may be, the statement shall be provided.

(8) A request referred to in subsection (7) shall be made within a period of twelve months beginning with the date on which the vehicle or pedestrian was stopped.

(9) Subject to subsections (10), (11), and (12), an authorisation given under this section shall have effect from the time the authorisation is given up to the time or date specified in the authorisation, except that the time or date specified in the authorisation shall not go beyond a period of twenty eight days beginning with the day on which the authorisation was given.

(10) The person who gives an authorisation under this section shall inform the Attorney-General as soon as is reasonably practicable, and if the authorisation is not confirmed by the Attorney-General within a period of forty eight hours beginning with the day when it was given it shall cease to have effect at the end of that period, except that its ceasing to have effect shall not affect the lawfulness of anything done in reliance on it before the end of that period.

(11) The Attorney-General may—

- (a) where he or she confirms an authorisation, substitute an earlier date or time for the date or time specified under subsection (9);
- (b) where he or she cancels an authorisation, cancel the authorisation with effect from a specified time.

(12) An authorisation may be renewed in writing by a person who gave it or by a person who could have given it, and subsections (9), (10), and (11) shall apply as if a new authorisation was given on each occasion on which the authorisation is renewed.

### **Parking of vehicles.**

**89.** (1) A police officer of at least the rank of Inspector may, in writing, authorise a police officer of a lower rank to prohibit or restrict the parking of vehicles on a road specified in the authorisation.

(2) An authorisation given under this section shall only be given if the police officer giving it considers it expedient for the prevention of acts of terrorism.

(3) A power conferred by an authorisation given under this section shall be exercised by placing a traffic sign on the road concerned.

(4) A police officer exercising the power conferred by an authorisation given under this section may suspend a parking place, and where a parking place is suspended under this subsection the suspension shall be treated as a restriction imposed under subsection (1).

(5) Subject to subsection (6), an authorisation given under this section shall have effect during the period specified in the authorisation, except that the period specified in the authorisation shall not exceed twenty eight days.

(6) An authorisation may be renewed, in writing, by a person who gave it or by a person who could have given it, and subsection (5) shall apply as if a new authorisation were given on each occasion on which the authorisation is renewed.

**Offences.**

- 90.** (1) A person who—
- (a) fails or refuses to stop a vehicle when required to do so by a police officer, acting in accordance with the provisions of section 88;
  - (b) fails or refuses to stop when required to do so by a police officer, acting in accordance with the provisions of section 88;
  - (c) wilfully obstructs a police officer in the exercise of the power conferred by an authorisation given pursuant to the provisions of section 88;

commits an offence and shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding seven thousand dollars or both.

(2) A person who parks a vehicle in contravention of a prohibition or restriction imposed by virtue of the provisions of section 89 commits an offence, and shall be liable, on summary conviction, to a fine not exceeding five thousand dollars.

(3) A driver or other person in charge of a vehicle that is parked in contravention of a prohibition or restriction imposed by virtue of the provisions of section 89 who refuses or fails to move the vehicle when ordered to do so by a police officer commits an offence, except that it shall be a defence for the driver or the other person charged with an offence under this subsection to prove that he or she had a reasonable excuse for refusing or failing to move the vehicle.

(4) A person convicted of an offence under subsection (3) shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding seven thousand dollars or both.

*Port and Border Controls*

**Questioning persons who are at a port or in a border area.**

- 91.** (1) An examining officer may, for the purpose of determining whether a person appears to be a terrorist, question the person—
- (a) if the person is at a port or in a border area, and the examining officer believes that the person's presence at the port or in the border area is connected with his or her entering or leaving Saint Christopher and Nevis;
  - (b) if the person is on a ship or aircraft that arrives in Saint Christopher and Nevis.
- (2) The examining officer may exercise the powers conferred on him or her by subsection (1) whether or not he or she has reasonable grounds for suspecting that a person is a terrorist.
- (3) A person who is questioned under the provisions of subsection (1) shall—
- (a) give the examining officer any information in his or her possession which the officer requests;
  - (b) give the examining officer, on request, either a valid passport which includes a photograph or other document that establishes his or her identity;



- (c) declare whether he or she has with him or her documents of a kind specified by the examining officer;
- (d) give the examining officer, on request, any document which he or she has with him or her and which is of a kind specified by the officer.

#### **Stopping of persons and vehicles for questioning, etc.**

**92.** (1) An examining officer may, for the purpose of exercising the powers conferred on him or her by section 91—

- (a) stop a person or a vehicle;
- (b) detain a person.

(2) An examining officer may, for the purpose of detaining a person under this section, authorise the person's removal from the ship, aircraft or vehicle.

(3) Where a person is detained under this section, the provisions of sections 99, 100, 101, 102, 103, and 104 shall apply, and unless detained under some other power, be released not later than the end of the period of nine hours beginning with the time when his or her examination began.

#### **Searches.**

**93.** (1) An examining officer may, for the purpose of satisfying himself or herself whether there are any persons whom he or she may wish to question by virtue of section 91—

- (a) search a ship or aircraft;
- (b) search for anything on a ship or aircraft;
- (c) search anything which he or she reasonably believes has been, or is about to be, on a ship or aircraft.

(2) An examining officer who questions a person by virtue of the provisions of section 91 may, for the purpose of determining whether he or she is a terrorist—

- (a) search the person;
- (b) search anything which he or she has with him or her, or which belongs to him or her, and which is on a ship or aircraft;
- (c) search anything which he or she has with him or her, or which belongs to him or her, and which the examining officer reasonably believes has been, or is about to be, on a ship or aircraft;
- (d) search a ship or aircraft for anything falling within paragraph (b).

(3) Where an examining officer questions a person in a border area in accordance with the provisions of section 91 he or she may, in addition to the matters specified in subsection (2)—

- (a) search a vehicle;
- (b) search anything on or in the vehicle;
- (c) search anything which he or she reasonably believes has been, or is about to be, in or on the vehicle.

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

**Examination of goods.**

**94.** (1) An examining officer may examine any goods which have arrived in or are about to leave Saint Christopher and Nevis on a ship, aircraft or vehicle for the purpose of determining whether such goods have been used in the preparation, instigation or commission of acts of terrorism.

(2) An examining officer may, for the purpose of exercising the powers conferred on him or her by subsection (1), board a ship, or aircraft, or enter a vehicle.

(3) In this section, “goods” include property of any description, and a container.

**Detention of property.**

**95.** (1) An examining officer may detain anything specified in subsection (2)—

- (a) for the purpose of examination, for a period not exceeding seven days beginning with the day on which the detention commences;
- (b) while he or she believes that the thing may be needed for use as evidence in criminal proceedings; or
- (c) while he or she believes that the thing may be needed in connection with a decision by the Minister whether to make a deportation order under the Immigration Act, Cap. 6.02.

(2) The things that may be detained by virtue of subsection (1) are the following—

- (a) anything which is given to the examining officer in accordance with section 91(3)(d);
- (b) anything which is searched or found on a search under the provisions of section 93;
- (c) anything which is examined under the provisions of section 94.

**Provision of passenger information.**

**96.** (1) An examining officer may request the owner or agent of a ship or aircraft to which this section applies to provide specified information, and the owner or agent shall comply with the request as soon as is reasonably practicable.

(2) A request referred to in subsection (1) may relate to—

- (a) a particular ship or aircraft;
- (b) all ships or aircraft of the owner or agent to which this section applies; or
- (c) specified ships or aircraft.

(3) Information referred to in this section may be specified in a request only if it is of a kind prescribed by the Minister, by Order, and which relate to passengers, crew, or vehicles belonging to passengers or crew.

(4) A passenger or member of the crew on a ship or aircraft shall give the captain any information required for the purposes of enabling the owners or agents to comply with the provisions of this section.

(5) Subsections (1) and (4) shall not require the provision of information which is required to be provided by virtue of the provisions of the Immigration Act, Cap. 6.02.

(6) This section applies to a ship or aircraft which arrives or is expected to arrive in Saint Christopher and Nevis.

#### **Terrorist aircraft.**

**97.** Permission shall not be granted to an aircraft to take off from or land in Saint Christopher and Nevis if it is owned, leased or operated by or on behalf of the Taliban, Al Qaida or any other terrorist group as designated by the United Nations Sanctions Committee, unless the particular flight has been approved in advance by the Committee on the grounds of humanitarian need.

*(Inserted as section 90A by Act 13 of 2009 and amended by Act 38 of 2011)*

#### **Failure to comply with sections 91, 92, 93, 94 and 95.**

**98.** A person who—

- (a) wilfully fails or refuses to comply with a duty imposed under or by virtue of the provisions of section 91, 92, 93, 94, or 95;
- (b) wilfully contravenes a prohibition imposed by virtue of the provisions of section 91, 92, 93, 94, or 95;
- (c) wilfully obstructs, or seeks to frustrate, a search or examination required by virtue of the provisions of section 91, 92, 93, 94, or 95,

commits an offence and shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding seven thousand dollars or both.

