

TERRORISM ACT 2018**Principal Act**

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FINANCING OF TERRORISM
(ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED
NATIONS IN RESOLUTION 54/109 OF 9 DECEMBER 1999)

AN ACT TO MAKE PROVISION ABOUT TERRORISM OFFENCES, TO MAKE PROVISION FOR THE PROSCRIBING OF ORGANISATIONS, TO PROVIDE FOR ORDERS FOR THE FREEZING AND FORFEITURE OF TERRORIST PROPERTY AND FUNDS, TO PROVIDE FOR THE INVESTIGATION OF TERRORIST OFFENCES AND PROVIDE INVESTIGATION MEASURES, TO MAKE PROVISION IN CONNECTION WITH OVERSEAS TERRORISM, TO REPEAL AND REPLACE THE TERRORISM ACT 2005 AND FOR CONNECTED PURPOSES.

**PART 1
PRELIMINARY**

Title.

1. This Act may be cited as the Terrorism Act 2018.

Commencement.

- 2.(1) This Act comes into operation on the day appointed by the Government by notice in the Gazette.

(2) Different days may be appointed under subsection (1) for different provisions and for different purposes.

Interpretation.

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

“act” and “action” include omission;

“article” includes substance and any other thing and for the purposes of Part 3 includes anything for storing data;

“biological agent” means any microbial, microbiological or other biological agent;

“biological weapon” means a biological agent or toxin, within the meaning of section 3 of the Weapons of Mass Destruction Act 2004, in a form capable of use for hostile purposes or anything to which section 3(1)(b) of that Act applies;

“chemical weapon” has the meaning given to it by section 9 of the Weapons of Mass Destruction Act 2004;

“conduct” includes acts, omissions and statements;

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

“device” includes (whether fixed to land or not) machinery, equipment, appliances, tanks, containers, pipes or conduits;

“explosive” means—

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

“firearm” includes an air gun or air pistol;

“Gibraltar Financial Intelligence Unit” and “GFIU” means the financial intelligence unit established under section 1B of the Proceeds of Crime Act 2015;

“Gibraltar resident” means—

- (a) a person ordinarily resident in Gibraltar whether or not by virtue of a certificate or permit of residence issued under the Immigration and Asylum Act 2018; or
- (b) a body incorporated in Gibraltar;

“glorification” includes any of praise or celebration, and cognate expressions are to be construed accordingly;

“Government” means the Government of Gibraltar, the Government of a country or territory other than Gibraltar or an international governmental organisation;

“information” includes documents;

“Minister” means the Minister with responsibility for Justice;

“noxious substance” includes any biological agent and any other natural or artificial substance (whatever its form, origin or method of production);

“nuclear facility” means—

- (a) a nuclear reactor, including a reactor installed in or on any transportation device for use as an energy source in order to propel it or for any other purpose; or
- (b) a plant or conveyance being used for the production, storage, processing or transport of radioactive material;

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

“nuclear reactor” means any plant (including any machinery, equipment or appliance, whether fixed to land or not) designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons;

“nuclear weapon” means a weapon which contains nuclear material;

“offences listed in Schedule 1” means an offence listed in Schedule 1 or an equivalent offence under the law of a country or territory outside Gibraltar;

“officer” means a police officer of the Royal Gibraltar Police;

“organisation” includes any association or combination of persons;

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

“premises” includes any place and in particular includes—

- (a) a vehicle;
- (b) an offshore production installation within the meanings given in regulation 4(1) of the Environment (Offshore Oil and Gas) Regulations 2015; and
- (c) a tent or moveable structure;

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“property” is to be construed widely and includes property of any description including-

- (a) assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such assets;
- (b) not only such property as has been originally in the possession of or under the control of any person but also any property into or for which the same has been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise;

“proscribed” shall be construed in accordance with Part 2;

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

“qualifying offence” means an offence listed in Schedule 16 committed in Gibraltar;

“radioactive device” means-

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

“radioactive material” means nuclear material or any other radioactive substance which-

- (a) contains nuclides that undergo spontaneous disintegration in a process accompanied by the emission of one or more types of ionising radiation, such as alpha radiation, beta radiation, neutron particles or gamma rays; and
- (b) is capable, owing to its radiological or fissile properties, of-
 - (i) causing serious bodily injury to a person;
 - (ii) causing serious damage to property;
 - (iii) endangering a person’s life; or

- (iv) creating a serious risk to the health or safety of the public;

“restraint order” means an order made under section 60;

“substance” includes any natural or artificial substance, whatever its origin or method of production and whether in solid or liquid form or in the form of a gas or a vapour, and any mixture of substances;

“terrorist investigation” means an investigation of-

- (a) the commission, preparation or instigation of acts of terrorism;
- (b) an act which appears to have been done for the purposes of terrorism;
- (c) the resources of a proscribed organisation; or
- (d) the commission, preparation or instigation of an offence under this Act other than an offence under section 12 or 13;

“transportation device” means a vehicle or a space object (within the meaning of the Outer Space Act 1986 (Gibraltar) Order 1996;

“vehicle”, except in sections 95 to 99 and Schedule 10, includes an aircraft, hovercraft, train or vessel; and

“working day” means a day other than a Saturday, Sunday, Christmas Day, Good Friday, a bank holiday or a public holiday under the Banking and Financial Dealings Act or the Interpretation and General Clauses Act.

(2) Any term used, but not defined, shall be construed in accordance with the provisions of the relevant directive, regulation or measure, as the case may be.

Terrorism: interpretation.

4.(1) In this Act “terrorism” means the use or threat of action where—

- (a) the action falls within subsection (2);
- (b) the use or threat is designed to coerce, compel or undermine the government or an international governmental organisation or to intimidate the public or a section of the public; and

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- (c) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.

(2) An action falls within this subsection if it-

- (a) involves serious violence against a person;
- (b) involves serious damage to property;
- (c) endangers a person's life, other than that of the person committing the action;
- (d) creates a serious risk to the health or safety of the public or a section of the public; or
- (e) is designed seriously to interfere with or seriously to disrupt an electronic system,

and the person committing the action either intends or is reckless as to whether any of the matters set out in paragraphs (a) to (e) is produced.

(3) In this section—

- (a) “action” includes action outside Gibraltar;
- (b) a reference to any person or to property is a reference to any person, or to property, wherever situated;
- (c) a reference to the public includes a reference to the public of a country or territory other than Gibraltar; and
- (d) “the government” means Her Majesty’s Government of Gibraltar or the government of another country or territory.

(4) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.

Terrorist property.

5.(1) In this Act “terrorist property” means—

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

- (c) proceeds of acts carried out for the purposes of terrorism.
- (2) In subsection (1)–
- (a) a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission); and
 - (b) the reference to an organisation's resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the organisation.

PART 2 PROSCRIBED ORGANISATIONS

Interpretation of Part.

6. In this Part a reference to “the UK Act” is a reference to the Terrorism Act 2000 of the United Kingdom as it may be amended from time to time.

Procedure

Proscription.

- 7.(1) For the purposes of this Act an organisation is proscribed if–
- (a) it is listed in Schedule 2 to the UK Act;
 - (b) it operates under the same name as an organisation listed in that Schedule.
- (2) Subsection (1)(b) shall not apply in relation to an organisation listed in Schedule 2 to the UK Act if its entry is the subject of a note in that Schedule.
- (3) The Government shall maintain a list of the organisations that are for the time being included in Schedule 2 to the UK Act.
- (4) As soon as practicable after any amendment is made to Schedule 2 to the UK Act the Government must–
- (a) arrange for the publication of the amended list in the Gazette;
or

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- (b) take such other reasonable steps to bring it to the attention of the public as it considers appropriate.

(5) Where an order made by the Secretary of State under section 3(6) of the UK Act provides for a name to be treated as another name for an organisation, this Act has effect in relation to acts occurring while-

- (a) the order is in force;
- (b) the organisation continues to be listed in Schedule 2 to the UK Act,

as if the organisation were listed in that Schedule under the other name, as well as under the name specified in the Schedule.

(6) Nothing in subsection (5) prevents any liability from being established in any proceedings by proof that an organisation is the same as an organisation listed in Schedule 2 to the UK Act, even though it is or was operating under a name specified neither in that Schedule nor in an order made by the Secretary of State under section 3(6) of the UK Act.

Deproscription: application.

8.(1) An organisation listed in Schedule 2 of the UK Act or a person affected by the organisation's proscription or by the treatment of the name as a name for the organisation may apply to the Secretary of State for-

- (a) the removal of an organisation from Schedule 2 of the UK Act, or
- (b) a name to cease to be treated as a name for an organisation listed in that Schedule.

(2) The application referred to in this section must be made under the terms of the UK Act.

(3) The Minister may by regulations provide for any matter arising from the deproscription of an organisation, including but not limited to-

- (a) the effect on any conviction;
- (b) providing for any appeals.

Offences

Attachment to proscribed organisation.

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

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

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

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

- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the level 4 on the standard scale or to both.

Support for a proscribed organisation.

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

- (a) he invites support for a proscribed organisation; and
- (b) the support is not, or is not restricted to, the provision of money or other property within the meaning of section 35 (raising funds for terrorism).

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

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

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

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

(5)(a) In subsection (1) "inviting support" means-

- (i) encouraging another person to provide labour or services to or on behalf of a proscribed organisation;
- (ii) encouraging another person to join a proscribed organisation or further its activities; or
- (iii) inviting support of other kinds, so long as that support is not restricted to the provision of money or other property within the meaning of section 35 (raising funds for terrorism); and

(b) in subsections (2) to (4)-

"meeting" means-

- (i) a meeting of three or more persons, whether or not the public are admitted; and
- (ii) a meeting is private if the public are not admitted.

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

- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine at level 5 on the standard scale or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the level 4 on the standard scale or to both.

Using items or clothes, etc. for proscribed organisation.

11.(1) A person in a public place commits an offence if he-

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

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

(2) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding 6 months, a fine not exceeding level 4 on the standard scale, or to both.

PART 3
OFFENCES RELATING TO ACTS OF TERRORISM

Encouragement of Terrorism

Encouragement of terrorism.

12.(1) This section applies to a statement that is likely to be understood by a person to whom it is made as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or offences listed in Schedule 1.

(2) A person commits an offence if-

- (a) he makes a statement to which this section applies or causes another to make such a statement; and
- (b) at the time he made it or causes it to be made, he-
 - (i) intends a person to be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate acts of terrorism or offences listed in Schedule 1; or
 - (ii) is reckless as to whether a person will be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate such acts or offences.

(3) For the purposes of this section, the statements that are likely to be understood by a person as indirectly encouraging the commission or preparation of acts of terrorism or offences listed in Schedule 1 include every statement which-

- (a) glorifies the commission or preparation, whether in the past, in the future or generally, of such acts or offences; and
- (b) is a statement from which the person could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances.

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(4) For the purposes of this section the questions how a statement is likely to be understood and what a person could reasonably be expected to infer from it must be determined having regard both–

- (a) to the contents of the statement as a whole; and
- (b) to the circumstances and manner in which it is made.

(5) It is irrelevant for the purposes of subsections (1) to (3)–

- (a) whether anything mentioned in those subsections relates to the commission, preparation or instigation of one or more particular acts of terrorism or offences listed in Schedule 1, of acts of terrorism or offences listed in Schedule 1 of a particular description or of acts of terrorism or offences listed in Schedule 1 generally; and
- (b) whether any person is in fact encouraged or induced by the statement to commit, prepare or instigate any such act or offence.

(6) In proceedings for an offence under this section against a person in whose case it is not proved that he intended the statement directly or indirectly to encourage or otherwise induce the commission, preparation or instigation of the acts of terrorism or offences listed in Schedule 1, it is a defence for him to show–

- (a) that the statement neither expressed his views nor had his endorsement, whether by virtue of section 14 or otherwise; and
- (b) that it was clear, in all the circumstances in the making of the statement, that it did not express his views and, apart from the possibility of his having been given and failed to comply with a notice under subsection (3) of that section, did not have his endorsement.

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

- (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both;
- (b) on summary conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding the level 4 on the standard scale or to both.

Dissemination of terrorist publications.

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

(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 some or all of the persons to whom it is or may become available as a consequence of that conduct, as a direct or indirect encouragement or other inducement to them 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.

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(4) For the purposes of this section matter that is likely to be understood by a 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 that 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 a 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) In proceedings for an offence under this section against a person in respect of conduct to which subsection (10) applies, it is a defence for him to show—

- (a) that the matter by reference to which the publication in question was a terrorist publication neither expressed his views nor had his endorsement, whether by virtue of section 14 or otherwise; and

- (b) that it was clear, in all the circumstances of the conduct, that that matter did not express his views and, apart from the possibility of his having been given and failed to comply with a notice under subsection (3) of section 14, did not have his endorsement.
- (10) This subsection applies to the conduct of a person to the extent that-
- (a) the publication to which his conduct related contained matter by reference to which it was a terrorist publication by virtue of subsection (3)(a); and
 - (b) that person is not proved to have engaged in that conduct with the intention specified in subsection (1)(a).
- (11) A person guilty of an offence under this section shall be liable-
- (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both;
 - (b) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 on the standard scale, or to both.
- (12) 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 if 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.

Application of sections 12 and 13 to internet activity, etc.

- 14.(1) This section applies for the purposes of sections 12 and 13 in relation to cases where-
- (a) a statement is published or caused to be published in the course of, or in connection with, the provision or use of a service provided electronically; or

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- (b) conduct falling within section 13(2) was in the course of, or in connection with, the provision or use of such a service.

(2) The cases in which the statement, or the article or record to which the conduct relates, is to be regarded as having the endorsement of a person (“the relevant person”) at any time include a case in which-

- (a) an officer has given him a notice under subsection (3);
- (b) that time falls more than 2 working days after the day on which the notice was given; and
- (c) the person has failed, without reasonable excuse, to comply with the notice.

(3) A notice under this subsection is a notice which-

- (a) declares that, in the opinion of the officer giving it, the statement or the article or record is unlawfully terrorism related;
- (b) requires the relevant person to secure the statement or the article or record, so far as it is so related, is not available to the public or is modified so as no longer to be so related;
- (c) warns the relevant person that a failure to comply with the notice within 2 working days will result in the statement, or the article or record, being regarded as having his endorsement; and
- (d) explains how, under subsection (4), he may become liable by virtue of the notice if the statement, or the article or record, becomes available to the public after he has complied with the notice.

(4) Where-

- (a) a notice under subsection (3) has been given to the relevant person in respect of a statement, or an article or record, and he has complied with it; but
- (b) he subsequently publishes or causes to be published another statement which is, or is for all practical purposes, the same or to the same effect as the statement to which the notice related, or to matter contained in the article or record to which it related;

the requirements of subsection (2)(a) to (c) shall be regarded as satisfied in the case of the repeat statement in relation to the times of its subsequent publication by the relevant person.

(5) In proceedings against a person for an offence under section 12 or 13 the requirements of subsection (2)(a) to (c) are not, in his case, to be regarded as satisfied in relation to any time by virtue of subsection (4) if he shows that he-

- (a) has, before any time, taken every step he reasonably could to prevent a repeat statement from becoming available to the public and to ascertain whether it does; and
- (b) was, at that time, a person to whom subsection (6) applied.

(6) This subsection applies to a person at any time when he-

- (a) is not aware of the publication of the repeat statement; or
- (b) having become aware of its publication, has taken every step that he reasonably could to secure that it either ceased to be available to the public or was modified as mentioned in subsection (3)(b).

(7) For the purposes of this section a statement or an article or record is unlawfully terrorism-related if it constitutes, or if matter contained in the article or record constitutes-

- (a) something that is likely to be understood, by any one or more of the persons to whom it has or may become available, as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism or offences listed in Schedule 1; or
- (b) information which-
 - (i) is likely to be useful to any one or more of those persons in the commission or preparation of such acts; and
 - (ii) is in a form or context in which it is likely to be understood by any one or more of those persons as being wholly or mainly for the purpose of being so useful.

