

VIRGIN ISLANDS

COUNTER-TERRORISM ACT, 2021

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I Assent
(Sgd.) John Rankin CMG
Governor
19th July, 2021

VIRGIN ISLANDS

No. 33 of 2021

An Act to criminalise terrorism and the financing of terrorism, to make provision for the detection, prevention, prosecution, conviction of terrorist activities within the Virgin Islands, and to give effect to the several International Conventions and Resolutions for the countering of terrorism and terrorist financing, and for other matters connected therewith.

[Gazetted 22nd July, 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I
PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Counter-Terrorism Act, 2021.

(2) This Act shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation.

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

U.K.S.I. 2007
No. 1678

“Attorney General” means the holder of the office of Attorney General appointed pursuant to section 95 of the Virgin Islands Constitution Order, 2007;

“carried out”, in relation to a terrorist act, has the meaning given to it in section 6(1);

“child” means a person under the age of sixteen years;

“confiscation order” means an order made by a court under Part X;

“country” includes any State or Territory or a part or province of a country;

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

“deal with”, in relation to any property, means

- (a) to use or deal with the property, in any way and by any means (such as, to acquire possession of, or a legal or an equitable interest in, transfer, pay for, sell, assign, or dispose of, including by way of gift, the property); and
- (b) includes allowing the property to be used or dealt with, or facilitating the use of it or dealing with it;

“designated terrorist entity means an entity”

- (a) for the time being designated by the Governor under section 38 or 40 as a terrorist entity or associated entity; and
- (b) an entity
 - (i) listed on the Al-Qaida Sanctions List maintained by the Committee established by the United Nations Security Council pursuant to resolution 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities;
 - (ii) listed on a list maintained and amended from time to time by the Committee established by the United Nations Security Council pursuant to resolution 1988 (2011) as being associated with the Taliban;
 - (iii) listed on a list maintained and amended from time to time by the Committee established by the United Nations Security Council pursuant to resolution 1718 (2006) as being associated with the Democratic People’s Republic of Korea (sanctions);
 - (iv) listed on a list maintained and amended from time to time by the Committee established by the United Nations Security Council pursuant to resolution 2231 (2015) concerning the Iran-Ballistic missile-related transfers and activities;
 - (v) designated by HM Treasury in accordance with the applicable laws in the United Kingdom; and

- (vi) included in the list provided by Article 2(3) of Council Regulation (EC) 2580/2001 of 27th September 2001 on specific restrictive measures directed against certain persons and entities with a view to combatting terrorism;

U.K.S.I. 2007 No. 1678 “Director of Public Prosecutions” means the holder of the office of Director of Public Prosecutions appointed pursuant to section 95 of the Virgin Islands Constitution Order, 2007;

“entity” means a person, group, trust, partnership, or fund, or an unincorporated association or organisation;

“explosive or other lethal device” means

- (a) an explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury, or substantial material damage; or
- (b) a weapon or device that is designed, or has the capability, to cause death, serious bodily injury, or substantial material damage through the release, dissemination, or impact of
 - (i) toxic chemicals, biological or nuclear agents or toxins or similar substances; or
 - (ii) radiation or radioactive material;

“financial institution” means

- No. 9 of 1990
- (a) a person who carries on banking business or trust business within the meaning of the Banks and Trust Companies Act, 1990;
- No. 1 of 2008
- (b) a person who carries on insurance business within the meaning of the Insurance Act, 2008;
- No. 8 of 1990
- (c) a person who carries on the business of company management within the meaning of the Company Management Act, 1990;
- No. 2 of 2010
- (d) a person who carries on investment business or business as a mutual fund or providing services as manager or administrator of a mutual fund within the meaning of the Securities and Investment Business Act, 2010; or
 - (e) a person who carries on financing business or money services business within the meaning of the Financing and Money Services Act, 2009.

“forfeiture order” means an order made by a court under Part IX;

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

“funds” means financial assets and benefits of every kind, whether from a legitimate or illegitimate source, including

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (b) deposits with financial institutions or other persons, balances on accounts, debts and debt obligations;
- (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products;
- (d) interest, dividends and other income on or value accruing from or generated by assets;
- (e) credit, rights of set-off, guarantees, performance bonds and other financial commitments;
- (f) letters of credit, bills of lading and bills of sale;
- (g) documents providing evidence of an interest in funds or financial resources; and
- (h) any other instrument of export financing;

“infrastructure facility” means a facility, whether publicly or privately owned providing or distributing basic services for a population, for instance, water, sewage disposal, energy, fuel, or communications;

“international organisation” means any organisation of States or Governments of States, or any organ or agency of any organisation of that kind;

“legal practitioner” has the meaning assigned to it under section 2 of the Legal Profession Act, 2015;

No. 13 of 2015

“make available” has the meaning given to it in section 10(5);

“manufacture” means any process, including reprocessing, that produces plastic explosives;

“nuclear facility” means

- (a) a nuclear reactor, including a reactor installed in or on any vessel, vehicle, aircraft, or space object for use as an energy source in order to propel the vessel, vehicle, aircraft, or space object or for any other purpose; or
- (b) a plant or conveyance
 - (i) being used for the production, storage, processing, or transport of radioactive material; or
 - (ii) in which radioactive material is being used, handled, or disposed of in circumstances where damage to or interference with the operation of the plant or conveyance could lead to the release of significant amounts of radiation or radioactive substances;

“nuclear material” has the same meaning as in Article 1(a) of the Nuclear Material Convention which is the Convention on the Physical Protection of Nuclear Material, done at New York and Vienna on 3rd March 1980;

“ordinarily resident in the Virgin Islands” has the meaning given to it in subsection (2);

“place of public use” means

- (a) those parts of any building, land, street, waterway, or other location that are accessible or open to members of the public (whether continuously, periodically, or occasionally, and whether for free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from the place); and
- (b) includes any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational, or similar place that is so accessible or open to the public;

“plastic explosives” means explosive products, including explosives in flexible or elastic sheet form, formulated with one or more high explosives that, in their pure form, have a vapour pressure less than 10-4 Pa at a temperature of 25°C and are formulated with a binder material and are, as a mixture, malleable or flexible at room temperature;

“property” means

- (a) real or personal property of any description, whether situated in the Virgin Islands or elsewhere and whether tangible or intangible; and
- (b) includes an interest in any real or personal property of that kind;

“public transportation” system means all conveyances, such as aircrafts, ships, ferries, trucks, buses, or small passenger vehicles, facilities, buildings, and objects, whether publicly or privately owned used in or for services that are available to the public for the transportation of persons or cargo;

“radioactive device” means

- (a) a nuclear weapon or other nuclear explosive device;
- (b) a radioactive material dispersal device; or
- (c) a radiation-emitting device;

“radioactive material” has the meaning given in Article 1 of the Nuclear Terrorism Convention;

“relevant place”, “facility”, or “system” has the meaning given to it in section 7(3);

“relevant Security Council resolutions” means the Security Council resolutions specified under Schedule 5;

“relevant United Nations Security Council Committee” means

- (a) the United Nations Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (DA’ESH) Al-Qaida and associated individuals, groups, undertakings and entities; or
- (b) the United Nations Security Council 1988 Committee concerning the Taliban and associated individuals and entities;

“specified agency” means

- (a) Financial Investigation Agency; or
- (b) the Royal Virgin Islands Police Force;

“State or government facility” means any conveyance, such as, an aircraft, ship, ferry, truck, bus, small passenger vehicle, or car or facility, whether

permanent or temporary used or occupied by any of the following persons in connection with their official duties

- (a) representatives of a State;
- (b) members of the executive, legislative, or judicial branch of the Government of a State;
- (c) employees or officials of a State, or of any other public authority or entity;
- (d) employees or officials of an intergovernmental organisation;

“terrorist” includes a person who

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

“terrorist act” has the meaning referred to in section 5(1);

“terrorist bombing” means an offence under section 7(1);

“terrorist investigation” has the meaning referred to in section 104;

“terrorist property” means

- (a) property owned or controlled, directly or indirectly, by a designated terrorist entity;

- (b) property derived or generated from any property of the kind specified in paragraph (c); or
- (c) property that is used in, intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations and includes proceeds of acts carried out for the purposes of a terrorist act.

“United Nations designated terrorist entities” mean the entities that are listed under Schedule 6;

Schedule 6

“unmarked”, in relation to a plastic explosive, means that

- (a) it does not contain a detection agent; or
- (b) at the time of manufacture, it does not contain the required minimum concentration level of a detection agent as set out in the Table to Part 2 of the Technical Annex to the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March, 1991.

“weapon” includes

- (a) a firearm under section 2 of the Firearms Act; Cap. 126
- (b) a prohibited weapon under section 2 of the Firearms Act;
- (c) any article made or adapted for use for causing injury to a person or property or intended by a person for use by him or another person for that purpose;
- (d) an explosive weapon;
- (e) a chemical weapon;
- (f) a biological weapon; or
- (g) a nuclear weapon.

“young person” means a person who has attained the age of sixteen years and is under the age of eighteen years.

(2) For the purposes of this Act, a person shall be treated as being ordinarily resident in the Virgin Islands if

- (a) the person’s home is in the Virgin Islands; or

- (b) the person is residing in the Virgin Islands with the intention of residing in the Virgin Islands indefinitely; or
- (c) having resided in the Virgin Islands with the intention of establishing his home in the Virgin Islands, or with the intention of residing in the Virgin Islands indefinitely, the person is outside the Virgin Islands but has an intention to return to establish his home in the Virgin Islands or to reside in the Virgin Islands indefinitely.

(3) Terms and expressions used and not defined in this Act but defined in the Nuclear Material Convention, the Plastic Explosives Convention, or the Technical Annex to the Plastic Explosives Convention shall have the same meaning as in those Conventions and Annex, unless the context otherwise requires.

(4) In respect of persons (whether in relation to an offence or otherwise) expressed in this Act, where reference is made to the masculine gender this shall be considered to include the feminine gender unless the context clearly indicates otherwise.

(5) Where an offence carries a term of life imprisonment under this Act, section 9(2) of the Parole Act, 2009, shall apply.

3. (1) The Governor may, to such extent and subject to such restrictions and conditions as the Governor may think necessary, delegate, any of the Governor's powers by instrument in writing under this Act to any person, or class or description of persons, approved by the Governor.

(2) A delegation of a function by the Governor shall be construed as a reservation to the Governor of the right to perform the function himself in any case that he thinks fit.

(3) Any delegation made under subsection (1) may be revoked or varied by the like instrument in writing.

4. This Act binds the Crown.

PART II **TERRORIST OFFENCES**

Terrorist act.

5. (1) A terrorist act for the purposes of this Act is where a person

- (a) with the intent to induce terror in a civilian population, compels or forces a Government or an international organisation to do or abstain from doing any act or

intimidates the public or a section of the public, for the purpose of advancing a political, ideological or a religious cause, does any act which he intends to cause, creates the likelihood of causing, or is likely to cause: –

- (i) loss of human life or serious bodily harm to one or more persons;
 - (ii) a serious risk to the health or safety of the public or a section of the public;
 - (iii) destruction of, or serious damage to, property of great value or importance, or major economic loss, or major environmental damage;
 - (iv) the intentional or reckless introduction or release of a disease-bearing organism; or
 - (v) prejudice to national security or serious disruption of public safety including disruption in the provision of emergency services, to any computer or electronic system or to the provision of services directly related to banking communications, infrastructure, financial services, public utilities, transportation or other essential infrastructure.
- (b) threatens to commit an act referred to in this Part;
 - (c) takes any preparatory steps for the purpose of committing an act under this Part; or
 - (d) coerces, encourages, entices, or incites another person to commit an offence under this Part.

(2) Where a person commits a terrorist act under subsection (1) he is liable, where no other penalty is specified, on conviction on indictment, to a term of imprisonment not exceeding 25 years or to a fine not exceeding \$2,000,000, or both.

(3) Notwithstanding the provisions of subsection (1), an act does not fall within that subsection if it occurs in a situation of armed conflict and is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.

(4) For the avoidance of doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial

action, is not, by itself, a sufficient basis for inferring that the person is carrying out an act for a purpose, or with an intention to cause any harm referred to in subsection (1).

Carrying out and facilitating terrorist acts.

6. (1) For the purposes of this Act, a terrorist act is “carried out” if any one or more of the following occurs

- (a) planning or other preparations to carry out the act, whether it is actually carried out or not;
- (b) a credible threat to carry out the act, whether it is actually carried out or not;
- (c) an attempt to carry out the act;
- (d) the carrying out of the act.

(2) For the purposes of this Act, a terrorist act is facilitated only if the facilitator knows that a terrorist act is facilitated, but this does not require that

- (a) the facilitator knows that any specific terrorist act is facilitated;
- (b) any specific terrorist act was foreseen or planned at the time it was facilitated;
- (c) any terrorist act was actually carried out.

Terrorist bombing.

7. (1) A person who, intentionally and without lawful justification or excuse, delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against a relevant place, facility, or system, with the intent to cause

- (a) death or serious bodily injury; or
- (b) extensive destruction
 - (i) of the relevant place, facility, or system; and
 - (ii) that results, or is likely to result, in major economic loss,

commits the offence of terrorist bombing.

(2) A person who commits an offence under subsection (1) is liable on conviction on indictment, to a term of life imprisonment.

(3) For the purposes of subsection (1), “relevant place”, “facility”, or “system” means

- (a) a place of public use;
- (b) a State or government facility;
- (c) a public transportation system; or
- (d) an infrastructure facility.

8. (1) A person who, directly or indirectly, wilfully and without lawful justification or reasonable excuse, provides or collects funds

Financing of terrorism.

- (a) intending that they be used, or knowing that they are to be used, in full or in part, in order to carry out one or more acts of a kind that, if they were carried out, would be one or more terrorist act; or
- (b) intending that they benefit, or knowing that they will benefit, an entity that the person knows is an entity that carries out, or participates in the carrying out of, one or more terrorist act,

commits the offence of financing of terrorism.

(2) Where a person commits an offence under subsection (1), he is liable:

- (a) on summary conviction, to a term of imprisonment not exceeding 10 years, or to a fine not exceeding \$500,000, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 20 years or to a fine not exceeding \$1,000,000, or both.

(3) The offence under subsection (1) is committed irrespective of whether

- (a) the funds are actually used, in full or in part, to commit or attempt to commit a terrorist act;
- (b) the funds are linked to a specific terrorist act; or

Prohibition on dealing with property of, or derived or generated from property of, designated terrorist entity.

- (c) the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist or terrorist entity is located, or the terrorist act occurred or will occur.

9. (1) A person who, without lawful justification or reasonable excuse, deals with any property knowing that the property is

- (a) owned or controlled, directly or indirectly, by a designated terrorist entity; or
- (b) derived or generated from any property of the kind specified in paragraph (a),

commits an offence.

(2) Where a person commits an offence under subsection (1), he is liable:

- (a) on summary conviction, to a term of imprisonment not exceeding 10 years; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 14 years.

(3) For the purposes of subsection (1), a reasonable excuse for dealing with property referred to in those provisions include the following

- (a) where the dealing with the property comprises an act that does no more than satisfy essential human needs of an individual designated under this Act or a dependant of an individual designated under this Act; or
- (b) where a person acts to freeze assets of a designated terrorist entity.

(4) Subsection (1) does not apply

- (a) if the Governor has, under section 11, authorised the dealing with the property; or
- (b) if the property concerned is the subject of a direction under section 72 and the dealing concerned, forms part of the exercise by the Attorney General of his powers based on the direction given under section 72.

(5) A reference in the definition of “deal with” in section 2 to the transfer of property that is a security includes a reference to a transfer of the security by way of loan, mortgage, pledge, or bailment, whether in respect of a legal or an equitable interest.

10. (1) A person who makes available, or causes to be made available, directly or indirectly, without lawful justification or reasonable excuse, any property, or any financial or related services, either to, or for the benefit of, an entity, knowing that the entity is a designated terrorist entity commits an offence.

(2) Where a person commits an offence under subsection (1), he is liable:

- (a) on summary conviction, to a term of imprisonment not exceeding 10 years; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 14 years.

(3) An example of making property available with a reasonable excuse, for the purposes of subsection (1), is where the property (for example, items of food, clothing, or medicine) is made available in an act that does no more than satisfy essential human needs of an individual designated under this Act or a dependant of an individual designated under this Act.

(4) Subsection (1) does not apply if the Governor has, under section 11, authorised the making available of the property or services.

(5) In this section, “make available”, in relation to any property or services, means to make the property or services available in any way and by any means (for example, to send, transfer, deliver, or provide the property or services).

(6) A reference in subsection (5) to the transfer of property that is a security includes a reference to a transfer of the security by way of loan, mortgage, pledge, or bailment, whether in respect of a legal or an equitable interest.

11. (1) The Governor may, by notice in writing, authorise any activity or transaction or class or classes of activities or transactions that would otherwise be prohibited under section 9(1) or section 10(1).

Authorisations
by the Governor.

(2) Any authorisation by the Governor under subsection (1)

- (a) may be subject to terms or conditions; and
- (b) may be amended, revoked, or replaced.

(3) Subject to subsection (4), if a person has obtained an authorisation of that kind, another person involved in carrying out the activity or transaction or class or classes of activities or transactions to which the authorisation relates is not subject to section 9(1) or section 10(1).

(4) Subsection (3) does not apply if

- (a) the authorisation is subject to terms or conditions imposed under subsection (2)(a); and
- (b) those terms or conditions are not satisfied.

Recruitment of persons for terrorist purposes.

12. (1) A person who agrees to recruit or knowingly and without lawful justification or reasonable excuse recruits

- (a) a person to participate in the commission of a terrorist act, commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 14 years and a fine not exceeding \$250,000; or
- (b) a child or young person to participate in the commission of a terrorist act, commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 20 years and a fine not exceeding \$750,000.

Joining an entity that carries out terrorist acts.

13. (1) A person who, knowingly and without lawful justification or reasonable excuse, joins

- (a) a designated terrorist entity; or
- (b) an entity that carries out, or participates in the carrying out of, one or more terrorist acts,

commits an offence.

(2) Where a person commits an offence under subsection (1), he is liable:

- (a) on summary conviction, to a term of imprisonment not exceeding 10 years and to a fine not exceeding \$100,000, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 14 years and to a fine not exceeding \$500,000, or both.

14. (1) A person who, with the intention of assisting another person to avoid arrest, escape lawful custody, or avoid conviction, harbours or conceals that person

Harbouring or concealing terrorists.

- (a) knowing, or being reckless as to whether, that person intends to carry out a terrorist act; or
- (b) knowing, or being reckless as to whether, that person has carried out a terrorist act,

commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 20 years.

15. (1) A person who knowingly and without lawful justification or reasonable excuse, supports or solicits support for

Soliciting or giving support for the commission of terrorist acts.

- (a) the commission of a terrorist act;
- (b) a terrorist;
- (c) a designated terrorist entity; or
- (d) an entity that the person knows is an entity that carries out, or participates in the carrying out of, one or more terrorist acts,

commits an offence.

(2) Where a person commits an offence under subsection (1) he is liable:

- (a) on summary conviction, to a term of imprisonment not exceeding 10 years; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 20 years.

(3) For the purposes of subsection (1) “support” includes but is not limited to

- (a) an offer to provide or the provision of expertise or a skill;
- (b) an offer to provide or the provision of documents; and
- (c) entering or remaining in any country,

for the purpose of committing or facilitating a terrorist act.