#### *Detention and Treatment of Detainees*

#### **Place of detention.**

**99.** (1) The Minister may designate such places as are necessary at which persons may be detained for the purposes of section 85 and 92.

(2) Where a person is detained by virtue of the provisions of section 88, the person may be taken in the custody of an examining officer or of a person acting under an examining officer's authority to and from any place where his or her attendance is required for the purpose of—

- (a) his or her examination under section 91;
- (b) establishing his or her nationality or citizenship; or
- (c) making arrangements for his or her admission to a country or territory outside Saint Christopher and Nevis.

(3) A police officer who arrests a person pursuant to the provisions of section 85 shall take the person, as soon as is reasonably practicable, to a police station which the officer considers the most appropriate.

(4) A person who is detained under this Act shall be deemed to be in legal custody throughout the period of his or her detention.

(5) In this section, a reference to a police station includes a reference to any place which the Minister has designated under subsection (1) as a place where a person may be detained under section 85.

**Identification of detained person.**

**100.** (1) Subject to subsection (2), an authorised person may take any steps which are reasonably necessary for photographing, measuring and identifying a person detained under this Act.

(2) Subsection (1) does not confer any power on an authorised officer to take—

- (a) fingerprints, non-intimate samples or intimate samples; or
- (b) relevant physical data or samples as provided in the Police Act, Cap. 19.07.

(3) For the purposes of this section, “authorised person” means a police officer, a prison officer, a person authorised by the Minister and, in the case of a person detained under section 92, an immigration officer, a police officer and a customs officer.

**Audio and video recording of interviews.**

**101.** (1) The Minister may issue a code of practice about the audio recording of interviews to which this section applies, and may, by Order, require the audio recording of interviews to which this section applies in accordance with the relevant code of practice issued under this subsection.

(2) The Minister may, by Order, require the video recording of interviews to which this section applies, and the Order shall specify whether the video recording which is required is to be silent or with sound.

(3) Where an Order is made under subsection (2), the Minister shall issue a code of practice about the video recording of interviews to which the Order applies, and the Order shall require the interviews to be video recorded in accordance with the relevant code of practice issued under this subsection.

(4) This section applies to any interview by a police officer of a person detained under section 85 or 92 if the interview takes place in a police station.

(5) Where the Minister proposes to issue a code of practice under this section the Minister shall—

- (a) publish a draft;
- (b) consider any representations made to him or her about the draft;
- (c) modify the draft, if he or she thinks it appropriate, in the light of any representations made to him or her.

(6) The Minister shall lay a draft of the code of practice before the National Assembly, and when he or she has laid the draft code he or she may bring it in operation by an Order.

(7) The Minister may revise or amend a code of practice issued by him or her under this section, in which case subsections (5) and (6) shall apply to the revised or amended code as they applied to the original code.

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

(9) A code of practice shall be admissible in evidence in criminal and civil proceedings, and 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.

**Rights of a detained person.**

**102.** (1) Subject to section 104, a person who is detained under section 85 or 92 at a police station shall be entitled, if he or she so requests, to have one of the persons specified in subsection (2) informed, as soon as is reasonably practicable, that he or she is being detained at the police station.

(2) The persons referred to in subsection (1) are the following—

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

(3) Where a person is transferred from one police station to another, he or she shall be entitled to exercise the right conferred on him or her by this section in respect of the police station to which he or she is transferred.

**Right to a solicitor.**

**103.** (1) Subject to sections 104 and 105, a person who is detained under section 85 or 92 at a police station shall be entitled, if he or she so requests, to consult a solicitor, as soon as reasonably practicable, privately and at any time.

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

**Delays in enforcing sections 102 and 103.**

**104.** (1) Subject to subsection (2), a police officer of at least the rank of Superintendent may authorise a delay—

- (a) in informing the person named by a detained person under section 102;
- (b) in permitting a detained person to consult a solicitor under section 103.

(2) Notwithstanding subsection (1), where a person is detained under section 85 he or she shall be permitted to exercise his or her rights under sections 102 and 103 before the expiry of the period specified in subsection (3) of section 85.

(3) Subject to subsection (5), an authorisation referred to in subsection (1) may only be given if the police officer has reasonable grounds to believe—

- (a) in the case of an authorisation under subsection (1)(a), that informing the named person of the detained person's detention may have any of the consequences specified in subsection (4); or
- (b) in the case of an authorisation under subsection (1)(b), that the exercise of the right under section 103 at the time when the detained person desires to exercise the right may have any of the consequences specified in subsection (4).

(4) The consequences referred to in subsection (3) are the following—

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

- (d) 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 37;
- (e) interference with the gathering of information about the commission, preparation or instigation of acts of terrorism;
- (f) alerting of a person and thereby making it more difficult to prevent an act of terrorism;
- (g) 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) A police officer may also give an authorisation under subsection (1) if the officer, on reasonable grounds, believes that—

- (a) the detained person has committed an offence to which the Proceeds of Crime Act, Cap. 4.28, applies;
- (b) the detained person has benefited from the offence within the meaning of the Proceeds of Crime Act; and
- (c) by informing the named person of the detained person's detention or by the exercise of the right under section 103, the recovery of the value of that benefit may be hindered.

(6) Where an authorisation is given under subsection (1), the detained person shall be told the reason for the delay as soon as is reasonably practicable, and the reason shall be recorded as soon as is reasonably practicable.

(7) Where the reason for authorising a delay ceases to subsist there may be no further delay in permitting the detained person to exercise his or her rights in the absence of a further authorisation made under subsection (1).

(8) In this section, "serious arrestable offence" means an offence triable on indictment.

### **Directions in relation to the exercise of the rights conferred by section 103.**

**105.** (1) Subject to subsection (2), a police officer of at least the rank of Superintendent may give a direction to the effect that a detained person who wishes to exercise the right conferred by section 103 may consult a solicitor only in the presence and hearing of a police officer designated by the Chief of Police for that purpose.

(2) A direction referred to in subsection (1) may only be given if the police officer has reasonable grounds to believe that, unless the direction is given, the exercise of the right by the detained person may have any of the consequences specified in section 104(4) or section 104(5)(c).

(3) A direction given under subsection (1) shall cease to have effect when the reason for giving it ceases to subsist.

### **Review of a person's detention.**

**106.** (1) A person who is detained by virtue of the provisions of section 85 shall be entitled to have his or her detention periodically reviewed by a police officer designated by the Chief of Police for that purpose, except that the designated officer shall be an officer who has not been directly involved in the investigation in connection with which the person is detained.

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

(3) Subsequent reviews shall, subject to section 107, be carried out at intervals of not more than 12 hours.

#### **Postponement of review.**

**107.** (1) A review referred to in subsection (1) of section 106 may be postponed if, at the latest time at which the review may be carried out in accordance with section 106—

- (a) the detained person is being questioned by a police officer and the interruption of the questioning in order to carry out the review would prejudice the investigation in connection with which the person is being detained;
- (b) the police officer who is empowered to carry out the review is not readily available.

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

(3) For the purposes of ascertaining the time within which the next review is to be carried out, a postponed review shall be deemed to have been carried out at the latest time at which it could have been carried out in accordance with section 106.

#### **Grounds for continued detention.**

**108.** (1) A police officer referred to in section 106(1) may authorise a continued detention only if the officer is satisfied that it is necessary—

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

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

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

(4) In this section—

- (a) “relevant evidence” means evidence which—

- (i) relates to the commission by the detained person of an offence under section 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27, 28, 29, 30 or 31;
  - (ii) indicate that the detained person falls within the definition of a terrorist;
- (b) “deportation notice” means a notice of a decision to make a deportation order under the Immigration Act, Cap. 6.02.

### **Representations.**

**109.** (1) A police officer referred to in section 106(1) shall, before determining whether to authorise a person’s continued detention, give the detained person, or a solicitor representing the detained person who is available at the time of the review, an opportunity to make representations about the detention.

(2) The representations referred to in subsection (1) may be made orally or in writing.

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

(4) Where the police officer authorises continued detention the officer shall inform the detained person—

- (a) of any of his or her rights under sections 102 and 103 which he or she has not yet exercised; and
- (b) if the exercise of any of his or her rights under section 102 or 103 is being delayed in accordance with the provisions of section 104, of the fact that it is being so delayed.

## PART VIII

### \*MISCELLANEOUS PROVISIONS

#### **Exchange of information on terrorism with foreign jurisdictions.**

**110.** (1) The Chief of Police may, upon a request made by a competent authority of a foreign State, disclose to that authority, any information in his or her possession or in the possession of any other government department or agency relating to any of the following matters—

- (a) the actions or movements of terrorists groups or persons suspected of involvement in the commission of terrorists acts;
- (b) the use of forged or falsified travel documents by persons suspected of being involved 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 terrorists acts;
- (d) the use of telecommunications technologies by terrorists.

(2) Notwithstanding the provisions of subsection (1), the disclosure referred to in that subsection shall only be made if it is not prohibited by any provision of law,

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\* NOTE: As a result of renumbering sections 79 to 102, sections 103 to 108 have been renumbered accordingly



and if, in the view of the Chief of Police, it will not be prejudicial to national security or public safety.