(8) The reference in subsection (7) to something that is likely to be understood as an indirect encouragement to the commission or preparation of acts of terrorism or of offences listed in Schedule 1 includes anything which is likely to be understood as-

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- (a) the glorification of the commission or preparation, whether in the past, on the future or generally, of such acts or such offences; and
- (b) a suggestion that what is being glorified is being glorified as conduct that should be emulated in existing circumstances.

Giving of notices under section 14.

15.(1) A notice under section 14(3) may be given to a person only-

- (a) by delivering it to him in person; or
- (b) by sending it to him, by means of a postal service providing for delivery to be recorded, at his last known address.

(2) A notice under section 14(3) may be given to a body corporate only-

- (a) by delivering it to the secretary of that body in person; or
- (b) by sending it to the appropriate person, by means of postal services providing for delivery to be recorded, at the address of the registered or principal office of the body.

(3) A notice under section 14(3) may be given to a firm only-

- (a) by delivering it to a partner of the firm in person;
- (b) by so delivering it to a person having the control or management of the partnership business; or
- (c) by sending it to the appropriate person, by means of a postal service providing for delivery to be recorded, at the address of the principal office of the partnership.

(4) A notice under section 14(3) may be given to a unincorporated body or association only-

- (a) by delivering it to a member of its governing body in person; or
- (b) by sending it to the appropriate person, by means of a postal service providing for delivery to be recorded, at the address of the principal office of the body or association.

(5) In the case of-

- (a) a company registered outside Gibraltar;
- (b) a firm carrying on business outside Gibraltar; or
- (c) an unincorporated body or association with offices outside Gibraltar;

the references in this section to its principal office include references to its principal office within Gibraltar, if any.

(6) For the purposes of section 14 the time at which a notice under subsection (3) of that section is to be regarded as given is-

- (a) where it is delivered to a person, the time at which it is so delivered; and
- (b) where it is sent by a postal service providing for delivery to be recorded, the time recorded as the time of its delivery.

(7) In this section “secretary”, in relation to a body corporate, means the secretary or other equivalent officer of the body.

Preparation of terrorist acts and terrorist training

Preparation of terrorist acts.

16.(1) A person commits an offence if, with the intention of-

- (a) committing acts of terrorism; or
- (b) assisting another to commit such acts;

he engages in any conduct in preparation for giving effect to his intention.

(2) It is irrelevant for the purposes of subsection (1) whether the intention and preparations relate to one or more particular acts of terrorism, acts of terrorism of a particular description or acts of terrorism generally.

(3) A person guilty of an offence under this section shall be liable, on conviction on indictment, to life imprisonment.

Training for terrorism.

17.(1) A person commits an offence if he provides instruction or training in the making, handling or use of-

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- (a) firearms;
- (b) explosives;
- (c) chemical, biological or nuclear weapons;
- (d) radioactive material or weapons designed or adapted for the discharge of any radioactive material;
- (e) noxious substances or of substances of a description of such substances;
- (f) a method or technique for doing anything else which is capable of being done for the purposes of terrorism, in connection with the commission or preparation of an act of terrorism or offences listed in Schedule 1 or in connection with assisting the commission or preparation by another of such an act or offence; or
- (g) a method or technique for doing anything else which the design or adaptation is for the purposes of terrorism, or in connection with the commission or preparation of an act of terrorism or offences listed in Schedule 1; and

at the time he provides the instruction or training, he knows or reasonably ought to know that a person receiving it intends to use the skills in which he is being instructed or trained-

- (h) for or in connection with the commission or preparation of acts of terrorism or offences listed in Schedule 1; or
- (i) for assisting the commission or preparation by others of such acts or offences.

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

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

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- (e) noxious substances or of substances of a description of such substances;
- (f) a method or technique for doing anything else which is capable of being done for the purposes of terrorism, in connection with the commission or preparation of an act of terrorism or offences listed in Schedule 1 or in connection with assisting the commission or preparation by another of such an act or offence; or
- (g) a method or technique for doing anything else which the design or adaptation is for the purposes of terrorism, or in connection with the commission or preparation of an act of terrorism or offences listed in Schedule 1; and

at the time of the instruction or training, he intends to use the skills in which he is being instructed or trained-

- (h) for or in connection with the commission or preparation of acts of terrorism or offences listed in Schedule 1; or
- (i) for assisting the commission or preparation by others of such acts or offences.

(3) A person commits an offence if he invites another person to receive instruction or training and the receipt-

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

(4) It is irrelevant for the purposes of subsections (1) to (3)-

- (a) whether any instruction or training that is provided is provided to one or more particular persons or generally;
- (b) whether the acts or offences in relation to which a person intends to use skills in which he is instructed or trained consist of one or more particular acts of terrorism or offences listed in Schedule 1, acts of terrorism or offences listed in Schedule 1 of a particular description or acts of terrorism or offences listed in Schedule 1 generally;
- (c) whether assistance that a person intends to provide to others is intended to be provided to one or more particular persons or to one or more persons whose identities are not yet known; and

- (d) whether an invitation to receive instruction or training is addressed to one or more particular persons or generally.
- (5) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both; or
 - (b) on summary conviction, to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale or to both.

Powers for forfeiture for an offence under section 17.

18.(1) The court by or before which a person is convicted of an offence under section 17 may order the forfeiture of anything the court considers to have been in the person's possession for purposes connected with the offence.

(2) Before making an order under subsection (1) the court shall give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner of or otherwise interested in anything which can be forfeited under that subsection.

(3) An order under subsection (1) shall not come into force until there is no further possibility, disregarding any power of a court to grant leave to appeal out of time, of the order being varied or set aside on appeal.

(4) Where a court makes an order under section (1), it may also make such other provision as appears to it to be necessary for giving effect to the forfeiture.

(5) That provision may include, in particular, provision relating to the retention, handling, destruction or other disposal of what is forfeited.

(6) Provision made by virtue of this section may be varied at any time by the court that made it.

(7) The power of forfeiture under this section is in addition to any power of forfeiture under this Act.

Attendance at a place used for terrorist training.

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

- (a) he attends at any place, whether in Gibraltar or elsewhere;

- (b) while he is at that place, instruction or training of the type mentioned in section 17(1) is provided there;
 - (c) that instruction or training is provided there wholly or partly for purposes connected with the commission or preparation of acts of terrorism or offences listed in Schedule 1; and
 - (d) the requirements of subsection (2) are satisfied in relation to that person.
- (2) The requirements of this subsection are satisfied in relation to a person if-
- (a) he knows or believes that instruction or training is being provided there wholly or partly for purposes connected with the commission or preparation of acts of terrorism or offences listed in Schedule 1; or
 - (b) a person attending at that place throughout the period of that person's attendance could not reasonably have failed to understand that instruction or training was being provided there wholly or partly for such purposes.
- (3) It is immaterial for the purposes of this section-
- (a) whether the person concerned receives the instruction or training himself; and
 - (b) whether the instruction or training is provided for purposes connected with one or more particular acts of terrorism or offences listed in Schedule 1, acts of terrorism or offences listed in Schedule 1 of a particular description or acts of terrorism or offences listed in Schedule 1 generally.
- (4) A person guilty of an offence under this section shall be liable-
- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine, or to both;
 - (b) on summary conviction, to imprisonment to a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.
- (5) In this section references to "instruction or training" being provided include references to its being made available.

Directing terrorist organisation.

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

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

Possession for terrorist purposes.

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

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

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

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

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

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

- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale or to both.

Travelling abroad for the purpose of terrorism.

22.(1) A person who travels or attempts to travel from Gibraltar to another country or territory for the purpose of—

- (a) the commission of, contribution to or participation in a terrorist offence; or

- (b) providing or receiving of training for terrorism,

commits an offence.

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

- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale or to both.

Funding travelling abroad for the purpose of terrorism.

23. A person who provides or collects, by any means, directly or indirectly, funds fully or partially enabling any person to travel abroad for the purpose of terrorism, as defined section 22, knowing or having reasonable cause to suspect that the funds are fully or partially intended to be used for this purpose commits an offence.

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

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, to a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale or to both.

Organising or otherwise facilitating travelling abroad for the purpose of terrorism.

24.(1) A person who by any means organises or otherwise facilitates the travelling abroad of a person whom he knows or could reasonably be expected to know is travelling for the purpose of terrorism.

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

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, to a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale or to both.

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Radioactive and Nuclear Terrorism Offences

Making and possession of devices or materials.

25.(1) A person commits an offence if-

- (a) he makes or has in his possession a radioactive device; or
- (b) he has in his possession radioactive material,

with the intention of using the device or material in the course of or in connection with the commission or preparation of an act of terrorism or for the purposes of terrorism, or of making it available to be so used.

(2) It is irrelevant for the purposes of subsection (1) whether the act of terrorism to which an intention relates is a particular act of terrorism, an act of terrorism of a particular description or an act of terrorism generally.

(3) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for life.

Misuse of devices or material and misuse and damage of facilities.

26.(1) A person commits an offence if he uses-

- (a) radioactive device; or
- (b) radioactive material,

in the course of or in connection with the commission of an act of terrorism or for the purposes of terrorism.

(2) A person commits an offence if, in the course of or in connection with the commission of an act of terrorism or for the purposes of terrorism, he uses or damages a nuclear facility in a manner which-

- (a) causes a release of radioactive material; or
- (b) creates or increases a risk that such material will be released.

(3) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for life.

Terrorist threats relating to devices, materials or facilities.

27.(1) A person commits an offence if, in the course of or in connection with the commission of an act of terrorism or for the purposes of terrorism-

- (a) he makes a demand-
 - (i) for the supply to himself or to another of a radioactive device or of radioactive material;
 - (ii) for a nuclear facility to be made available to himself or to another; or
 - (iii) for access to such a facility to be given to himself or to another;
 - (b) he supports the demand with a threat that he or another will take action if the demand is not met; and
 - (c) the circumstances and manner of the threat are such that it is reasonable for the person to whom it is made to assume that there is real risk that the threat will be carried out if the demand is not met.
- (2) A person also commits an offence if-
- (a) he makes a threat falling within subsection (3) in the course of or in connection with the commission of an act of terrorism or for the purposes of terrorism; and
 - (b) the circumstances and manner of the threat are such that it is reasonable for the person to whom it is made to assume that there is real risk that the threat will be carried out, or would be carried out if demands made in association with the threat are not met.
- (3) A threat falls within this subsection if it is-
- (a) a threat to use radioactive material;
 - (b) a threat to use a radioactive device; or
 - (c) a threat to use or damage a nuclear facility in a manner that releases radioactive material or creates or increases a risk that such material will be released.
- (4) A person guilty of an offence under this section shall be liable, on conviction on incitement, to imprisonment for life.

Forfeiture of devices, materials or facilities.

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28.(1) A court by or before which a person is convicted of an offence under section 25 or 26 may order the forfeiture of any radioactive device or radioactive material, or any nuclear facility, made or used in committing the offence.

(2) A court by or before which a person is convicted of an offence under section 27 may order the forfeiture of any radioactive device or radioactive material, or any nuclear facility, which is the subject of-

- (a) a demand under subsection (1) of that section; or
- (b) a threat falling within subsection (3) of that section.

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

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

(5) Where a court makes an order under this section, it may also make such other provision as appears to be necessary for giving effect to the forfeiture, including, in particular, provision relating to the retention, handling, disposal or destruction of what is forfeited.

(6) Provision made by virtue of subsection (5) may be varied at any time by the court that made it.

(7) The power of forfeiture under this section is in addition to any power of forfeiture under this act.

Trespassing, etc. on nuclear sites.

29.(1) Section 546 of the Crimes Act 2011 applies with the following amendments-

- (a) in subsections (1), (4) and (7) for “designated site” read “protected site”;
- (b) read in the following after subsection (1)-

“(1A) In this section “protected site” means-

- (a) a nuclear site; or

(b) a designated site.

(1B) In this section “nuclear site” means-

- (a) so much of any premises in respect of which a nuclear site licence (within the meaning of the Nuclear Installations Act (Gibraltar) Order 1985) is for the time being in force as lies within the outer perimeter of the protection provided for those premises; and
- (b) so much of any other premises of which premises falling within paragraph (a) form a part as lies within that outer perimeter.

(1C) For this purpose-

- (a) the outer perimeter of the protection provided for any premises is the line of the outermost fences, walls or other obstacles provided or relied on for protecting those premises from intruders; and
- (b) that line shall be determined on the assumption that every gate, door or other barrier across a way through a fence, wall or other obstacle is closed.”.

Miscellaneous Terrorist Offences

Collection of information.

30.(1) A person commits an offence if-

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

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

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

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

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- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum, or to both.

Eliciting, publishing or communicating information about members of police, etc.

31.(1) A person commits an offence who-

- (a) elicits or attempts to elicit information about an individual who is or has been-
 - (i) a member of the Royal Gibraltar Regiment,
 - (ii) a police officer of the Royal Gibraltar Police or of the Gibraltar Defence Force,
 - (iii) a customs officer, or
 - (iv) a borders and coastguard officer,

which is of a kind likely to be useful to a person committing or preparing an act of terrorism; or

- (b) publishes or communicates any such information.

(2) It is a defence for a person charged with an offence under this section to prove that they had a reasonable excuse for their action.

(3) A person guilty of an offence under this section is liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine, or to both;
- (b) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both.

Use of noxious substances or things to cause harm and intimidate.

32.(1) A person who takes any action which-

- (a) involves the use of a noxious substance or noxious thing;

- (b) has or is likely to have an effect falling within subsection (2); and
- (c) is designed to influence the government or to intimidate the public or a section of the public,

is guilty of an offence.

(2) An action has an effect falling within this subsection if it-

- (a) causes serious violence against a person anywhere in the world;
- (b) causes serious damage to real or personal property anywhere in the world;
- (c) endangers human life or creates a serious risk to the health or safety of the public or a section of the public; or
- (d) induces in members of the public the fear that the action is likely to endanger their lives or create a serious risk to their health and safety,

but any effect on the person taking the action is to be disregarded.

(3) A person who-

- (a) makes a threat that he or another person will take any action which constitutes an offence under subsection (1); and
- (b) intends thereby to induce in a person anywhere in the world the fear that the threat is likely to be carried out,

is guilty of an offence.

(4) A person guilty of an offence under this section is liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 4 on the standard scale or to both.

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(5) For a person to be guilty of an offence under this section it is not necessary for him to have any particular person in mind as the person in whom he intends to induce the belief in question.

Hoaxes involving noxious substances or things.

33.(1) A person is guilty of an offence if he-

- (a) places any substance or other thing in any place; or
- (b) sends any substance or other thing from one place to another (by post or any other means whatever),

with the intention of inducing in a person anywhere in the world a belief that it likely to be or it contains a noxious substance or other noxious thing and thereby endanger human life or create a serious risk to human health.

(2) A person is guilty of an offence if he communicates any information which he knows or believes to be false with the intention of inducing in a person anywhere in the world a belief that a noxious substance or other noxious thing is likely to be present (whether at the time the information is communicated or later) in any place and thereby endanger human life or create a serious risk to human health.

(3) A person guilty of an offence under this section is liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 4 on the standard scale or to both.

(4) For a person to be guilty of an offence under this section it is not necessary for him to have any particular person in mind as the person in whom he intends to induce the belief in question.

Hostage-taking.

34.(1) Where a person who is either a Gibraltarian or Gibraltar resident-

- (a) detains any other person (“the hostage”); and
- (b) in order to compel a Government, international organisation or a person to do or abstain from doing any act, threatens to kill, injure or continue to detain the hostage,

he commits an offence.