Provision of devices.

16. (1) A person who knowingly and without lawful justification or reasonable excuse offers to provide or provides any explosive or other lethal device for the purpose of committing or facilitating a terrorist act commits an offence is liable on conviction on indictment to a term of imprisonment not exceeding 20 years and to a fine not exceeding \$1,000,000.

Provision of instruction or training to persons committing terrorist acts.

17. (1) A person who knowingly and without lawful justification or reasonable excuse agrees to provide instruction or training or provides instruction or training in

- (a) carrying out a terrorist act;
- (b) the making or use of any explosive or other lethal device; or
- (c) the practice of military exercises or movements,

to a person engaging in or preparing to engage in the commission of a terrorist act, commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 14 years and to a fine not exceeding \$500,000.

(2) A person who, knowingly and without lawful justification or reasonable excuse, agrees to provide instruction or training or provides instruction or training in

- (a) carrying out a terrorist act;
- (b) the making or use of any explosive or other lethal device; or
- (c) the practice of military exercises or movements,

to a child or young person, for the purpose of engaging in or preparing to engage in the commission of a terrorist act, commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 20 years and to a fine not exceeding \$750,000.

Attending or receiving training to commit a terrorist act.

18. (1) A person who, knowingly and without lawful justification or reasonable excuse, attends or receives any instruction or training in

- (a) carrying out a terrorist act;
- (b) the making or use of any explosive or other lethal device; or
- (c) the practice of military exercises or movements;

whether in person or through electronic or other means, for the purposes of carrying out a terrorist act, commits an offence and is liable on conviction on

indictment to a term of imprisonment not exceeding 14 years and a fine not exceeding \$500,000.

(2) A person who, knowingly and without lawful justification or reasonable excuse, attends or receives any instruction or training from

- (a) a terrorist,
- (b) a designated terrorist entity; or
- (c) an entity that the person knows is an entity that carries out one or more terrorist acts, or

whether in person or through electronic or other means, commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 14 years and to a fine not exceeding \$500,000.

19. (1) A person who, knowingly and without lawful justification or reasonable excuse, incites or promotes the commission of a terrorist act, or solicits property for the commission of a terrorist act, commits an offence.

(2) Where a person commits an offence under subsection (1) he is liable:

- (a) on summary conviction, to a term of imprisonment not exceeding 10 years or to a fine not exceeding \$150,000, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 14 years or to a fine of \$500,000, or both.

(3) A person who, knowingly and without lawful justification or reasonable excuse, incites a child or young person to commit a terrorist act, commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 20 years and to a fine not exceeding \$500,000.

20. (1) A person who, knowingly and without lawful justification or reasonable excuse, being the

- (a) agent, charterer, lessee, master, operator or owner in charge of a vessel permits that vessel to be used;
- (b) agent, charterer, lessee, operator, owner or pilot in charge of an aircraft permits that aircraft to be used;

Incitement,
promotion or
solicitation of
property for the
commission of
terrorist acts.

Providing
property to
facilitate terrorist
acts.

- (c) lessee, occupier, owner or person in charge of any place or premises permits a meeting or any other event, to be held in that place or building; or
- (d) lessee, owner or person in charge of any equipment or facility that may be used for conferencing, recording of meetings through the use of technological means permits the equipment or facility to be used,

to facilitate the commission of an offence under this Act, commits an offence.

(2) Where a person commits an offence under subsection (1) he is liable:

- (a) on summary conviction, to a term of imprisonment not exceeding 10 years or a fine not exceeding \$500,000, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 14 years or a fine not exceeding \$1,000,000, or both.

Arranging for
property to be
used for terrorist
purposes.

21. (1) A person who

- (a) enters into or becomes concerned in an arrangement as a result of which terrorist property is made available or is to be made available to another; and
- (b) knows or has reasonable cause to suspect that it will or may be used for the purposes of financing terrorism or the commission of one or more terrorist acts,

commits an offence.

(2) Where a person commits an offence under subsection (1) he is liable

- (a) on summary conviction, to a term of imprisonment not exceeding 10 years or a fine not exceeding \$150,000, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 14 years or a fine not exceeding \$500,000, or both.

22. (1) A person who enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property by concealment, by removal from the jurisdiction or by transfer to nominees, commits an offence.

Arranging for property to be concealed, transferred, removed, etc.

(2) Where a person commits an offence under subsection (1) he is liable:

- (a) on summary conviction, to a term of imprisonment not exceeding 10 years or a fine not exceeding \$150,000, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 14 years or a fine not exceeding \$500,000, or both.

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

23. (1) A person who, knowingly and without lawful justification or reasonable excuse, travels for the purpose of

Travelling for the purpose of committing a terrorist act.

- (a) planning a terrorist act;
- (b) committing a terrorist act;
- (c) supporting a terrorist act; or
- (d) facilitating the commission of a terrorist act,

commits an offence.

(2) Where a person commits an offence under subsection (1) he is liable:

- (a) on summary conviction, to a term of imprisonment not exceeding 10 years or to a fine not exceeding \$250,000, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 14 years or to a fine not exceeding \$750,000, or both.

(3) A person who commits an offence under subsection (1) shall be deemed to be a foreign terrorist fighter.

(4) For the purposes of this section, “support” includes but is not limited to

- (a) an offer to provide or the provision of expertise or a skill;
- (b) an offer to provide or the provision of documents; and
- (c) entering or remaining in any country,

for the purpose of planning, committing or facilitating a terrorist act.

Offences involving use and movement of unmarked plastic explosives.

24. (1) A person who

- (a) possesses, uses, or manufactures unmarked plastic explosives, knowing they are unmarked; or
- (b) imports or exports unmarked plastic explosives to or from the Virgin Islands, knowing they are unmarked,

commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 14 years or a fine not exceeding \$500,000, or both.

(2) Subsection (1) does not apply in respect of unmarked plastic explosives (not being explosives to which subsection (3) applies) that were lawfully manufactured in, or imported into the Virgin Islands before the commencement of this section and that may be transported or possessed by

- (a) a person who performs police functions; or
- (b) holds a licence or permitted under the Explosives Ordinance.

(3) Nothing in this section applies to unmarked plastic explosives that are manufactured or held in limited quantities for sole use in any of the following activities

- (a) research, development, or testing of new or modified explosives;
- (b) training in explosives detection or testing of explosives detection equipment; or
- (c) forensic science activities.

Cap. 124

Offences
involving nuclear
material or
facilities.

- 25.** (1) Subject to section 34, a person who
- (a) intends to acquire or possesses nuclear material or designs or manufactures or possesses a device, or attempts to manufacture or acquire a device, with the intent
 - (i) to cause death or serious bodily injury; or
 - (ii) to cause damage to property or the environment;
 - (b) uses in any way nuclear material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of nuclear material with the intent
 - (i) to cause death or serious bodily injury;
 - (ii) to cause damage to property or the environment; or
 - (iii) to compel a natural or legal person, an inter-governmental organisation or a State to do or refrain from doing an act,

commits an offence.

- (2) A person who
- (a) threatens, under circumstances which indicate the credibility of the threat, to commit an offence referred to in subsection (1)(b); or
 - (b) unlawfully and intentionally demands radioactive material, a device or control of a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force,

commits an offence.

(3) A person who commits an offence under this section is liable on conviction on indictment to a term of life imprisonment.

- (4) For the purposes of this section “device” means a weapon.
- (5) This section applies to acts done within or outside of the Virgin Islands.

Importation,
acquisition, etc,
of radioactive
material.

26. A person who imports, acquires, possesses, or has control over any radioactive material with intent to use it to commit an offence involving bodily injury, or the threat of violence to any person commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 20 years.

Offences
involving
radioactive
material and
radioactive
devices.

27. (1) Subject to section 34, a person who

- (a) makes or possesses a radioactive device or possesses radioactive material with intent to cause death or serious injury to any person or substantial damage to property or to the environment;
- (b) uses radioactive material or a radioactive device or uses or damages a nuclear facility in a manner that releases or risks the release of radioactive material: -
 - (i) with intent to cause death or serious injury to any person or substantial damage to property or to the environment; or
 - (ii) with intent to compel any person, international organisation, or State to do, or refrain from doing an act;
- (c) threatens to commit an offence set out in paragraph (b);
- (d) unlawfully and intentionally demands by threat, in circumstances that indicate the credibility of the threat, or by use of force or by any other form of intimidation, any radioactive material, radioactive device, or nuclear facility; or
- (e) by use of force,
 - (i) uses or threatens to use radioactive material or a radioactive device; or
 - (ii) uses or damages or threatens to use or damage a nuclear facility,

commits an offence and is liable on conviction on indictment to a term of life imprisonment.

(2) This section applies to acts done within or outside of the Virgin Islands.

- 28.** (1) Subjection to section 34, a person who develops, produces, stockpiles, acquires or retains
- (a) any biological agent or toxin of a type and in a quantity that has no justification for prophylactic, protective or peaceful purposes; or
 - (b) any weapon, equipment or means of delivery designed to use biological agents or toxins for hostile purposes or in armed conflict,

commits an offence.

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

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

(3) A person who commits an offence under this section is liable on conviction on indictment to a term of life imprisonment.

(4) This section applies to acts done within or outside of the Virgin Islands.

- 29.** (1) A person who engages in conduct falling within subsection (2) and, at the time he does so
- (a) he intends an effect of his conduct to be a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism;
 - (b) he intends an effect of his conduct to be the provision of assistance in the commission or preparation of such acts; or
 - (c) he is reckless as to whether his conduct has an effect mentioned in paragraph (a) or (b),

commits an offence.

(2) For the purposes of this section, a person engages in conduct falling within this subsection if he

- (a) distributes or circulates a terrorist publication;
- (b) gives, sells or lends such a publication;
- (c) offers such a publication for sale or loan;
- (d) provides a service to others that enables them to obtain, read, listen, to or look at such a publication, or to acquire it by means of a gift, sale or loan;
- (e) transmits the contents of such a publication electronically; or
- (f) has such a publication in his possession with a view to its becoming the subject of conduct falling within any of paragraphs (a) to (e).

(3) For the purposes of this section, a publication is a terrorist publication, in relation to conduct falling within subsection (2), if matter contained in it is likely

- (a) to be understood, by a reasonable person, as a direct or indirect encouragement or other inducement, to some or all of the persons to whom it is or may become available as a result of that conduct, to the commission, preparation or instigation of acts of terrorism; or
- (b) to be useful in the commission or preparation of such acts and to be understood, by some or all of those persons, as contained in the publication, or made available to them, wholly or mainly for the purpose of being so useful to them.

(4) For the purposes of this section, matter that is likely to be understood by a reasonable person as indirectly encouraging the commission or preparation of acts of terrorism includes any matter which

- (a) glorifies the commission or preparation (whether in the past, in the future or generally) of such acts; and
- (b) is matter from which a person could reasonably be expected to infer that what is being glorified is being glorified as

conduct that should be emulated by him in existing circumstances.

(5) For the purposes of this section, the question whether a publication is a terrorist publication in relation to particular conduct must be determined

- (a) as at the time of that conduct; and
- (b) having regard both to the contents of the publication as a whole and to the circumstances in which that conduct occurs.

(6) In subsection (1), references to the effect of a person's conduct in relation to a terrorist publication include references to an effect of the publication on one or more persons to whom it is or may become available as a consequence of that conduct.

(7) It is irrelevant for the purposes of this section whether anything mentioned in subsections (1) to (4) is in relation to the commission, preparation or instigation of one or more particular acts of terrorism, of acts of terrorism of a particular description or of acts of terrorism generally.

(8) For the purposes of this section, it is also irrelevant, in relation to matter contained in any article whether any person

- (a) is in fact encouraged or induced by that matter to commit, prepare or instigate acts of terrorism; or
- (b) in fact makes use of it in the commission or preparation of such acts.

(9) A person guilty of an offence under this section shall be liable

- (a) on summary conviction, to a term of imprisonment not exceeding 10 years or to a fine not exceeding \$150,000, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 14 years or to a fine not exceeding \$500,000, or both.

(10) In this section

“lend” includes let on hire, and “loan” is to be construed accordingly;

“publication” means an article or record of any description that contains any of the following, or any combination of them

- (a) matter to be read;
- (b) matter to be listened to;
- (c) matter to be looked at or watched.

30. (1) A person who

- (a) collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism,
- (b) possesses a document or record containing information of that kind; or
- (c) views, or otherwise accesses, by means of the internet a document or record containing information of that kind,

Collection of information.

commits an offence.

(2) The cases in which a person collects or makes a record for the purposes of subsection (1)(a) included, but are not limited to, those in which the person does so by means of the internet, whether by downloading the record or otherwise.

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

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

(5) The cases in which a person has a reasonable excuse for the purposes of subsection (4) include, but are not limited to, those in which

- (a) at the time of the person’s action or possession, the person did not know, and had no reason to believe, that the document or record in question contained, or is likely to contain, information of a kind likely to be useful to a person committing or preparing of an act of terrorism; or
- (b) the person’s action or possession was for the purposes of
 - (i) carrying out work as a journalist; or

- (ii) academic research.
- (6) A person guilty of an offence under this section shall be liable
- (a) on summary conviction, to a term of imprisonment, not exceeding 10 years or to a fine not exceeding \$150,000, or both; or
 - (b) on conviction on indictment, to a term of imprisonment not exceeding 14 years or a fine not exceeding \$500,000, or both.

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

Failing to disclose information about acts of terrorism

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

(2) A person who does not disclose the information as soon as reasonably practicable in accordance with subsection (4), commits an offence.

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

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

- (5) A person guilty of an offence under this section shall be liable
- (a) on summary conviction, to a term of imprisonment, not exceeding 10 years or to a fine not exceeding \$150,000, or both; or
 - (b) on conviction on indictment, to a term of imprisonment not exceeding 14 years or a fine not exceeding \$500,000, or both.

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

32. (1) Where an offence under this Act committed by a body corporate is proved

Offences by
body
corporate

- (a) to have been committed with the consent or the connivance of an officer of the body corporate; or
- (b) to be attributable to any act or default on his part,

the officer as well as the body corporate is guilty of an offence and shall be liable to be proceeded against and punished accordingly.

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

(3) For the purposes of this section "officer" means any director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity.

Penalty for body
corporate.

33. (1) Where a body corporate commits an offence under section 32, it shall be liable on conviction on indictment to a fine not exceeding \$1,000,000.

(2) An officer of a body corporate who knowingly and without lawful excuse, authorizes, acquiesces in, or permits the commission of an offence under this section

- (a) for the benefit of the body corporate; or
- (b) which results in the body corporate being used as a vehicle for the commission of an offence under this section,

commits an offence.

(3) Where a person commits an offence under subsection (2) he is liable

- (a) on summary conviction, to a term of imprisonment not exceeding 10 years or a fine not exceeding \$250,000, or both; or
 - (b) on conviction on indictment, to a term of imprisonment not exceeding 14 years or a fine not exceeding \$500,000, or both.

34. (1) Nothing in sections 25, 27 or 28 applies

Exceptions.

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

(2) The Governor may

- (a) authorise any act which would otherwise contravene sections 25, 27 or 28 in such manner and on such terms as he thinks fit; and
 - (b) withdraw or vary any authorisation given under this subsection.

(3) Any question arising in proceedings for an offence under sections 25, 27 or 28 as to whether anything was done in the course of an armed conflict shall be determined by the Governor.

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

35. Proceedings for an offence committed under this Part outside of the Virgin Islands may be taken, and the offence may for incidental purposes be treated as having been committed in the Virgin Islands.

Extraterritorial Application.

PART III

JURISDICTION

36. (1) Proceedings may be brought in a court of the Virgin Islands in respect of any offence referred to in this Act (other than sections 60, 64 or 71) if

Jurisdiction of Virgin Islands' Court.

- (a) the alleged perpetrator of the offence is arrested

- (i) within the Virgin Islands;
 - (ii) on board any aircraft registered in the Virgin Islands under the Civil Aviation Act 1949 (UK); or
 - (iii) on board any ship or vessel registered under the Merchant Shipping Act 2001; and
- (b) the offence was committed
- (i) in the Virgin Islands, or committed elsewhere, if the act is punishable in terms of the laws of the Virgin Islands, including this Act or in terms of the obligations of the Virgin Islands under international law;
 - (ii) on board any aircraft registered in the Virgin Islands under the Civil Aviation Act 1949 (UK);
 - (iii) on board any ship or vessel registered under the Merchant Shipping Act 2001;
 - (iv) wholly outside of the Virgin Islands, and the person who has committed the act is, after the commission of the act, present in the Virgin Islands; or
- (c) the evidence reveals any other basis recognised by law.

(2) Proceedings may also be brought in a court in the Virgin Islands in respect of any offence referred to in this Act (other than sections 60, 64 or 71), if the acts alleged to constitute the offence occurred wholly outside the Virgin Islands, but were done

- (a) against a belonger;
- (b) by a person who is ordinarily resident in the Virgin Islands but is not a belonger;
- (c) against a Government facility of the Virgin Islands abroad; or
- (d) in an attempt to compel the Government of the Virgin Islands to do or abstain from doing any act.

37. An act or omission committed outside the Virgin Islands which would, if committed in the Virgin Islands, constitute an offence under this Act shall be deemed to have been committed in the Virgin Islands if the person committing the act or omission is present in the Virgin Islands and cannot be extradited to a foreign State having jurisdiction over the offence constituted by such act or omission.

Offences also apply to acts outside the Virgin Islands if alleged perpetrator is in the Virgin Islands and is not extradited.

PART IV **INTERIM AND FINAL DESIGNATION**

38. (1) The Governor may, after consultation with the Secretary of State, make an interim designation of an entity as a terrorist entity if the United Nations Security Council has advised that measures should be taken in relation to an entity because of the risks of terrorist acts being carried on by that entity.

Interim designation as terrorist or associated entity.

(2) The Governor may, after consultation with the Secretary of State, also make an interim designation of an entity if: -

- (a) he reasonably suspects or believes that the entity
 - (i) is or has been involved in one or more terrorist acts;
 - (ii) is owned or controlled directly or indirectly by an entity within subparagraph (i); or
 - (iii) is acting on behalf of or at the direction of an entity within subparagraph (i); and
- (b) he considers that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the entity.

(3) It is immaterial whether the acts of terrorism in question are specific acts of terrorism, terrorist financing or acts of terrorism generally.

(4) The Governor may collect or solicit information to identify entities who meet the criteria under subsection (2) for an interim designation.

(5) On or after designating an entity as a terrorist entity under this Act, the Governor may, after consultation with the Secretary of State, designate one or more other entities as an associated entity under this section.

(6) The Governor may exercise the power given by subsection (5) only if the Governor reasonably suspects or believes that the other entity: -

- (a) is knowingly facilitating the carrying out of one or more terrorist acts by, or with the participation of, the terrorist entity (for example, by financing those acts, in full or in part); or
- (b) is acting on behalf of, or at the direction of,
 - (i) the terrorist entity, knowing that the terrorist entity has done what is referred to in subsection (2); or
 - (ii) an entity designated as an associated entity under subsection (5) and paragraph (a), knowing that the associated entity is doing what is referred to in paragraph (a); or
- (c) is an entity (other than an individual) that is wholly owned or effectively controlled, directly or indirectly, by the terrorist entity, or by an entity designated under subsection (5) and paragraph (a) or paragraph (b); and
- (d) he considers that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the other entity.