**Counter terrorism convention to be used as basis for extradition.**

**111.** (1) Where Saint Christopher and Nevis becomes a party to a counter terrorism convention and there is in force an extradition arrangement between the Government of Saint Christopher and Nevis and another State which is a party to that counter terrorism convention, the extradition arrangement shall be deemed, for the purposes of the Extradition Act, Cap. 4.08 to include provision for extradition in respect of offences falling within the scope of the counter terrorism convention.

(2) Where Saint Christopher and Nevis becomes a party to a counter terrorism convention and there is no extradition arrangement between the Government of Saint Christopher and Nevis and another State which is a party to that counter terrorism convention, the Minister may, by Order, treat the counter terrorism convention, for the purposes of the Extradition Act, as an extradition arrangement between the Government of Saint Christopher and Nevis and that State, providing for extradition in respect of offences falling within the scope of the counter terrorism convention.

**Counter terrorism convention to be used as basis for mutual assistance in criminal matters.**

**112.** (1) Where Saint Christopher and Nevis becomes a party to a counter terrorism convention and there is in force an arrangement between the Government of Saint Christopher and Nevis and another State which is a party to that counter terrorism convention, for mutual assistance in criminal matters, the arrangement shall be deemed, for the purposes of the Mutual Assistance in Criminal Matters Act, Cap. 4.19, to include provision for mutual assistance in criminal matters in respect of offences falling within the scope of the counter terrorism convention.

(2) Where Saint Christopher and Nevis becomes a party to a counter terrorism convention and there is no arrangement between the Government of Saint Christopher and Nevis and another State which is a party to that counter terrorism convention, for mutual assistance in criminal matters, the Minister may, by Order, treat the counter terrorism convention, for the purposes of the Mutual Assistance in Criminal Matters Act, to include provision for mutual assistance in criminal matters in respect of offences falling within the scope of the counter terrorism convention.

**Offences under this Act not to be of a political character.**

**113.** Notwithstanding anything contained in the Extradition Act, an offence under this Act shall, for the purposes of the Extradition Act, Cap. 4.08, 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.

**Participation in the commission of crimes.**

**114.** (1) A person who knowingly prepares to commit, conspires to commit or attempts, incites another, aids, abets, facilitates, counsels or procures the commission of any of the offences under this Act commits an offence, and is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years or a fine of five hundred thousand dollars or both;
- (b) on summary conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand dollars, or both.

*(Amended by Act 27 of 2008)*

- (2) A person who conspires with another person—
- (a) in Saint Christopher and Nevis to do any act in a place outside Saint Christopher and Nevis, being an act, which if done in Saint Christopher and Nevis would have constituted an offence under this Act;
  - (b) in a place outside Saint Christopher and Nevis to do any act in Saint Christopher and Nevis which constitute an offence under this Act,

shall be deemed to have conspired to do that act in Saint Christopher and Nevis or to have conspired in Saint Christopher and Nevis to do that act, as the case may be.

**Regulations.**

**115.** The Minister may generally make regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing, the Minister may, in particular, make regulations providing for the contents of freezing orders and related matters.

*(Amended by Act 33 of 2009)*

**FIRST SCHEDULE**

*(Section 3)*

**ANTI-TERRORISM ACT (DESIGNATION OF TERRORISTS) ORDER**

**Citation**

1. This Order may be cited as the Anti-Terrorism Act (Designation of Terrorists) Order.

**Designation of Terrorists**

2. The persons and groups listed pursuant to the Consolidated List established and maintained by the 1267 Committee with respect to Al-Qaida, Usama Bin Laden, and the Taliban and other individuals, groups, undertakings and entities associated with them are hereby designated as terrorists or terrorist groups for the purposes of the Anti-Terrorism Act.

**SECOND SCHEDULE***(Section 3)***ANTI-TERRORISM ACT (DESIGNATION OF TERRORISTS) ORDER****Citation**

1. This Order may be cited as the Anti-Terrorism Act (Designation of Terrorists) Order.

**Designation of Terrorist.**

2. Pursuant to the decision of the UN Security Council Resolution 1267 Sanctions Committee on 24th August, 2010, approving the addition of MUHAMMAD ABDALLAH HASSAN ABU-AL-KHAYR to its consolidated list of individuals and entities subject to targeted sanctions, the said MUHAMMAD ABDALLAH HASSAN ABU-AL-KHAYR is hereby designated as a terrorist.

*(Inserted by S.R.O. 10/2011)*

**THIRD SCHEDULE**

*(Section 115)*

**ANTI-TERRORISM ACT (PREVENTION OF  
TERRORIST FINANCING) REGULATIONS**

**Citation.**

1. These Regulations may be cited as the Anti-Terrorism (Prevention of Terrorist Financing) Regulations.

**Interpretation.**

2. (1) In these Regulations, unless the context otherwise requires—

“Act” means the Anti-Terrorism Act, Cap. 4.02;

“applicant for business” means a person seeking to form a business relationship or carry out a one-off transaction with a relevant person who is carrying on relevant business in or from the Federation;

“appropriate times” means—

(a) in respect of the application of identification procedures—

(i) times that are appropriate having regard to the degree of risk of terrorist financing, taking into account the type of customer, business relationship, product or transaction concerned; and

(ii) times when either a relevant person suspects terrorist financing in a given situation or when he or she doubts the veracity or adequacy of the identifying documents provided pursuant to section 4(1) (c);

(b) in respect of the application of on-going identification procedures—

(i) throughout the business relationship for the purposes of applying the procedure described in regulation 4(3)(a); and

(ii) times when a relevant person becomes aware that documents, data or information that he or she holds, are out of date or no longer relevant for the purposes of applying the procedure described in regulation 4(3)(b);

“beneficial owner or controller”—

(a) means a natural person who—

(i) ultimately owns or controls a customer or other person on whose behalf a transaction is being conducted; or

(ii) exercises ultimate, effective control over the management of a legal person or other entity; and

(b) includes ultimate ownership or control whether it is direct or indirect; but

(c) does not extend to a body corporate, the stocks or shares of which are admitted to trading on a regulated market;

“beneficial ownership or control” shall be construed accordingly;

“business relationship” means an arrangement between two or more persons where—

- (a) at least one of those persons is acting in the course of a business;
- (b) the purpose of the arrangement is to facilitate the carrying out of transactions between the persons concerned on a frequent, habitual or regular basis; and
- (c) the total amount of any payment or payments to be made by a person to any other person in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made;

“Commission” means the Financial Services Regulatory Commission established by section 3 of the Financial Services Regulatory Commission Act, Cap. 21.10;

“compliance officer” means a senior officer of a relevant person appointed under regulation 12;

“enhanced customer due diligence procedures” means customer due diligence procedures that involve appropriate measures to compensate for a higher risk of terrorist financing;

“equivalent business” means business in relation to any category of financial services business carried on in St. Christopher and Nevis if that business is—

- (a) carried on in a country or territory other than St. Christopher and Nevis;
- (b) carried on in St. Christopher and Nevis, and would be financial services business whether or not it is referred to as financial services business;
- (c) carried on in a country or territory other than St Christopher and Nevis and which business may only be carried on by a person registered or otherwise authorised for that purpose under the law of that country or territory;
- (d) subject to requirements to forestall and prevent terrorist financing that are consistent with those in the FATF recommendations in respect of that business; and
- (e) supervised, for compliance with the requirements of FATF;

“FATF” means the Financial Action Task Force on money laundering and terrorist financing;

“Guidance Notes” means the Guidance Notes issued pursuant to the Financial Services Regulatory Commission Act, 2009;

“one-off transaction” means—

- (a) a transaction amounting to not less than forty thousand five hundred dollars but does not include a money services business;
- (b) two or more transactions, other than in respect of a money services business—
  - (i) where it appears at the outset to any person handling any of the transactions that the transactions are linked and that the total amount of those transactions is not less than forty thousand five hundred dollars; or
  - (ii) where at any later stage it comes to the attention of any person handling any of those transactions that sub-paragraph (i) is satisfied;

- (c) a transaction carried out in the course of a money services business amounting to not less than two thousand seven hundred dollars; or
- (d) two or more transactions carried out in the course of a money services business—
  - (i) where it appears at the outset to any person handling any of the transactions that those transactions are linked and that the total amount of those transactions is not less than two thousand seven hundred dollars; or
  - (ii) where at any later stage it comes to the attention of any person handling any of those transactions that sub-paragraph (i) is satisfied.

“physical presence” means that the substantive direction and management of a bank is conducted from within the local jurisdiction, rather than through the presence of a local agent or junior member of staff.