(2) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for life.

PART 4
TERRORIST PROPERTY

Finance Offences

Raising funds for terrorism.

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

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

(2) A person commits an offence if he—

- (a) receives money or other property; and
- (b) intends that it should be used, or has reasonable cause to suspect that it may be used, in full or in part, for the purposes of terrorism.

(3) A person commits an offence if he—

- (a) provides money or other property; and
- (b) knows or has reasonable cause to suspect that it will or may be used, in full or in part, for the purposes of terrorism.

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

Use and possession of money or other property for terrorism.

36.(1) A person commits an offence if he uses money or other property for the purposes of terrorism.

(2) A person commits an offence if he—

- (a) possesses money or other property; and

This version is out of date

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

Arranging funds for terrorism.

37. A person commits an offence if he—

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

Insurance against payments made in response to terrorist demands.

38.(1) The insurer under an insurance contract commits an offence if—

- (a) the insurer makes a payment under the contract, or purportedly under it;
- (b) the payment is made in respect of any money or other property that has been, or is to be, handed over in response to a demand made wholly or partly for the purposes of terrorism; and
- (c) the insurer or the person authorising the payment on the insurer's behalf knows or has reasonable cause to suspect that the money or other property has been, or is to be, handed over in response to such a demand.

(2) If an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

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

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

(3) The reference in subsection (2) to a director, in relation to a body corporate whose affairs are managed by its members, is a reference to a member of the body corporate.

(4) In this section “insurance contract” means a contract under which one party accepts significant insurance risk from another party (“the

policyholder") by agreeing to compensate the policyholder if a specified uncertain future event adversely affects the policyholder.

Money laundering.

39.(1) A person commits an offence if he enters into or becomes concerned in an arrangement of terrorist property—

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

which facilitates the retention or control by or on behalf of another person of such property.

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

Interpretation for the purposes of sections 35 to 39.

39A. For the purposes of sections 35 to 39, the definition of “terrorism” includes the use or threat of action where the action is one set out in the third column of the table in Schedule 17, and the definition of “terrorist property” shall be construed accordingly.

Disclosure of information: duty.

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

- (a) believes or suspects that another person has committed an offence under any of sections 35 to 39; and
- (b) bases his belief or suspicion on information which comes to his attention—
 - (i) in the course of a trade, profession or business, or
 - (ii) in the course of his employment (whether or not in the course of a trade, profession or business).

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

This version is out of date

(3) The person commits an offence if he does not disclose to a constable as soon as is reasonably practicable-

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

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

(5) Where-

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

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

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

- (a) information which he obtains in privileged circumstances; or
- (b) a belief or suspicion based on information which he obtains in privileged circumstances.

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

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

(8) For the purposes of subsection (1)(a) a person shall be treated as having committed an offence under one of sections 35 to 39 if-

- (a) he has taken an action or been in possession of a thing; and

- (b) he would have committed an offence under one of those sections if he had been in Gibraltar at the time when he took the action or was in possession of the thing.

(9) The reference to a business in the regulated sector must be construed in accordance with Schedule 2.

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

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, to a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum or to both.

Disclosure of information: permission.

41.(1) A person may disclose to a police officer-

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

(2) A person may make a disclosure to a police officer in the circumstances mentioned in section 40(1) and (3).

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

(4) Where-

- (a) a person is in employment; and
- (b) his employer has established a procedure for the making of disclosures of the kinds mentioned in subsection (1) and section 40(3),

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

(5) References to a police officer include references to-

- (a) the Head of the GFIU,

- (b) police officers and customs officers within the GFIU, and
- (c) such other personnel authorised for the purposes of this section by the Head of GFIU.

Cooperation with police.

42.(1) A person does not commit an offence under any of sections 35 to 39 if he is acting with the express consent of a police officer.

(2) Subject to subsections (3) and (4), a person does not commit an offence under any of sections 35 to 39 by involvement in a transaction or arrangement relating to money or other property if he discloses to a police officer-

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

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

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

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

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

(5) It is a defence for a person charged with an offence under any of sections 35(2) and (3) and 36 to 39 to prove that-

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

(6) Where-

- (a) a person is in employment; and

- (b) his employer has established a procedure for the making of disclosures of the same kind as may be made to a police officer under subsection (2),

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

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

Arrangements with prior consent.

43.(1) A person does not commit an offence under any of sections 35 to 39 by involvement in a transaction or an arrangement relating to money or other property if, before becoming involved, the person-

- (a) discloses to an authorised officer the person's suspicion or belief that the money or other property is terrorist property and the information on which the suspicion or belief is based; and
- (b) has the authorised officer's consent to becoming involved in the transaction or arrangement.

(2) A person is treated as having an authorised officer's consent if before the end of the notice period the person does not receive notice from an authorised officer that consent is refused.

(3) The notice period is the period of 14 working days starting with the first working day after the person makes the disclosure.

(4) In this section "authorised officer" means a police officer or a customs officer and include references to

- (a) the Head of the GFIU,
- (b) police officers and customs officers within the GFIU, and
- (c) such other personnel authorised for the purposes of this section by the Head of GFIU.

(5) The reference in this section to a transaction or arrangement relating to money or other property includes a reference to use or possession.

Disclosure after entering into arrangements.

This version is out of date

44.(1) A person does not commit an offence under any of sections 35 to 39 by involvement in a transaction or an arrangement relating to money or other property if, after becoming involved, the person discloses to an authorised officer-

- (a) the person's suspicion or belief that the money or other property is terrorist property; and
- (b) the information on which the suspicion or belief is based.

(2) This section applies only where-

- (a) there is a reasonable excuse for the person's failure to make the disclosure before becoming involved in the transaction or arrangement; and
- (b) the disclosure is made on the person's own initiative and as soon as it is reasonably practicable for the person to make it.

(3) This section does not apply to a person if-

- (a) an authorised officer forbids the person to continue involvement in the transaction or arrangement to which the disclosure relates; and
- (b) the person continues that involvement.

(4) In this section “authorised officer” means a police officer or a customs officer and include references to the police officers and customs officers in the GFIU.

(5) The reference in this section to a transaction or arrangement relating to money or other property includes a reference to use or possession.

Reasonable excuse for failure to disclose.

45. It is a defence for a person charged with an offence under any of sections 35 to 39 to prove that-

- (a) the person intended to make a disclosure of the kind mentioned in section 43 or 44; and
- (b) there is a reasonable excuse for the person's failure to do so.

Failure to disclose: regulated sector.

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

(2) The first condition is that he-

- (a) knows or suspects; or
- (b) has reasonable grounds for knowing or suspecting, that another person has committed or attempted to commit an offence under any of sections 35 to 39.

(3) The second condition is that the information or other matter-

- (a) on which his knowledge or suspicion is based; or
- (b) which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a business in the regulated sector.

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

(5) But a person does not commit an offence under this section if-

- (a) he has a reasonable excuse for not disclosing the information or other matter;
- (b) he is a professional legal adviser or relevant professional adviser and the information or other matter came to him in privileged circumstances;
- (c) subsection (6) applies to him.

(6) This subsection applies to a person if-

- (a) the person is employed by, or is in partnership with, a professional legal adviser or relevant professional adviser to provide the adviser with assistance or support;
- (b) the information or other matter comes to the person in connection with the provision of such assistance or support; and
- (c) the information or other matter came to the adviser in privileged circumstances.

This version is out of date

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

- (a) issued by a supervisory authority or any other appropriate body; and
- (b) published in a manner appropriate to bring the guidance to the attention of persons likely to be affected by it.

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

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

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

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

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

(11) Schedule 2 has effect for the purpose of determining what is-

- (a) a business in the regulated sector;
- (b) a supervisory authority.

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

- (a) he has taken an action or been in possession of a thing; and

- (b) he would have committed the offence if he had been in Gibraltar at the time when he took the action or was in possession of the thing.

(13) A person guilty of an offence under this section is liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both.

(14) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

(15) References to a police officer include references to the police officers and customs officers in the GFIU.

(16) In this section “relevant professional adviser” means an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for-

- (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
- (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.

Protected disclosures.

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

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

(3) The second condition is that the information or other matter-

- (a) causes the discloser to know or suspect; or

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- (b) gives him reasonable grounds for knowing or suspecting, that another person has committed or attempted to commit an offence under any of sections 35 to 39.
- (4) The third condition is that the disclosure is made to a police officer or a nominated officer as soon as is practicable after the information or other matter comes to the discloser.
- (5) A disclosure to a nominated officer is a disclosure which—
 - (a) is made to a person nominated by the discloser's employer to receive disclosures under this section; and
 - (b) is made in the course of the discloser's employment and in accordance with the procedure established by the employer for the purpose.
- (6) The reference to a business in the regulated sector must be construed in accordance with Schedule 2.
- (7) The reference to a police officer includes a reference to a references to the police officers and customs officers in the GFIU.

Disclosures to the GFIU.

48. Where a disclosure is made under a provision of this Part to a police officer, the police officer must disclose it in full as soon as practicable after it has been made to the GFIU.

Tipping off: regulated sector.

- 49.(1) A person commits an offence if—
- (a) the person discloses any matter within subsection (2);
 - (b) the disclosure is likely to prejudice any investigation that might be conducted following the disclosure referred to in that subsection; and
 - (c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.
- (2) The matters are that the person or another person has made a disclosure under a provision of this Part—
- (a) to a police officer;

This version is out of date

- (b) in accordance with a procedure established by that person's employer for the making of disclosures under that provision;
- (c) to a nominated officer; or
- (d) to the GFIU,

of information that came to that person in the course of a business in the regulated sector.

- (3) A person commits an offence if-
 - (a) the person discloses that an investigation into allegations that an offence under this Part has been committed is being contemplated or is being carried out;
 - (b) the disclosure is likely to prejudice that investigation; and
 - (c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.
- (4) A person guilty of an offence under this section is liable-
 - (a) on summary conviction to imprisonment for a term not exceeding 3 months, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both.
- (5) This section is subject to-
 - (a) section 52 (disclosures within an undertaking or group etc);
 - (b) section 51 (other permitted disclosures between institutions etc);
and
 - (c) section 52 (other permitted disclosures etc).

Disclosures within an undertaking or group etc.

50.(1) An employee, officer or partner of an undertaking does not commit an offence under section 49 if the disclosure is to an employee, officer or partner of the same undertaking.

(2) A person does not commit an offence under section 49 in respect of a disclosure by a credit institution or a financial institution if-

This version is out of date

- (a) the disclosure is to a credit institution or a financial institution;
 - (b) the institution to whom the disclosure is made is situated in a Member State or in a country or territory imposing equivalent money laundering requirements; and
 - (c) both the institution making the disclosure and the institution to whom it is made belong to the same group.
- (3) In subsection (2) “group” has the same meaning as in Directive 2002/87/EC of the European Parliament and of the Council of 16th December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.
- (4) A professional legal adviser or a relevant professional adviser does not commit an offence under section 49 if-
- (a) the disclosure is to a professional legal adviser or a relevant professional adviser;
 - (b) both the person making the disclosure and the person to whom it is made carry on business in a Member State or in a country or territory imposing equivalent money laundering requirements; and
 - (c) those persons perform their professional activities within different undertakings that share common ownership, management or control.

Other permitted disclosures between institutions etc.

51.(1) This section applies to a disclosure-

- (a) by a credit institution to another credit institution;
 - (b) by a financial institution to another financial institution;
 - (c) by a professional legal adviser to another professional legal adviser; or
 - (d) by a relevant professional adviser of a particular kind to another relevant professional adviser of the same kind.
- (2) A person does not commit an offence under section 49 in respect of a disclosure to which this section applies if-

- (a) the disclosure relates to-
 - (i) a client or former client of the institution or adviser making the disclosure and the institution or adviser to whom it is made,
 - (ii) a transaction involving them both, or
 - (iii) the provision of a service involving them both;
- (b) the disclosure is for the purpose only of preventing an offence under this Part of this Act;
- (c) the institution or adviser to whom the disclosure is made is situated in a Member State, the United Kingdom, Gibraltar or in a country or territory imposing equivalent money laundering requirements; and
- (d) the institution or adviser making the disclosure and the institution or adviser to whom it is made are subject to equivalent duties of professional confidentiality and the protection of personal data (within the meaning of section 2 of the Data Protection Act 2004).

Other permitted disclosures etc.

52.(1) A person does not commit an offence under section 49 if the disclosure is-

- (a) to the authority that is the supervisory authority for that person by virtue of Part 1 of Schedule 2 of the Proceeds of Crime Act 2015; and
- (b) for the purpose of-
 - (i) the detection, investigation or prosecution of a criminal offence (whether in Gibraltar or elsewhere);
 - (ii) an investigation under the Proceeds of Crime Act 2015;
 - (iii) the enforcement of any order of a court under that Act.

(2) A professional legal adviser or a relevant professional adviser does not commit an offence under section 49 if the disclosure-

- (a) is to the adviser's client; and

- (b) is made for the purpose of dissuading the client from engaging in conduct amounting to an offence.

(3) A person does not commit an offence under section 49(1) if the person does not know or suspect that the disclosure is likely to have the effect mentioned in section 49(1)(b).

(4) A person does not commit an offence under section 49(3) if the person does not know or suspect that the disclosure is likely to have the effect mentioned in section 49(3)(b).

Interpretation of sections 49 to 52.

53.(1) The references in sections 49 to 52-

- (a) to a business in the regulated sector; and
- (b) to a supervisory authority, are to be construed in accordance with Schedule 2.

(2) In sections 49 to 52-

“credit institution” has the same meaning as in Schedule 2;

“financial institution” means an undertaking that carries on a business in the regulated sector by virtue of any of paragraphs (b) to (i) of paragraph 1(1) of Schedule 2.

(3) References in sections 49 to 52 to a disclosure by or to a credit institution or a financial institution include disclosure by or to an employee, officer or partner of the institution acting on its behalf.

(4) For the purposes of sections 49 to 52 a country or territory imposes “equivalent money laundering requirements” if it imposes requirements equivalent to those laid down in Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, as amended from time to time.

(5) In sections 49 to 52 “relevant professional adviser” means an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for-

- (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
- (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.

Penalties.

54. A person guilty of an offence under any of sections 35 to 39 shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both; or
 - (b) on summary conviction, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both.

Meaning of “employment”.

55. In sections 40 to 47-
- (a) “employment” means any employment (whether paid or unpaid) and includes-
 - (i) work under a contract for services or as an office-holder,
 - (ii) work experience provided pursuant to a training course or programme or in the course of training for employment, and
 - (iii) voluntary work;
 - (b) “employer” has a corresponding meaning.

Forfeiture

Forfeiture in connection with offences under sections 35 to 39.

56.(1) The court, by or before which a person is convicted of an offence under any of sections 35 to 39, may make a forfeiture order in accordance with the provisions of this section.

This version is out of date

(2) Where a person is convicted of an offence under section 35(1) to (2) or section 36, the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which-

- (a) had been used for the purposes of terrorism; or
- (b) they intended should be used, or had reasonable cause to suspect might be used, for those purposes.

(3) Where a person is convicted of an offence under section 35(3) the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which-

- (a) had been used for the purposes of terrorism; or
- (b) which, at that time, they knew or had reasonable cause to suspect would or might be used for those purposes.

(4) Where a person is convicted of an offence under section 37 or 39 the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which-

- (a) had been used for the purposes of terrorism; or
- (b) was, at that time, intended by them to be used for those purposes.

(5) Where a person is convicted of an offence under section 37 the court may order the forfeiture of the money or other property to which the arrangement in question related, and which-

- (a) had been used for the purposes of terrorism; or
- (b) at the time of the offence, the person knew or had reasonable cause to suspect would or might be used for those purposes.