Further provisions relating to interim designation.

- 39.** An interim designation under section 38
- (a) may be made in respect of an entity only once, and therefore may not be made in respect of an entity who
 - (i) is the subject of an earlier designation made under section 38 that has not yet expired or been revoked; or
 - (ii) was the subject of a designation under section 38 that has expired or been revoked.
 - (b) takes effect on being made, and shall be made in writing signed by the Governor;
 - (c) shall be publicly notified
 - (i) by a notice (in the prescribed form (if any)) indicating that it has been made being published in the *Gazette* as soon as practicable; and

- (ii) in any other way the Governor directs under section 45(1);
- (d) shall also be notified
 - (i) by a notice (in the prescribed form (if any)) indicating that it has been made being given (in the prescribed manner (if any)) with all reasonable speed to the designated terrorist entity, if practicable, where that entity or a representative of it is in the Virgin Islands; and
 - (ii) by a notice indicating that it has been made being given to any other persons or bodies, as the Governor directs under section 45(2);
- (e) expires on the close of the 30th day after the day on which it is made, unless it has earlier been revoked by the Governor under section 55, or by the making of a final designation in respect of the entity concerned, under section 40;
- (f) operates until it expires or is revoked but, if it is made the subject of any judicial review or other proceedings before a court and is not sooner revoked under section 55, continues to operate until those proceedings are withdrawn or finally determined; and
- (g) can be varied or revoked by the Governor, after consultation with the Secretary of State, at any time, and the designated terrorist entity shall be given written notice of the variation or revocation and the Governor shall take reasonable steps to bring the variation or revocation to the attention of the entities informed of the designation.

40. (1) The Governor may, after consultation with the Secretary of State, make a final designation of an entity if: -

Final designation
as terrorist or
associated entity.

- (a) he reasonably suspects or believes that
 - (i) the entity is or has been involved in one or more terrorist acts;
 - (ii) the entity is owned or controlled directly or indirectly by an entity under subparagraph (i); or

- (iii) the entity is acting on behalf of or at the direction of an entity under subparagraph (i); and
 - (b) he considers that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the entity.
- (2) The Governor may collect or solicit information to identify entities who meet the criteria under subsection (1) for a final designation.
- (3) On or after designating an entity as a terrorist entity under this Act, the Governor may, after consultation with the Secretary of State, designate one or more other entities as an associated entity under this section.
- (4) The Governor may exercise the power given by subsection (3) only if the Governor believes on reasonable grounds that the other entity
- (a) is knowingly facilitating the carrying out of one or more terrorist acts by, or with the participation of, the terrorist entity (for example, by financing those acts, in full or in part); or
 - (b) is acting on behalf of, or at the direction of
 - (i) the terrorist entity, knowing that the terrorist entity has done what is referred to in subsection (1); or
 - (ii) an entity designated as an associated entity under subsection (3) and paragraph (a), knowing that the associated entity is doing what is referred to in paragraph (a); or
 - (c) is an entity (other than an individual) that is wholly owned or effectively controlled, directly or indirectly, by the terrorist entity, or by an entity designated under subsection (3) and paragraph (a) or paragraph (b); and
 - (d) he considers that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the other entity.
- (5) The Governor may make a final designation if the Governor

- (a) has received a request to make a final designation from an authority outside of the Virgin Islands which appears to the Governor to have the function of making requests to freeze funds and other resources; and
- (b) considers it appropriate and reasonable in the circumstances to make the final designation.

(6) The Governor may request another country or territory to give effect to any action initiated by the Virgin Islands under this Part.

(7) The Governor in making the request to another country or territory under subsection (6) shall provide, as much as possible, identifying information and specific information supporting the designation.

41. A final designation under section 40

- (a) may be made in respect of an entity who
 - (i) has never been the subject of an interim designation made under section 38;
 - (ii) is the subject of an interim designation under section 38 that has not yet expired or been revoked; or
 - (iii) was the subject of an interim designation under section 38 that has expired or been revoked.
- (b) may be made in respect of an entity who was earlier the subject of a designation made under section 40 and that has expired or been revoked (the earlier designation) only if it is based on information that became available after the expiry or revocation of the earlier designation and is significantly different from the information on which the earlier designation was based;
- (c) takes effect on being made, and shall be made in writing signed by the Governor;
- (d) shall be publicly notified
 - (i) by a notice (in the prescribed form (if any)) indicating that it has been made being published in the *Gazette* as soon as practicable; and

Further provisions relating to final designation.

- (ii) in any other way the Governor directs under section 45(1);
- (e) shall also be notified
 - (i) by a notice (in the prescribed form (if any)) indicating that it has been made being given (in the prescribed manner (if any)) with all reasonable speed to the designated terrorist entity, if practicable, where that entity or a representative of it is in the Virgin Islands; and
 - (ii) by a notice indicating that it has been made being given to any other persons or bodies, as the Governor directs under section 45(2);
- (f) operates until it expires or is revoked but, if it is made the subject of any judicial review or other proceedings before a court and is not sooner revoked under section 55, continues to operate until those proceedings are withdrawn or finally determined; and
- (g) can be varied or revoked by the Governor, after consultation with the Secretary of State, at any time, and the designated terrorist entity shall be given written notice of the variation or revocation and the Governor shall take reasonable steps to bring the variation or revocation to the attention of the entities informed of the designation.

Entity or
property need not
be in the Virgin
Islands.

42. An entity may be designated under section 38 or section 40 whether or not any of the following is in the Virgin Islands

- (a) the entity;
- (b) property owned or controlled, directly or indirectly, by the entity;
- (c) property derived or generated from any property of the kind referred to in paragraph (b).

Content of notice
to designated
terrorist entity.

43. A notice under section 39(d)(i) or section 41(e)(i) (to notify the designated terrorist entity of the making of the designation under section 38 or section 40)

- (a) shall state the section under which the designation is made, and whether the entity concerned is designated as a terrorist entity or as an associated entity;
- (b) may describe the entity concerned by reference to any name or names or associates or other details by which the entity may be identified;
- (c) shall state that any person who deals with the entity's property may be liable to prosecution for an offence under section 9;
- (d) shall state the maximum period for which the designation may have effect or, if it is made under section 40, the maximum period for which it may have effect without being renewed under section 56(2) or (3);
- (e) shall include general information about how it may be reviewed and revoked; and
- (f) shall include any other information specified for the purposes of this paragraph by regulations made under this Act.

44. (1) Subsection (2) applies to

Content of notice to public and others.

- (a) a notice under section 39(c)(i) or section 41(d)(i) to notify publicly the making of a designation under section 38 or section 40; and
- (b) a notice under section 39(d)(ii) or section 41(e)(ii) to notify specified persons or bodies of the making of a designation under section 38 or section 40.

(2) The notice

- (a) shall state the section under which the designation is made, and whether the entity concerned is designated as a terrorist entity or as an associated entity;
- (b) may describe the entity concerned by reference to any name or names or associates or other details by which the entity may be identified;
- (c) shall state that any person who deals with the entity's property may be liable to prosecution for an offence under section 9;

- (d) shall state the maximum period for which the designation may have effect or, if it is made under section 37, the maximum period for which it may have effect without being renewed under section 56(2) or (3);
- (e) shall include any other information specified for the purposes of this paragraph by regulations made under this Act; and
- (f) may include details of all earlier designations under this Act that have not yet expired or been revoked, so as to provide details of all entities currently designated under this Act.

Further notification of making of designation.

45. (1) The Governor may, for the purposes of section 39(c)(ii) or section 41(d)(ii), direct that the making of a designation under section 38 or section 40 be publicly notified, other than by notice in the *Gazette*, and either in the prescribed manner or form or both, if any, or in any other manner or form or both that the Governor thinks fit.

(2) The Governor may, for the purposes of section 39(d)(ii) or section 41(e)(ii), direct that notice of the making of a designation under section 38 or section 40 be given, either in the prescribed manner or in any other manner that the Governor thinks fit, to any persons or bodies that the Governor thinks fit, for example, to any registered banks or other persons

- (a) who may possess property which may be property to which section 9(1) relates; or
- (b) who may make available property or services to which section 10(1) may relate.

Designations not invalid for certain reasons.

46. No designation under section 38 or section 40 shall be invalid only by reason that

- (a) the entity concerned was not, before the designation was made, given notice that it may be made, or a chance to comment on whether it should be made, or both; or
- (b) the making of it has not been notified or notice of the making of it has not been given, in the manner or form required by section 39 or section 41.

Changes of description of designated entities.

47. (1) If satisfied that an entity designated under section 40 should have a description other than that under which the entity was designated, or than the description stated in the most recent notice under this subsection relating to the

entity, the Governor may, by signing a written notice to that effect, state a new description for the entity.

(2) The notice shall identify the entity by reference to

(a) its most recent description; and

(b) the notice in the *Gazette* in which that description was stated.

(3) Sections 41(d) and (e) apply to the notice as if it were a designation under section 37; and section 45(2) applies accordingly.

(4) The stating of the new description does not affect the designation of the entity and, in particular, does not affect the application of section 56(1) to it.

48. Designated entities shall be subject to the prohibitions under Schedule 4 and the Governor shall apply the designation procedures for making a proposal for designation under the said Schedule.

Prohibitions and
Designation
Procedures.
Schedule 4

PART V **TRAVEL BAN AND ARMS EMBARGO**

49. A designated terrorist entity, other than a designated terrorist entity who is a belonger as defined under section 2 of the Constitution, shall not be allowed entry into, or transit through, the Virgin Islands.

Travel ban.
U.K.S.I 2007
No. 1678

50. (1) Notwithstanding section 49,

Exemptions to
travel ban.

(a) if there are reasonable grounds to believe that a designated terrorist entity has committed any offence under this Act, the Governor shall take appropriate measures to allow that individual entry into, or transit through, the Virgin Islands and to ensure his presence is for the purposes of prosecution or extradition; or

(b) the Governor may allow a designated terrorist entity to enter into, or transit through, the Virgin Islands in relation to judicial proceedings other than those related to an offence under this Act, including when it is necessary for the purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of any other offence.

(2) When the presence of a designated terrorist entity is not required under subsection (1)(a) and (b), section 49 shall apply.

(3) The Governor may submit to the relevant United Nations Security Council Committee a request for authorisation to grant entry or transit of any designated terrorist entity for reasons different from those specified in subsection (1)(a) and (b).

Arms embargo

51. A person who supplies, sells, or transfers, directly or indirectly, to a designated terrorist entity, arms and related material of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned as well as technical advice, assistance or training related to military activities, whether this conduct is carried out from the Virgin Islands or by Virgin Islands' nationals living abroad or by anyone using flag vessels or aircrafts from the Virgin Islands, commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 14 years and to a fine not exceeding \$500,000.

PART VI

MATERIAL ON WHICH DESIGNATIONS MAY BE BASED

Information available to Governor.

52. In considering whether to make or to revoke a designation under section 38 or section 40 or section 55, the Governor may take into account any relevant information, including classified security information.

Classified security information defined.

53. (1) In this Act, “classified security information” means information

- (a) relevant to whether there are or may be grounds for designating an identifiable entity under this Act as a terrorist entity or as an associated entity;
- (b) held by a specified agency; and
- (c) that the Head of the specified agency certifies in writing (in the prescribed form (if any)) that the information cannot be disclosed except to the extent provided in section 57 because, in the opinion of the Head of the specified agency
 - (i) the information is information of a kind specified in subsection (2); and
 - (ii) disclosure of the information would be disclosure of a kind specified in subsection (3).

(2) Information falls within subsection (1)(c)(i) if it

- (a) might lead to the identification of, or provide details of, the source of the information, the nature, content, or scope of the information, or the nature or type of the assistance or operational methods available to the specified agency;
- (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in pursuance of any of the functions of the specified agency; or
- (c) has been provided to the specified agency by the Government of another country or by an agency of a Government of another country or by an international organisation, and is information that cannot be disclosed by the specified agency because the government or agency or organisation by which the information has been provided will not consent to the disclosure.

(3) Disclosure of information falls within subsection (1)(c)(ii) if the disclosure would be likely

- (a) to prejudice the security or defence of the Virgin Islands or the international relations of the Government of the Virgin Islands;
- (b) to prejudice the entrusting of information to the Government of the Virgin Islands on a basis of confidence by the Government of another country or any agency of such a Government, or by any international organisation;
- (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
- (d) to endanger the safety of any person.

54. Nothing in this Act prevents a person from bringing any judicial review or other proceedings before a court arising out of, or relating to, the making of a designation under this Act.

Judicial review of designations.

55. (1) The Governor may at any time revoke a designation made under section 38 or section 40, either on the Governor's own initiative or on an application in writing for the purpose

Revocation of designations.

- (a) by the entity who is the subject of the designation; or

- (b) by a third party with an interest in the designation that, in the Governor's opinion, is an interest apart from any interest in common with the public.

(2) Without limiting subsection (1)(b), a party may have an interest in a designation apart from any interest in common with the public through

- (a) possessing or controlling, or having an interest in, property to which section 9 applies as a result of the designation;
- (b) making available property or services to which section 10 applies as a result of the designation; or
- (c) having an especially close association with the designated terrorist entity or its interests or objectives.

(3) Subject to subsection (4), an application under subsection (1) for revocation of a designation shall be based on the grounds: -

- (a) that the designation should not stand because the entity concerned does not satisfy the test stated in section 38(1) or (3) or, as the case requires, in section 40(1) or (3); or
- (b) that the entity concerned is no longer involved in any way in acts of the kind that made, or that would make, the entity eligible for designation.

(4) The Governor may not refuse an application to revoke a designation under section 38 or section 40 without having first consulted with the Attorney General about the proposed refusal.

(5) Except as provided in subsection (4), subsection (1) overrides every other provision of this Act.

Designations
under section 40
to expire after 3
years unless
renewed by
Governor.

56. (1) A designation under section 40 expires 3 years after the date on which it takes effect, unless it is earlier

- (a) revoked under section 55; or
- (b) renewed by an order under subsection (2) or (3).

(2) The Governor may order that a designation made under section 40 remain in force for a further 3 years after the making of the order if the Governor is satisfied that there are still reasonable grounds as set out in section 40 for an entity to be designated under that section.

(3) Before the expiry of an order under subsection (2), the Governor may make another order renewing the designation concerned for a further 3 years.

(4) After making an order under subsection (2) or (3), the Governor shall report to the National Security Council on the renewal of the designation.

(5) The Governor may make any number of orders under subsection (3) in respect of the same designation.

U.K. S.I. 2007
No. 1678

(6) For the purposes of this section, “National Security Council” means the Council established under section 57 of the Virgin Islands Constitution, 2007.

57. (1) This section applies to any proceedings in a court arising out of, or relating to, the making of a designation under this Act.

(2) The court shall determine the proceedings on the basis of information available to it (whether or not that information has been disclosed to or responded to by all parties to the proceedings).

(3) If information presented, or proposed to be presented, by the Crown includes classified security information

(a) except where proceedings are before the Court of Appeal, the proceedings shall be heard and determined by a Judge; and

(b) the court shall, on a request for the purpose by the Attorney General, and if satisfied that it is desirable to do so for the protection of either all or part of the classified security information, receive or hear the relevant part or all of the classified security information in the absence of

(i) the designated terrorist entity concerned; and

(ii) all legal practitioners, if any, representing that entity; and

(iii) members of the public.

(4) Without limiting subsection (3), if the designated terrorist entity concerned participates in proceedings

(a) the court shall approve a summary of the information of the kind referred to in section 53(2) that is presented by the Attorney General except to the extent that a summary of any particular part of the information would itself involve

Procedure in proceedings involving classified security information.

disclosure that would be likely to prejudice the interests referred to in section 53(3); and

- (b) on being approved by the court a copy of the statement shall be given to the entity concerned.

(5) Nothing in this section limits section 24 of the Crown Proceedings Ordinance or any rule of law that authorises or requires the withholding of a document or the refusal to answer a question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

(6) Subsections (2) to (5) apply despite any enactment or rule of law to the contrary.

Ancillary general practices and procedures to protect classified security information.

58. (1) Any general practices and procedures that may be necessary to implement the procedures specified in section 57 and to ensure that classified security information is protected in all proceedings to which that section relates shall be agreed between the High Court Judge and the Attorney General as soon as practicable after the commencement of this section, and revised from time to time.

(2) Without limiting the generality of subsection (1), general practices and procedures may be agreed under that subsection on the following matters

- (a) measures relating to the physical protection of the information during all proceedings to which section 57 relates;
- (b) the manner in which the information may be provided to the court;
- (c) measures to preserve the integrity of the information until any appeals are withdrawn or finally determined.

Notification of revocation, expiry, or invalidity of designations.

59. (1) If a designation under this Act expires or is revoked or is found to be or to have been invalid, under section 52 or section 53 or by virtue of any judicial review or other proceedings before a court, the Governor shall

- (a) ensure that notice of the revocation or expiry or invalidity is published in the *Gazette* as soon as practicable; and
- (b) take all reasonable steps to ensure that notice of the revocation or expiry or invalidity is given, in the manner and form required by section 39(d) or section 41(e), to every person and body specified in subsection (2) who is not already aware of it.

(2) The persons and bodies referred to in subsection (1)(b) are every person or body to whom notice of the making of the designation was given under section 39(d) or section 41(e).

PART VII

DUTY TO REPORT SUSPICIOUS ACTIVITIES/TRANSACTIONS AND SUSPICIONS RELATING TO PROPERTY REGARDING ENTITIES INVOLVED IN TERRORIST ACTIVITY

60. (1) This section applies to

- (a) the requirement of a reporting entity to report any suspicious activity/transaction regarding terrorist financing and terrorist acts;
- (b) property owned or controlled, directly or indirectly, by a designated terrorist entity; and
- (c) property derived or generated from any property of the kind specified in paragraph (b).

Mandatory reporting requirement and reporting of suspicions of property owned or controlled by designated terrorist entities.

(2) A person who knows or suspects, or has reasonable grounds for knowing or suspecting, through the course of his trade, profession, business or employment, that:

- (a) another person is engaged in the financing of terrorism; or
- (b) another person is seeking to engage in one or more terrorist acts,

is under an obligation to report such information or other matter, as soon as is reasonably practicable after it comes to his attention, to the Financial Investigation Agency in accordance with section 55 of the Anti-money Laundering and Terrorist Financing Code of Practice.

(3) A reporting entity or other person in possession or immediate control of property that the reporting entity or other person suspects on reasonable grounds is or may be property to which this section applies shall, as soon as is reasonably practicable after forming that suspicion, report it to the Financial Investigation Agency, in accordance with section 61 of this Act.

(4) A person commits an offence if:

- (a) he knows or suspects that a report of suspicious information is being or had been made to the Financial Investigation Agency under subsections (2) or (3); and
- (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the report of suspicious information.

(5) In proceedings against a person for an offence under subsection (4), it is a defence to prove that he did not know or suspect that the disclosing of information to any other person was likely to be prejudicial in the way mentioned under subsection (4)(b).

- (6) A person who commits an offence under subsection (4) is liable:
 - (a) on summary conviction, to a term of imprisonment not exceeding 3 years, or to a fine not exceeding \$150,000, or both; or
 - (b) on conviction on indictment, to a term of imprisonment not exceeding 5 years or to a fine not exceeding \$500,000, or both.