“politically exposed person” means a person who is—

- (a) an individual who is a prominent public person or a person who has been entrusted with a prominent public function in a country or territory outside St. Christopher and Nevis or by an international organization outside St. Christopher and Nevis, including—
  - (i) heads of state, heads of government, senior politicians;
  - (ii) senior government, judicial or military officials;
  - (iii) senior executives of state owned corporations;
  - (iv) important political party officials,
- (b) an immediate family member of a person mentioned in paragraph (a), including any of the following—
  - (i) a spouse;
  - (ii) a partner, that is someone considered by his or her national law as equivalent to a spouse, or who has been cohabiting in a relationship with a person for more than five years;
  - (iii) children and their spouses or partners as defined in subparagraph (ii);
  - (iv) parents;
  - (v) grandparents and grandchildren;
  - (vi) siblings;
- (c) close associates of an individual referred to in paragraph (a), including any person who is known to maintain a close business relationship with such individual or a person who is in a position to conduct substantial financial transactions on his or her behalf.

“prominent public function” includes the role held by a head of state, head of government, government minister, senior civil servant, senior judicial or military official, senior executive of a state-owned corporation or senior political party official;

“regulated person” means any person carrying on a regulated business activity as defined under the Proceeds of Crime Act Cap. 4.28;

“relevant business” means engaging by way of business in one or more of the businesses or transactions referred to in relation to a regulated person;

“relevant person” means a person carrying on relevant business;

“Reporting Authority” means the Financial Intelligence Unit established by section 3 of the Financial Intelligence Unit Act, Cap. 21.09;

“shell bank” means a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial services group that is subject to effective consolidated supervision.

(2) For the purposes of these Regulations—

- (a) a business relationship formed by any relevant person is an established business relationship where that person has obtained, under procedures maintained in accordance with these Regulations, satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business;
- (b) the question as to what constitutes satisfactory evidence of identity may be determined in accordance with the Guidance Notes as issued by the Financial Services Regulatory Commission;
- (c) a reference to the expression “key staff” means a member of staff, who at any time in the course of his duties, has or may have, access to any information which may be relevant in determining whether any person is engaged in terrorist financing;
- (d) in determining whether an individual is a “beneficial owner or controller” of another person, regard shall be had to all the circumstances of the case, in particular the size of an individual’s beneficial ownership or degree of control, having regard to the risk of that individual or that other person being involved in terrorist financing; and
- (e) in determining whether or not a person is a close associate of a politically exposed person as referred to in paragraph (a) of that definition, a relevant person need only have regard to the information which is in that person’s possession or that is publicly known information.

### **General Requirements.**

3. (1) In conducting relevant business, a relevant person shall not form a business relationship or carry out a one-off transaction with or for another person unless the relevant person—

- (a) maintains appropriate policies for the application of—
  - (i) identification procedures in accordance with regulation 4;
  - (ii) record keeping procedures in accordance with regulation 8;
  - (iii) internal reporting procedures in accordance with regulation 11; and
  - (iv) internal controls and communication procedures as may be necessary for the purposes of forestalling and preventing terrorist financing;
- (b) For the purposes of subregulation (a)—



“appropriate policies” means prudential policies that are established by the relevant person having regard to the degree of risk of terrorist financing, taking into account the type of customers, business relationships, products or transactions with which the relevant person’s business is concerned.

(2) A relevant person shall, at least once in every year, make arrangements for refresher training to remind key staff of their responsibilities and to make them aware of any changes in the laws relating to terrorist financing or the internal procedures of the relevant person and at a minimum shall do the following—

- (a) take appropriate measures for the purpose of making employees aware of—
  - (i) the procedures maintained under subregulation (1)(a); and
  - (ii) the provisions of the Anti-terrorism Act, the Financial Intelligence Unit Act, the Financial Services Regulatory Commission Act, the Proceeds of Crime Act and any regulations made thereunder as well as any directives issued under these Regulations;
- (b) provide training for employees to assist them in—
  - (i) the recognition and handling of transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in terrorist financing;
  - (ii) dealing with customers where such transactions have been reported to the Reporting Authority in accordance with the provisions of the Act.
- (c) maintain adequate procedures for monitoring and testing the effectiveness of—
  - (i) the policies applied under subregulation (1)(a);
  - (ii) the measures taken under paragraph (a);
  - (iii) training provided under paragraph (b);
- (3) The policies referred to in subregulation (1) shall include principles that—
  - (a) provide for the identification and scrutiny of the following—
    - (i) complex or unusually large transactions;
    - (ii) business relationships and transactions connected with countries or territories which have insufficient or non-existent application of the FATF recommendations;
    - (iii) business relationships and transactions with persons, countries or territories that are subject to measures imposed by one or more countries for insufficient or non-existent application of the FATF recommendations; or that are otherwise sanctioned by the United Nations for purposes connected with the prevention of terrorist financing;
    - (iv) unusual patterns of transactions which have no apparent economic or visible lawful purpose; and
    - (v) any other activity which the relevant person regards as particularly likely by its nature to be related to terrorist financing;

- (b) specify the taking of additional procedures, where appropriate, to prevent the use for terrorist financing of products and transactions which are susceptible to anonymity;
- (c) determine whether for terrorist financing purposes a customer is a politically exposed person;
- (d) prevent the misuse of technological developments in terrorist financing schemes;
- (e) address any specified risks associated with non-face-to-face business relationships or transactions.

(4) The requirements of subregulation (1)(a) shall apply in relation to a person with whom, prior to the coming into force of these Regulations, a business relationship or one-off transaction was formed or carried out and such relationship or transaction is subsisting or continues upon the coming into force of these Regulations and in such a case the reference in regulation 4, as to the period when contact is first made, shall be construed as if contact was made upon the coming into force of these Regulations.

(5) A relevant person shall submit for the approval of the Commission appropriate policies for the application of—

- (a) customer due diligence procedures in accordance with regulations 4, 5 and 6;
- (b) record-keeping procedures in accordance with regulations
- (c) reporting procedures in accordance with regulation 11;
- (d) such other procedures of internal control and communication as may be appropriate,

in respect of that person's financial services business in order to forestall and prevent activities relating to terrorist financing.

(6) The Commission may keep, for its own use, copies of the documents referred to in subregulation (5).

(7) A relevant person commits an offence where it acts in a manner that is contrary to the provisions of subregulations (1), (2), (4) or (5) and shall be liable on conviction to a fine of twenty-five thousand dollars.

(8) For the purposes of this regulation, a reference to maintaining "internal controls and communication procedures for the purposes of forestalling and preventing terrorist financing", means internal control measures that include but are not limited to—

- (a) appointment of a compliance officer pursuant to regulation 12;
- (b) developing independent internal audit programmes to test and validate activities associated with the mitigation of terrorist financing risks, including processes for—
  - (i) identification of trends in criminal activity and other areas of vulnerability;
  - (ii) monitoring of transactions and reporting of suspicious activities to competent authorities;
  - (iii) maintaining ongoing staff training programmes;

- (iv) implementing adequate screening procedures to ensure high standards when hiring employees;
- (v) development of an independent audit function to test internal systems;
- (c) application of the type and extent of measures to be taken having regard to the risk of money laundering and terrorist financing and the size of the business.

*(Inserted by S.R.O. 12/2012)*

*(Inserted by S.R.O. 47/2011)*

#### **Identification Procedures In Relation To Business Relationships And One-Off Transactions.**

4. (1) A relevant person shall apply—
- (a) identification procedures before the establishment of a business relationship or before carrying out a one-off transaction;
  - (b) on-going identification procedures during a business relationship;
  - (c) identification procedures where—
    - (i) the relevant person suspects terrorist financing; or
    - (ii) the relevant person has doubts about the veracity or adequacy of documents, data or information previously obtained.
- (2) Identification procedures referred to in subregulation (1)(a) and (1)(c) are procedures—
- (a) for identifying the customer—
  - (b) for determining whether the customer is legitimately acting for a third party and, if so—
    - (i) identifying that third party;
    - (ii) where the third party is not an individual, understanding the ownership and control structure of that third party; or
    - (iii) where sub-paragraph (ii) does not apply, identifying each individual who is that third party's beneficial owner or controller;
  - (c) in respect of a customer that is not an individual, for—
    - (i) identifying any person purporting to act on behalf of the customer and verifying that the person is authorised to act in that capacity;
    - (ii) understanding the ownership and control structure of that customer; and
    - (iii) identifying the individuals who are the customer's beneficial owners or controllers;
  - (d) obtaining information on the purpose and intended nature of the business relationship or one-off transaction;
  - (e) Where a relevant person fails to institute the requisite procedures as contemplated by this subregulation, it commits an offence and shall be liable on conviction to a fine of fifty thousand dollars and if after conviction, the contravention of the offence continues, to a further fine

of two hundred and fifty dollars for each day that the matter remains unresolved.

(3) On-going identification procedures referred to in subregulation (1)(b) are procedures for

- (a) scrutinising transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the relevant person's knowledge of the customer, including the customer's business and risk profile; and
- (b) ensuring that documents, data or information obtained under identification procedures are kept up to date and relevant by undertaking reviews of existing records, including but without prejudice to the generality of the foregoing, reviews where any inconsistency has been discovered as a result of applying the procedures described in sub-paragraph (a);

(4) For the purpose of these Regulations, identification of a person means—

- (a) establishing the true identity of that person, including that person's name and legal status and where that person is not an individual, verifying the legal status of the person; and
- (b) obtaining evidence that—
  - (i) is reasonably capable of verifying that the person to be identified is in fact one and the same as the customer, third party, beneficial owner or controller being identified;
  - (ii) satisfies the relevant person through the use of documents, data or other information obtained from a reliable and independent source, that the evidence; and
  - (iii) relying on evidence that is supported by independent documentation that is derived from a reliable source.