(6) Where a person is convicted of an offence under section 38 the court may order the forfeiture of the amount paid under, or purportedly under, the insurance contract.

(7) Where a person is convicted of an offence under section 39 the court may order the forfeiture of the money or other property to which the arrangement in question related.

(8) Where a person is convicted of an offence under any of sections 35 to 39, the court may order the forfeiture of any money or other 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.

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

Forfeiture: other terrorism offences and offences with a terrorist connection.

57.(1) The court by or before which a person is convicted of an offence to which this section applies may order the forfeiture of any money or other property in relation to which the following conditions are met-

- (a) that it was, at the time of the offence, in the possession or control of the person convicted; and
- (b) that-
 - (i) it had been used for the purposes of terrorism,
 - (ii) it was intended by that person that it should be used for the purposes of terrorism, or
 - (iii) the court believes that it will be used for the purposes of terrorism unless forfeited.

(2) This section applies to an offence under any of the following provisions of this Act-

- (a) section 17 (training); and
- (b) section 21, 30 or 31 (possessing things and collecting information for the purposes of terrorism);
- (c) section 137 (inciting terrorism outside Gibraltar);
- (d) section 13 (dissemination of terrorist publications);
- (e) section 16 (preparation of terrorist acts);
- (f) section 25 to 27 (offences involving radioactive devices or materials).

This version is out of date

- (3) The Minister may by Order amend subsection (2).
- (4) An Order adding an offence to subsection (2) applies only in relation to offences committed after the order comes into force.

Forfeiture: supplementary provisions.

58.(1) Before making an order under sections 56 or 57, a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner or otherwise interested in anything which can be forfeited under that section.

(2) In considering whether to make an order under sections 56 or 57 in respect of any property, a court shall have regard to-

- (a) the value of the property; and
 - (b) the likely financial and other effects on the convicted person of the making of the order (taken together with any other order that the court contemplates making).
- (3) Schedule 3 makes further provision in relation to forfeiture orders under sections 56 or 57.

Implementation of forfeiture orders made under section 56.

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

- (a) require any of the forfeited property to be paid or handed over to the Government;
- (b) direct any of the forfeited property other than money or land to be sold or otherwise disposed of in such manner as the court may direct and the proceeds, if any, to be paid to the Government;
- (c) appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property, to realise it in such manner as the court may direct and to pay the proceeds to the Government;
- (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 Government to a specified person falling within section 56(8).

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

(3) In 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.

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

(5) The receiver shall, if, and insofar as those proceeds are insufficient, be entitled to be paid his remuneration and expenses out of the funds of the Government of Gibraltar.

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

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

(7) Subsection (6) does not apply in so far as the loss or damage is caused by the receiver's negligence.

(8) The Registrar of the Supreme Court shall issue a certificate in respect of a forfeiture order if an application is made by—

- (a) the prosecutor in the proceedings in which the forfeiture order was made;
- (b) the defendant in those proceedings; or
- (c) a person whom the court heard under section 56(8) before making the order.

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

Restraint orders.

This version is out of date

60.(1) The Supreme Court may make a restraint order under this section where-

- (a) proceedings have been instituted for an offence under any of sections 35 to 39;
- (b) the proceedings have not been concluded;
- (c) an application for a restraint order is made to the Supreme Court by the prosecutor; and
- (d) a forfeiture order has been made, or it appears to the Supreme Court that a forfeiture order may be made, in the proceedings for the offence.

(2) The Supreme Court may also make a restraint order under this section where-

- (a) a criminal investigation has been started with regard to an offence under any of sections 35 to 39;
- (b) an application for a restraint order is made to the Supreme Court by a person who the Supreme Court is satisfied will have the conduct of any proceedings for the offence; and
- (c) it appears to the Supreme Court that a forfeiture order may be made in any proceedings for the offence.

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

(4) An application for a restraint order may be made ex-parte to the Chief Justice in Chambers.

(5) In this section a reference to dealing with property includes a reference to removing the property from Gibraltar.

Discharge or variation of restraint orders.

61.(1) A restraint order shall provide for notice of it to be given to any person affected by the order.

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

(3) A restraint order made under section 60(1) shall, in particular, be discharged on an application under subsection (2) if the proceedings for the offence have been concluded.

(4) A restraint order made under section 60(2) shall, in particular, be discharged on an application under subsection (2)–

- (a) if no proceedings in respect of offences under any of sections 35 to 39 are instituted within such time as the Supreme Court considers reasonable; or
- (b) if all proceedings in respect of offences under any of sections 35 to 39 have been concluded.

PART 5 FORFEITURE AND FREEZING ORDERS

Terrorist Property

Forfeiture of terrorist cash.

62.(1) Schedule 4 (which makes provision for enabling cash which–

- (a) is intended to be used for the purposes of terrorism;
- (b) consists of resources of an organisation which is a proscribed organisation; or
- (c) is, or represents, property obtained through terrorism,

to be forfeited in civil proceedings before a magistrates' court) is to have effect.

(2) The powers conferred by Schedule 4 are exercisable in relation to any cash whether or not any proceedings have been brought for an offence in connection with the cash.

(3) Expressions used in this section have the same meaning as in Schedule 4.

Orders

Power to make order.

63.(1) The Minister may make a freezing order if the following two conditions are satisfied.

This version is out of date

- (2) The first condition is that the Minister reasonably believes that-
- (a) action to the detriment of Gibraltar's economy (or part of it) has been or is likely to be taken by a person or persons; or
 - (b) action constituting a threat to the life or property of one or more Gibraltarian or resident of Gibraltar has been or is likely to be taken by a person or persons.
- (3) If one person is believed to have taken or to be likely to take the action the second condition is that the person is-
- (a) the government of another country or territory; or
 - (b) a resident of another country or territory.
- (4) If two or more persons are believed to have taken or to be likely to take the action the second condition is that each of them falls within paragraph (a) or (b) of subsection (3); and different persons may fall within different paragraphs.

Contents of order.

64.(1) A freezing order is an order which prohibits persons from making funds available to or for the benefit of a person or persons specified in the order.

- (2) The order must provide that these are the persons who are prohibited-
- (a) all persons in Gibraltar; and
 - (b) all persons elsewhere who are Gibraltarians or are bodies incorporated under the laws of Gibraltar.
- (3) The order may specify the following (and only the following) as the person or persons to whom or for whose benefit funds are not to be made available-
- (a) the person or persons reasonably believed by the Minister to have taken or to be likely to take the action referred to in section 63;
 - (b) any person the Minister reasonably believes has provided or is likely to provide assistance (directly or indirectly) to that person or any of those persons.
- (4) A person may be specified under subsection (3) by-

- (a) being named in the order; or
- (b) falling within a description of persons set out in the order.

(5) The description must be such that a reasonable person would know whether he fell within it.

(6) Funds are financial assets and economic benefits of any kind.

(7) Schedule 5 contains further provisions about the contents of freezing orders.

(8) The Minister must keep a freezing order under review.

Duration of order.

65. A freezing order ceases to have effect at the end of the period of 2 years starting with the day on which it is made.

Residents (interpretation).

66.(1) A resident of Gibraltar is-

- (a) an individual who is ordinarily resident in Gibraltar; or
- (b) a body incorporated under the laws of Gibraltar.

(2) A resident of another country or territory is-

- (a) an individual who is ordinarily resident in such a country or territory; or
- (b) a body incorporated under the law of such a country or territory.

(3) For the purposes of subsection (2)(b) a branch situated in another country or territory is to be treated as a body incorporated under the law of the country or territory where the branch is situated.

(4) This section applies for the purposes of this Part.

Orders: procedure etc

Procedure for making freezing orders.

67.(1) A freezing order is made when an Order is published in the Gazette.

(2) A freezing order must be laid before Parliament after being made and ceases to have effect if annulled pursuant to a resolution of the Parliament.

Procedure for making certain amending orders.

68.(1) This section applies if-

- (a) a freezing order is made specifying by description (rather than by name) the person or persons to whom or for whose benefit funds are not to be made available;
- (b) it is proposed to make a further order which amends the freezing order only so as to make it specify by name the person or persons (or any of the persons) to whom or for whose benefit funds are not to be made available; and
- (c) the Minister reasonably believe that the person or persons named fall within the description contained in the freezing order and the further order contains a statement of the Minister's belief.

(2) This section also applies if-

- (a) a freezing order is made specifying by name the person or persons to whom or for whose benefit funds are not to be made available;
- (b) it is proposed to make a further order which amends the freezing order only so as to make it specify by name a further person or further persons to whom or for whose benefit funds are not to be made available; and
- (c) the Minister reasonably believe that the further person or persons fall within the same description as the person or persons specified in the freezing order and the further order contains a statement of the Minister's belief.

(3) This section also applies if-

- (a) a freezing order is made; and
- (b) it is proposed to make a further order which amends the freezing order only so as to make it specify (whether by name or description) fewer persons to whom or for whose benefit funds are not to be made available.

(4) If this section applies, the further order is subject to annulment in pursuance of a resolution of the Parliament.

Orders: supplementary.

69.(1) Where this Part confers a power to make provision, different provision may be made for different purposes.

(2) An order under this Part may include supplementary, incidental, saving or transitional provisions.

(3) Nothing in this Part affects the generality of subsection (2).

Miscellaneous

The Crown.

70.(1) A freezing order binds the Crown in right of Her Majesty's Government of Gibraltar, subject to the following provisions of this section.

(2) No contravention by the Crown of a provision of a freezing order makes the Crown criminally liable; but the Supreme Court may, on the application of a person appearing to the Court to have an interest, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Nothing in this section affects the operation of section 29(1) of the Crown Proceedings Act.

**PART 6
DISCLOSURE OF INFORMATION**

Extension of existing disclosure powers.

71.(1) This section applies to the provisions listed in Schedule 6, so far as they authorise the disclosure of information.

(2) Each of the provisions to which this section applies shall have effect, in relation to the disclosure of information by or on behalf of a public authority, as if the purposes for which the disclosure of information is authorised by that provision included each of the following-

- (a) the purposes of any criminal investigation whatever which is being or may be carried out, whether in Gibraltar or elsewhere;

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

(3) The Minister may by order amend Schedule 6.

(4) No disclosure of information shall be made by virtue of this section unless the public authority by which the disclosure is made is satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it.

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

(6) The information that may be disclosed by virtue of this section includes information obtained before the commencement of this section.

Restriction on disclosure of information for overseas purposes.

72.(1) Subject to subsections (2) and (3), the Minister may give a direction which-

- (a) specifies any overseas proceedings or any description of overseas proceedings; and
- (b) prohibits the making of any relevant disclosure for the purposes of those proceedings or, as the case may be, of proceedings of that description.

(2) In subsection (1) the reference, in relation to a direction, to a relevant disclosure is a reference to a disclosure authorised by any of the provisions to which section 71 applies which-

- (a) is made for a purpose mentioned in subsection (2)(a) to (d) of that section; and
- (b) is a disclosure of any such information as is described in the direction.

(3) The Minister shall not give a direction under this section unless it appears to him that the overseas proceedings in question, or that overseas proceedings of the description in question, relate or would relate-

- (a) to a matter in respect of which it would be more appropriate for any jurisdiction or investigation to be exercised or carried out by a court or other Gibraltar authority;
- (b) to a matter in respect of which it would be more appropriate for any jurisdiction or investigation to be exercised or carried out by a court or other authority of a third country; or
- (c) to a matter that would fall within paragraph (a) or (b)-
 - (i) if it were appropriate for there to be any exercise of jurisdiction or investigation at all, and
 - (ii) if (where one does not exist) a court or other authority with the necessary jurisdiction or functions existed in Gibraltar or, as the case may be, in the third country in question.

(4) A direction under this section shall not have the effect of prohibiting-

- (a) the making of any disclosure by a Minister; or
- (b) the making of any disclosure in pursuance of an European Union obligation.

(5) A direction under this section-

- (a) may prohibit the making of disclosures absolutely or in such cases, or subject to such conditions as to consent or otherwise, as may be specified in it; and
- (b) must be published or otherwise issued by the Minister in such manner as he considers appropriate for bringing it to the attention of persons likely to be affected by it.

(6) A person who, knowing of any direction under this section, discloses any information in contravention of that direction shall be guilty of an offence and liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both;

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- (b) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding the statutory maximum or to both.

(7) The following are overseas proceedings for the purposes of this section-

- (a) criminal proceedings which are taking place, or will or may take place, in another country or territory;
- (b) a criminal investigation which is being, or will or may be, conducted by an authority of any such country or territory.

(8) References in this section, in relation to any proceedings or investigation, to a third country are references to any country or territory which is not the country or territory where the proceedings are taking place, or will or may take place or, as the case may be, is not the country or territory of the authority which is conducting the investigation, or which will or may conduct it.

(9) In this section “court” includes a tribunal of any description.

Disclosure of information held by revenue departments.

73.(1) This section applies to information which is held by or on behalf of the Commissioner of Income Tax or by or on behalf of the Collector of Customs, including information obtained before the coming into force of this section.

(2) No obligation of secrecy imposed by statute or otherwise prevents the disclosure, in accordance with the following provisions of this section, of information to which this section applies if the disclosure is made-

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

(3) No disclosure of information to which this section applies shall be made by virtue of this section unless the person by whom the disclosure is made is satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it.

(4) Information to which this section applies shall not be disclosed by virtue of this section except by the Commissioner of Income Tax or the Collector of Customs by or on whose behalf it is held or with their authority.

(5) Information obtained by means of a disclosure authorised by subsection (2) shall not be further disclosed except-

- (a) for a purpose mentioned in that subsection; and
- (b) with the consent of the Commissioner of Income Tax or the Collector of Customs by whom or with whose authority it was initially disclosed,

and information so obtained shall not be further disclosed (with or without such consent) except for a purpose mentioned in paragraphs (b) to (d) of that subsection.

(6) A consent for the purposes of subsection (5) may be given either in relation to a particular disclosure or in relation to disclosures made in such circumstances as may be specified or described in the consent.

(7) Nothing in this section authorises the making of any disclosure which is prohibited by any provision of the Data Protection Act 2004.

(8) References in this section to information which is held on behalf of the Commissioner of Income Tax or the Collector of Customs include references to information which-

- (a) is held by a person who provides services to the Commissioner of Income Tax or, as the case may be, to the Collector of Customs; and
- (b) is held by that person in connection with the provision of those services.

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

Interpretation of Part 6.

74.(1) In this Part-

“criminal investigation” means an investigation of any criminal conduct, including an investigation of alleged or suspected criminal conduct relating to or otherwise connected to terrorism and an investigation of whether such criminal conduct relating to or otherwise connected to terrorism has taken place;

“information” includes-

- (a) documents; and
- (b) in relation to a disclosure authorised by a provision to which section 71 applies, anything that falls to be treated as information for the purposes of that provision;

“public authority” includes-

- (a) a court or tribunal; and
- (b) any person certain of whose functions are functions of a public nature,

but does not include the Parliament or a person exercising functions in connection with proceedings in Parliament, and in relation to a particular act, a person is not a public authority by virtue only of paragraph (b) if the nature of the act is private.

(2) Proceedings outside Gibraltar shall not be taken to be criminal proceedings for the purposes of this Part unless the conduct with which the defendant in those proceedings is charged is criminal conduct or conduct which, to a substantial extent, consists of criminal conduct relating to or otherwise connected to terrorism.

(3) In this section “conduct” includes acts, omissions and statements.

PART 7 TERRORIST INVESTIGATIONS

Cordons

Cordoned areas.

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

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

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

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

- (a) by means of tape marked with the word "police"; or
- (b) in such other manner as a police officer considers appropriate.

Power to designate.

76.(1) Subject to subsection (2), a designation under section 75 may only be made, by a police officer who is at least of the rank of superintendent.