(7) For the purposes of subsections (2) and (3), the term “reasonably practicable” means filing within a few days, no more than 5 working days, from the date the suspicion was formed.

(8) Nothing in subsections (2) and (3) requires any legal practitioner to disclose any privileged communication as defined in section 62.

(9) A person who contravenes subsections (2) or (3) commits an offence and is liable

- (c) on summary conviction, to a term of imprisonment not exceeding 3 years, or to a fine not exceeding \$150,000, or both; or
- (d) on conviction on indictment, to a term of imprisonment not exceeding 5 years or to a fine not exceeding \$500,000, or both.

(10) In this section, “reporting entity” has the meaning referred to in section 61(3).

<p>61. (1) Except as provided in subsection (2), every report under section 60(3) shall</p> <ul style="list-style-type: none"> (a) contain the details specified in Schedule 3; (b) if made by a reporting entity, be signed by someone authorised to sign reports under section 60(3) on behalf of the reporting entity, unless the report is forwarded by email or another similar means of communication; (c) if made by any other person, be signed by the person or by someone authorised to sign reports under section 60(3) on behalf of the person, unless the report is forwarded by email or another similar means of communication; and (d) be forwarded, in writing, to the Financial Investigation Agency <ul style="list-style-type: none"> (i) by way of hand delivery; (ii) by way of transmission by fax; or (iii) by another means including, without limitation, by email or another similar means of communication that may be agreed from time to time between the Financial Investigation Agency and the reporting entity, as the case may be, or person concerned. <p>(2) If the urgency of the situation requires, a report under sections 60(2) and (3) may be made orally to the Director of the Financial Investigation Agency, but in any case of that kind the reporting entity or other person shall, as soon as practicable, forward to the Director of the Financial Investigation Agency a written report in the manner specified in this Act.</p> <p>(3) For the purpose of this Part and Schedule 3, a reporting entity includes</p> <ul style="list-style-type: none"> (a) a person that is engaged in a relevant business as defined under regulation 2(1) of the Anti-Money Laundering Regulations, 2008; S.I No. 12 of 2008 (b) a non-financial business that is designated under the Non-financial Business (Designation) Notice, 2008; S. I No. 14 of 2008 (c) a non-profit organisation within the meaning of section 2 of the Non-Profit Organisations Act, 2012; and S.I No. 12 of 2012 	Nature of suspicious activity/transaction report regarding property owned or controlled by designated terrorist entities. Schedule 3
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- Privileged communication defined.
- (d) any other person that is required to comply with this Act, the Proceeds of Criminal Conduct Act, the Anti-money Laundering Regulations, the Anti-Money Laundering and Terrorist Financing Code of Practice and any other code, guideline, practice direction or directive that are issued by the Financial Services Commission or the Financial Investigation Agency.

62. (1) Subject to subsection (2), for the purposes of section 60, a communication is a privileged communication only if

- (a) it is a confidential communication, whether oral or written, passing between
- (i) a legal practitioner in his professional capacity and another legal practitioner in that capacity; or
 - (ii) a legal practitioner in his professional capacity and his client, whether made directly or indirectly through an agent of either;
- (b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and
- (c) it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.

Protection of persons.

63. (1) For the purposes of section 60(2), no civil, criminal, or disciplinary proceedings shall lie against a person who reports a suspicion to the Financial Investigation Agency

- (a) in respect of the report or disclosure, or the manner of the report or disclosure, by that person, of the information referred to in the report filed under section 60(2); or
- (b) for any consequences that follow from the report or disclosure of that information.

(2) Subsection (1)(a) and (b) do not apply if the information was reported or disclosed in bad faith.

(3) For the purposes of section 60(3), a person has immunity from civil, criminal, or disciplinary proceedings under subsection (4) if the person

- (a) acts in purported compliance with the requirements of section 9 or section 10 or both;
- (b) reports a suspicion to the Financial Investigation Agency under section 60(3); or
- (c) otherwise discloses information to the Financial Investigation Agency in connection with a report of that kind.

(4) Subject to subsection (5), no civil, criminal, or disciplinary proceedings shall lie against a person to whom subsection (3) applies: -

- (a) in respect of the acts of the person in good faith and with reasonable care in purported compliance with the requirements of section 9 or section 10 or both;
- (b) in respect of the report or disclosure, or the manner of the report or disclosure, by that person, of the information referred to in subsection (3)(b) and (c); or
- (c) for any consequences that follow from the report or disclosure of that information.

(5) Subsection (4)(b) and (c) do not apply if the information was reported or disclosed in bad faith, or without reasonable care having been taken in determining, before the report or disclosure, that the property is or may be property to which section 55(3) applies.

64. (1) This section applies in respect of the following information

Protection of
identity of
persons making
reports.

- (a) any report under section 60;
- (b) any information the disclosure of which will identify, or is reasonably likely to identify, any person
 - (i) as a person who, in his capacity as an officer, employee, or agent of a reporting entity, has handled or identified property that was the subject of a report under section 60(3);
 - (ii) as a person who has prepared a report under section 60; or
 - (iii) as a person who has made a report under section 60;

(c) any information that discloses or is reasonably likely to disclose the existence of a report under section 60.

(2) No investigating officer of the Financial Investigation Agency may disclose any information to which this section applies except for the purposes of the enforcement of this Act, or for the purposes of the detection, investigation, and prosecution of an offence under this Act.

(3) Nothing in subsection (2) limits the provision of assistance under the Criminal Justice (International Co-operation) Act, 1993.

No. 8 of 1993

(4) No person may disclose, in any judicial proceeding, within the meaning of section 110 of the Criminal Code, any information to which this section applies, unless the Judge or Magistrate or, as the case requires, the person presiding at the proceeding, is satisfied that the disclosure of the information is necessary in the interests of justice.

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(5) A person who knowingly contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding \$15,000.

Detention of
goods suspected
to be terrorist
property.

65. (1) A customs officer or authorised person may, without warrant, seize and detain goods if

(a) the goods came to his attention, or into his possession, during a search, inspection, audit, or examination under

No. 10 of 2010

(i) the Customs Management and Duties Act, 2010; or

(ii) an applicable enactment which relates to reporting of imports and exports of cash;

(b) the goods are in the Virgin Islands and he is satisfied that they either

(i) are being, or are intended to be, exported from the Virgin Islands; or

(ii) are being, or have been, imported into the Virgin Islands; and

(c) he has good cause to suspect

(i) that the goods are property of any kind owned or controlled, directly or indirectly, by an entity; and

- (ii) that the entity is a designated terrorist entity; or
- (d) he has good cause to suspect
 - (i) that the goods are cash or cash equivalents owned or controlled, directly or indirectly, by an entity; and
 - (ii) that the entity is an entity that carries out, or participates in the carrying out of, one or more terrorist acts.

(2) Where anything is seized or detained by a customs officer or authorised person under subsection (1) the customs officer or authorised person shall immediately inform the Commissioner of Customs of the seizure or detention in writing stating the full details of the things seized or detained and the grounds for such seizure and detention.

(3) For the purposes of this section and sections 66 to 70, “cash equivalents” includes, without limitation, bearer negotiable or other monetary instrument, any postal orders and precious stones and metals.

66. (1) The power to detain goods under section 65 does not extend to, and the customs officer as authorised by the Commissioner of Customs shall if practicable return immediately, cash seized under section 65 if the customs officer is satisfied that the cash is, or that things for which it might be exchanged are, necessary to satisfy the essential human needs

- (a) of an individual or a dependant of an individual from whom the cash has been seized; and
- (b) arising on, or within 7 days after, the date on which the detention would otherwise be effected.

Return of cash necessary to satisfy essential human needs.

(2) Nothing in subsection (1) requires the customs officer as authorised by the Commissioner of Customs to return any cash that the customs officer is satisfied is not necessary for the purpose specified in that subsection.

(3) If the 7 day period referred to in section 68(1)(a) is extended under section 66, subsection (1) applies to the extension, and the reference in subsection (1)(b) to 7 days shall be read as a reference to the number of days, not exceeding 21, of that 7 day period as extended.

67. (1) Reasonable force may be used if it is necessary for any of the following purposes:

- (a) to seize goods under section 65;

Further provisions about detention under section 65.

(b) to detain goods under section 65.

(2) If the person from whom goods have been seized and detained under section 65 is identified but is not present when the seizure and detention occurs, for instance, because the goods concerned are in mail or cargo or in unaccompanied baggage, the customs officer shall make all reasonable efforts to notify that person of the detention and seizure as soon as is reasonably practicable.

(3) Goods detained under section 65 shall be taken to such place of security as a customs officer or authorised person directs, and there detained, unless section 70 applies.

No. 6 of 2010

(4) Section 134 of the Customs Management and Duties Act, 2010, which protects persons acting under authority of that Act, applies, with all necessary modifications, in relation to the exercise of a power under any of sections 65 to 70 of this Act.

(5) Nothing in section 65 limits or affects powers under the following Acts:

No. 6 of 2010

(a) Customs Management and Duties Act, 2010;

No. 5 of 1997

(b) Proceeds of Criminal Conduct Act, 1997;

No. 5 of 1992

(c) Drug Trafficking Offences Act, 1992;

(d) Anti-Money Laundering and Terrorist Financing Code of Practice, 2008;

No. 8 of 1993

(e) Criminal Justice (International Co-operation) Act, 1993.

Return of goods
detained under
section 65.

68. (1) In this section, “investigation period”, in relation to goods seized and detained under section 65

(a) means the period of 7 days after the date on which the goods were seized and detained; and

(b) includes any extension of that period granted by a Judge or Magistrate under section 69.

(2) Subject to subsection (3), goods seized and detained under section 65 shall be returned to the person from whom they were seized as soon as is reasonably practicable after whichever of the following occurs first:

(a) the completion of all relevant investigations if they show either

- (i) that the goods are not property of the kind referred to in section 65(1)(c)(i) or (d)(i); or
 - (ii) that the entity is not an entity of the kind referred to in section 65(1)(c)(ii) or (d)(ii);
- (b) the expiry of the investigation period.

(3) The customs officer need not return the goods as provided in subsection (2), and may continue to detain them, based on a direction by the Governor under section 72, that the Commissioner of Customs maintains custody and control of them, if the Commissioner of Customs is advised by, or on behalf of, the Governor

- (a) that the goods are property of any kind owned or controlled, directly or indirectly, by an entity; and
- (b) that the entity is a designated terrorist entity.

69. (1) The 7-day period in section 68(1)(a) may be extended, once only, by order of a Judge or Magistrate for a reasonable period up to a further 14 days if, on an application for the purpose made before the expiry of that 7-day period, that court is satisfied

- (a) that the good cause to suspect required by section 65(1)(c) or (d) exists; and
- (b) that the extension to be granted is necessary to enable investigations in or outside the Virgin Islands in relation to the goods or entity to be completed.

(2) The application shall be made in writing and served on the person from whom the goods were seized, if that person can be identified and located, and shall include the following particulars

- (a) a description of the goods detained;
- (b) the date on which the detention commenced;
- (c) a statement of the facts supporting the good cause to suspect required by section 65(1)(c) or (d); and
- (d) a statement of reasons why the extension sought is necessary to enable investigations in or outside the Virgin Islands in relation to the goods or entity to be completed.

Extension of 7-day period in section 65(1)(a).

Custody of certain goods detained under section 65.

(3) The person from whom the goods were seized is entitled to appear and be heard on the application.

(4) The customs officer shall make all reasonable efforts to notify the person from whom the goods were seized, at least 24 hours before the hearing of the application, of the time and place of that hearing.

70. (1) If goods detained under section 65 are a vessel, vehicle, or animal, a customs officer may leave those goods in the custody of either

- (a) the person from whom the goods have been seized; or
- (b) any other person authorised by the customs officer and who consents to having such custody.

(2) A person who has the custody of goods under subsection (1) shall, until a final decision is made under section 68 as to whether or not they are to be returned, hold them in safekeeping, without charge to the Crown and in accordance with any reasonable conditions that may be imposed by the customs officer.

(3) A person to whom subsection (2) applies shall in addition

- (a) make the goods available to a customs officer on request;
- (b) not alter, or dispose of, or remove the goods from the Virgin Islands, unless he is authorised to do so by a customs officer; and
- (c) return the goods on demand to the custody of the customs officer.

Offences in relation to certain detained goods.

71. (1) A person who, having custody of goods pursuant to section 67(1) acts in breach of any requirement of, or imposed pursuant to, section 67(2) or (3), commits an offence.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding \$25,000.

(3) A person who, without the permission of the Commissioner of Customs, takes or carries away or otherwise converts to his own use, goods to which section 70(2) and (3) applies, commits an offence.

(4) A person who commits an offence under subsection (3) is liable on summary conviction to a term of imprisonment of 18 months, or to a fine not exceeding an amount equal to 5 times the value of the goods to which the offence relates, or both.

PART VIII

MANAGEMENT OF PROPERTY

72. (1) The Governor may, if satisfied that it is desirable to do so, direct the Commissioner of Customs to take or maintain custody and control of property in the Virgin Islands, if an entity is subject to a designation under section 40 or is a United Nations listed terrorist entity and the Governor believes on reasonable grounds that the property is

Direction that
Commissioner of
Customs take or
maintain control of
property.

- (a) property owned or controlled, directly or indirectly, by the entity; or
- (b) property derived or generated from property of the kind referred to in paragraph (a).

(2) The direction

- (a) shall be in writing signed by the Governor;
- (b) shall specify the property concerned; and
- (c) may be subject to any terms and conditions the Governor specifies.

(3) A person who has custody or control of property specified in the direction shall allow the Commissioner of Customs to take custody and control of that property in accordance with the direction.

73. (1) Notice of the making of a direction under section 72 shall be given

Notice of
direction.

- (a) with all reasonable speed to the designated terrorist entity concerned, if practicable, where that entity or a representative of it is in the Virgin Islands; and
- (b) to any other person that the Governor has reason to believe may have an interest in the property concerned.

(2) No direction under section 72 is invalid just because notice of the making of it has not been given in the manner required by subsection (1)(a) or (b).

74. (1) Having made a direction under section 72, the Governor may

- (a) make another direction varying

Variation,
revocation, or
expiry of
direction.

- (i) the property to which the direction relates; or
 - (ii) terms and conditions to which the direction is subject;
- (b) revoke the direction under section 72.

(2) The powers given by subsection (1)(a) and (b) are exercisable at any time after the making of the direction, and either on the Governor's own initiative or on an application for the purpose in writing by or on behalf of the Attorney General or a person who claims an interest in the property concerned.

(3) If not earlier revoked, a direction under section 72 in relation to property of an entity expires

- (a) on the entity ceasing to be subject to the designation under section 40;
- (b) on the entity ceasing to be a United Nations listed terrorist entity; or
- (c) on a forfeiture order being made under section 76 in relation to the property concerned, in which case Part IV of the Proceeds of Criminal Conduct Act, 1997, with the necessary modification applies.

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Further provisions on management of property.

75. The provisions of the Proceeds of Criminal Conduct Act, 1997 shall apply, with any necessary modifications, to property that is the subject of a direction under section 69, as if the direction were a restraining order under that Act.

PART IX FORFEITURE ORDERS, ETC

Forfeiture Orders.

76. (1) Subject to subsection (7), a Judge or Magistrate may order the forfeiture of property to the Crown, for the purposes of sections 9, 19, 20, 21 or 22, if the court is satisfied, on an application made by the Director of Public Prosecutions, that the property is terrorist property, whether or not the person is convicted of an offence under sections 9, 19, 20, 21 or 22.

(2) The standard of proof in proceedings on an application under subsection (1) shall be on a balance of probability.

(3) Subject to subsection (7), where, in a trial for an offence under sections 9, 19 or 20 of this Act, it is shown to the satisfaction of the court that the

property is terrorist property, the court may order the forfeiture of any such property

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

(4) Subject to subsection (7), where, in a trial for an offence under sections 21 or 22 of this Act, it is shown to the satisfaction of the court that the property is terrorist property, the court may order the forfeiture of the property

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

(5) Subject to subsection (7), where, in a trial for an offence under sections 9, 19, 20, 21 or 22, it is shown to the satisfaction of the court that the property is terrorist property, the court may order the forfeiture of any such property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.

(6) In considering whether to make an order under this section in respect of such property, the court may have regard to

- (a) any undue hardship that is reasonably likely to be caused to any person by the operation of such an order; or
- (b) the nature and extent of the entity's interest in the property, and the nature and extent of other interests in it, if any.

(7) Where a person, other than the person on trial, claims to be the owner of or otherwise interested in anything subject to forfeiture under this section the court shall not order anything to be forfeited unless an opportunity has been given to such person to show cause, within 21 days from the date of the Court's ruling, why the order should not be made.

(8) Any party to proceedings under this section who is aggrieved by an order of the court may, within 30 days from the date on which the order is made, appeal to the Court of Appeal which may make such order as it thinks appropriate.

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

- (a) require any of the forfeited property to be paid into the Asset Seizure Forfeiture Fund established under section 14(1) of the Asset Seizure and Forfeiture Act, 2020 or handed over to the Asset Seizure and Forfeiture Management Committee established under section 4 of the Asset Seizure and Forfeiture Act, 2020;
- (b) direct any of the forfeited property other than money or land to be sold or otherwise disposed of in such manner as the court may direct and the proceeds if any to be paid into the Asset Seizure and Forfeiture Fund;
- (c) appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property, to realise such property in such manner as the court may direct and to pay the proceeds into the Asset Seizure and Forfeiture Fund; or
- (d) direct a specified part of any forfeited money, or of the proceeds of the sale, disposal or realisation of any forfeited property to be paid by the Asset Seizure and Forfeiture Management Committee to a specified person falling under section 76(7).

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

78. (1) A receiver appointed under section 77 shall be entitled to be paid his remuneration and expenses by the Asset Seizure and Forfeiture Management Committee out of the proceeds of the property realised by the receiver and paid into the Asset Seizure and Forfeiture Fund under section 77(1)(c).

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

(3) A receiver appointed under section 77 is not liable to any person in respect of any loss or damage resulting from action which

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

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

79. (1) The court may make a restraint order prohibiting a person from dealing with any terrorist property, subject to such conditions and exceptions as may be specified in the order. Restraint Order.

(2) Without prejudice to the generality of subsection (1), the court may, in making a restraint order, include such provision as it thinks fit for living and legal expenses.

(3) A restraint order may apply

- (a) to all terrorist property held by a specified person, whether the property is described in the order or not; and
- (b) to terrorist property held by a specified person, being property transferred to him after the making of the order.

(4) A restraint order

- (a) may be made only on an application by the Director of Public Prosecutions;
- (b) may be made on an *ex parte* application to a Judge in Chambers; and
- (c) shall provide for notice to be given to persons affected by the order.

(5) A restraint order

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged on the conclusion of the proceedings or application in question.

(6) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(7) Where the court has made a restraint order, it may at any time appoint a receiver

- (a) to take possession of any terrorist property; and
- (b) in accordance with the court's direction, to manage or otherwise deal with any property in respect of which he is appointed, subject to such conditions and exceptions as may be specified by the court, and may require any person having possession of property in respect of which a receiver is appointed under this subsection to give possession of the property to the receiver.