*(Inserted by S.R.O. 12/2012)*

(5) The identification of a person in the manner that is described in subregulation (4)(b) may be completed as soon as reasonably practicable after the establishment of a business relationship if—

- (a) it is not sufficiently urgent or necessary to interrupt the normal conduct of business; and
- (b) there is, in the interim, little risk of terrorist financing occurring.

(6) For the purposes of subregulation (2), the identification procedures shall include the assessment by the relevant person of the risk that any business relationship or one-off transaction will involve terrorist financing, including obtaining appropriate information for assessing that risk.

(7) For the purposes of subregulation (2)(b) and (c), procedures for obtaining evidence shall involve reasonable measures having regard to all the circumstances of the case, including the degree of risk assessed.

(8) Where a relevant person has a business relationship with a customer that started before these Regulations came into force, the relevant person shall apply customer due diligence procedures to that relationship within sixty days after the coming into force of these Regulations.

(9) Where a relevant person carries out a one-off transaction, he shall apply identification procedures as soon as reasonably practicable on the following terms—

- (a) if a relevant person is unable to apply the identification procedures before the establishment of a business relationship or before the carrying out of a one-off transaction to the extent specified in regulation 4(1)(a), that person shall not establish that business relationship or carry out that one-off transaction;
- (b) if a relevant person is unable to apply the identification procedures to the extent that they involve identification of a person in the circumstances described in subregulation (5) after the establishment of a business relationship, that person shall terminate that relationship;
- (c) if a relevant person is unable to comply with regulation 4(1)(b) in respect of a business relationship, that person shall terminate that relationship;
- (d) if a relevant person is unable to apply identification procedures as soon as reasonably practicable, in respect of a one-off transaction, that person shall not complete or carry out any further linked transactions in respect of that one-off transaction;
- (e) subject to paragraph (f), if a relevant person is unable to apply the identification procedures in the cases described in regulation 4(1)(c) in respect of any business relationship or transaction with a person, the relevant person shall—
  - (i) not establish that business relationship or carry out or complete the transaction; or
  - (ii) terminate that business relationship or not carry out or complete the transaction as the case requires.
- (f) the relevant person need not apply the identification procedures in the case described in regulation 4(1)(c)(i) in respect of any business relationship or transaction with a person if the relevant person, having made a report under procedures maintained pursuant to Regulation 11, to a designated reporting authority and acting with the consent of that reporting authority—
  - (i) does not complete that transaction;
  - (ii) does not carry out that transaction;
  - (iii) does not establish that business relationship; or
  - (iv) terminates that business relationship;
- (g) subject to paragraph (f), if a relevant person is unable to apply the identification procedures at an appropriate time for the purposes of subregulation (7) in respect of a business relationship, the relevant person shall terminate that relationship;
- (h) in a situation where paragraph (a), (b), (c), (d), (e) or (g) applies, a relevant person shall consider whether to make a report under regulation 11;
- (i) paragraphs (a), (b), (c), (d), (e) and (g) shall not apply where a lawyer or other professional adviser is in the course of ascertaining the legal position for that person's client or performing the task of defending or

- representing the client in, or concerning, legal proceedings, including advice on the institution or avoidance of proceedings;
- (j) in paragraph (i), “other professional adviser” means an auditor, accountant or tax adviser who is a member of a professional body which is established for any such persons and which makes provision for—
- (i) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
  - (ii) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards;
- (k) if a report is made under procedures maintained under regulation 8 to a designated reporting authority, paragraphs (a), (b), (c), (d), (e) and (g) shall not apply to the extent that the relevant person is acting with the consent of that reporting authority;
- (l) where a relevant person acts in contravention of paragraphs (a), (b), (c), (d), (e) or (g), it commits an offence and shall be liable on conviction to a fine of fifty thousand dollars and, if the contravention continues after such conviction, the person commits a further offence and shall be liable on conviction to an additional fine of five hundred dollars for each day that the relationship in question is allowed to continue in violation of this regulation.
- (10) A regulated person shall not, in the course of a business relationship—
- (a) operate or keep open, or keep numbered accounts, anonymous accounts or accounts which are in fictitious names; or
  - (b) conduct business with a shell bank.
- (11) (a) For the purpose of this Regulation—
- (i) a correspondent banking relationship involves the provision of services such as bank accounts or the facilitation of funds transfers or securities transactions;
  - (ii) the provision of direct access to the services of a correspondent bank is often known as “payable through accounts” or “straight through processing”;
- (12) A relevant person that is a correspondent bank shall—
- (a) gather sufficient information about the respondent to understand fully the nature of its business;
  - (b) determine the reputation of the respondent and the quality of its supervision;
  - (c) assess the respondent’s systems and controls to combat terrorist financing and to determine whether they are consistent with the requirements of the FATF Recommendations;
  - (d) require new correspondent banking relationships to be approved by the Board;
  - (e) document the respective responsibilities of the correspondent and the respondent banks to combat terrorist financing so that they are clearly understood;

- (f) be satisfied that, in respect of customers of the respondent who have direct access to the services of the correspondent bank, the respondent—
  - (i) has performed identification procedures in line with those set out in subregulation (2); and
  - (ii) is able to provide relevant customer due diligence information and documents evidencing verification of identity on request to the correspondent bank;
- (g) A relevant person that is a correspondent bank shall not enter into a correspondent banking relationship, or continue an existing correspondent banking relationship, with a respondent that is a shell bank;
- (h) A relevant person that is a correspondent bank shall satisfy itself that its respondents do not themselves provide correspondent banking services to shell banks—
  - (i) A relevant person that is a correspondent bank shall not enter into a banking relationship where it has knowledge or suspicion that the respondent, or any of its customers is engaged in the financing of terrorism.

(13) Where a relevant person acts in contravention of subregulation 12, it commits an offence and shall be liable on conviction to a fine of fifty thousand dollars.

#### **Enhanced Customer Due Diligence**

5. (1) This regulation applies in the following cases where:
- (a) a relevant person who is registered under the Banking Act, the Nevis Offshore Banking Ordinance, Cap. 7.05(N) as amended, or the Financial Services Regulations Order No. 25 of 1997 has or proposes to have a banking or a similar relationship with an institution whose address for that purpose is outside St. Christopher and Nevis;
  - (b) a relevant person proposes to have a business relationship or carry out a one-off transaction with a politically exposed person;
  - (c) a customer has not been physically present for identification purposes; or
  - (d) the relevant person—
    - (i) intends to conduct business transactions with persons, including legal persons and other financial institutions from or in countries which do not apply or insufficiently apply the FATF Recommendations; or
    - (ii) has a foreign branch or subsidiary in countries which do not, or which insufficiently apply the FATF Recommendations.
- (2) A relevant person shall apply the following measures on a risk-sensitive basis—
- (a) enhanced customer due diligence procedures where regulation 4(1) paragraphs (a) to (d) apply; and

(b) enhanced customer due diligence procedures in any other situation which by its nature can present a higher risk of terrorist financing.

(3) If the business transactions referred to in subregulation (1)(d)(i) have no apparent economic or visible lawful purpose, the background and purpose of such transactions shall, as far as possible, be examined, and written findings shall be made available by the relevant person to assist the Reporting Authority, the Commission or any other competent authorities.

(4) (a) Where the minimum anti-terrorism financing requirements of St. Christopher and Nevis differ from the requirements of branches and subsidiaries located outside of the Federation, the higher standard of enhanced due diligence measures shall be applied with the consent of the Commission to transactions concerning those branches and subsidiaries; and

(b) The relevant person shall inform the Commission when a foreign branch or subsidiary is unable to observe appropriate anti-terrorism measures as a result of prohibitive laws of the host country.

(5) A relevant person shall—

(a) obtain senior management approval for establishing business relationships with politically exposed persons;

(b) take reasonable measures to establish the source of wealth and source of funds;

(c) conduct enhanced ongoing monitoring of the business relationship.

(6) A relevant person who acts in contravention of subregulations (2), (3), (4) or (6), commits an offence and is liable on conviction to a fine of one hundred and fifty thousand dollars.

#### **Reduced Customer Due Diligence for Low Risk Situations.**

6. (1) Identification procedures under Regulation 4 are not required in any of Cases A to E as described in subregulations (2), (3), (4), (5) and (6).

(2) Case A is where the person whose identity is to be verified is a public authority, and is acting in that capacity.

(3) Case B is where the business relationship or one-off transaction relates to a pension, superannuation or similar scheme and where the contributions to the scheme are made by way of deductions from wages and the rules of the scheme do not permit the assignment of an interest of a member of the scheme under the scheme.

(4) Case C is where, in the case of an insurance business consisting of a policy of insurance in connection with a pension scheme taken out by virtue of a person's contract of employment or occupation—

(a) the policy contains a “no surrender” clause; and

(b) it may not be used as collateral security for a loan.