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

(3) Where a police officer makes a designation in reliance on subsection (2) he shall as soon as is reasonably practicable-

- (a) make a written record of the time at which the designation was made; and
- (b) ensure that a police officer of at least the rank of superintendent is informed.

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

- (a) shall confirm the designation or cancel it with effect from such time as he may direct; and
- (b) shall, if he cancels the designation, make a written record of the cancellation and the reason for it.

Duration.

77.(1) A designation under section 75 has effect, subject to subsections (2) to (5), during the period-

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

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(2) The date or time specified under subsection (1)(b) must not occur after the end of the period of 14 days beginning with the day on which the designation is made.

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

- (a) the person who made it; or
- (b) a person who could have made it (otherwise than by virtue of section 76(2)).

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

(5) A designation shall not have effect after the end of the period of 28 days beginning with the day on which it was made.

Police powers in cordoned area.

78.(1) A police officer in uniform may-

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

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

(3) It is a defence for a person charged with an offence under subsection (2) to prove that he had a reasonable excuse for his failure.

(4) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 4 on the standard scale or to both.

Information and Evidence - Powers

Searches.

79. Schedule 14 of the Criminal Procedure and Evidence Act 2011 is amended by inserting the following after paragraph 11-

- “12. A summary offence under the Terrorism Act 2018 which falls within the definition of “terrorist investigation” as defined in section 3 of the Terrorism Act 2018.”.

Financial information.

80. Schedule 7 (financial information) shall have effect.

Account monitoring orders.

81. Schedule 8 (account monitoring orders) shall have effect.

Information about acts of terrorism.

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

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

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

(3) Disclosure is in accordance with this section if it is made to a police officer of the Royal Gibraltar Police.

(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 conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine or to both; or

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- (b) on summary conviction, to imprisonment for term not exceeding 6 months, or to a fine not exceeding the statutory maximum or to both.

(6) Proceedings for an offence under this section may be taken, and the offence may for the purposes of those proceedings be treated as having been committed, in any place where the person 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).

Disclosure of information.

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

(2) The person commits an offence if he-

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

(3) Subsection (4) applies where a person knows or has reasonable cause to suspect that disclosure has been or will be made under section 82.

(4) The person commits an offence if he-

- (a) discloses to another anything which is likely to prejudice an investigation resulting from the disclosure under that section; or
- (b) interferes with material which is likely to be relevant to an investigation resulting from the disclosure under that section.

(5) It is a defence for a person charged with an offence under subsection (2) or (4) to prove-

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

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

- (a) to his client or to his client's representative in connection with the provision of legal advice by the adviser to the client and not with a view to furthering a criminal purpose; or
- (b) to any person for the purpose of actual or contemplated legal proceedings and not with a view to furthering a criminal purpose.

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

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, to a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both.

(8) For the purposes of this section-

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

PART 8 COUNTER-TERRORIST POWERS

Suspected Terrorists

Terrorist - interpretation.

84.(1) In this Part "terrorist" means a person who-

- (a) has committed an offence under any of sections 9, 10, 17, 20 to 31 and 35 to 39; or
- (b) is or has been concerned in the commission, preparation or instigation of acts of terrorism.

(2) The reference in subsection (1)(b) to a person who has been concerned in the commission, preparation or instigation of acts of terrorism includes a

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reference to person who has been, whether before or after the passing of this Act, concerned in the commission, preparation instigation of acts of terrorism within the meaning given by section 4.

Arrest without a warrant.

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

(2) Where a person is arrested under this section the provisions of Schedule 9 (Detention: Treatment, Review and Extension) 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-

- (a) with the time of his arrest under this section; or
- (b) if he was being detained under Schedule 10 when he was arrested under this section, with the time when his examination under that Schedule began.

(4) If on a review of a person's detention under Part 3 of Schedule 9 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, through a Crown Counsel, under paragraph 36 of Schedule 9 extending a person's detention, the person may be detained pending the making of the application.

(6) Where an application has been made under paragraph 36 or 43 of Schedule 9 in respect of a person's detention, he may be detained pending the conclusion of proceedings on the application.

(7) Where an application under paragraph 36 or 43 of Schedule 9 is granted in respect of a person's detention, he may be detained, subject to paragraph 45 of that Schedule, during the period specified in the warrant.

(8) The refusal of an application in respect of a person's detention under paragraph 36 or 43 of Schedule 9 shall not prevent his continued detention in accordance with this section.

(9) When a person who is in police detention is removed to a hospital because he is in need of medical treatment-

- (a) any time during which he is being questioned in hospital or on the way there or back by a police officer for the purpose of obtaining evidence relating to an offence is included in any period which falls to be calculated for the purposes of this Part; but
- (b) any other time while he is in hospital or on his way there or back is not so included.

Search of premises.

86.(1) A justice of the peace 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 84(1)(b) is to be found there.

(2) A warrant under this section shall authorise any police officer to enter and search the specified premises for the purpose of arresting the person referred to in subsection (1) under section 85.

Search of persons.

87.(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 85 to discover whether he has in his possession anything which may constitute evidence that he is a terrorist.

(3) 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.

(4) Subsection (5) applies if a police officer, in exercising the power under subsection (1) to stop a person whom the police officer reasonably suspects to be a terrorist, stops a vehicle (see section 143(2) – Powers to stop and search).

(5) The police officer-

- (a) may search the vehicle and anything in or on it to discover whether there is anything which may constitute evidence that the person concerned is a terrorist; and
- (b) may seize and retain anything which the police officer-

This version is out of date

- (i) discovers in the course of such a search, and
- (ii) reasonably suspects may constitute evidence that the person is a terrorist.

(6) Nothing in subsection (5) confers a power to search any person but the power to search in that subsection is in addition to the power in subsection (1) to search a person whom the police officer reasonably suspects to be a terrorist.

Search of vehicles.

88.(1) Subsection (2) applies if a police officer reasonably suspects that a vehicle is being used for the purposes of terrorism.

(2) The police officer may stop and search-

- (a) the vehicle;
- (b) the driver of the vehicle;
- (c) a passenger in the vehicle;
- (d) anything in or on the vehicle or carried by the driver or a passenger; to discover whether there is anything which may constitute evidence that the vehicle is being used for the purposes of terrorism.

(3) A police officer may seize and retain anything which he-

- (a) discovers in the course of a search under this section; and
- (b) reasonably suspects may constitute evidence that the vehicle is being used for the purposes of terrorism.

(4) In this section “driver”, in relation to an aircraft, hovercraft or vessel, means the captain, pilot or other person with control of the aircraft, hovercraft or vessel or any member of its crew and, in relation to a train, includes any member of its crew.

Powers to stop and search in specified locations

Searches in specified areas or places.

This version is out of date

89.(1) The Commissioner of Police may give an authorisation under subsection (2) or (3) in relation to a specified area or place if a police officer-

- (a) reasonably suspects that an act of terrorism will take place; and
- (b) reasonably considers that-
 - (i) the authorisation is necessary to prevent such an act,
 - (ii) the specified area or place is no greater than is necessary to prevent such an act, and
 - (iii) the duration of the authorisation is no longer than is necessary to prevent such an act.

(2) An authorisation under this subsection authorises any police officer in uniform to stop a vehicle in the specified area or place and to search-

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

(3) An authorisation under this subsection authorises any police officer in uniform to stop a pedestrian in the specified area or place and to search-

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

(4) A police officer in uniform may exercise the power conferred by an authorisation under subsection (2) or (3) only for the purpose of discovering whether there is anything which may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 84(1)(b).

(5) But the power conferred by such an authorisation may be exercised whether or not the police officer reasonably suspects that there is such evidence.

(6) A police officer may seize and retain anything which the police officer-

This version is out of date

- (a) discovers in the course of a search under such an authorisation; and
- (b) reasonably suspects may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 84(1)(b).

(7) Schedule 11 (which makes supplementary provision about authorisations under this section) has effect.

(8) In this section-

“driver” has the meaning given by section 88(4); and

“specified” means specified in an authorisation.

(9) Schedule 11 of this Act shall have effect.

Code of practice relating to sections 87, 88 and 89

Code of practice relating to sections 87, 88 and 89.

90.(1) The Minister must prepare a code of practice containing guidance about-

- (a) the exercise of the powers conferred by sections 87 and 88;
- (b) the exercise of the powers to give an authorisation under section 89(2) or (3);
- (c) the exercise of the powers conferred by such an authorisation and section 89(6); and
- (d) such other matters in connection with the exercise of any of the powers mentioned in paragraphs (a) to (c) as the Minister considers appropriate.

(2) Such a code may make different provision for different purposes.

(3) In the course of preparing such a code, the Minister must consult the Attorney General and such other persons as the Minister considers appropriate.

Publication of codes of practice.

91.(1) Before issuing a code of practice prepared under section 90 as an order, the Minister-

- (a) must publish a draft of the code;
- (b) must consider any representations made to him about the draft; and
- (c) may modify the draft accordingly.

(2) Before issuing a code of practice the Minister must lay it in the Parliament and if the Parliament has not passed a motion disapproving the code within 30 days of the commencement of the next sitting, it will be deemed to be approved by Parliament and may be issued by the Minister.

(3) Upon being issued by the Minister, a code-

- (a) must be published in the Gazette;
- (b) does not come into operation until the Minister by order so provides.

(4) An order bringing a code into operation may include transitional or saving provisions.

(5) A code of practice prepared under section 90 comes into force in accordance with this section.

Amendment or revision of codes of practice.

92.(1) The Minister may at any time by order amend or revise the whole or any part of a code of practice.

(2) Where the Minister has made an order under subsection (1) the order containing the amendment or revision-

- (a) must be published in the Gazette;
- (b) must be laid before the Parliament at the next sitting following the date of publication in the Gazette; and
- (c) shall come into operation on such date as the Minister appoints therein.

(3) An order containing an amendment or revision under this section may include transitional or saving provisions.

This version is out of date

(4) If the Parliament within 30 days of the commencement of the next sitting, resolves to pass a motion disapproving of the amendment or revision-

- (a) any action undertaken in pursuance of the amendment or revision shall be deemed valid if undertaken prior to the resolution of the Parliament;
- (b) the Minister shall as soon as reasonably practicable thereafter-
 - (i) revoke the amended or revised code of practice, and
 - (ii) (notwithstanding any provision to the contrary) issue a code of practice in such terms as contained in the relevant code of practice prior to the relevant amendment or revision; and
- (c) a code of practice issued under subsection (4)(b)(ii) shall be deemed to have come into operation on the date of the resolution of the Parliament.

Review of code.

93.(1) The Minister must keep the search powers code under review.

(2) In this section “search powers code” means the code of practice issued under section 91, as amended or revised from time to time.

Effect and status of codes of practice.

94.(1) In all criminal and civil proceedings-

- (a) a code of practice issued under this Act is admissible in evidence; and
- (b) if any provision of a code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings, it is to be taken into account in deciding that question.

(2) Persons other than police officers who have a duty to investigate offences or charge offenders must in the discharge of that duty have regard to any relevant provision of a code of practice.

(3) A failure-

- (a) by a police officer to comply with any provision of a code of practice; or
- (b) by any person to whom a code or practice applies to have regard to any provision of the code,

does not invalidate any action taken by the police officer or other person or in itself render the officer or other person liable to any criminal or civil proceedings.

(4) A police officer is liable to disciplinary proceedings under Part VIII of the Police Act 2006 for a failure to comply with any provision of a code of practice which imposes a duty on the officer.

(5) If it appears to a court or tribunal conducting criminal or civil proceedings that-

- (a) any provision of a code issued under this Act; or
- (b) any failure mentioned in subsection (3),

is relevant to any question arising in the proceedings, the provision or failure may be taken into account in deciding the question.

Parking

Authorisations.

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

(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 where the road specified is in Gibraltar and is given by a police officer of at least the rank of chief superintendent.

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

Exercise of power.

96.(1) The power conferred by an authorisation under section 95 shall be exercised by placing a traffic sign specifying that the prohibition or restriction is made under section 95 of this Act on the road concerned.

This version is out of date

(2) A police officer exercising the power conferred by an authorisation under section 95 may suspend a parking place.

(3) Where a parking place is suspended under subsection (2), the suspension shall be treated as a restriction imposed by virtue of section 95 for the purposes of regulation 43 of the Traffic (Parking and Waiting) Regulations 2011 and of any regulations in force under those Regulations.

Duration of authorisation.

97.(1) An authorisation under section 95 has effect, subject to subsections (2) and (3), during the period specified in the authorisation.

(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.

98.(1) A person commits an offence if he parks a vehicle in contravention of a prohibition or restriction imposed by virtue of section 95.

(2) A person commits an offence if-

- (a) he is the driver or other person in charge of a vehicle which has been permitted to remain at rest in contravention of any prohibition or restriction imposed by virtue of section 95; and
- (b) he fails to move the vehicle when ordered to do so by a police officer in uniform.

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

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

(5) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) A person guilty of an offence under subsection (2) is liable on summary conviction to imprisonment for 3 months or to a fine not exceeding level 4 on the standard scale or both.

Interpretation.

99. In sections 95 to 98-

“disabled person’s badge” has the meaning afforded to “disabled person’s badge” under regulation 31 of the Traffic (Parking and Waiting) Regulation 2011;

“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;

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

“traffic sign” shall mean any object or device (whether fixed or portable) for conveying warnings, information, requirements, restrictions or prohibitions of any description to traffic on roads or any specified description of traffic and any line or mark, on a road for conveying such warnings, information, requirements, restrictions or prohibitions; and

“vehicle” means any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle.

Port and Border Controls

Port and border controls.

100.(1) Schedule 10 (port and border controls) shall have effect.

(2) The powers conferred by Schedule 10 shall be exercisable notwithstanding the rights conferred by the Immigration and Asylum Act 2018.

(3) The Minister may by regulations amend Schedule 10 to provide for the temporary seizure of passports and other travel documents of persons who are suspected of involvement in terrorism.

*Bail for arrest under section 85 and
continuing detention under Schedule 9*

Bail when arrested under section 85.

This version is out of date

101. Sections 101 to 107 apply to an arrest of a person under section 85 and to any extension to the period of detention of the person under Part 4 or Part 5 of Schedule 9.

Bail.

102.(1) A police officer may release on bail a person who is arrested or taken into custody under section 85.

(2) A person may be released on bail under subsection (1) at any time after arrest or after being taken into custody.

(3) A person released on bail under subsection (1) must be required to attend a specified police station.

(4) Where a police officer releases a person on bail under subsection (1)-

- (a) no recognizance for the person's surrender to custody shall be taken from the person;
- (b) no security for the person's surrender to custody shall be taken from the person or from anyone else on the person's behalf; and
- (c) the person shall not be required to provide a surety or sureties for his surrender to custody.

(5) Subject to subsection (4), where a police officer releases a person on bail under subsection (1) the officer may impose, as conditions of the bail, such requirements as appear to the constable to be necessary-

- (a) to secure that the person surrenders to custody;
- (b) to secure that the person does not commit an offence while on bail;
- (c) to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person; or
- (d) for the person's own protection or, if the person is under the age of 17, for the person's own welfare or in the person's own interests.

(6) Where a person is released on bail under subsection (1), a requirement may be imposed on the person as a condition of bail only under the preceding provisions of this section.

(7) The police station which the person is required to attend may be any police station.

Bail under section 102: notices.

103.(1) Where a police officer grants bail to a person under section 102, he must give that person a notice in writing before he is released.

(2) The notice must state-

- (a) the offences for which he was arrested; and
- (b) the ground on which he was arrested.

(3) The notice must inform that he is required to attend a police station.

(4) It may also specify the police station which he is required to attend and the time when he is required to attend.