(8) Where the court has made a restraint order, a police officer may, for the purpose of preventing any terrorist property being removed from the Territory, seize the property.

(9) Property seized under subsection (8) shall be dealt with in accordance with the court's directions.

(10) This section shall not have effect in relation to a property that is subject to a charging order.

(11) For the purposes of subsection (1), a reference to dealing with property includes

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

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(12) The Registered Land Ordinance shall apply in relation to

- (a) restraint orders, as it applies in relation to orders affecting land made by the court for the purpose of enforcing judgments; and
- (b) applications for restraint orders, as it applies in relation to other pending land actions.

Compensation.

80. (1) This section applies where a restraint order is discharged under section 79(5).

(2) This section also applies where a forfeiture order or a restraint order is made in or in relation to proceedings for an offence under sections 9, 19, 20, 21 or 22 and which

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

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

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

- (a) there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned;
- (b) the person concerned was or was acting as a member of the Royal Virgin Islands Police Force or was acting under the authority of the Director of Public Prosecutions;
- (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; and
- (d) having regard to all the circumstances, it is appropriate to order compensation to be paid.

(5) A person who makes an application for compensation must in claiming the loss suffered under subsection 4(c) provide in the application to the court:

- (d) documentary evidence detailing the loss being claimed; and
- (e) documentary evidence that proves a similar level of income or business turnover for the preceding 3 years, starting from

the date prior to the alleged offence or occurrence that led to the losses claimed being incurred.

(6) For the purposes of subsections 5(a) and (b), documentary evidence means financial records such as bank statements, social security payment records and income tax payment records, which can be validated by a financial institution or the appropriate Government departments.

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

(8) The amount of compensation to be paid under this section shall be such as the court deems fit in all the circumstances of the case.

Forfeiture of terrorist cash.

81. (1) Schedule 8 which deals with the forfeiture of terrorist cash in civil proceedings before the Magistrate's Court shall have effect.

Third Parties may apply for relief.

82. (1) A person who claims an interest in property that is in relation to proceedings for an offence under sections 9, 19, 20, 21 or 22 (not being property to which subsection (2) applies) may apply to the court for an order under section 84.

(2) A person who claims an interest in property that is the subject of an application for an order of forfeiture of property to the Crown under section 76, may, before the order under section 76 is made, apply to the court for an order under section 84.

(3) If not prevented by section 83, a person who claims an interest in property forfeited to the Crown under an order under section 76 may apply to the court for an order under section 84

- (a) within 6 months after the date on which the order under section 76 is made; or
- (b) within any further time the court allows on an application for that purpose made before or after the end of that 6-month period.

(4) No entity who is the subject of the designation concerned may make an application under this section.

(5) A person who makes an application under this section shall serve notice of the application on the Director of Public Prosecutions, who is a party to any proceedings on the application.

83. (1) A person on whom notice of the application for an order under section 76, or of any amendment to the application, was served, or who appeared at the hearing of the application, may apply under section 82(3) only with the leave of the court.

Limits on applications under section 82(3).

(2) The court shall not grant leave unless there are special reasons for doing so.

(3) Without limiting the generality of subsection (2), the court may grant leave if it is satisfied

- (a) that the applicant had good reason for failing to attend the hearing of the application for an order under section 76; or
- (b) that evidence proposed to be adduced by the applicant in connection with the application under section 82(3) was not reasonably available to the applicant at the time of the hearing of the application for the order under section 76.

84. (1) Subsection (2) applies where

Court may grant relief to third party.

- (a) a person applies to the High Court under section 82(1), (2) or (3) in respect of an interest in property; and
- (b) the court is satisfied that the applicant's claim to that interest is valid.

(2) The court shall, subject to subsection (3), make an order declaring the nature, extent, and value of the applicant's interest in the property, and

- (a) if the application is under section 82(1), declaring that the interest is no longer subject to the prohibition in section 9 and regarding sections 19, 20, 21 and 22, declaring that the interest was acquired in good faith and for value;
- (b) if the application is under section 82(2), directing that the interest shall not be included in an order under section 76 made in respect of the proceedings that gave rise to the application; and
- (c) if the application is under section 82(3), either
 - (i) directing the Crown to transfer the interest to the applicant; or

(ii) declaring that there is payable by the Crown to the applicant an amount equal to the value of the interest declared by the court.

(3) The court may, if it thinks fit, refuse to make an order under subsection (2), if it is satisfied that

- (a) the applicant was knowingly involved in any way in the carrying out of the terrorist acts that are the basis of the designation of the entity as a designated terrorist entity, or is wholly owned or effectively controlled, directly or indirectly, by that entity; or
- (b) if the applicant acquired the interest at the time of or after the designation of the entity as a designated terrorist entity, the applicant did not acquire the interest in the property in good faith and for value, without knowing or having reason to believe that the property was, at the time of the acquisition, property subject to the prohibition in section 9 or property for the purposes of facilitating terrorist acts.

(4) Nothing in subsection (3) requires a refusal to make an order under subsection (2) or limits the circumstances in which the court may refuse to make an order of that kind.

Appeal against decision on application under section 76.

85. (1) A party to an application under section 76 may appeal to the Court of Appeal against the decision of the court.

(2) Subject to sections 57 and 58, the procedure for the appeal shall be in accordance with rules of court.

(3) For the avoidance of doubt, the standard of proof on appeal under subsection (1) shall be that applicable to civil proceedings.

PART X CONFISCATION ORDERS, ETC

Definitions in this Part.

86. For the purposes of this Part

“date of conviction” is

- (a) the date on which the defendant was convicted of the offence concerned; or

- (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

“defendant” means a person against whom proceedings have been instituted for an offence to which this Act applies.

“relevant day” means the first day of the period of six years ending with –

- (a) the day when proceedings for the terrorist offence concerned were started against the defendant; or
- (b) if there are two or more terrorist offences and proceedings for them were started on different days, the earliest of those days.

87.(1) The court shall proceed under this section if the following conditions are satisfied

- (a) the defendant has been convicted of an offence or offences under this Act;
- (b) the Crown asks the court to proceed under this Part; or
- (c) the court believes it is appropriate for it to do so.

(2) The court shall proceed as follows:

- (a) it must determine whether the defendant has committed a terrorist offence under this Act, including the commission of or any involvement in one or more terrorist acts, the handling or possession of terrorist property and the financing of terrorism; and
- (b) whether he has benefited from such terrorist offence.

(3) The court must decide these issues on a balance of probabilities.

(4) If the court determines under subsection (2)(b) that the defendant has benefited from a terrorist offence under this Act it must: –

- (a) determine the recoverable amount,
- (b) exclude in the determination any property that is subject to a cash forfeiture order or a forfeiture order under the Proceeds of Criminal Conduct Act, 1997, the Drug Trafficking Offences Act, 1992, or any other enactment; and

(c) make a confiscation order requiring him to pay that amount, to the extent that it would not be disproportionate to require the defendant to pay the recoverable amount.

(5) The court must treat the duty in subsection (4) as a power if it believes that any person has at any time started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with or as a result of a terrorist offence.

(6) For the purposes of this Part, a person benefits from a terrorist offence if he obtains terrorist property as a result of or in connection with its commission and his benefit is the value of the property so obtained.

(7) Where a person derives a pecuniary advantage as a result of or in connection with the commission of a terrorist offence, he is to be treated for the purposes of this Act, as if he had obtained as a result of or in connection with the commission of the terrorist offence a sum of money equal to the value of the pecuniary advantage.

Recoverable Amount.

88. (1) The recoverable amount for the purposes of section 87(4) is an amount equal to the defendant's benefit from the terrorist offence concerned.

(2) The court upon determining the defendant's benefit, may, after giving a sentence for offences under this Act, make an order for the defendant to pay an amount that represents a part of or the entire benefit to the court, to be paid within a specified time as stated by the court.

(3) An order to pay confiscation is separate and apart from any fine that may be made as a part of sentencing.

(4) If any sum required to be paid by a person under a confiscation order, whether forthwith or within a specified period, is not paid, that person is liable to pay interest on the sum for the period for which it remains unpaid.

(5) The amount of the interest referred to in subsection (4) shall be treated as part of the amount to be recovered from the person liable to pay interest under the confiscation order.

(6) The rate of interest to be paid under subsection (4) shall be that applicable to a civil judgment debt under section 7 of the Judgments Act.

Third party interests.

89. (1) Where it appears to a court making a confiscation order that

(a) there is property held by the defendant that is likely to be realised or otherwise used to satisfy the order; and

- (b) a person other than the defendant holds, or may hold, an interest in the property,

the court may, if it thinks it appropriate to do so, determine the extent (at the time the confiscation order is made) of the defendant's interest in the property.

(2) The court must not exercise the power conferred by subsection (1) unless it gives to anyone who the court thinks is or may be a person holding an interest in the property a reasonable opportunity to make representations to it.

(3) A determination under this section is conclusive in relation to any question as to the extent of the defendant's interest in the property that arises in connection with

- (a) the realisation of the property, or the transfer of an interest in the property, with a view to satisfying the confiscation order; or
- (b) any action or proceedings taken for the purposes of any such realisation or transfer.

(4) Subsection (3) does not apply or bind the court

- (a) if the person holding an interest in the property was not given a reasonable opportunity to make representations when the determination was made and has not appealed against the determination; or
- (b) where it appears to the court that there would be a serious risk of injustice to the person if the court was bound by the determination.

(5) Further, subsection (3) does not apply in relation to a question that arises in proceedings before the Court of Appeal or the High Court.

(6) In this section, the "extent" of the defendant's interest in property means the proportion that the value of the defendant's interest in it bears to the value of the property itself.

(7) Any person, other than the defendant who holds, or may hold, an interest in the property, who has not been charged or sentenced with any offence under this Act may apply to the court to alter the recoverable amount to preserve their interest.

(8) The person making the application under subsection (7) must prove on the balance of probabilities that the benefit to not be applied to the

recoverable amount is not the result of a terrorist offence under this Act or any other offence.

(9) No entity who is the subject of the designation concerned may make an application under this section.

90. (1) This section applies if the court

- (a) is considering whether to make a determination under section 89 of the extent of the defendant's interest in any property; or
- (b) is deciding what determination to make (if the court has decided to make a determination under section 89).

Provision of information as to defendant's interest in property

(2) For the purposes of this section "interested person" means a person (other than the defendant) who the court thinks is or may be a person holding an interest in the property.

(3) For the purpose of obtaining information to help it in carrying out its functions under section 86, the court may at any time order an interested person to give it information specified in the order.

(4) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.

(5) If an interested person fails without reasonable excuse to comply with an order under this section, the court may draw such inference as it believes is appropriate.

(6) Subsection (5) does not affect any power of the court to deal with the person in respect of a failure to comply with an order under this section.

(7) If the prosecutor accepts to any extent an allegation made by an interested person

- (a) in giving information required by an order under this section; or
- (b) in any other statement given to the court in relation to any matter relevant to a determination under section 89,

the court may treat the acceptance as conclusive of the matters to which it relates.

(8) For the purposes of this section, an allegation may be accepted in a manner ordered by the court.

(9) If the court makes an order under this section, it may at any time vary it by making another one.

(10) No information given by a person under this section is admissible in evidence in proceedings against that person for an offence.

91. (1) If the court makes a confiscation order, the defendant may appeal to the Court of Appeal in respect of the order.

(2) If the court decides not to make a confiscation order, the Crown may appeal to the Court of Appeal against the decision.

92. (1) On an appeal under subsection 91(1) the Court of Appeal may confirm, quash or vary the confiscation order. Court's powers on appeal.

(2) On an appeal under subsection 91(2) the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may

- (a) itself proceed under section 87 (ignoring the conditions under subsection 87(1)); or
- (b) direct the court to proceed afresh under section 87.

(3) In proceeding afresh in pursuance of this section the court must comply with any directions the Court of Appeal may make.

(4) If a court makes or varies a confiscation order under this Part or in pursuance of a direction under this Part it must have regard to any fine imposed on the defendant in respect of the terrorist offence (or any of the terrorist offences) concerned.

(5) If an order has been made against the defendant in respect of the terrorist offence (or any of the terrorist offences) stated under this Act, the court must have regard to it.

PART XI **EXTRADITION AND MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

Exchange of information relating to terrorist groups and terrorist acts.

93. (1) Subject to subsection (2), a specified Agency may, after consultation with the Attorney General, on a request made by the appropriate authority of a foreign state, disclose to that authority, any information in its possession or in the possession of any other Government department or Agency relating to any of the following

- (a) the actions and movements of terrorist groups suspected of involvement in the commission of terrorist acts;
- (b) the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist acts;
- (c) traffic in weapons and sensitive materials by terrorist groups or persons suspected of involvement in the commission of terrorist acts; or
- (d) the use of communications technologies by terrorist groups.
- (2) A disclosure under subsection (1) may only be made
- (a) if it is not prohibited by any other law;
 - (b) subject to any other law regulating the procedure to be followed when making such a disclosure; and
 - (c) if, in the opinion of the specified Agency, after consulting with the Attorney General, it would not be prejudicial to national security or public safety.

Counter-terrorism Convention to be used as basis for extradition.

94. (1) Where

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

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

(2) Where

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

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

95. (1) Where

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

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

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

(2) Where

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

the Governor may with the advice of the Secretary of State, by order published in the *Gazette*, treat the counter-terrorism convention for the purposes of giving effect to this Act, as an arrangement between the United Kingdom and that state for providing for mutual legal assistance in criminal matters falling within the scope of the counter-terrorism Convention.

96. Notwithstanding any provision in the Extradition Act or the Mutual Legal Assistance Act, in any other Law in the Virgin Islands relating to extradition or mutual assistance, an offence under this Act shall for the purposes of extradition or of mutual assistance 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.

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

PART XII

ACCOUNT MONITORING ORDERS

Applications.

97. (1) A Judge, on application made to him by the Commissioner of Police or a police officer designated by the Commissioner of Police, may make an account monitoring order if he is satisfied that: -

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

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

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

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

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

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

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

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

(d) at the place or places so specified,

provide information of the description specified in the application to the Commissioner of Police or a police officer designated by the Commissioner of Police.

(6) The description of information specified in an application for an account monitoring order may be varied by the Commissioner of Police or the police officer designated by the Commissioner of Police who made the application or by any other police officer of a rank equal or superior to that police officer.

(7) The period stated in an account monitoring order shall not exceed the period of 90 days beginning with the day on which the order is made.

98. (1) An application to discharge or vary an account monitoring order may be made to the court by the Commissioner of Police or the police officer designated by the Commissioner of Police who applied for the order or any other police officer of a rank equal or superior to that police officer or by any person affected by the order.

Discharge or variation.

(2) The court may either discharge the order or may vary the order subject such conditions as it sees fit.

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

Rules of court.

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

Effect of Orders.

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

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

Statements.

(2) Subsection (1) does not apply

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

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

(3) A statement may not be used under subsection (2)(b) against a financial institution unless

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

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

102. (1) This section applies where an offence under section 100(2) is committed by a financial institution and it is proved that the offence

- (a) was committed with the consent or connivance of an officer of the financial institution; or
- (b) was attributable to neglect on the part of an officer of the financial institution.

(2) The officer of the financial institution, as well as the financial institution, shall be deemed to have committed the offence.

(3) A person who is convicted of an offence under this section is liable on summary conviction to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 2 years, or both.

(4) In the case of a financial institution which is a body corporate, for the purposes of this section

“officer” includes

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

(5) In the case of an institution which is a partnership, for the purposes of this section

“officer” means a partner.

Offence by
body corporate,
etc, - account
monitoring
orders

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

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

(2) Subsection (1) shall not apply in relation to proceedings for an offence under section 100(2) including proceedings brought under section 101.

PART XIII **TERRORIST INVESTIGATIONS**

104. “Terrorist investigation” means an investigation of

Terrorist Investigation.

- (a) the commission, preparation or instigation of acts of terrorism;
- (b) the financing or funding of acts of terrorism;
- (c) an act which appears to have been done for the purposes of terrorism; or
- (d) the commission, preparation or instigation of an offence under this Act.

105. (1) A police officer shall cordon off an area for the purposes of a Cordoned areas terrorist investigation.

106. (1) A police officer in uniform or a police officer who produces Police Powers. identification that he is a police officer may

- (a) order a person in a cordoned area to leave such area immediately;
- (b) order a person immediately to leave premises which are wholly or partly in or adjacent to a cordoned area;
- (c) order the driver or person in charge of a vehicle in a cordoned area to move it immediately from the area;
- (d) arrange for the removal of a vehicle from a cordoned area;
- (e) arrange for the movement of a vehicle within a cordoned area; or

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

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

(3) A person who commits an offence under subsection (2) is liable on summary conviction to a term of imprisonment not exceeding 6 months and to a fine not exceeding \$5,000.

Powers.
Schedule 1

107. Schedule 1 which deals with the power to obtain information shall have effect.

Disclosure of
information, etc.

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

(2) A person commits an offence if he

(a) discloses to another anything which is likely to prejudice the investigation; or

(b) interferes with material which is likely to be relevant to the investigation.

(3) Subsection (4) applies where a person knows or has reasonable cause to suspect that a disclosure has been or will be made in relation to sections 5, 7 to 10 and 12 to 31 of this Act.

(4) A person commits an offence if he

(a) discloses to another anything which is likely to prejudice an investigation resulting from the disclosure under that section; or

(b) interferes with material which is likely to be relevant to an investigation resulting from the disclosure under that section.

(5) It is a defence for a person charged with an offence under subsection (2) or (4) to prove that he did not know and had no reasonable cause to suspect that the disclosure or interference was likely to affect a terrorist investigation.

(6) Subsections (2) and (4) do not apply to a disclosure which is made by a professional legal practitioner

- (a) to his client or to his client's representative in connection with the provision of legal advice by the legal practitioner to the client and not with a view to furthering a criminal purpose; or
 - (b) to any person for the purpose of actual or contemplated legal proceedings and not with a view to furthering a criminal purpose.
- (7) A person who commits an offence under this section is liable: -
- (a) on summary conviction, to a term of imprisonment not exceeding 2 years or to a fine not exceeding \$250,000, or both; or
 - (b) on conviction on indictment, to a term of imprisonment not exceeding 5 years or to a fine not exceeding \$500,000, both.
- (8) In this section
- (a) a reference to conducting a terrorist investigation includes a reference to taking part in the conduct of, or assisting, a terrorist investigation; and
 - (b) a person interferes with material if he falsifies it, conceals it, destroys it or disposes of it, or if he causes or permits another to do any of those things.

PART XIV COUNTER-TERRORISM POWERS

109. (1) A police officer may arrest without a warrant a person whom he reasonably suspects to be a terrorist. Arrest without warrant.

(2) Where a person is arrested under this section the provisions of Schedule 2 and the Police Act, which addresses the detention and treatment of persons in detention, access to legal advice, obtaining of fingerprints, intimate and non-intimate samples, extension of detention and other incidental matters, shall apply.

(3) Subject to subsections (4) to (7), a person detained under this section shall, unless detained under any other power, be released not later than the end of the period of 48 hours beginning with the time of his arrest under this section.

(4) If on a review of a person's detention under Part III of Schedule 2 the review officer does not authorise continued detention, the person shall, unless detained in accordance with subsection (5) or (6) or under any other power, be released.

(5) Where a police officer intends to make an application for a warrant under paragraph 18 of Schedule 2 extending a person's detention, the person may be detained pending the making of the application.