(5) Case D is where, in respect of insurance business, a premium is payable in one installment of an amount not exceeding five thousand dollars.

(6) Case E is where, in respect of insurance business, a periodic premium is payable and the total amount payable in respect of any calendar year does not exceed twenty five hundred dollars.

(7) Where the customer of a relevant person is—



- (a) a regulated person; or
  - (b) a person who carries on equivalent business to any category of regulated business, the relevant person need not comply with his or her obligations under regulation 4 (1) in respect of those procedures mentioned in paragraphs (a) and (c) of regulation 4(2).
- (8) Where—
- (a) a person is authorised to act on behalf of a customer;
  - (b) the customer is not a relevant person;
  - (c) the person who is so authorised acts on behalf of the customer in the course of employment by a financial services business; and
  - (d) the financial services business is either a regulated business or equivalent business to a regulated business, the relevant person need not comply with his or her obligations under regulation 4 in respect of the procedure mentioned in regulation 4(2) paragraphs (a) to (d).
- (9) Notwithstanding the provisions of this regulation, in any case where there is a suspicion of terrorist financing the requirements of enhanced due diligence shall be applicable pursuant to regulation 4.

#### **Identification Procedures in Relation to Introduce Persons and Intermediaries.**

7. (1) In this regulation, the expression “other party” shall be used to refer to either an intermediary or an introducer.

- (2) (a) Notwithstanding the provisions of paragraph (b), a relevant person shall satisfy itself that the introducer or intermediary has appropriate customer due diligence processes in place prior to entering into business with that introducer or intermediary.
- (b) Subject to the conditions in subregulation (6) being met, a relevant person may rely on an intermediary or introducer to apply the identification procedures specified in subregulations (4) and (5) in respect of—
  - (i) that other party’s customers; and
  - (ii) the persons to which subregulations (7) applies,in order to meet the relevant person’s obligation under regulation 4 to apply those specified identification procedures.
- (c) For the purposes of this subregulation a relevant person shall satisfy itself by immediately obtaining from an introducer or intermediary the necessary information concerning the introducer or intermediary’s customer due diligence processes including specific details on—
  - (i) identification procedures of customers;
  - (ii) verification procedures where a customer is acting for a third party or in the case of a legal person, verifying the legal status or arrangements of that legal person;
  - (iii) verifying whether any person is properly authorised to act on behalf of a customer.

*(Inserted by S.R.O. 12/2012)*

(3) The reliance of a relevant person on the other party pursuant to subregulation (2)(b) shall be subject to the following—

- (a) consent of the other party to such reliance with the understanding that the other party shall be bound by FATF Recommendations;
- (b) the condition that notwithstanding the consent of the other party in (a), the relevant person shall remain liable for any failure to apply the necessary identification procedures.

(4) Where the relevant person relies on an intermediary, the applicable identification procedures shall be the ones described in regulation 4(2)(b).

(5) Where the relevant person relies on an introducer, the applicable identification procedures shall be the ones described in regulation 4(2)(a) to (c).

(6) The conditions mentioned in subregulation (2) are that—

- (a) the relevant person knows or has reasonable grounds for believing that the other party is—
  - (i) a relevant person in respect of which the Commission discharges supervisory functions in respect of that other party's financial services business; or
  - (ii) a person who carries on equivalent business;
- (b) the relevant person obtains adequate assurance in writing from the other party that he—
  - (i) has applied the identification procedures mentioned in subregulation (1);
  - (ii) is required to keep and does keep a record of the evidence of the identification, as described in regulation 4(4), relating to each of the other party's customers;
  - (iii) will provide the information in that record to the relevant person without delay, once that information is requested;  
*(Substituted by S.R.O. 12/2012)*
- (c) where the other party is an introducer, the relevant person obtains, in writing—
  - (i) confirmation that each customer referred in subregulation (2)(b) is an established customer of that other party; and
  - (ii) sufficient information about each customer described in subregulation (2)(b) to enable the relevant person to assess the risk of terrorist financing involving that customer; and
- (d) where the other party is an intermediary, the relevant person obtains in writing sufficient information about the customers for whom the intermediary is acting to enable the relevant person to assess the risk of terrorist financing involving that customer.

(7) This subregulation applies to any of the following—

- (a) any beneficial owner or controller of the customer;
- (b) any third party for whom the customer is acting;
- (c) any beneficial owner or controller of a third party for whom the customer is acting; or

- (d) any person purporting to act on behalf of a customer.
- (8) In these Regulations—
  - (a) an intermediary is a person who has or seeks to establish a business relationship or to carry out a one-off transaction on behalf of that person's customer with a relevant person so that the intermediary becomes a customer of the relevant person;
  - (b) an introducer is a person who has a business relationship with a customer and who introduces that customer to a relevant person with the intention that the customer will form a business relationship or conduct a one-off transaction with the relevant person so that the introducer's customer also becomes a customer of the relevant person.
- (9) For the purposes of subregulation (6)(b), assurance is adequate if—
  - (a) it is reasonably capable of being regarded as reliable;
  - (b) the person who relies on it is satisfied that it is reliable;
  - (c) the intermediary or introducer is able to demonstrate that he or she used independent documents to verify identification information;
  - (d) the intermediary or introducer has verified that the authority of a customer purporting to act for another is valid; and
  - (e) the intermediary or introducer has accurately determined what is the nature of the customer's business.
- (10) Notwithstanding the provisions of this regulation, in any case where there is a suspicion of terrorist financing, a relevant person shall apply enhanced due diligence procedures in a manner consistent with regulation 4.

#### **Record Keeping Procedures.**

- 8.** (1) A relevant person shall keep the records specified in subregulation (2).
- (2) A relevant person shall ensure that records of unusual and complex transactions are maintained for at least five years and that such records shall be made available upon request to competent authorities and to auditors.  
*(Inserted by S.R.O. 12/2012)*
- (3) This subregulation refers to—
  - (a) a record comprising—
    - (i) a copy of the evidence of identity obtained pursuant to the application of customer due diligence procedures or information that enables a copy of such evidence to be obtained; and
    - (ii) all the supporting documents, data or information, including business correspondence in respect of a business relationship or one-off transaction which is the subject of customer due diligence procedures;
  - (b) a record containing details relating to each transaction carried out by the relevant person in the course of any business relationship or one-off transaction.
- (4) The record to which subregulation (3)(b) refers shall in any event include sufficient information to enable the reconstruction of individual transactions.

(5) The relevant person shall keep the records to which subregulation (3) refers in such a manner that those records can be made available on a timely basis to the Commission, a police officer or customs officer for the purposes of complying with a requirement under any relevant enactment.

(6) Where the records described in subregulation (3)(a)(i) relate to a business relationship, a relevant person shall keep those records for a period of at least five years commencing with the date on which the business relationship ends.

(7) Where the records described in subregulation (3)(a)(ii) relate to a one-off transaction, a relevant person shall keep those records for a period of at least five years commencing with the date on which the one-off transaction is completed.

(8) A relevant person shall keep the records described in subregulation (3)(b) in relation to each transaction for a period of five years commencing with the date on which all activities taking place within the course of that transaction were completed.

(9) For the purposes of subregulation (7) a one-off transaction is completed on the date when all the activities taking place in that transaction have been done.

(10) The Commission may notify to the relevant person a period longer than five years for the purposes of subregulation (6), (7) or (8) and such longer period shall then apply instead of the five years specified in those paragraphs.

(11) Where the relevant person fails to keep records in a manner consistent with this Regulation then the relevant person commits an offence and shall be liable on conviction to a fine of twenty five thousand dollars.

(12) For the purposes of these Regulations, the term “competent authorities” means the Reporting Authority, the Commission and such other person or body authorised in law to have access to such records.

*(Inserted by S.R.O. 12/2012)*

### **Maintaining a Register of Terrorist Financing Enquiries.**

**9.** (1) A relevant person shall maintain a register of all enquiries made of it by the Commission, the Financial Intelligence Unit and other law enforcement authorities acting under powers provided by the Anti-Terrorism Act or any other relevant Acts and any regulations made thereunder.

(2) The register maintained under subregulation (1) shall be kept separate from other records and shall contain, at a minimum, the date and nature of the enquiry, the name and agency of the inquiring officer, the powers being exercised, and details of the accounts or transactions involved.

### **Reporting Officer.**

**10.** (1) A relevant person, other than a sole trader, shall appoint an individual as a reporting officer in respect of the financial services business being carried on by the relevant person.

(2) The reporting officer’s function is to receive and consider reports in accordance with Regulation 11.

(3) When a named individual has ceased to be the reporting officer, the relevant person shall appoint another individual within twenty-one days as the reporting officer in respect of the financial services business being carried on by the relevant person.

(4) Subject to subregulation (5), a relevant person shall give the Commission written notice, within one month after the date that—

- (a) an appointment under subregulation (1) or (3) takes effect; or
  - (b) a person ceases to be the reporting officer.
- (5) The notice referred to in subregulation (4) is to specify the name of that reporting officer and the date on which his or her appointment takes effect or he or she ceases to be the reporting officer.
- (6) A reporting officer may also be appointed as a compliance officer.