(5) If the person is granted bail subject to conditions under section 102(5), the notice also-

- (a) must specify the requirements imposed by those conditions;
- (b) must explain the opportunities under section 105(1) and 106(1) for variation of those conditions; and
- (c) if it does not specify the police station at which the person is required to attend, must specify a police station at which the person may make a request under section 105(1)(b).

(6) If the notice does not include the information mentioned in subsection (4), the person must subsequently be given a further notice in writing which contains that information.

(7) The person may be required to attend a different police station from that specified in the notice under subsection (1) or (5) or to attend at a different time.

(8) He must be given notice in writing of any such change as is mentioned in subsection (7) but more than one such notice may be given to him.

Bail under section 102: supplemental.

104.(1) A person who has been required to attend a police station is not required to do so if he is given notice in writing that his attendance is no longer required.

This version is out of date

(2) If a person is required to attend a police station which is not a designated police station he must be-

- (a) released; or
- (b) taken to a designated police station,

not more than 6 hours after his arrival.

(3) Nothing in the Criminal Procedure and Evidence Act 2011 applies in relation to bail under section 102.

(4) Nothing in section 102 or 103 or in this section prevents the re-arrest without a warrant of a person released on bail under section 102 if new evidence justifying a further arrest has come to light since his release.

Bail under section 102: variation of conditions by police.

105.(1) Where a person released on bail under section 102(1) is on bail subject to conditions-

- (a) a relevant officer at the police station at which the person is required to attend; or
- (b) where no notice under section 103 specifying that police station has been given to the person, a relevant officer at the police station specified under section 103(5)(c),

may, at the request of the person but subject to subsection (2), vary the conditions.

(2) On any subsequent request made in respect of the same grant of bail, subsection (1) confers power to vary the conditions of the bail only if the request is based on information that, in the case of the previous request or each previous request, was not available to the relevant officer considering that previous request when he was considering it.

(3) Where conditions of bail granted to a person under section 102(1) are varied under subsection (1)-

- (a) paragraphs (a) to (d) of section 102(4) apply;
- (b) requirements imposed by the conditions as so varied must be requirements that appear to the relevant officer varying the conditions to be necessary for any of the purposes mentioned in paragraphs (a) to (d) of section 102(5); and

- (c) the relevant officer who varies the conditions must give the person notice in writing of the variation.

(4) Power under subsection (1) to vary conditions is, subject to subsection (3)(a) and (b), power—

- (a) to vary or rescind any of the conditions; and
- (b) to impose further conditions.

(5) In this section “relevant officer”, in relation to a designated police station, means a custody officer but, in relation to any other police station—

- (a) means a police officer who is not involved in the investigation of the offence for which the person making the request under subsection (1) was under arrest when granted bail under section 102(1), if such a police officer is readily available; and
- (b) if no such police officer is readily available—
 - (i) means a police officer other than the one who granted bail to the person, if such a police officer is readily available; and
 - (ii) if no such police officer is readily available, means the police officer who granted bail.

Bail under section 102: variation of conditions by court.

106.(1) Where a person released on bail under section 102(1) is on bail subject to conditions, a magistrates' court may, on an application by or on behalf of the person, vary the conditions if—

- (a) the conditions have been varied under section 105(1) since being imposed under section 102(5);
- (b) a request for variation under section 105(1) of the conditions has been made and refused; or
- (c) a request for variation under section 105(1) of the conditions has been made and the period of 48 hours beginning with the day when the request was made has expired without the request having been withdrawn or the conditions having been varied in response to the request.

This version is out of date

(2) In proceedings on an application for a variation under subsection (1), a ground may not be relied upon unless-

- (a) in a case falling within subsection (1)(a), the ground was relied upon in the request in response to which the conditions were varied under section 105(1); or
- (b) in a case falling within paragraph (b) or (c) of subsection (1), the ground was relied upon in the request mentioned in that paragraph,

but this does not prevent the court, when deciding the application, from considering different grounds arising out of a change in circumstances that has occurred since the making of the application.

(3) Where conditions of bail granted to a person under section 102(1) are varied under subsection (1)-

- (a) paragraphs (a) to (d) of section 102(4) apply;
- (b) requirements imposed by the conditions as so varied must be requirements that appear to the court varying the conditions to be necessary for any of the purposes mentioned in paragraphs (a) to (d) of section 102(5); and
- (c) that bail shall not lapse but shall continue subject to the conditions as so varied.

(4) Power under subsection (1) to vary conditions is, subject to subsection (3)(a) and (b), power-

- (a) to vary or rescind any of the conditions; and
- (b) to impose further conditions.

Failure to answer bail under section 102.

107.(1) A police officer may arrest without a warrant a person who-

- (a) has been released on bail under section 102 subject to a requirement to attend a specified police station as may be varied by section 105 or section 106; but
- (b) fails to attend the police station at the specified time.

(2) A person arrested under subsection (1) must be taken to a police station, which may be the specified police station or any other police station, as soon as practicable after the arrest.

(3) A person who has been released on bail under section 102 may be arrested without a warrant by a police officer if the officer has reasonable grounds for suspecting that the person has broken any of the conditions of bail.

(4) A person arrested under subsection (3) must be taken to a police station, which may be the specified police station mentioned in subsection (1) or any other police station, as soon as practicable after the arrest.

(5) In subsection (1), “specified” means specified in a notice under subsection (1) or (6) of section 103 or, if notice of change has been given under subsection (8) of that section, or as may be varied by section 105 or section 106, in that notice.

(6) An arrest under this section is to be treated as an arrest for an offence.

(7) A person who without reasonable excuse fails to comply with a requirement under section 102, as may be varied by section 105 or section 106, to attend the police station at the time specified in the requirement commits an offence and is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine or both.

PART 9 NOTIFICATION REQUIREMENTS

Introductory

Scheme of this Part.

108.(1) This Part imposes notification requirements on persons dealt with in respect of certain offences-

- (a) sections 109 to 112 specify the offences to which this Part applies;
- (b) sections 113 to 115 make provision as to the sentences or orders triggering the notification requirements;
- (c) sections 116 to 119 contain the notification requirements;
- (d) section 120 makes provision as to the period for which the requirements apply; and

This version is out of date

- (e) section 121 to 126 make provision for review of notification requirements.

(2) This Part also provides for-

- (a) orders applying the notification requirements to persons dealt with outside Gibraltar for corresponding foreign offences (see section 130 and Schedule 12); and
- (b) orders imposing restrictions on travel outside Gibraltar on persons subject to the notification requirements (see section 131 and Schedule 13).

Offences to which this Part applies: terrorism offences.

109.(1) This Part applies to an offence under any of the following provisions under this Act-

- (a) section 9 or 10 (offences relating to proscribed organisations);
- (b) sections 35 to 39 (offences relating to terrorist property);
- (c) section 32 (failure to disclose information about acts of terrorism);
- (d) section 17 (weapons training);
- (e) sections 20 to 31 and 134 (directing terrorism, possessing things and collecting information for the purposes of terrorism, travelling abroad for the purposes of terrorism or facilitating or organising travelling abroad for the purposes of terrorism and inciting terrorism outside Gibraltar);
- (f) an offence in respect of which there is jurisdiction by virtue of any of sections 135 to 139 (extra-territorial jurisdiction in respect of certain offences committed outside Gibraltar for the purposes of terrorism etc);
- (g) section 32 (use of noxious substances or things to cause harm and intimidate);
- (h) sections 12 and 13 (encouragement of terrorism);
- (i) sections 16, 17 and 19 (preparation and training for terrorism);
- (j) sections 25, 26 and 27 (offences relating to radioactive devices and material and nuclear facilities);

- (k) an offence in respect of which there is jurisdiction by virtue of section 137 to 139 (extra-territorial jurisdiction in respect of certain offences committed outside Gibraltar for the purposes of terrorism etc).

(2) This Part also applies to any ancillary offence in relation to an offence listed in subsection (1).

(3) The Minister may by regulations amend subsection (1).

(4) Regulations adding an offence apply only in relation to offences dealt with after the regulations come into force.

(5) Regulations removing an offence have effect in relation to offences whenever dealt with, whether before or after the regulations come into force.

(6) Where an offence is removed from the list, a person subject to the notification requirements by reason of that offence being listed (and who is not otherwise subject to those requirements) ceases to be subject to them when the regulations come into force.

Offences to which this Part applies: offences having a terrorism connection.

110.(1) This Part applies to an offence as to which a court has determined under section 146 (sentences for offences with a terrorist connection) that the offence has a terrorist connection.

(2) A person to whom the notification requirements apply by virtue of such a determination as is mentioned in subsection (1) may appeal against it to the same court, and subject to the same conditions, as an appeal against sentence.

(3) If the determination is set aside on appeal, the notification requirements are treated as never having applied to that person in respect of the offence.

(4) Where the contents of Schedule 14 are amended so as to remove an offence from the list in Schedule 14, a person subject to the notification requirements by reason of that offence being so listed, and who is not otherwise subject to those requirements, ceases to be subject to them when the order comes into force.

Offences dealt with before commencement.

This version is out of date

111.(1) This Part applies to a person dealt with for an offence before the commencement of this Part only if-

- (a) the offence is on the commencement of this Part within section 109(1) or (2) (offences to which this Part applies: terrorism offences); and
- (b) immediately before the commencement of this Part the person-
 - (i) is imprisoned or detained in pursuance of the sentence passed or order made in respect of the offence,
 - (ii) would be so imprisoned or detained but for being unlawfully at large, absent without leave, on temporary leave or leave of absence, or on bail pending an appeal, or
 - (iii) is on licence, having served the custodial part of a sentence of imprisonment in respect of the offence.

(2) In relation to a person dealt with for an offence before the commencement of this Part-

- (a) any reference in this Part to a sentence or order under a specified statutory provision includes a sentence or order under any corresponding earlier statutory provision;
- (b) any reference in this Part to a person being or having been found to be under a disability and to have done the act charged against them in respect of an offence includes a reference to their being or having been found-
 - (i) unfit to be tried for the offence,
 - (ii) insane so that their trial for the offence cannot or could not proceed, or
 - (iii) unfit to be tried and to have done the act charged against them in respect of the offence.

Persons to whom the notification requirements apply

Persons to whom the notification requirements apply.

112. The notification requirements apply to a person who-

This version is out of date

- (a) is aged 16 or over at the time of being dealt with for an offence to which this Part applies; and
- (b) is made subject in respect of the offence to a sentence or order within section 113 (sentences or orders triggering notification requirements).

Sentences or orders triggering notification requirements.

113.(1) The notification requirements apply to a person who in Gibraltar-

- (a) has been convicted of an offence to which this Part applies and sentenced in respect of the offence to-
 - (i) imprisonment or custody for life,
 - (ii) imprisonment or detention of a young offender for a term of 12 months or more,
 - (iii) imprisonment or detention of a young offender for public protection under section 631 of the Crimes Act 2011 for life,
 - (iv) detention for life or for a period of 12 months or more under section 629 of the Crimes Act 2011,
 - (v) a youth rehabilitation order for a term of 12 months or more under section 522 of the Crimes Act 2011,
 - (vi) detention for public protection under section 629 or 630 of the Crimes Act 2011,
 - (vii) detention during Her Majesty's pleasure; or
- (b) has been-
 - (i) convicted of an offence to which this Part applies carrying a maximum term of imprisonment of 12 months or more,
 - (ii) found not guilty by reason of insanity of such an offence, or
 - (iii) found to be under a disability and to have done the act charged against them in respect of such an offence, and made subject in respect of the offence to a hospital order.

This version is out of date

(2) The references in this section to an offence carrying a maximum term of imprisonment of 12 months or more-

- (a) are to an offence carrying such a maximum term in the case of a person who has attained the age of 18; and
- (b) include an offence carrying in the case of such a person a maximum term of life imprisonment and an offence for which in the case of such a person the sentence is fixed by law as life imprisonment.

(3) “Young offender” means a person aged at least 18 but under 21.

Power to amend specified terms or periods of imprisonment or detention.

114.(1) The Minister may by Regulations amend the provisions of section 113 referring to a specified term or period of imprisonment or detention.

(2) Regulations reducing a specified term or period have effect only in relation to persons dealt with after the regulations come into force.

(3) Where Regulations made under subsection (1) increase a specified term or period-

- (a) they have effect in relation to persons dealt with at any time, whether before or after the order comes into force; and
- (b) a person who would not have been subject to the notification requirements if the regulations had been in force when the offence was dealt with (and who is not otherwise subject to those requirements) ceases to be subject to the requirements when the regulations come into force.

Notification requirements

Initial notification.

115.(1) A person to whom the notification requirements apply must notify the following information to the police within the period of 3 days beginning with the day on which the person is dealt with in respect of the offence in question.

(2) The information required is-

- (a) date of birth;

- (b) identification card number;
- (c) name on the date on which the person was dealt with in respect of the offence (where the person used one or more other names on that date, each of those names);
- (d) home address on that date;
- (e) name on the date on which notification is made (where the person uses one or more other names on that date, each of those names);
- (f) home address on the date on which notification is made;
- (g) address of any other premises in Gibraltar at which, at the time the notification is made, the person regularly resides or stays;
- (h) any prescribed information.

(3) In subsection (2) “prescribed” means prescribed by regulations made by the Minister.

(4) In determining the period within which notification is to be made under this section, there shall be disregarded any time when the person is-

- (a) remanded in or committed to custody by an order of a court;
- (b) serving a sentence of imprisonment or detention;
- (c) detained in a hospital; or
- (d) detained under the Immigration and Asylum Act 2018.

(5) This section does not apply to a person who-

- (a) is subject to the notification requirements in respect of another offence (and does not cease to be so subject before the end of the period within which notification is to be made); and
- (b) has complied with this section in respect of that offence.

(6) In the application of this section to a person dealt with for an offence before the commencement of this Part who, immediately before commencement-

This version is out of date

- (a) would be imprisoned or detained in respect of the offence but for being unlawfully at large, absent without leave, on temporary leave or leave of absence, or on bail pending an appeal; or
- (b) is on licence, having served the custodial part of a sentence of imprisonment in respect of the offence, the reference in subsection (1) to the day on which the person is dealt with in respect of the offence shall be read as a reference to the commencement of this Part.

Notification of changes.

116.(1) A person to whom the notification requirements apply who uses a name that has not previously been notified to the police must notify the police of that name.

(2) If there is a change of the home address of a person to whom the notification requirements apply, the person must notify the police of the new home address.

(3) A person to whom the notification requirements apply who resides or stays at premises in Gibraltar the address of which has previously not been notified to the police-

- (a) for a period of 7 days; or
- (b) for two or more periods, in any period of 12 months, that taken together amount to 7 days, must notify the police of the address of those premises.

(4) A person to whom the notification requirements apply who is released-

- (a) from custody pursuant to an order of a court;
- (b) from imprisonment or detention pursuant to a sentence of a court;
- (c) from detention in a hospital; or
- (d) from detention under the Immigration and Asylum Act 2018, must notify the police of that fact.

This does not apply if the person is at the same time required to notify the police under section 115 (initial notification).

(5) A person who is required to notify information within section 115(2)(h) (prescribed information) must notify the police of the prescribed details of any prescribed changes in that information.

(6) In subsection (5) “prescribed” means prescribed by regulations made by the Minister.

(7) Notification under this section must be made before the end of the period of 3 days beginning with the day on which the event in question occurs. Where subsection (3) applies that is the day with which the period referred to in paragraph (a) or (b) (as the case may be) ends.

(8) In determining the period within which notification is to be made under this section, there shall be disregarded any time when the person is-

- (a) remanded in or committed to custody by an order of a court;
- (b) serving a sentence of imprisonment or detention;
- (c) detained in a hospital; or
- (d) detained under the Immigration and Asylum Act 2018.

(9) References in this section to previous notification are to previous notification by the person under section 115 (initial notification), this section, section 117 (periodic re-notification) or section 129 (notification on return after absence from Gibraltar).