(6) Where an application has been made under paragraphs 18 or 25 of Schedule 2 in respect of a person's detention, he may be detained pending the conclusion of proceedings on the application.

(7) Where an application under paragraphs 18 or 25 of Schedule 2 is granted in respect of a person's detention, he may be further detained for the period specified in the warrant.

(8) The refusal of an application in respect of a person's detention under paragraphs 18 or 25 of Schedule 2 shall not prevent his continued detention in accordance with this section.

Search of premises.

110. (1) The court may, on the application of a police officer, issue a warrant in relation to specified premises if he is satisfied that there are reasonable grounds for suspecting that a person whom the police officer reasonably suspects to be a person falling within section 109(1) is to be found there.

(2) A warrant under this section shall authorise any police officer to enter, if need be by such reasonable force as may be necessary, and search the specified premises for the purpose of arresting the person referred to in section 109(1).

Search of person.

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

(2) A police officer may search a person arrested under section 111 to discover whether he has in his possession anything which may constitute evidence that he is a terrorist.

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

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

112. (1) An authorisation under this section authorises any police officer in uniform or a police officer who produces identification to stop a vehicle in an area or at a place specified in the authorisation and to search

Authorisations:
power to stop
and search.

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

(2) An authorisation under this subsection authorises any police officer in uniform or any police officer who produces identification to stop a pedestrian in an area or at a place specified in the authorisation and to search the pedestrian or anything carried by him.

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

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

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

113. (1) The power conferred by an authorisation under section 112(1) or (2) may be exercised

Exercise of
power.

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

(2) A police officer may seize and retain an article which he discovers in the course of a search under section 112(1) or (2) and which he reasonably suspects is intended to be used in connection with terrorism.

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

(4) Where a police officer proposes to search a person or vehicle under section 112(1) or (2), he may detain the person or vehicle for such time as is

reasonably required to permit the search to be carried out at or near the place where the person or vehicle is stopped.

(5) Where

- (a) a vehicle or pedestrian is stopped under section 112(1) or (2); and
- (b) the driver of the vehicle or the pedestrian applies for a written statement that the vehicle was stopped, or that he was stopped, under section 116(1) or (2),

the written statement shall be provided.

(6) An application under subsection (5) must be made within the period of 12 months beginning with the date on which the vehicle or pedestrian was stopped.

Duration of authorisation under section 112.

114. (1) An authorisation under section 112 has effect, subject to subsections (2) to (7), during the period

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

(2) The date or time specified under subsection (1)(b) must not occur after the end of the period of 28 days beginning with the day on which the authorisation is given.

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

(4) If an authorisation is not confirmed by the Governor before the end of the period of 48 hours beginning with the time when it is given

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

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

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

(7) An authorisation may be renewed in writing by the person who gave it or by a person who could have given it; and subsections (1) to (6) shall apply as if a new authorisation were given on each occasion on which the authorisation is renewed.

115. (1) A person commits an offence if he

Offences under this Part.

- (a) fails to stop a vehicle when required to do so by a police officer in the exercise of the power conferred by an authorisation under section 112(1);
- (b) fails to stop when required to do so by a police officer in the exercise of the power conferred by an authorisation under section 112(2); or
- (c) wilfully obstructs a police officer in the exercise of the power conferred by an authorisation under section 112(1) or (2).

(2) A person who commits an offence under this section is liable on summary conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding \$7,500, or both.

116. (1) An authorisation under this section authorises any police officer in uniform or any police officer who produces identification to prohibit or restrict the parking of vehicles on a road specified in the authorisation.

Authorisations: parking

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

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

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

117. (1) The power conferred by an authorisation under section 116 shall be exercised by placing a traffic sign on the road concerned.

Exercise of power.

(2) A police officer exercising the power conferred by an authorisation under section 116 may suspend a parking place.

118. (1) An authorisation under section 116 has effect, subject to subsections (2) and (3), during the period specified in the authorisation.

Duration of authorisation under section 116.

(2) The period specified shall not exceed 28 days.

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

Offences.

119. (1) A person commits an offence if he parks a vehicle in contravention of a prohibition or restriction imposed under section 116.

(2) A person commits an offence if

- (a) he is the driver or other person in charge of a vehicle which has been permitted to remain at rest in contravention of any prohibition or restriction imposed under section 116; and
- (b) he fails to move the vehicle when ordered to do so by a police officer in uniform or a police officer who produces identification.

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

(4) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding \$2,000.

(5) A person who commits an offence under subsection (2) is liable on summary conviction to term of imprisonment not exceeding 3 months or to a fine not exceeding \$2,000, or both.

Definitions in
this Part.

120. In this Part

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

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

PART XV MISCELLANEOUS

Police Powers.

121. (1) A power conferred under this Act on a police officer

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

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

(3) Where anything is seized by a police officer under a power conferred under this Act, it may (unless the contrary intention appears) be retained until the conclusion of the matter.

122. (1) A document which purports to be Evidence.

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

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

(2) A document bearing a certificate which

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

shall be evidence of the document in legal proceedings.

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

123. (1) The Cabinet may by Order, acting on the advice of the Financial Investigation Agency, amend or repeal the Schedules to this Act, with the exception of Schedules 1, 2 and 5. Amendment of Schedules.

(2) The Cabinet may by Order, acting on the advice of the Royal Virgin Islands Police Force amend and repeal Schedules 1 and 2 to this Act.

(3) Where the United Nations Security Council takes any decision that has the effect of amending or repealing the operation of any of the relevant Security Council Resolutions under Schedule 5 or requires the amending or repealing of Schedule 5, the Governor may by Order amend or repeal Schedule 5 or any of the Resolutions thereunder.

(4) An order made under subsections (1), (2) and (3) shall be made subject to affirmative resolution.

Regulations

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

Directions.

125. A direction given under this Act may be varied or revoked by a further direction.

Provision as to
offences under
this Act and
extended
overseas Orders.

126. Where any act or omission constitutes an offence under this Act and any of the Orders under Schedule 7, the offender is, unless the contrary intention appears, liable to be prosecuted and punished under either this Act or the Order but is not liable to be punished twice for the same offence.

Report to House
of Assembly.

127. The Attorney General shall lay before the House of Assembly at least once in every 12 months a report on the working of this Act.

SCHEDULE 1

[Section 104]

TERRORIST INVESTIGATIONS: INFORMATION

PART I

Searches

1. (1) A police officer of at least the rank of chief inspector may apply to a Judge or a Magistrate for the issue of a warrant under this paragraph for the purposes of a terrorist investigation.

(2) A warrant under this paragraph shall authorise the police officer: -

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

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

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

(4) A warrant under this paragraph shall not authorise: -

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

(5) Subject to paragraph 2, a Judge or a Magistrate may grant an application under this paragraph if 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 and which does not consist of or include excepted material within the meaning of paragraph 4; and
- (c) the issue of the warrant is likely to be necessary in the circumstances of the case.

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

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

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

(3) Where a warrant under paragraph 1 is issued under this paragraph, the powers under paragraph 1(2)(a) and (b) are exercisable only within the period of 24 hours beginning with the time when the warrant is issued.

(4) For the purposes of subparagraph (1)

“residential premises” means any premises which the officer making the application has reasonable grounds for believing are used wholly or mainly as a dwelling.

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

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

- (3) An authorisation under this paragraph shall authorise any police officer
- (a) to enter the premises specified in the authorisation
 - (b) to search the premises and any person found there; and
 - (c) to seize and retain any relevant material as defined under paragraph 1(3) which is found on a search under subparagraph (b).
- (4) The powers under subparagraph (3)(a) and (b) may be exercised
- (a) on one or more occasions; and
 - (b) at any time during the period when the designation of the cordoned area under section 100 has effect.
- (5) An authorisation under this paragraph shall not authorise
- (a) the seizure and retention of items subject to legal privilege; nor
 - (b) the 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 under this paragraph shall not be given unless the person giving it has reasonable grounds for believing that there is material to be found on the premises which
- (a) is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation; and
 - (b) does not consist of or include excepted material.
- (7) A person commits an offence if he wilfully obstructs a search under this paragraph.
- (8) A person who commits an offence under subparagraph (7) is liable on summary conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding \$7,500, or both.

Excepted material

4. (1) For the purposes of this Schedule

“excepted material” includes: “items subject to legal privilege”;

“items subject to legal privilege” means

- (a) communications between a legal practitioner and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a legal practitioner and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(2) Items held and communications made with the intention of furthering a criminal purpose are not items subject to legal privilege.

Explanations

5. (1) A police officer of at least the rank of chief inspector may apply to a Judge or Magistrate for an order under this paragraph requiring any person specified in the order to provide an explanation of any material seized in pursuance of a warrant under paragraph 1.

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

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

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

- (b) may be used in evidence against him only on a prosecution for an offence under paragraph 6.

6. (1) A person commits an offence if, in purported compliance with an order under paragraph 5, he

- (a) makes a statement which he knows to be false or misleading in a material particular, or
 - (b) recklessly makes a statement which is false or misleading in a material particular.
- (2) A person who commits an offence under subparagraph (1) is liable
- (a) on summary conviction, to a term of imprisonment not exceeding 1 year or to a fine not exceeding \$10,000; or
 - (b) on conviction on indictment, to a term of imprisonment not exceeding 3 years or to a fine not exceeding \$20,000.

Urgent cases

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

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

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

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

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

(5) A person who commits an offence under subparagraph (4) is liable on summary conviction to a term of imprisonment for 6 months or to a fine not exceeding \$7,500, or both.

8. (1) Where a police officer of at least the rank of chief inspector has reasonable grounds for believing that the case is one of great emergency he may

by a written notice signed by him require any person specified in the notice to provide an explanation of any material seized in pursuance of an order under paragraph 7.

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

(3) A person who commits an offence under subparagraph (2) is liable on summary conviction to a term of imprisonment for 1 year or to a fine not exceeding \$10,000, or both.

SCHEDULE 2

[Section 109]

DETENTION

PART I

TREATMENT OF PERSONS DETAINED UNDER SECTION 109

Place of Detention

1. (1) The Governor shall designate places at which persons may be detained under section 109.

(2) In this Schedule a reference to a police station includes a reference to any place which the Governor has designated under subparagraph (1) as a place where a person may be detained under section 109.

(3) A police officer who arrests a person under section 109 shall take that person as soon as is reasonably practicable to the police station which the police officer considers reasonable in the circumstances.

Identification

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

(2) In subparagraph (1) -

“authorised person” means any of the following: -

(a) a police officer;

(b) a prison officer; or

(c) a person authorised by the Commissioner of Police.

(3) This paragraph does not confer the power to take fingerprints, non-intimate samples or intimate samples within the meaning given by paragraph 8.

Status

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

Rights

4. (1) Subject to paragraph 6, a person detained under section 109 at a police station in the Virgin Islands shall be entitled, if he so requests, to have one named person informed as soon as is reasonably practicable that he is being detained there.

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

5. (1) Subject to paragraphs 6 and 7, a person detained under section 109 at a police station in the Virgin Islands shall be entitled, if he so requests, to consult a legal practitioner as soon as is reasonably practicable, privately and at any time.

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

6. (1) Subject to subparagraph (2), a police officer of at least the rank of chief inspector may authorise a delay: -

(a) in informing the person named by a detained person under paragraph 4; or

(b) in permitting a detained person to consult a legal practitioner under paragraph 5.

(2) Where the person is detained under section 109 he must be permitted to exercise his rights under paragraphs 4 and 5 before the end of the period mentioned in section 109(3).

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

(a) in the case of an authorisation under subparagraph (1)(a), that informing the named person of the detained person's detention will have any of the consequences specified in subparagraph (4), or

(b) in the case of an authorisation under subparagraph (1)(b), that the exercise of the right under paragraph 5 at the time when the detained person desires to exercise it will have any of the consequences specified in subparagraph (4).

(4) The consequences referred to in subparagraph (3) are: -

- (a) interference with or harm to evidence of a serious arrestable offence;
- (b) interference with or physical injury to any person;
- (c) the alerting of persons who are suspected of having committed a serious arrestable offence but who have not been arrested for it;
- (d) the hindering of the recovery of property obtained as a result of a serious arrestable offence or in respect of which a forfeiture order could be made under section 76;
- (e) interference with the gathering of information relating to the commission, preparation or instigation of acts of terrorism;
- (f) the alerting of a person and thereby making it more difficult to prevent an act of terrorism; and
- (g) the alerting of a person and thereby making it more difficult to secure a person's apprehension, prosecution or conviction in connection with the commission, preparation or instigation of an act of terrorism.

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

(6) Where an authorisation under subparagraph (1) is given: -

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

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

(8) In this paragraph -

“serious arrestable offence” includes: -

- (a) an offence under any of the provisions mentioned in sections 5, 7 to 10 and 12 to 31 of this Act; and

- (b) an attempt or conspiracy to commit an offence under any of the provisions mentioned in sections 5, 7 to 10 and 12 to 31 of this Act.

7. (1) A direction under this paragraph may provide that a detained person who wishes to exercise the right under paragraph 5 may consult a legal practitioner only in the sight and hearing of a qualified officer.

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

(3) A direction under this paragraph may be given only if the police officer giving it has reasonable grounds for believing that, unless the direction is given, the exercise of the right by the detained person will have any of the consequences specified in paragraph 6(4).

(4) In this paragraph: -

“a qualified officer” means a police officer who: -

- (a) is of at least the rank of chief inspector; and
- (b) in the opinion of the police officer giving the direction, has no connection with the detained person’s case.

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

8. (1) This paragraph applies where a person is detained in the Virgin Islands under section 109.

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

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

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

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

(5) An intimate sample may be taken from the detained person only if: -

- (a) he is detained at a police station, or, following arrest, is admitted at a medical facility;
- (b) the appropriate consent is given in writing;
- (c) a police officer of at least the rank of chief inspector authorises the sample to be taken; and
- (d) subject to paragraph 11(2) and (3), the sample is taken by a police officer.

(6) A police officer may give an authorisation under subparagraph (4) or (5)(c) only if: -

- (a) in the case of a person detained under section 106, the police officer reasonably suspects that the person has been involved in an offence under any of the provisions mentioned in sections 5, 7 to 10 and 12 to 31 of this Act, and the police officer reasonably believes that the fingerprints or sample will tend to confirm or disprove his involvement, or
- (b) in any case, the police officer is satisfied that the taking of the fingerprints or sample from the person is necessary in order to assist in determining whether he is a terrorist.

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

9. (1) Before fingerprints or a sample are taken from a person under paragraphs 8(2), (3)(a) or (5)(b), he shall be informed of the reason for taking the fingerprints or sample.

(2) Before fingerprints or a sample are taken from a person upon an authorisation given under paragraph 8(4) or (5)(c), he shall be informed: -

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

(3) After fingerprints or a sample are taken under paragraph 8, there shall be recorded as soon as is reasonably practicable any of the following which apply:-

- (a) the fact that the person has been informed in accordance with subparagraphs (1) and (2);
- (b) the reason referred to in subparagraph (1)(b);
- (c) the authorisation given under paragraph 8(4) or (5)(c);
- (d) the grounds upon which that authorisation has been given; and
- (e) the fact that the appropriate consent has been given.

10. (1) This paragraph applies where: -

- (a) two or more non-intimate samples suitable for the same means of analysis have been taken from a person under paragraph 8;
- (b) those samples have proved insufficient, and
- (c) the person has been released from detention.

(2) An intimate sample may be taken from the person if: -

- (a) the appropriate consent is given in writing;
- (b) a police officer of at least the rank of chief inspector authorises the sample to be taken; and

subject to paragraph 11(2) and (3), the sample is taken by a police officer.

(3) Paragraphs 8(6) and (7) and 11 shall apply in relation to the taking of an intimate sample under this paragraph, and a reference to a person detained under section 109 shall be taken as a reference to a person who was detained under section 109 when the non-intimate samples mentioned in subparagraph (1)(a) were taken.

11. (1) Where appropriate written consent to the taking of an intimate sample from a person under paragraphs 8 or 10 is refused without good cause, in any proceedings against that person for an offence: -

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

(2) An intimate sample other than a sample of urine or a dental impression may be taken under paragraphs 8 or 10 only by a registered medical practitioner acting on the authority of a police officer of at least the rank of chief inspector.

(3) An intimate sample which is a dental impression may be taken under paragraphs 8 or 10 only by a registered dentist acting on the authority of a police officer of at least the rank of chief inspector.

(4) Where a sample of hair other than pubic hair is to be taken under paragraph 8 the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

12. (1) This paragraph applies to:-

- (a) fingerprints or samples taken under paragraphs 8 or 10; and
- (b) information derived from those samples.

(2) Where a person has been arrested on suspicion of being involved in an offence under this Act or has been charged with any offence under this Act or has been informed that he will be reported for any offence under this Act:

- (a) fingerprints, impressions of footwear or samples or the information derived from samples taken under any power conferred by this Act from the person, may be checked against –
 - (i) other fingerprints, impressions of footwear or samples taken under paragraphs 8 or 10 or information derived from those samples, subject to subparagraph (2);
 - (ii) other fingerprints, impressions of footwear or samples to which the person seeking to check has access and which are held by or on behalf of one or more relevant law enforcement authority, both within the Territory and internationally, or which are held in connection with or as a result of an investigation of an offence; or

(iii) information derived from other samples if the information is contained in records to which the person seeking to check has access and which are held as mentioned in subparagraph (a)(ii) above.

(3) Where a person has been charged with an offence or has been informed that he will be reported for such an offence, no consent is required to take photographs, fingerprints, and samples for DNA analysis.

(4) Where a person who is arrested for, or charged with, an offence under this Act but is not convicted of that offence, and fingerprints and samples were taken (or, in the case of a DNA profile, derived from a sample taken in connection with the investigation of the offence), the retention period shall be: -

- (a) in the case of fingerprints, the period of 3 years, beginning with the date on which the fingerprints were taken; and
- (b) in the case of a DNA profile, the period of 3 years, beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples were taken).

13. (1) In the application of paragraphs 8 to 12 in relation to a person detained in the Virgin Islands: -

“appropriate consent” means –

- (a) in relation to a person who is 18 years of age or older, the consent of that person;
- (b) in relation to a person who has attained the age of 16 years and is under the age of 18 years, the consent of that person and his parent or guardian; and
- (c) in relation to a person under the age of 16 years, the consent of his parent or guardian;

“fingerprints” includes palmprints;

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

“intimate sample” means: –

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (b) a dental impression; and
- (c) a swab taken from a person's orifice other than the mouth;

"non-intimate sample" means: -

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part of a person's body including the mouth but not any other body orifice;
- (d) saliva; and
- (e) a footprint or a similar impression of any part of a person's body other than a part of his hand;

"registered dentist" means a dentist registered under the Medical Act, 2000;

"registered medical practitioner" means a medical practitioner registered under the Medical Act, 2000;

"sufficient" in relation to a sample means sufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample.

PART II **REVIEW OF DETENTION UNDER SECTION 109**

Grounds for continued detention

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

- (a) to obtain relevant evidence whether by questioning him or otherwise;
- (b) to preserve relevant evidence;
- (c) pending a decision whether to apply to the Governor for a deportation order to be served on the detained person;

- (d) pending the making of an application to the Governor for a deportation order to be served on the detained person;
- (e) pending consideration by the Governor whether to serve a deportation order on the detained person; or
- (f) pending a decision whether the detained person should be charged with an offence.