### **Reporting Procedures and Requirements.**

**11.** (1) The internal reporting procedures to be maintained by a relevant person shall be in accordance with the following requirements—

- (a) communication of the identity of the reporting officer to persons who are either obligated to make reports to that officer or who may wish to do so;
- (b) a report shall be made to the reporting officer, of any information or other matter that comes to the attention of any person handling financial services business and, in the opinion of the person handling that business, gives rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in terrorist financing; or that funds are linked, or related to or to be used for terrorism, terrorist acts, or by terrorist organisations or those who finance terrorism;
- (c) if a report is made or forwarded to the reporting officer, it shall be considered by the reporting officer, in the light of all other relevant information, for the purpose of determining whether or not—
  - (i) the information or other matter contained in the report gives rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in terrorist financing; or
  - (ii) that funds are linked, or related to or to be used for terrorism, terrorist acts, or by terrorist organisations or those who finance terrorism;
- (d) the reporting officer, shall have access to all other relevant information that may be of assistance to him or her in his investigation;
- (e) where the reporting officer—
  - (i) determines that the information or other matter reported to him or her pursuant to subparagraph (c), gives rise to a knowledge or suspicion or reasonable grounds for knowledge or suspicion that a person is engaged in terrorist financing; or
  - (ii) knows otherwise or has reasonable grounds for suspecting that another person is engaged in terrorist financing,he or she shall ensure that all relevant information that comes to his or her knowledge or is in his or her possession pursuant to subparagraphs (a) or (b), is disclosed in writing, to the Reporting Authority within twenty four hours of such determination or knowledge or suspicion of information obtained by him or her;
- (f) a relevant person shall maintain a register of all reports made to the reporting officer;

- (g) the register maintained under subregulation (f) shall contain details of the date on which the report is made, the person who makes the report and information sufficient to identify the relevant documents.
- (2) (a) A regulated person shall pay special attention to all complex, unusual or large business transactions, whether completed or not, and to all unusual patterns of transactions and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.
- (b) Upon reasonable suspicion that—
- (i) a transaction described in subparagraph (a); or
  - (ii) any other business transaction,
- could constitute or be related to terrorist financing, or where there are grounds for believing that the funds in that transaction could be linked, related to or are to be used for terrorist financing, the relevant business shall, within twenty four hours of the matter coming to its attention, submit a suspicious transaction report to the Reporting Authority.
- (c) Where the report referred to in subparagraph (b) is made, or other information submitted in good faith, a relevant person and its employees, staff, directors, owners or other representatives as authorised by law, shall be exempted from criminal, civil or administrative liability, as the case may be, from complying with these regulations or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication of that report.
- (d) A relevant person or its employees, staff, directors, owners or other authorised representatives who fail to comply with the obligations in this regulation, or who make a false or falsified report referred to above commits an offence and shall be liable on conviction—
- (i) in the case of directors or owners, to imprisonment for a term of two years or to fifty thousand dollars; or
  - (ii) in the case of a relevant person itself, to a fine of one hundred thousand dollars and a penalty of one hundred dollars for each day that the requirement is not complied with.
- (e) A relevant person, its employees, staff, directors, owners or other authorised representative who unlawfully discloses the fact that a suspicious transaction report or related information is being reported or provided to the Reporting Authority commits an offence and shall be liable on conviction to a fine of one hundred thousand dollars.
- (3) (a) If the Commission—
- (i) obtains any information; and
  - (ii) is of the opinion that the information indicates that any person has or may have been engaged in terrorist financing, the Commission shall disclose that information to the Reporting Authority as soon as is reasonably practicable;
- (b) If a person is a secondary recipient of information obtained by the Commission, and forms such an opinion as is described in Regulation

8(a)(ii), the person may disclose the information to a Reporting Authority.

(c) If any person—

- (i) obtains any information while acting in the course of any investigation, or discharging any functions, to which the person's authorisation or appointment relates; and
- (ii) is of the opinion that the information indicates that any other person has or may have been engaged in terrorist financing, the first person shall as soon as is reasonably practicable disclose that information to a designated reporting authority and the Commission.

(4) Where a relevant person acts in contravention of subregulation (1)(c), or (e), or (2)(a) or (b), it commits an offence and shall be liable on conviction to a fine of one hundred thousand dollars.

#### **Duty to Appoint Compliance Officer.**

**12.** (1) A relevant person, other than a sole trader, shall appoint or designate one of his staff to be approved by the Commission as a Compliance Officer for the purposes of these Regulations.

(2) A Compliance Officer shall—

- (a) be a senior officer with relevant qualifications and sufficient experience to enable him or her to respond appropriately to enquiries relating to the relevant person and the conduct of its business;
- (b) be responsible for establishing and maintaining such manual of compliance procedures in relation to the business of the relevant person as the Regulator may require;
- (c) be responsible for ensuring compliance by staff of the relevant person with the following—
  - (i) the provisions of these Regulations and any other law relating to terrorist financing;
  - (ii) the provisions of any manual of compliance procedures established pursuant to paragraph (b); and
  - (iii) the internal reporting procedures established under regulation 11;
- (d) act as a liaison between the relevant person and the Regulator in matters relating to compliance with the provisions of these Regulations and any other law or directive with respect to terrorist financing; and
- (e) prepare and submit to the Regulator written reports on the relevant person's compliance with the provisions of these Regulations and any other law or directive relating to terrorist financing, and the reports shall be prepared in such form and submitted at such time as the Regulator may determine;
- (f) a compliance officer may also be appointed as a reporting officer.

(3) When a named individual has ceased to be a Compliance Officer, the relevant person shall appoint another individual forthwith as Compliance Officer in respect of the financial services business being carried on by the relevant person.

(4) For the purposes of subregulation (2) (a), the question as to whether a senior officer of a relevant person has relevant qualifications and sufficient experience shall be determined in accordance with such guidelines as the Commission may determine.

#### **Due Diligence Audit.**

**13.** Notwithstanding regulation 11 or any enactment relating to the conduct of inspections to verify compliance, the Regulator may conduct an inspection of any relevant person to determine compliance by that person with the requirements of these Regulations and any other law or directive relating to terrorist financing.

#### **Offences and Penalties.**

**14.** (1) A person who fails to comply with the requirements of these Regulations, particularly any directive issued under regulation 15 or the requirements of the Guidance Notes for which a penalty is not specifically provided, commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars, and, if in the case of a continuing offence, the contravention continues after such conviction, the person commits a further offence and is liable to an additional fine of one hundred dollars for each day on which the contravention continues.

(2) In determining whether a person has complied with the requirements of these Regulations or any directive issued under regulation 15, a court may take account of—

- (a) any provision in the Guidance Notes which may apply to that person; or
- (b) any other relevant guidance issued by the Commission or any other body that regulates, or is representative of, any trade, business, profession or employment carried on by that person.

(3) In proceedings against a person for an offence under these Regulations, it shall be a defence for the person to prove that he took all reasonable steps and exercised due diligence to comply with the requirements of these Regulations or any directive issued under regulation 15 in respect of which he is charged.

(4) Where an offence under these Regulations has been committed by a body corporate, the directors as well as the body corporate commit that offence and shall be liable to be proceeded against and punished accordingly.

(5) Where the affairs of a body corporate are managed by its members, subregulation (4) shall apply equally in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

(6) Where an offence under these Regulations that is committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been committed with—

- (a) the consent or connivance of a partner in the partnership or, as the case may be, a person concerned in the management or control of the partnership; or
- (b) is attributable to the failure to exercise due diligence by a partner in the partnership or, as the case may be, a person concerned in the management or control of the association,



the partner or other person concerned, as well as the partnership or association, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(7) The penalties issued pursuant to these Regulations, shall be in addition to any penalties, sanctions or other measures taken by the Commission under the Financial Services Regulatory Commission Act.

#### **Directives.**

**15.** (1) The Commission may, for the purposes of these Regulations, issue such directives as it considers necessary and such directives, when issued, shall be published in the *Gazette* and at least one locally circulated newspaper.

(2) Where FATF has decided to apply terrorist financing counter-measures to a country, the Commission may, in respect of a person who is situated or incorporated in that country, direct a regulated person to—

- (a) not enter into a business relationship;
- (b) not carry out an occasional transaction;
- (c) not proceed any further with a business relationship or occasional transaction;
- (d) impose any prohibition, restriction or limitation relating to a business relationship or occasional transaction; or
- (e) apply enhanced customer due diligence measures to any business relationship or occasional transaction as the case may be.

#### **Notice of Terrorist Designation.**

**16.** (1) A person or group which is designated as a terrorist or terrorist group pursuant to section 4 of the Act shall, within one week of the gazetting of the Order, be informed by the Minister of that designation including a notification of the procedure for having such a designation revoked.

(2) Notwithstanding the provisions of subregulation (1), the Minister shall only be required to take such steps that would be considered reasonably necessary to notify the designated person or group of the terrorist designation.