(10) Notification under this section must be accompanied by re-notification of the other information mentioned in section 115(2).

Periodic re-notification.

117.(1) A person to whom the notification requirements apply must, within the period of one year after last notifying the police in accordance with-

- (a) section 115 (initial notification);
- (b) section 116 (notification of change);
- (c) this section; or
- (d) section 129 (notification on return after absence from Gibraltar),

re-notify to the police the information mentioned in section 115(2).

This version is out of date

(2) Subsection (1) does not apply if the period referred to in that subsection ends at a time when the person is-

- (a) remanded in or committed to custody by an order of a court;
- (b) serving a sentence of imprisonment or detention;
- (c) detained in a hospital; or
- (d) detained under the Immigration and Asylum Act 2018.

(3) In that case section 116(4) and (10) (duty to notify of release and to re-notify other information) apply when the person is released.

Method of notification and related matters.

118.(1) This section applies to notification under-

- (a) section 115 (initial notification);
- (b) section 116 (notification of change);
- (c) section 117 (periodic re-notification); or
- (d) section 129 (notification on return after absence from Gibraltar).

(2) Notification must be made by the person-

- (a) attending at a police station; and
- (b) making an oral notification to a police officer or to a person authorised for the purpose by the officer in charge of the station.

(3) A person making a notification under section 116 (notification of change) in relation to premises referred to in subsection (3) of that section may make the notification at a police station that would fall within subsection (2)(a) above if the address of those premises were the person's home address.

(4) The notification must be acknowledged.

(5) The acknowledgement must be in writing, and in such form as the Minister may direct.

(6) The person making the notification must, if requested to do so by the police officer or person to whom the notification is made, allow the officer or person to-

- (a) take the person's fingerprints;
- (b) photograph any part of the person; or
- (c) do both these things,

for the purpose of verifying the person's identity.

Travel outside Gibraltar.

119.(1) The Minister may by regulations make provision requiring a person to whom the notification requirements apply who leaves Gibraltar-

- (a) to notify the police of their departure before they leave; and
- (b) to notify the police of their return if they subsequently return to Gibraltar.

(2) Notification of departure must disclose-

- (a) the date on which the person intends to leave Gibraltar;
- (b) the country (or, if there is more than one, the first country) to which the person will travel;
- (c) the person's point of arrival (determined in accordance with the regulations) in that country;
- (d) any other information required by the regulations.

(3) Notification of return must disclose such information as is required by the regulations about the person's return to Gibraltar.

(4) Notification under this section must be given in accordance with the regulations.

(5) Regulations under this section are subject to affirmative resolution procedure.

Period for which notification requirements apply

Period for which notification requirements apply.

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- 120.(1) The period for which the notification requirements apply is-
- (a) 30 years in the case of a person who-
 - (i) is aged 18 or over at the time of conviction for the offence, and
 - (ii) receives in respect of the offence a sentence within subsection (2);
 - (b) 15 years in the case of a person who-
 - (i) is aged 18 or over at the time of conviction for the offence, and
 - (ii) receives in respect of the offence a sentence within subsection (3);
 - (c) 10 years in any other case.
- (2) The sentences in respect of which a 30 year period applies are-
- (a) imprisonment for life;
 - (b) imprisonment or detention of a young offender for a term of 10 years or more;
 - (c) detention during Her Majesty's pleasure.
- (3) The sentences in respect of which a 15 year period applies are imprisonment or detention of a young offender for a term of 5 years or more but less than 10 years.
- (4) The period begins with the day on which the person is dealt with for the offence.
- (5) If a person who is the subject of a finding within section 113(1)(b)(iii) (finding of disability) is subsequently tried for the offence, the period resulting from that finding ends-
- (a) if the person is acquitted, at the conclusion of the trial;
 - (b) if the person is convicted, when the person is again dealt with in respect of the offence.
- (6) For the purposes of determining the length of the period-

- (a) a person who has been sentenced in respect of two or more offences to which this Part applies to consecutive terms of imprisonment is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to the aggregate of the terms; and
- (b) a person who has been sentenced in respect of two or more such offences to concurrent terms of imprisonment (X and Y) that overlap for a period (Z) is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to X plus Y minus Z.

(7) In determining whether the period has expired, there shall be disregarded any period when the person was-

- (a) remanded in or committed to custody by an order of a court;
- (b) serving a sentence of imprisonment or detention;
- (c) detained in a hospital; or
- (d) detained under the Immigration and Asylum Act 2018.

Review and Appeals of Notification Requirements

Review of notification requirement: qualifying relevant offender.

121.(1) A qualifying relevant offender may apply to the Commissioner of Police for a determination that the qualifying relevant offender is no longer subject to the notification requirements (“an application for review”).

(2) A qualifying relevant offender means a relevant offender who, on the date on which he makes an application for review is subject to the notification requirements under this Part.

(3) The “notification requirements” means the notification requirements of this Part for a specified period by virtue of section 120.

Review of notification requirements: application for review and qualifying dates.

122.(1) An application for review must be in writing and may be made on or after the qualifying date or, as the case may be, the further qualifying date.

(2) The qualifying date is-

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- (a) where the qualifying relevant offender was 18 or over on the relevant date, the day after the end of a 1 year period beginning with the day on which the qualifying relevant offender gives the relevant notification; or
- (b) where the qualifying relevant offender was under 18 on the relevant date, the day after the end of a 6 month period beginning with the day on which the qualifying relevant offender gives the relevant notification.

(3) Subject to subsections (4) to (6), the further qualifying date is the day after the end of a 1 year period beginning with the day on which the Commissioner of Police makes a determination under section 123 to require a qualifying relevant offender to remain subject to the notification requirement.

(4) Subsection (5) applies if the Commissioner of Police, when making a determination under section 123 to require a qualifying relevant offender to remain subject to the notification requirements, considers that the risk of terrorism posed by a qualifying relevant offender is sufficient to justify a continuation of those requirements after the end of the 1 year period beginning with the day on which the determination under subsection (3) is made.

(5) If this subsection applies, the Commissioner of Police may make a determination to require a qualifying relevant offender to remain subject to the notification requirements for a period which may be no longer than a 1 year period beginning with the day on which the determination is made and in any event no longer than the period imposed on the qualifying relevant offender under section 120.

(6) If subsection (5) applies, the further qualifying date is the day after the end of the period determined under that subsection.

(7) The Commissioner of Police within 14 days of receipt of an application for review-

- (a) must give an acknowledgment of receipt of the application to the qualifying relevant offender; and
- (b) may notify a responsible body that the application has been made.

(8) Where a responsible body is notified of the application for review under subsection (7)(b) and holds information which it considers to be relevant to the application, the responsible body must give such information to the Commissioner of Police within 14 days of receipt of the notification.

(9) In this section “the relevant notification” means the initial notification under section 115.

(10) For the purposes of this Part “responsible body” means-

- (a) the Minister;
- (b) the probation service;
- (c) the prison service;
- (d) Customs;
- (e) Borders and Coastguard Agency;
- (f) every Government department authority or agency.

Review of notification requirements: determination of application for review.

126.(1) The Commissioner of Police must, within 4 weeks of the latest date on which any body to which a notification has been given under section 122(7)(b) may give information under section 122(8)-

- (a) determine the application for review; and
- (b) give notice of the determination to the qualifying relevant offender.

(2) For the purposes of the determination of an application for review under this section, a qualifying relevant offender must satisfy the Commissioner of Police that it is not necessary for the purpose of protecting the public or any particular members of the public from terrorism for the qualifying relevant offender to remain subject to the notification requirements.

(3) If the Commissioner of Police determines under this section that the qualifying relevant offender should not remain subject to the notification requirements, the notice of determination must-

- (a) contain a statement of reasons for the determination; and
- (b) inform the qualifying relevant offender that he may appeal the determination in accordance with section 125.

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(4) If the Commissioner of Police determines under this section that a qualifying relevant offender should not remain subject to a notification requirements, the qualifying relevant offender ceases to be subject to the notification requirements on the date of receipt of the notice of determination.

Review of notification requirements: factors applying to determination under section 123.

124.(1) In determining an application for review under section 123, the Commissioner of Police must-

- (a) have regard to information, if any, received from a responsible body;
- (b) consider the risk of terrorism posed by the qualifying relevant offender and the effect of a continuation of the notification requirements on the offender; and
- (c) take into account the matters listed in subsection (2).

(2) The matters are-

- (a) the seriousness of the offence in relation to which the qualifying relevant offender became subject to the notification requirements;
- (b) the period of time which has elapsed since the qualifying relevant offender committed the offence, or other offences;
- (c) the age of the qualifying relevant offender at the qualifying date or further qualifying date;
- (d) the age of the qualifying relevant offender at the time the offence referred to in paragraph (a) was committed;
- (e) any assessment of the risk posed by the qualifying relevant offender which has been made by a responsible body;
- (f) any submission or evidence from a victim of the offence giving rise to notification requirement, if a victim exists;
- (g) any convictions or findings made by a court;
- (h) any caution which the qualifying relevant offender has received for an offence;

- (i) any other submission or evidence of the risk of terrorism posed by the qualifying relevant offender; and
- (j) any other matter which the Commissioner of Police considers to be appropriate.

Review of notification requirements: appeals.

125.(1) A qualifying relevant offender may appeal against a determination of the Commissioner of Police under section 123.

(2) An appeal under subsection (1) may be made by complaint to the magistrates' court within the period of 21 days beginning with the day of receipt of the notice of determination.

(3) If the magistrates' court makes an order that a qualifying relevant offender should not remain subject to the notification requirements, the qualifying relevant offender ceases to be subject to the notification requirements on the date of the order.

(4) If the magistrates' court makes an order that a qualifying relevant offender should remain subject to the notification requirement, the qualifying relevant offender may bring a further appeal, against the decision of the magistrates' court, to the Supreme Court.

(5) An appeal under subsection (4) must be made within the period of 21 days beginning with the day the order was made by the magistrates' court under subsection (4).

(6) If the Supreme Court makes an order that a that a qualifying relevant offender should not remain subject to the notification requirements, the qualifying relevant offender ceases to be subject to the notification requirements on the date of the order.

Review of notification requirements: guidance.

126.(1) The Minister must issue guidance to the Commissioner of Police un relation to the determination by them of applications made under section 122.

(2) The Minister may, from time to time, revise the guidance issued under subsection (1).

(3) The Minister must arrange for any guidance issued or revised under this section to be published in such manner as the Minister considers appropriate.

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Offences in relation to notification

Offences relating to notification.

127.(1) A person commits an offence who-

- (a) fails without reasonable excuse to comply with-
 - (i) section 115 (initial notification),
 - (ii) section 116 (notification of changes),
 - (iii) section 117 (periodic re-notification),
 - (iv) section 118(6) (taking of fingerprints or photographs), any regulations made under section 119(1) (travel outside Gibraltar), or
 - (v) section 129 (notification on return after absence from Gibraltar); or
- (b) notifies to the police in purported compliance with-
 - (i) section 115 (initial notification),
 - (ii) section 116 (notification of changes),
 - (iii) section 117 (periodic re-notification),
 - (iv) any regulations made under section 119(1) (travel outside Gibraltar), or section 129 (notification on return after absence from Gibraltar), any information that the person knows to be false.

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

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.

(3) A person-

- (a) commits an offence under subsection (1)(a) above on the day on which the person first fails without reasonable excuse to comply with-
 - (i) section 115 (initial notification),
 - (ii) section 116 (notification of changes),
 - (iii) section 117 (periodic re-notification),
 - (iv) any regulations made under section 119(1) (travel outside Gibraltar), or section 129 (notification on return after absence from Gibraltar); and
- (b) continues to commit it throughout any period during which the failure continues.

(4) A person shall not be prosecuted under subsection (1) more than once in respect of the same failure.

(5) Proceedings for an offence under this section may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found.

Effect of absence abroad.

128.(1) If a person to whom the notification requirements apply is absent from Gibraltar for any period the following provisions apply.

(2) During the period of absence the period for which the notification requirements apply continues to run.

(3) Subject to subsection (4), the period of absence does not affect the obligation under section 115 (initial notification).

(4) Section 115 does not apply if-

- (a) the period of absence begins before the end of the period within which notification must be made under that section; and
- (b) the person's absence results from the person's removal from Gibraltar.

(5) Section 116 (notification of changes)-

- (a) subject to subsection (6), applies in relation to an event that occurs before the period of absence; but

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- (b) does not apply in relation to an event that occurs during the period of absence.

(6) Section 116 does not apply in relation to an event that occurs before the period of absence if-

- (a) the period of absence begins before the end of the period within which notification must be made under that section; and
- (b) the person's absence results from the person's removal from Gibraltar.

(7) Section 117 (periodic re-notification) does not apply if the period referred to in subsection (1) of that section ends during the period of absence.

(8) Section 120 (7) (disregard of period of custody) applies in relation to the period of absence as if it referred to any period when the person was-

- (a) remanded in or committed to custody by an order of a court outside Gibraltar;
- (b) serving a sentence of imprisonment or detention imposed by such a court;
- (c) detained in a hospital pursuant to an order of such a court that is equivalent to a hospital order; or
- (d) subject to a form of detention outside Gibraltar that is equivalent to detention under the Immigration and Asylum Act 2018.

(9) References in this section and section 129 to a person's removal from Gibraltar include-

- (a) the person's removal from Gibraltar in accordance with the Immigration and Asylum Act 2018;
- (b) the person's extradition from Gibraltar; or
- (c) the person's transfer from Gibraltar to another country pursuant to a warrant under the European Arrest Warrant Act 2004.

Notification on return after absence from Gibraltar.

129.(1) This section applies if, before the end of the period for which the notification requirements apply, a person to whom the requirements apply returns to Gibraltar after a period of absence and-

- (a) the person was not required to make a notification under section 115 (initial notification);
- (b) there has been a change to any of the information last notified to the police in accordance with-
 - (i) section 115,
 - (ii) section 116 (notification of changes),
 - (iii) section 117 (periodic re-notification), or
 - (iv) this section; or
- (c) the period referred to in section 117(1) (period after which re-notification required) ended during the period of absence.

(2) The person must notify or (as the case may be) re-notify to the police the information mentioned in section 115(2) within the period of three days beginning with the day of return.

(3) In determining the period within which notification is to be made under this section, there shall be disregarded any time when the person is-

- (a) remanded in or committed to custody by an order of a court;
- (b) serving a sentence of imprisonment or detention;
- (c) detained in a hospital; or
- (d) detained under the Immigration and Asylum Act 2018.

(4) This section does not apply if-

- (a) the person subsequently leaves Gibraltar;
- (b) the period of absence begins before the end of the period within which notification must be made under this section; and
- (c) the person's absence results from the person's removal from Gibraltar.

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(5) The obligation under this section does not affect any obligation to notify information under section 119(3) (regulations requiring notification of return).

Supplementary provisions

Notification orders.

130. Schedule 12 makes provision for notification orders applying the notification requirements of this Part to persons who have been dealt with outside Gibraltar in respect of a corresponding foreign offence.

Foreign travel restriction orders.

131. Schedule 13 makes provision for foreign travel restriction orders prohibiting persons to whom the notification requirements apply from-

- (a) travelling to a country outside Gibraltar named or described in the order;
- (b) travelling to any country outside Gibraltar other than a country named or described in the order; or
- (c) travelling to any country outside Gibraltar.

Definitions for Part 9.

132. In this Part-

“country” includes a territory;

“detained in a hospital” means detained in a hospital under Part 28 of the Criminal Procedure and Evidence Act 2011;

“home address” means, in relation to a person-

- (a) the address of the person’s sole or main residence in Gibraltar; or
- (b) where the person has no such residence, the address or location of a place in Gibraltar where the person can regularly be found and, if there is more than one such place, such one of those places as the person may select;

“hospital order” means an order made under Part 28 of the Criminal Procedure and Evidence Act 2011;

“photograph” includes any process by means of which an image may be produced; and

“release” from imprisonment or detention includes release on licence but not temporary release.