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

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

(4) In subparagraph (1): -

“review officer” means a police officer of at least the rank of Inspector.

(5) In subparagraph (1)(a) and (b): -

“relevant evidence” means evidence which: -

- (a) relates to the commission by the detained person of an offence under any of the provisions mentioned in sections 5, 7 to 10 and 12 to 31 of this Act, or
- (b) indicates that the detained person is a terrorist.

(6) In subparagraph (1): -

“deportation order” means a deportation order made under the Immigration and Passport Ordinance, Cap. 130.

Representations

15. (1) Before determining whether to authorise a person’s continued detention, a review officer shall give either of the following persons an opportunity to make representations relating to the detention: -

- (a) the detained person; or

- (b) a legal practitioner representing him who is available at the time of the review,

and such representations may be oral or written.

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

Rights

16. (1) Where a review officer authorises continued detention, he shall inform the detained person: -

- (a) of any of his rights under paragraphs 4 and 5 which he has not yet exercised; and
- (b) if the exercise of any of his rights under either of those paragraphs is being delayed in accordance with the provisions of paragraph 6, of the fact that it is being so delayed.

(2) Where a review of a person's detention is being carried out at a time when his exercise of a right under either of those paragraphs is being delayed:

- (a) the review officer shall consider whether the reason for which the delay was authorised continue to subsist; and
- (b) where in his opinion the reason has ceased to subsist, he shall inform the officer who authorised the delay of his opinion (unless he was that officer).

Record

17. (1) A review officer carrying out a review shall make a written record of the outcome of the review and of any of the following which apply: -

- (a) the grounds upon which continued detention is authorised;
- (b) the reason for postponement of the review;
- (c) the fact that the detained person has been informed as required under paragraph 16(1);

- (d) the officer's conclusion on the matter considered under paragraph 16(2)(a);
- (e) the fact that he has taken action under paragraph 16(2)(b); and
- (f) the fact that the detained person is being detained under section 109(5) or (6).

(2) The review officer shall: -

- (a) make the record in the presence of the detained person; and
- (b) inform him at that time whether the review officer is authorising continued detention, and if he is, of his grounds.

(3) Subparagraph (2) shall not apply where, at the time when the record is made, the detained person is incapable of understanding what is said to him, violent or likely to become violent or in urgent need of medical attention.

PART III EXTENSION OF DETENTION UNDER SECTION 109

Warrants of further detention

18. (1) A police officer of at least the rank of chief inspector may apply to the summary court for the issue of a warrant of further detention under this Part.

(2) A warrant of further detention: -

- (a) shall authorise the further detention under section 109 of a specified person for a specified period; and
- (b) shall state the time at which it is issued.

(3) The specified period in relation to a person shall end not later than the end of the period of 14 days beginning with the time of his arrest under section 109.

Time limit

19. (1) An application for a warrant shall be made during the period mentioned in section 109(3) or within 6 hours of the end of that period.

(2) The court hearing an application made under subparagraph (1) shall dismiss the application if the court considers that it would have been reasonably practicable to make it during the period mentioned in section 109(3).

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

Notice

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

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

Grounds for extension

21. (1) A court may issue a warrant of further detention only if satisfied that: -

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

(2) In subparagraph (1): -

“relevant evidence” means, in relation to the person to whom the application relates, evidence which: -

- (a) relates to his commission of an offence under any of the provisions mentioned in sections 5, 7 to 10 and 12 to 31 of this Act; or
- (b) indicates that he is a terrorist.

Representation

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

- (a) be given an opportunity to make oral or written representations to the court about the application, and
 - (b) be entitled to be legally represented at the hearing.
- (2) The court shall adjourn the hearing of an application to enable the person to whom the application relates to obtain legal representation where he wishes to be so represented.

Information

23. (1) The police officer who has made an application for a warrant may apply to the court for an order that specified information upon which he intends to rely be withheld from the person to whom the application relates and anyone representing him.
- (2) Subject to subparagraph (3), the court may make an order under subparagraph (1) in relation to specified information only if satisfied that there are reasonable grounds for believing that if the information were disclosed: -

- (a) evidence of an offence under any of the provisions mentioned in sections 5, 7 to 10 and 12 to 31 of this Act would be interfered with or harmed;
- (b) the recovery of property obtained as a result of an offence under any of those provisions would be hindered;
- (c) the recovery of property in respect of which a forfeiture order could be made under section 76 would be hindered;
- (d) the apprehension, prosecution or conviction of a person who is suspected of being a terrorist or engaging in terrorist activities would be made more difficult as a result of his being alerted;
- (e) the prevention of an act of terrorism would be made more difficult as a result of a person being alerted;
- (f) the gathering of information relating to the commission, preparation or instigation of an act of terrorism would be interfered with; or
- (g) a person would be interfered with or physically injured.

- (3) The court shall direct that the following be excluded from the hearing of the application under this paragraph: -

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

Adjournments

24. (1) The court may adjourn the hearing of an application for a warrant only if the hearing is adjourned to a date before the expiry of the period mentioned in section 109(3).

(2) This paragraph shall not apply to an adjournment under paragraph 22(2).

Extensions of warrants

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

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

(3) The specified period shall end not later than the end of the period of 14 days beginning with the time of the person's arrest under section 109.

(4) Paragraphs 19(3) and 20 to 23 shall apply to an application under this paragraph as they apply to an application for a warrant of further detention.

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

(6) Subparagraph (5) shall not apply to an adjournment under paragraph 22(2).

Detention - conditions

26. A person detained under a warrant issued under this Part shall unless detained in accordance with section 109(5) or (6) or under any other power be released immediately if the officer having custody of him becomes aware that any of the grounds under paragraph 21(1)(a) and (b) upon which the court authorised his further detention have ceased to apply.

SCHEDULE 3

[Section 61(1)(a)]

Details to be included in suspicious activity/transaction reports regarding property owned or controlled by designated terrorist entities

1. The name, and, if available, the last known address, of the designated terrorist entity concerned.
2. For property that came into the possession or immediate control of a reporting entity through a transaction conducted or proposed to be conducted through the reporting entity and involving a facility with the reporting entity:
 - (a) the grounds on which the reporting entity holds the suspicion referred to in section 60(3) and the date on which that suspicion was formed;
 - (b) to the best of the knowledge of the reporting entity, the date on which the reporting entity became aware of the existence of the property, and if readily available to the reporting entity, the type of, and all other available identifying information about, the property;
 - (c) if readily available electronically to the reporting entity
 - (i) the nature of the transaction; and
 - (ii) the date of the transaction.
 - (iii) the type and identifying number of the facility;
 - (iv) the value of the property in the facility, if known to the person preparing the report for the reporting entity;
 - (d) the name, address, date of birth, if applicable, and if known to the person preparing the report for the reporting entity, occupation or, if appropriate, business or principal activity of the person in whose name the facility is operated, and if available to the person preparing the report for the reporting entity, details of any documentary or other evidence held by the reporting entity and used to establish the identity of that person;

- (e) the names of the signatories to the facility and, if available to the person preparing the report for the reporting entity, details of any documentary or other evidence held by the reporting entity and used to establish the identity of the signatories to the facility;
 - (f) if readily available electronically to the reporting entity, the name, address, date of birth, if applicable, and occupation or, if appropriate, business or principal activity of each person conducting the transaction and of any person on whose behalf the transaction is conducted;
 - (g) if applicable, the branch name, address, and telephone number of the reporting entity which provided the facility involved in the transaction or the reporting entity through which the transaction was conducted, as the case may be.
3. For other property in the possession or immediate control of a reporting entity or any other person
- (a) the grounds on which the reporting entity or other person holds the suspicion referred to in section 60(3) and the date on which that suspicion was formed;
 - (b) to the best of the knowledge of the reporting entity or other person, the date on which the reporting entity or other person became aware of the existence of the property, and if readily available to the reporting entity or other person, the type of, and all other available identifying information about the property;
 - (c) the value of the property, if known to the reporting entity or other person;
 - (d) if available to the reporting entity or other person the name, address, date of birth, if applicable, and occupation or, if appropriate, business or principal activity of the person who owns the property, if it is not owned by the entity, and details of any documentary or other evidence held by the reporting entity or other person and used to establish the identity of the person who owns the property;
 - (e) if available to the reporting entity or other person, the name, address, date of birth, if applicable, and occupation or, if appropriate, business or principal activity of the person who controls the property, if it is not controlled by the entity, and details of any documentary or other evidence held by the reporting entity

or other person and used to establish the identity of the person who controls the property.

4. If the report is made in relation to property controlled or possessed by a reporting entity, the name, position, and phone and fax number of the person authorised by the reporting entity to prepare and submit the report. In all other cases, the name, position, if relevant, and phone and fax numbers of the person who prepared the report.

SCHEDULE 4

[Section 48]

FREEZING OF FUNDS OF DESIGNATED PERSONS AND DESIGNATION PROCEDURES REGARDING PROPOSAL MADE BY GOVERNOR, ETC

Interpretation

1. In this Schedule

“person” means a natural or legal person.

“designated terrorist entity” has the same meaning under section 2(1) of this Act.

“economic resources” means assets of every kind, whether from a legitimate or illegitimate source and whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.

“financial services” means services provided by the regulated sector.

“funds” has the meaning under section 2(1) of this Act.

“relevant institution” means:

- (a) a person that is engaged in a relevant business within the meaning of regulation 2(1) of the Anti-Money Laundering Regulations and, for the avoidance of doubt, it includes a person that is regulated by the Financial Services Commission by virtue of any regulatory legislation provided in Part 1 of Schedule 2 of the Financial Services Commission Act; and
- (b) a non-financial business that is designated under the Non-financial Business (Designation) Notice, 2008;

“supervisory authority” means

- (a) the Financial Services Commission; and
- (b) the Financial Investigation Agency.

“without delay” means acting within a matter of hours not exceeding 24 hours.

Prohibitions in relation to designated terrorist entities

Freezing of funds and economic resources

2. (1) A person shall freeze, without delay and without providing prior notice

- (a) the funds or economic resources owned, held or controlled by a designated terrorist entity;
- (b) the funds or economic resources that are wholly or jointly owned, held or controlled, directly or indirectly by a designated terrorist entity;
- (c) the funds or economic resources derived or generated from funds or other economic resources owned or controlled directly or indirectly by a designated terrorist entity; and
- (d) the funds or economic resources of a person acting on behalf of or at the direction of a designated terrorist entity,

if the person knows, or has reasonable cause to suspect, that the designated terrorist entity is dealing with such funds or economic resources.

(2) In subparagraph (1)

“dealing with” includes

- (a) in relation to funds, transferring, converting, disposing, moving or using; or
- (b) in relation to economic resources, exchanging or using in exchange for funds, goods or services; and

“freeze” means to prohibit the transfer, conversion disposition, movement or use of any funds or economic resources that are owned or controlled by a designated terrorist entity.

(3) Subparagraph (1) is subject to paragraphs 7, 8 and 9.

(4) A person who contravenes the prohibition in subparagraph (1) commits an offence and is liable:

- (a) on summary conviction, to a term of imprisonment of 5 years or to a fine not exceeding \$100,000, or both; or

- (b) on conviction on indictment, to a term of imprisonment of 7 years or to a fine not exceeding \$250,000, or both.

(5) A person who, in good faith, freezes the funds or economic resources of a designated terrorist entity or refuses to make those funds or economic resources available to a designated terrorist entity on the basis that such action is in accordance with this Act shall not be held liable for any action to freeze the funds or economic resources unless it is proved that the funds and economic resources were frozen or withheld as a result of the negligence of the person.

(6) A person who, in good faith, does not freeze the funds or economic resources of a designated terrorist entity shall not be held liable if it is proven that the person did not know or had no reasonable cause to suspect that his actions would be in contravention of the freezing obligation.

Making funds or financial services available to designated terrorist entity

3. (1) A person shall not make funds or financial services or other related services available, directly or indirectly, wholly or jointly to

- (a) a designated terrorist entity;
- (b) an entity owned or controlled, directly or indirectly by a designated terrorist entity; or
- (c) a person acting on behalf of, or at the direction of, the designated terrorist entity;

if the person knows, or has reasonable cause to suspect, that he is making the funds or financial services available to the designated terrorist entity.

(2) Subparagraph (1) is subject to paragraphs 7, 8 and 9.

(3) A person who contravenes the prohibition under subparagraph (1) commits an offence and is liable

- (a) on summary conviction, to a term of imprisonment not exceeding 5 years or to a fine not exceeding \$100,000, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 7 years or to a fine not exceeding \$250,000, or both.

Making funds or financial services available for the benefit of designated terrorist entity

4. (1) A person shall not make funds, financial services or other related services available, directly or indirectly, wholly or jointly for the benefit of: -

- (a) a designated terrorist entity;
- (b) an entity owned or controlled, directly or indirectly by a designated terrorist entity; or
- (c) a person acting on behalf of, or at the direction of, the designated terrorist entity;

if the person knows or has reasonable cause to suspect that he is making or will be making the funds, financial services or other related services so available for the benefit of the designated terrorist entity.

(2) For the purposes of this paragraph

- (a) funds are made available for the benefit of a designated terrorist entity only if the designated terrorist entity thereby obtains, or is able to obtain, a financial benefit; and
- (b) “financial benefit” includes the discharge of a financial obligation for which the designated terrorist entity is wholly or partly responsible.

(3) Subparagraph (1) is subject to paragraphs 7, 8 and 9.

(4) A person who contravenes the prohibition in subparagraph (1) commits an offence and is liable:

- (a) on summary conviction, to a term of imprisonment not exceeding 5 years or to a fine not exceeding \$100,000, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 7 years or to a fine not exceeding \$250,000, or both.

Making economic resources available to designated terrorist entity

5. (1) A person shall not make economic resources available, directly or indirectly, wholly or jointly to

- (a) a designated terrorist entity;
- (b) an entity owned or controlled, directly or indirectly by a designated terrorist entity; or
- (c) a person acting on behalf of, or at the direction of, a designated terrorist entity;

if the person knows, or has reasonable cause to suspect that

- (i) he is making the economic resources so available to the designated terrorist entity; and
- (ii) the designated terrorist entity is likely to exchange the economic resources, or use them in exchange, for funds, goods or services.

(2) Subparagraph (1) is subject to paragraphs 7 and 9.

(3) A person who contravenes the prohibition under subparagraph (1) commits an offence and is liable:

- (a) on summary conviction, to a term of imprisonment not exceeding 5 years or to a fine not exceeding \$100,000, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 7 years or to a fine not exceeding \$250,000, or both.

Making economic resources available for the benefit of designated terrorist entity

6. (1) A person shall not make economic resources available to any other person for the benefit of

- (a) a designated terrorist entity;
- (b) an entity owned or controlled, directly or in directly by a designated terrorist entity; and

- (c) a person acting on behalf of, or at the direction of, a designated terrorist entity,

if the person knows, or has reasonable cause to suspect, that he is making or will be making the economic resources so available for the benefit of the designated terrorist entity.

(2) For the purposes of this paragraph

- (a) economic resources are made available for the benefit of a designated terrorist entity only if the designated terrorist entity thereby obtains, or is able to obtain, a financial benefit; and
- (b) “financial benefit” includes the discharge of a financial obligation for which the designated terrorist entity is wholly or partly responsible.

(3) Subparagraph (1) is subject to paragraphs 7 and 9.

(4) A person who contravenes the prohibition in subparagraph (1) commits an offence and is liable

- (a) on summary conviction, to a term of imprisonment not exceeding 5 years or to a fine not exceeding \$100,000, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 7 years or to a fine not exceeding \$250,000, or both.

Licences granted outside the Virgin Islands

7. The prohibitions identified in paragraphs 2 to 6 do not apply to anything done

- (a) outside the Virgin Islands; and
- (b) under the authority of a licence granted in accordance with any provisions of the law in force in the place where the prohibited conduct occurred, and which corresponds with the provisions of this Schedule.

Exceptions and Licences

Exceptions

8. (1) The prohibitions in paragraphs 2 to 4 are not contravened by a relevant institution crediting a frozen account with: -

- (a) interest or other earnings due on the account; or
- (b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.

(2) The prohibitions in paragraphs 3 and 4 on making funds available do not prevent a relevant institution from crediting a frozen account where it receives funds transferred to the account.

(3) A relevant institution shall inform the Governor without delay if it credits a frozen account in accordance with subparagraph (1)(b) or (2).

(4) For the purposes of this paragraph “frozen account” means an account with a relevant institution, which is held or controlled, directly or indirectly, by a designated terrorist entity.

Licences

9. (1) The prohibitions in paragraphs 2 to 6 do not apply to anything done under the authority of a licence granted by the Governor.

(2) A licence shall specify the acts authorised by it and may be: -

- (a) general or granted to a category of persons or to a particular person;
- (b) subject to conditions; and
- (c) of indefinite duration or subject to an expiry date.

(3) The Governor may, after consultation with the Secretary of State, grant, vary or revoke, at any time, a licence issued in relation to a person who falls within paragraph 2.

(4) On the grant, variation or revocation of a licence, the Governor shall

- (a) in the case of a licence granted to a particular person, give written notice of the grant, variation or revocation to that person; and
- (b) in the case of a general licence or a licence granted to a category of persons, take such steps as he considers appropriate to publicise the grant, variation or revocation of the licence.

(5) A person commits an offence who, for the purpose of obtaining a licence, knowingly or recklessly

- (a) provides information that is false in a material respect; or
- (b) provides or produces a document that is not what it purports to be.

(6) A person who purports to act under the authority of a licence but who fails to comply with any conditions included in the licence commits an offence.

(7) A person who commits an offence under paragraph 9(5) is liable:

- (a) on summary conviction, to a term of imprisonment not exceeding 5 years or to a fine not exceeding \$100,000, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 7 years or to a fine not exceeding \$250,000, or both.

(8) A person who commits an offence under paragraph 9(6) is liable:

- (a) on summary conviction, to a term of imprisonment not exceeding 3 years or to a fine not exceeding \$100,000, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 5 years or to a fine not exceeding \$250,000, or both.

Circumventing prohibitions etc.

Circumventing prohibitions etc.

10. (1) A person commits an offence who intentionally participates in activities knowing that the object or effect of them is (whether directly or indirectly)

- (a) to circumvent any of the prohibitions in paragraphs 2 to 6; or
- (b) to enable or facilitate the contravention of any such prohibition.

(2) A person who commits an offence under paragraph 10(1) is liable:

- (a) on summary conviction, to a term of imprisonment not exceeding 5 years or to a fine not exceeding \$100,000, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding 7 years or to a fine not exceeding \$250,000, or both.

Listing and De-listing Procedure

11. (1) The Governor may, through the Foreign and Commonwealth Office of the United Kingdom, propose to any relevant United Nations Security Council Committee, that an entity be

- (a) listed as a designated terrorist entity because of the involvement of that entity in one or more terrorist acts; or
- (b) de-listed from any list maintained by a relevant United Nations Security Council Committee, where the Governor believes that the entity no longer meets the criteria for designation.

(2) The Governor shall not make a proposal for a designation under subparagraph (1)(a) against an entity unless the Governor has reasonable grounds to suspect or believe that the entity is involved in one or more terrorist acts.