(3) Where a designation has been made pursuant to section 4 of the Act, within one month of the gazetting of the Designation Order, the fact of the designation along with the relevant procedures for obtaining a revocation of that designation, shall be published in at least one newspaper of general circulation within the Federation.

#### **Provision for Basic Living Expenses of Designate Terrorists.**

**17.** (1) Where pursuant to an Order made under section 4 of the Act, the funds of a designated terrorist or terrorist group are frozen in Saint Christopher and Nevis, allowance shall be made for provision from the accounts in question of basic living expenses for the person as well as his or her immediate family and dependents.

(2) The question of what are “basic living expenses” shall be determined by the Registrar of the High Court in consultation with the Minister of Justice, based on representations made to him or her by the terrorist or terrorist group but notwithstanding any such representations the term “basic living expenses” shall include the following—

- (a) food;

- (b) clothing;
- (c) shelter;
- (d) medicines and medical treatment;
- (e) taxes;
- (f) insurance premiums; and
- (g) public utility charges.

(3) Further to subregulation (2) the Registrar may also determine whether access to funds may be allowed for the purpose of reasonable legal expenses.

(4) Where a decision is made by the Registrar for provision of access to the funds in question, he or she shall notify the Minister of that decision.

(5) (a) Pursuant to the notification referred to in subregulation (4), the Minister shall notify the Committee established pursuant to the United Nations Security Council Resolution 1267 (1999) or the United Nations Security Council Resolution 1452 as the case may be, of the intention to authorise access to funds, assets or resources of a terrorist or suspected terrorist or terrorist group for basic living expenses or for necessary extraordinary expenses.

(b) Within forty-eight hours, in the absence of a negative response from the Committees pursuant to paragraph (a), the Minister may proceed to authorise access to the funds, assets or resources on the terms indicated.

#### **Judicial Review.**

**18.** A person or group that has been so designated in accordance with section 4 of the Act may, within twenty one days of being informed of the designation, apply to the High Court for judicial review of the action of the Minister.

#### **Use of Guidance Notes.**

**19.** In the preparation of procedures required to be maintained in accordance with the provisions of these Regulations, a relevant person shall adopt and have regard to the provisions of the Guidance Notes as set out in the Schedule to the Financial Services (Implementation of Industry Standards) Regulations.

*(Inserted by S.R.O. 47/2011)*

## **FOURTH SCHEDULE**

*(Section 115)*

### **ANTI-TERRORISM DE-LISTING PROCEDURES REGULATIONS**

#### **Citation.**

1. These Regulations may be cited as the Anti-Terrorism De-listing Procedures Regulations.

#### **Interpretation.**

2. In this Act unless the context otherwise requires—

“Act” means the Anti-Terrorism Act, Cap. 4.02;

“de-listing” means removal of any person or group of persons from the list of designated terrorists pursuant to section 3(2) of the Act;

“Special Committee” means the Special Committee established under regulation 4.

#### **Request for De-Listing.**

3. Any application made pursuant to section 3(2) of the Act, for de-listing shall be made to the Minister in writing stating the grounds on which such an application is made.

#### **Special Committee.**

4. (1) The Minister may appoint a Special Committee to hear any requests for de-listing that may be forwarded to him or her.

(2) The Special Committee referred to in subsection (1) shall consist of the following persons—

- (a) a senior officer representing the Ministry responsible for matters of national security;
- (b) the Permanent Secretary of the Ministry responsible for Homeland Security or his or her nominee;
- (c) the Director of the Financial Intelligence Unit or his or her nominee;
- (d) the Director of the Financial Services Regulatory Commission or his or her nominee;
- (e) a senior officer representing the Legal Department.

#### **Hearing.**

5. (1) Within thirty days of receiving an application for de-listing, the Minister may schedule a hearing for the applicant before a Special Committee to determine the merits of the applicant’s case and shall notify the applicant accordingly.

(2) An applicant for de-listing shall be entitled to have legal representation at the hearing and to put forward such evidence to support his or her request.

(3) Within seven days after the hearing, the Special Committee shall notify the Minister of its recommendation to either let the designation stand or to revoke same.

(4) Where the Minister receives a notification pursuant to subsection (3) he or she shall inform the applicant without delay of his or her decision.

**Appeal.**

6. Where an applicant is dissatisfied with the decision of the Minister then he or she, may within fourteen days after receiving notification of that decision make an appeal to the High Court.

**Powers and Functions of the Special Committee.**

7. (1) The Special Committee shall have such powers and functions as are reasonably necessary for the execution of its functions or incidental to their proper discharge.

(2) The functions of the Special Committee are—

- (a) to consider applications made under section 3(2) of the Act for de-listing;
- (b) to make recommendations to the Minister in respect of applications for de-listing;
- (c) to advise and make recommendations to the Minister on matters related to the de-listing of terrorists.

(3) The Special Committee may, in connection with the carrying out of its functions, consult and seek advice of such persons or bodies whether inside or outside of Saint Christopher and Nevis, as it considers appropriate.

**Proceedings of Special Committee.**

8. The provisions of the Schedule shall have effect with respect to the Constitution, proceedings and other matters of the Special Committee.

## **SCHEDULE TO THE REGULATIONS**

*(Regulation 8)*

### **PROCEEDINGS OF SPECIAL COMMITTEE**

#### **Appointment Of Members.**

1. (1) The members of the Special Committee shall be appointed by instrument in writing.

(2) Each member of the Special Committee shall be eligible for re-appointment.

(3) The appointment of any person as a member of the Special Committee and the termination of office of such person whether by death, resignation, revocation, effluxion of time or otherwise shall be notified and published in the *Official Gazette*.

#### **Terms of Appointment.**

2. A member of the Special Committee shall hold and vacate office in accordance with the terms of his or her instrument of appointment.

#### **Appointment of Chairperson and Secretary.**

3. The Committee shall appoint a Chairperson and a Secretary from amongst its members.

#### **Secretariat.**

4. (1) The Secretariat for the Special Committee shall be serviced by a Secretariat from the Ministry responsible for the matters of national security.

(2) The Special Committee shall have an administrative officer assigned to it from the Ministry responsible for national security.

(3) The administrative officer shall provide administrative, recording and secretarial support to the Special Committee and shall not have a vote.

#### **Resignation.**

5. A member of the Special Committee may, at any time, resign his or her office by instrument in writing addressed to the Minister and transmitted through the Chairperson and such resignation shall take effect from the date of receipt of such instrument by the Minister.

#### **Dismissal.**

6. Where the Minister is satisfied that a member of the Special Committee—

- (a) has been absent from meetings longer than three consecutive meetings without the permission of the Chairperson;
- (b) has become bankrupt or made arrangements with his or her creditors;
- (c) is incapacitated by physical or mental illness; or
- (d) is otherwise unfit to discharge the function of a member of the Special Committee,

the Minister may declare his or her office as a member of the Special Committee to be vacant and shall notify the fact in such manner as the Minister thinks fit and thereupon, that office shall become vacant.

#### **Vacancies and Temporary Membership.**

7. (1) If any vacancy occurs in the membership of the Special Committee, such vacancy shall be filled by the appointment of another person who shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed, so however, that such appointment shall be made in the same manner and from the same category of persons, if any, as the appointment of the previous member.

(2) Any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed or elected shall be appointed or elected only for the remainder of such term.

#### **Meetings.**

8. (1) The Special Committee shall meet at such times as may be necessary or expedient for the transaction of its business and such meetings shall be held at such times and places and on such days as the Special Committee may determine.

(2) Subject to subsection (5) the Chairperson may, at any time, summon a meeting of the Committee.

(3) The Chairperson shall preside at a meeting of the Special Committee and in his or her absence the members of the Committee present shall elect one of their number to preside as Chairperson at that meeting.

(4) The decisions of the Special Committee shall be by a majority of votes and in addition to an original vote, in any case in which the voting is equal, the Chairperson, or in his or her absence, any other member presiding at that meeting as Chairperson, shall have a casting vote.

(5) The Chairperson shall summon a meeting of the Committee within 7 days—

- (a) of a request to that purpose addressed to him or her by three members of the Special Committee; or
- (b) of a direction to that effect addressed to him or her by the Minister.

#### **Quorum.**

9. At any meeting of the Special Committee, a quorum shall consist of three persons.

#### **Minutes.**

10. (1) Minutes in proper form of each meeting of the Special Committee shall be kept by the Secretary or in his or her absence, such person as the Special Committee may appoint for the purpose.

(2) A copy of the minutes of every meeting shall be submitted to the Minister within 14 days after the meeting.

**Members Not Liable.**

**11.** A member of the Special Committee shall not be personally liable for any act or default of the Special Committee done or omitted to be done in good faith in the course of its operations.

**Disclosure.**

**12.** A member of the Special Committee who is directly or indirectly interested in any matter which is being dealt with by the Special Committee shall—

- (a) disclose the nature of his or her interest; and
- (b) shall not take part in any deliberation or decision of the Special Committee with respect to that matter.

**Remuneration.**

**13.** The members of the Special Committee may be remunerated on such terms as the Minister may direct.

*(Inserted by S.R.O. 62/2011)*

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