(3) The Governor, when proposing entities to the relevant United Nations Security Council Committee, shall

- (a) follow the procedures and standard forms for listing, as adopted by the relevant United Nations Security Council Committee;

- (b) provide as much relevant information as possible on the proposed entity, particularly, sufficient identifying information to allow for the accurate and positive identification of the entity and to the extent possible, the information required by Interpol to issue a Special Notice.
- (c) provide a statement of case which contains as much detail as possible on the basis for the listing, including:
 - (i) specific information supporting a determination that the entity meets the relevant criteria for designation under sections 38(2) and 40(1) of this Act;
 - (ii) the nature of the information;
 - (iii) supporting information or documents that can be provided; and
 - (iv) details of any connection between the proposed designee and any currently designated entity; and
- (d) specify whether the status as a designating state may be made known.

(4) The Governor shall, while his proposal is being considered, operate *ex parte* against the entity that has been identified as a designated terrorist entity.

- (5) The Governor may establish procedures for the
 - (a) de-listing; and
 - (b) unfreezing of funds and other resources, of a person who no longer meets the criteria for designation.
- (6) The procedures referred to in subsection (5) include the following
 - (a) the submission of a de-listing request to the relevant United Nations Sanctions Committee;
 - (b) in relation to United Nations Security Council Resolution 1373, allowing, upon request, review of a designation decision before a court or other independent competent authority;

- (c) in relation to designations under United Nations Security Council Resolution 1988, facilitation of the review by the 1988 Committee;
- (d) in relation to designations on the Al-Qaida Sanctions List, informing designated terrorist entities of the availability of the United Nations Office of the Ombudsman pursuant to United Nations Security Council Resolutions 1904, 1989 and 2083 to accept de-listing petitions;
- (e) unfreezing of the funds or other assets of an entity with the same or similar name as a designated terrorist entity; and
- (f) facilitation of the review of a designation by the United Nations Security Council 1988 Committee concerning the Taliban and associated individuals and entities.

Communication of designated terrorist entities' list, de-listing and unfreezing

12. (1) The Supervisory Authority shall, as soon as is reasonably practicable after a designation is made, communicate the designation through a medium it considers appropriate, to all relevant institutions it is required to supervise.

(2) The Supervisory Authority shall, as soon as is reasonably practicable after an entity is de-listed as a designated terrorist entity or funds or other assets are unfrozen, communicate the de-listing and the unfreezing through a medium it considers appropriate, to all relevant institutions it is required to supervise.

(3) The Supervisory Authority shall maintain and make available to the public an updated list of all designated terrorist entities, entities that have been de-listed as designated terrorist entities and funds and assets that have been unfrozen.

(4) A person, upon being notified that an entity is no longer listed as a designated terrorist entity, shall, without delay:

- (a) confirm whether it has frozen funds or other assets of the entity;
- (b) verify with its Supervisory Authority that the entity is no longer subject to the prohibition under paragraph 2; and
- (c) if funds or other assets are frozen, unfreeze the funds or other assets of the entity and reactivate the relevant accounts.

(5) A person shall submit notification to the entity that the assets are no longer subject to the prohibition under paragraph 2 and notify the Governor of the actions taken.

Information from relevant institutions to Governor

13. (1) A relevant institution shall inform the Governor as soon as practicable if

- (a) it knows, or has reasonable cause to suspect, that an entity: -
 - (i) is a designated terrorist entity; or
 - (ii) has committed an offence under any provision of sections 5, 7 to 10 and 12 to 31 of this Act; and
- (b) the information or other matter on which the knowledge or suspicion is based came to it in the course of its trade, profession, business or employment.

(2) Where a relevant institution informs the Governor under subparagraph (1), it shall state

- (a) the information or other matter on which the knowledge or suspicion is based; and
- (b) any information it holds about the person by which the person can be identified.

(3) Subparagraph (4) applies if

- (a) a relevant institution informs the Governor under subparagraph (1) that it knows, or has reasonable cause to suspect, that a person is a designated terrorist entity; and
- (b) that entity is a customer of the institution.

(4) The relevant institution shall also state the nature and amount or quantity of any funds or economic resources held by it for the customer at the time when it first had the knowledge or suspicion.

(5) A relevant institution shall

- (a) report any action taken in accordance with the prohibitions of this Schedule; and
- (b) report any transaction attempted by a designated terrorist entity to deal with funds, economic resources or other assets.

(6) A relevant institution that fails to comply with any requirement of subparagraph (1), (2) or (4) commits an offence.

(7) A relevant institution that commits an offence under paragraph 13(6) is liable on summary conviction to a fine not exceeding \$100,000.

Governor's power to request information

14. (1) The Governor may request a designated terrorist entity to provide information concerning

- (a) funds or economic resources owned, held or controlled by or on behalf of the designated terrorist entity; or
- (b) any disposal of such funds or economic resources.

(2) The Governor may request a designated terrorist entity to provide such information as the Governor may reasonably require about expenditure: -

- (a) by or on behalf of the designated terrorist entity; or
- (b) for the benefit of the designated terrorist entity.

(3) The power in subparagraphs (1) or (2) is exercisable only where the Governor believes that it is necessary for the purpose of monitoring compliance with or detecting evasion of this Schedule.

(4) The Governor may request a person acting under a licence referred to in paragraph 7 or granted under paragraph 9 to provide information concerning

- (a) funds or economic resources dealt with under the licence; or
- (b) funds, economic resources or financial services made available under the licence.

(5) The Governor may request any person in or resident in the Virgin Islands to provide such information as the Governor may reasonably require in order to

- (a) establish for the purposes of this Schedule

- (i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by or on behalf of a designated terrorist entity;
 - (ii) the nature and amount or quantity of any funds, economic resources or financial services made available directly or indirectly to, or for the benefit of, a designated terrorist entity; or
 - (iii) the nature of any financial transactions entered into by a designated terrorist entity.
- (b) monitor compliance with or detecting evasion of this Schedule; or
 - (c) obtain evidence of the commission of an offence under this Schedule.

(6) The Governor may specify the manner in which, and the period within which, information shall be provided, and if no such period is specified, the information which has been requested shall be provided within a reasonable time.

(7) A request may include a continuing obligation to keep the Governor informed as circumstances change, or on such regular basis as the Governor may specify.

(8) Information requested under this paragraph may relate to any period of time during which a person is, or was, a designated terrorist entity.

(9) Information requested under subparagraphs (1)(b), (2) or (5)(a)(iii) may relate to any period of time before a person became a designated terrorist entity or any subsequent period of time.

Production of documents

15. (1) A request under paragraph 14 may include a request to produce specified documents or documents of a specified description.

- (2) Where the Governor requests that documents be produced, he may
 - (a) cause copies to be made of, or extracts to be taken from, any document so produced;
 - (b) request any person producing a document to give an explanation of it; and

- (c) where that person is a body corporate, partnership or unincorporated body other than a partnership, request any person who is
- in the case of a partnership, a present or past partner or employee of the partnership; or
- in any other case, a present or past officer or employee of the body concerned,
- to give such an explanation.

(3) Where the Governor requests a designated terrorist entity or a person acting under a licence referred to in paragraph 7 or granted under paragraph 9 to produce documents, that person shall

- (a) take reasonable steps to obtain the documents, if they are not already in the person's possession or control; and
- (b) keep the documents under the person's possession or control except for the purpose of providing them to the Governor or as the Governor may otherwise permit.

Failure to comply with Governor's request for information

- 16. (1)** A person commits an offence who
- (a) without reasonable excuse refuses or fails within the time and in the manner specified, (or, if no time has been specified, within a reasonable time) to comply with any request made or requirement under paragraphs 13, 14 and 15;
- (b) knowingly or recklessly gives any information, or produces any document, which is false in a material particular in response to such a request;
- (c) with intent to evade the provisions of paragraphs 13, 14 and 15, destroys, mutilates, defaces, conceals or removes any document; or
- (d) otherwise intentionally obstructs the Governor in the exercise of his powers under paragraphs 13, 14 and 15.

(2) A person who commits an offence under paragraph 16 is liable on summary conviction to a term of imprisonment of 3 years or to a fine not exceeding \$100,000, or both.

(3) Where a person is convicted of an offence under this paragraph, the court may make an order requiring that person, within such period as may be specified in the order, to comply with the request.

Disclosure of information by Governor

17. (1) The Governor may disclose any information obtained by him in exercise of his powers under this Schedule, including any document so obtained and any copy made of, or extract taken from, any document so obtained

- (a) to a senior ranking police officer;
- (b) to a public officer;
- (c) to the supervisory authority;
- (d) for the purpose of giving assistance or co-operation, pursuant to the relevant Security Council resolutions; to:-
 - (i) any organ of the United Nations; or
 - (ii) any person in the service of the United Nations or the Government of any country;
- (e) with a view to instituting, or otherwise for the purposes of, any proceedings
 - (i) in the Virgin Islands, for an offence under this Schedule; or
 - (ii) in the United Kingdom or any British Overseas Territory, for an offence under a similar provision in any such jurisdiction; or
- (f) with the consent of a person who, in his own right, is entitled to the information or to possession of the document, copy or extract, to any third party.

(2) In subparagraph (1)(f) “in his own right” means not merely in the capacity as a servant or agent of another person.

Co-operation with local or international investigations

18. The Governor shall take such steps as he considers appropriate to co-operate with any investigation, in the Virgin Islands or elsewhere, relating to the funds, economic resources or financial transactions of a designated terrorist entity.

Application of provisions

19. (1) Nothing done under paragraphs 13 to 18 shall be treated as a breach of any restriction imposed by statute or otherwise.

(2) Paragraphs 13 to 18 shall not be considered to require a person who has acted or is acting as a legal practitioner for any person to disclose any privileged information in his possession in that capacity.

(3) Paragraphs 13 to 18 do not limit the circumstances in which information may be disclosed apart from those paragraphs.

(4) Paragraphs 13 to 18 do not limit the powers of the Governor to impose conditions in connection with the discharge of his functions under paragraph 9.

(5) In this paragraph

“information” includes documents; and

“privileged information” means information with respect to which a claim to legal professional privilege could be maintained in legal proceedings.

Supplementary Provisions

Supervision of exercise of Governor’s powers

Appeal to the court in relation to designations

20. (1) This paragraph applies to any decision of the Governor

(a) to make or vary an interim or final designation of an entity;

- (b) to renew a final designation of an entity; or
- (c) not to vary or revoke an interim or final designation of an entity.

(2) The designated terrorist entity concerned may appeal against any such decision to the court.

(3) On an appeal under subparagraph (2), the court may make such Order as it consider appropriate.

(4) Under subparagraph (3), where an Order is being made, the court may in the Order

- (a) make provision for the access of funds or other assets of the designated terrorist entity to cover basic or extraordinary expenses, including but not limited to
 - (i) mortgage or rent payments;
 - (ii) allowances for food, medicine and medical treatment;
 - (iii) any payments due as a result of an Order of the court;
 - (iv) provision for
 - A. the reasonable living expenses of dependants, including educational expenses; and
 - B. medicine and medical treatment of dependants; and
 - (v) provision for taxes, insurance premiums and public utilities;
- (b) make provision for reasonable legal expenses, including expenses incurred in defending a criminal charge or any proceedings connected thereto and any proceedings under this Schedule;
- (c) make provision for expenses necessary to enable a person to carry on any trade, business, profession or occupation;

- (d) make provision for fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources; and
- (e) make the designated terrorist entity subject to any other condition that the court considers necessary and reasonable.

(5) The making of an appeal under this paragraph does not suspend the effect of the decision to which the appeal relates.

Review of other decisions by the court

21. (1) This paragraph applies to any decision of the Governor in connection with his functions under this Schedule other than a decision to which paragraph 23 applies.

(2) Any person affected by a decision to which this paragraph applies may apply to the court for the decision to be set aside.

(3) In determining whether the decision should be set aside, the court shall apply the principles applicable on an application for judicial review.

(4) If the court decides that a decision should be set aside it may make any Order, or give any relief, as may be made or given in proceedings for judicial review.

Jurisdiction to try offences

22. Where an offence under this Schedule is committed outside of the Virgin Islands, proceedings for the offence may be taken in the Virgin Islands and the offence may for all incidental purposes be treated as having been committed in the Virgin Islands.

Procedure for offences by unincorporated bodies

23. (1) A fine imposed on an unincorporated body on its conviction of an offence under this Schedule shall be paid out of the funds of the body.

(2) If it is alleged that an offence under this Schedule has been committed by an unincorporated body, as opposed to by a member of the body

- (a) proceedings for the offence shall be brought in the name of the body; and
- (b) for the purposes of such proceedings any rules of court relating to the service of documents have effect as if the body were a body corporate.

Miscellaneous

24. (1) Where a notice is required to be given to a person by the Governor under this Schedule, the notice may be given

- (a) by posting it to the person's last known address; or
- (b) where the person is a body corporate, partnership or unincorporated body other than a partnership, by posting it to the registered or principal office of the body or partnership concerned.

(2) Where the Governor does not have an address for the person, he shall cause arrangements to be made for the notice to be given to the person at the first available opportunity.

SCHEDULE 5

[Section 2(1)]

Relevant United Nations Security Council Resolutions (“UNSCR”) that have been implemented by the Virgin Islands

- a) resolution 1267 (1999) adopted by the Security Council of the United Nations on 15th October 1999;
- b) resolution 1373 (2001) adopted by the Security Council of the United Nations on 28th September 2001;
- c) resolution 1452 (2002) adopted by the Security Council of the United Nations on 20th December 2002;
- d) resolution 1718 (2006) adopted by the Security Council of the United Nations on 14 October 2006;
- e) resolution 2178 (2014) adopted by the Security Council of the United Nations on 24th September 2014;
- f) resolution 2231 (2015) adopted by the Security Council of the United Nations on 20 July 2015; and
- g) any successor resolutions to the above resolutions adopted by the Security Council of the United Nations.

SCHEDULE 6

[Section 2(1)]

Relevant United Nations Designated Terrorist Entities

1. ISIL (Da'esh) & Al-Qaida and affiliated individuals and entities;
2. The Taliban and affiliated individuals and entities;

SCHEDULE 7

[Section 126]

Relevant Orders that have been extended to the Virgin Islands by the United Kingdom

1. Terrorism (United Nations Measures)(Overseas Territories) Order, 2001
2. Anti-Terrorism (Financial and Other Measures)(Overseas Territories) Order, 2002
3. Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order, 2011
4. The Democratic People's Republic of Korea (Sanctions)(Overseas Territories) Order, 2012
5. The Iran (Restrictive Measures)(Overseas Territories) Order, 2012
6. Afghanistan (United Nations Measures)(Overseas Territories) Order, 2012
7. Al-Qaida (United Nations Measures)(Overseas Territories) Order, 2012

SCHEDULE 8

[Section 81]

PART 1

FORFEITURE OF TERRORIST CASH

1. (1) This Schedule applies to cash identified as terrorist cash.

(2) For the purposes of this paragraph

“terrorist cash” means cash which

- (a) is intended to be used for the purposes of terrorist financing or one or more terrorist acts; or
- (b) is, or represents, property obtained through terrorist acts.

PART 2

SEIZURE AND DETENTION OF TERRORIST CASH

2. (1) For the purposes of this paragraph

- (a) “cash” includes coins, notes in any currency, cheques and any other monetary or type of bearer negotiable instrument;
- (b) “customs officer” means an officer appointed under section 6 of the Customs Ordinance;
- (c) “police officer” includes the Director and an investigating officer of the Financial Investigation Agency established under section 3(1) of the Financial Investigation Agency Act; and

(2) A police officer or a customs officer may seize any cash if he has reasonable grounds for suspecting that it is terrorist cash.

3. (1) Cash seized by virtue of paragraph 2(2) shall not be detained for more than 72 hours, unless its continued detention is authorised by order of a Magistrate upon an application made by a police officer or the Commissioner of Customs.

(2) A Magistrate shall not make an order under paragraph 3(1), unless he is satisfied

- (a) that there are reasonable grounds for the suspicion mentioned in paragraph 2(2); and
- (b) that continued detention of the cash is justified while its origin or derivation is further investigated, or consideration is given to the institution (whether in the Territory or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected; or
- (c) that proceedings against any person for an offence with which the cash is connected have been started but have not been concluded.

4. Where an order is made under paragraph 3(1), the Magistrate

- (a) shall provide for notice to be given to persons affected by it and the notice shall be in such form as the Magistrate shall determine, unless otherwise provided in rules made under the Magistrate's Code of Procedure Act;
- (b) shall authorise the continued detention of the cash to which the order relates for a period, not exceeding 3 months beginning with the date of the order, as may be specified in the order; and
- (c) may thereafter, if satisfied as to the matters mentioned in the application under paragraph 3(1), from time to time by order authorise the further detention of the cash, but so that
 - (i) no period of detention specified in such an order shall exceed 3 months beginning with the date of the order; and
 - (ii) the total period of detention shall not exceed 2 years from the date of the order.

5. At any time while cash is detained by virtue of paragraph 2(2)

- (a) the Magistrate may direct its release if satisfied, on an application made: -

- (i) by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer any, such grounds as are mentioned in paragraph 3(2) to warrant its continued detention; or
 - (ii) by any other person, that the continued detention of the cash is not for that or any other reason justified; and
- (b) The Commissioner of Police or the Commissioner of Customs shall, through the Director of Public Prosecutions, make an application to the Magistrate to have detained cash released once it has been determined that continued detention is no longer justified.

6. A police officer or the Commissioner of Customs shall not release detained cash unless he first notifies

- (a) the Magistrate under whose order the cash is being detained; or
- (b) another Magistrate in the absence of the one under whose order the cash is being detained.

7. Where on an application under paragraph 5 for the release of cash that is being detained the Magistrate finds that only a part of the cash, if it relates to liquid currency, is intended for use by a terrorist, the Magistrate may order the release of that part of the cash as does not relate to the intended terrorist act or financing of terrorism.

8. If at any time when any cash is being detained by virtue of paragraph 2(2)

- (a) an application for its forfeiture is made under paragraph 9; or
- (b) proceedings are instituted (whether in the Virgin Islands or elsewhere) against any person for an offence with which the cash is connected,

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.

Forfeiture

9. (1) A Magistrate may order the forfeiture to the Crown of the whole or any part of cash which has been seized pursuant to paragraph 2(2) if he is satisfied, on an application made by a police officer or the Commissioner of Customs, that the cash is terrorist cash.

(2) The standard of proof in proceedings on an application under paragraph 9(1) shall be on a balance of probability.

(3) An order may be made under paragraph 9(1) irrespective of whether proceedings are brought against a person for an offence with which the cash in question is connected.

(4) Where an application for the forfeiture of any cash is made under paragraph 9(1), the cash is to be detained (and may not be released under any power conferred under Part 2 of this Schedule) until any proceedings in pursuance of the application, including any proceedings on appeal, are concluded.

(5) Any party to proceedings under this section who is aggrieved by an order of the Magistrate may, within 30 days from the date on which the order is made, appeal to the Court of Appeal, which may make such order as it thinks appropriate.

Interest

10. Cash seized pursuant to paragraph 2(2) and detained for more than 72 hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

Immunity from suit

11. No action shall be brought against any police officer or customs officer for anything done, in good faith, in exercise of the powers conferred on him by this Schedule.

Passed by the House of Assembly this 24th day of June, 2021.

(Sgd.) Julian Willock,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.