References to a person being “dealt with” for an offence.

133.(1) References in this Part to-

- (a) a person being “dealt with” for or in respect of an offence are to their being sentenced, or made subject to a hospital order, in respect of the offence;
- (b) an offence being “dealt with” are to a person being dealt with in respect of the offence.

(2) Subject to the following provisions of this section, references in this Part to the time at which a person is dealt with for an offence are to the time at which they are first dealt with by the magistrates’ court or the Supreme Court and this is referred to below as “the original decision”.

(3) Where the original decision is varied (on appeal or otherwise), then-

- (a) if the result is that the conditions for application of the notification requirements to a person in respect of an offence cease to be met (and paragraph (c) below does not apply), the notification requirements are treated as never having applied to that person in respect of that offence;
- (b) if the result is that the conditions for application of the notification requirements to a person in respect of an offence are met where they were not previously met (and paragraph (c) below does not apply)-
 - (i) the person is treated as dealt with for the offence when the variation takes place, and
 - (ii) the notification requirements apply accordingly;
- (c) if-
 - (i) a conviction of, or finding in relation to, a different offence is substituted, and

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- (ii) the conditions for application of the notification requirements were met in respect of the original offence and are also met in respect of the substituted offence,

the person is treated as if they had been dealt with for the substituted offence at the time of the original decision;

- (d) if the sentence is varied so as to become one by virtue of which the notification requirements would apply for a different period, the period for which those requirements apply shall be determined as if the sentence as varied had been imposed at the time of the original decision;
- (e) in any other case, the variation is disregarded.

(4) For the purposes of-

- (a) section 109(5) (effect of order adding offence to list of terrorism offences);
- (b) section 112(a) (persons subject to notification requirements: age when dealt with for offence);
- (c) section 114(2) (effect of order reducing term or period triggering notification requirements);
- (d) section 120(5)(b) (period for which notification requirements apply: ending of period resulting from finding of disability etc where person subsequently tried); and
- (e) paragraph 2(3) of Schedule 13 (conditions for making foreign travel restriction order: behaviour since offence dealt with),

a person is treated as dealt with at the time of the original decision and any subsequent variation of the decision is disregarded.

(5) For the purposes of-

- (a) section 111(1) and (2) (application of Part to offences dealt with before commencement); and
- (b) paragraph 2(4) of Schedule 13 (conditions for making foreign travel restriction order where offence dealt with before commencement),

a person is dealt with for an offence before the commencement of this Part if the time of the original decision falls before the commencement of this Part.

Where in such a case subsection (3) above applies for the purposes of any provision of this Part, that subsection has effect as if the provisions of this Part had been in force at all material times.

(6) In section 115(6) (adaptation of initial notification requirements in case of offence dealt with before commencement)-

- (a) the reference in the opening words to an offence dealt with before the commencement of this Part is to an offence where the time of the original decision falls before the commencement of this Part; and
- (b) the reference in the closing words to when the offence is dealt with has the same meaning as in subsection (1) of that section.

(7) References in this section to the variation of a decision include any proceedings by which the decision is altered, set aside or quashed, or in which a further decision is come to following the setting aside or quashing of the decision.

PART 10 TERRORISM OVERSEAS

Inciting terrorism overseas.

134.(1) A person commits an offence if-

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

(2) Those offences are-

- (a) murder;
- (b) an offence under sections 136, 137, 166, 170 or 354(2) of the Crimes Act 2011.

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

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

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

Terrorist bombing: jurisdiction.

135.(1) If–

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

he shall be guilty of the offence.

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

- (a) an offence under section 140, 141 or 143 of the Crimes Act 2011;
- (b) an offence under section 3 or 10 of the Weapons of Mass Destruction Act 2004.

Terrorist finance: jurisdiction.

136. If–

- (a) a person does anything outside Gibraltar; and
- (b) his action would have constituted the commission of an offence under any of sections 35 to 39 if it had been done in Gibraltar,

he shall be guilty of the offence.

Other terrorist offences under this Act: jurisdiction.

137. If a Gibraltarian or a Gibraltar resident does anything outside Gibraltar and his action, if done in Gibraltar, would have constituted an offence under any of–

- (a) sections 9, 16, 17, 19 to 27, 30, 31 and 134 of this Act;
- (b) a listed offence in Schedule 1; or

is an offence of-

- (c) conspiracy to commit an offence falling within this section;
- (d) inciting a person to commit such an offence;
- (e) attempting to commit such an offence; or
- (f) aiding, abetting, counselling or procuring the commission of such an offence,

he shall be guilty in Gibraltar of that offence.

Terrorist attacks abroad by Gibraltarians or Gibraltar residents: jurisdiction.

138.(1) If-

- (a) a Gibraltarian or a Gibraltar resident does anything outside Gibraltar as an act of terrorism or for the purposes of terrorism; and
- (b) his action, if done in Gibraltar, would have constituted an offence listed in subsection (2),

he shall be guilty in Gibraltar of the offence.

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

- (a) sections 27, 136, 137, 138, 139, 149, 153, 156, 157, 166, 167, 168, 169, 170, 213, 176, 189, 354 or 356 of the Crimes Act 2011;
- (b) an offence under Part 17 of the Crimes Act 2011;
- (c) sections 9, 16, 17, 19 to 27, 30, 31 and 134 of this Act;
- (d) a listed offence in Schedule 1;
- (e) conspiracy to commit an offence falling within this section;
- (f) inciting a person to commit such an offence;
- (g) attempting to commit such an offence;

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- (h) aiding, abetting, counselling or procuring the commission of such an offence.

Terrorist attacks abroad on Gibraltarians or Gibraltar residents: jurisdiction.

139.(1) If–

- (a) a person does anything outside Gibraltar as an act of terrorism or for the purposes of terrorism;
- (b) his action is done to, or in relation to, a Gibraltarian or a Gibraltar resident; and
- (c) his action, if done in Gibraltar, would have constituted an offence listed in subsection (2),

he shall be guilty in Gibraltar of the offence.

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

- (a) sections 27, 136, 137, 138, 139, 149, 153, 156, 157, 166, 167, 168, 169, 170, 213, 176, 189, 354 or 356 of the Crimes Act 2011;
- (b) an offence under Part 17 of the Crimes Act 2011;
- (c) sections 9, 16, 17, 19 to 27, 30, 31 and 134 of this Act;
- (d) a listed offence in Schedule 1;
- (e) conspiracy to commit an offence falling within this section;
- (f) inciting a person to commit such an offence;
- (g) attempting to commit such an offence;
- (h) aiding, abetting, counselling or procuring the commission of such an offence.

Sections 138 to 139: supplementary.

140.(1) Proceedings for an offence which (disregarding the Acts listed in subsection (2)) would not be an offence apart from section 138 or 139 are not to be started except by or with the consent of the Attorney General.

(2) The Acts referred to in subsection (1) are–

- (a) the Internationally Protected Persons Act 1978 (Overseas Territories) Order 1979;
- (b) the Suppression of Terrorism Act 1978 (Overseas Territories) Order 1986;
- (c) the United Nations Personnel Act 1999,

any other enactment which the Minister may by Order provide.

(3) For the purposes of sections 139 it is immaterial whether a person knows that another person is a Gibraltarian, a Gibraltar resident or a protected person.

Extradition.

140A.(1) This section applies to extradition under any provision of law on extradition in force in Gibraltar.

(2) The offences to which a provision of law referred to in subsection (1) applies include the offences mentioned in sections 134 to 139.

(3) If any conduct would constitute an offence if committed in Gibraltar then, notwithstanding that it does not constitute such an offence a person whose surrender is sought in respect of that conduct may be surrendered by Gibraltar in pursuance of a provision of law on extradition in force in Gibraltar to which subsection (2) applies.

Application of the Mutual Legal Assistance (International) Act 2005.

140B.(1) The Mutual Legal Assistance (International) Act 2005 shall apply to offences under this Act in relation to requests for assistance in criminal proceedings –

received in Gibraltar and made by a State;

from Gibraltar for assistance in a State outside Gibraltar,

as if that State is a party to an agreement with the Government of mutual legal assistance in criminal matters based on the principle of reciprocity and is included in Schedule 2 of that Act, or in such other case as permitted under that Act.

(2) The words “State” and “criminal proceedings” in paragraph (1) shall have the same meanings as in section 2 of the Mutual Legal Assistance (International) Act 2005.

**PART 11
GENERAL**

Police powers.

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

- (a) is additional to powers which he has at common law or by virtue of 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 by virtue of this Act (apart from paragraphs 2 and 3 of Schedule 10).

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

Officers' powers.

142. Schedule 15 which makes provision about the exercise of functions by examining officers for the purposes of Schedule 10 shall have effect.

Powers to stop and search.

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

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

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

(4) A person guilty of an offence under subsection (3) shall be liable on summary conviction to imprisonment for a term not exceeding 6 months, a fine not exceeding level 5 on the standard scale, or both.

Consent to prosecution.

144.(1) This section applies to an offence under any provision of this Act other than an offence under—

- (a) section 78;

- (b) section 98; or
- (c) paragraph 16 of Schedule 10.

(2) Proceedings for an offence to which this section applies shall not be instituted without the consent of the Attorney General.

Defences.

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

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

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

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

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

(5) The provisions in respect of which subsections (2) and (4) apply are sections 10(4), 17, 21, 30, 31 and 83(5)(a) of this Act.

Sentences for offences with a terrorist connection.

146.(1) This section applies where a court is considering for the purposes of sentence the seriousness of an offence specified in Schedule 14 (Offences where a terrorist connection is to be considered).

(2) If having regard to the material before it for the purposes of sentencing it appears to a court that the offence has or may have a terrorist connection, the court must determine whether that is the case.

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(3) For that purpose the court may hear evidence, and must take account of any representations made by the prosecution and the defence, as in the case of any other matter relevant for the purposes of sentence.

(4) If the court determines that the offence has a terrorist connection, the court-

- (a) must treat that fact as an aggravating factor; and
- (b) must state in open court that the offence was so aggravated.

(5) In this section “sentence”, in relation to an offence, includes any order made by a court when dealing with a person in respect of the offence.

(6) This section has effect in relation only to offences committed on or after the day it comes into force.

Crown servants, regulators, etc.

147.(1) The Minister may make regulations providing for any of sections 35 to 56 and 83 to apply to persons in the service of the Government of Gibraltar.

(2) Regulations may-

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

Evidence.

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

- (a) a notice or direction given or order made by the Minister 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 Minister.

(2) A document bearing a certificate which-

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

shall be evidence of the document in legal proceedings.

Supplementary powers of forfeiture.

149.(1) A court by or before which a person is convicted of an offence under a provision mentioned in column 1 of the following table may order the forfeiture of any item mentioned in column 2 in relation to that offence-

| Offence | Items liable to forfeiture |
|------------|---|
| Section 17 | Anything that the court considers to have been in the possession of the person for purposes connected with the offence. |
| Section 21 | Any article that is the subject matter of the offence. |
| Section 30 | Any document or record containing information of the kind mentioned in subsection (1)(a) of that section. |
| Section 31 | Any document or record containing information of the kind mentioned in subsection (1)(a) of that section. |

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

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

(4) Where a court makes an order under this section, it may also make such other provision as appears to it to be necessary for giving effect to the forfeiture, including, in particular, provision relating to the retention, handling disposal or destruction of what is forfeited.

(5) Provision made by virtue of subsection (4) may be varied at any time by the court that made it.

Money.

150. The following shall be paid out of money provided by Parliament–

- (a) any expenditure of a Minister under or by virtue of this Act; and
- (b) any increase in sums payable out of money provided by Parliament under any other enactment.

Liability of, and penalties for, a body corporate.

151.(1) A body corporate may be made liable–

- (a) for an offence under this Act committed by a person acting either individually or as part of an organ of the body corporate, who has a leading position within the body corporate, and based on a power of representation of, or an authority to take decisions on behalf of the body corporate, or an authority to exercise control within the body corporate; or
- (b) for its involvement as an accessory or instigator in the commission of the offence or in the attempt of commission of the offence,

(2) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of–

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

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

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

(4) A body corporate who is held liable for an offence under this section may, in addition, be declared by the court that it is–

- (a) not entitled to any public benefit or aid; or

- (b) disqualified for such time as may be prescribed by the court or, permanently from the practice of commercial activities in Gibraltar.

Application to ships registered in Gibraltar.

151A.(1) Any act or omission taking place on board a ship registered in Gibraltar, which act or omission if taking place in Gibraltar, would constitute an offence under this Act shall constitute that offence.

(2) For the purpose of conferring jurisdiction, any offence under this Act committed on board a ship registered in Gibraltar, shall be deemed to have been committed in Gibraltar wherever the person who is the offender may be for the time being.

**PART 12
SUPPLEMENTARY PROVISIONS**

Orders and regulations.

152.(1) Subject to subsections (3) to (6), the Minister may make regulations-

- (a) generally for carrying out any of the purposes or provisions of this Act or any matters incidental or consequential to those purposes as appear to the Government to be necessary or proper for giving full effect to this Act;
- (b) providing any procedural rules to be followed in connection with any application for an order or where one has been made;
- (c) providing for any appeal and any procedural rules in that connection;
- (d) providing for any matter consequent upon the deproscription of a proscribed organisation;
- (e) allowing for the implementation in Gibraltar of any international obligation by which Gibraltar is bound;
- (f) to enable the extension to or application of any international convention, protocol or other instrument,

and in the case of regulations made under paragraph (e) or (f) any such regulations may amend any provision in this Act and may make such consequential provisions as may be deemed necessary or expedient.

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(2) The power in subsection (1) is in addition to and does not derogate from any other power to make regulations or orders conferred by this Act.

(3) In the case of the first order to be made under paragraph 15(4) of Schedule 10 the order shall not be made unless a draft has been laid before and approved by resolution of Parliament.

(4) As soon as practicable after making an order under paragraph 46 of Schedule 9, the Minister must lay a copy of the order before Parliament.

(5) An order under paragraph 46 of Schedule 9 is to cease to have effect at the end of the period of 20 days beginning with the day on which the Minister makes the order, unless a resolution approving the order is passed by Parliament during that period.

(6) Subsection (5) does not apply to an order under paragraph 46 of Schedule 9 which revokes an order under that paragraph.

Amendment of sections or schedules.

153.(1) The Minister may by regulations published in the Gazette amend any section in, or schedule to, this Act.

(2) Regulations under this Act amending a section or a schedule may make such transitional and consequential provisions as appear to the Minister to be necessary or expedient.

Directions.

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

Constitutional responsibilities of the Governor.

155.(1) Nothing in this Act or in any regulations, rules and orders made under this Act is to derogate from the responsibility of the Governor under the Constitution for external affairs, defence, internal security or any other matter for which the Governor may have responsibility under the Constitution.

(2) Given the Governor's Constitutional responsibilities for these matters, the Minister shall give such directions as are required of him by the Governor, where matters relating to the external affairs, defence and internal security of Gibraltar are concerned.

Repeals and savings.

156.(1) The Terrorism Act 2005 (“the repealed Act”) is repealed.

(2) Any direction, exemption, notice or other non-legislative instrument made or issued by the Government or any person or body under any of the repealed Act which could be made or issued by the Government or an equivalent person or body under this Act continues to have effect as if made or issued by the Government or that person or body under this Act until varied or revoked by this Act.

(3) Any delegation made, direction given or other action taken by a person under the repealed Act which could be taken by an equivalent person under this Act continues to have effect as if taken by that person under this Act.

(4) Except as expressly provided in this Act, and subject to subsection (5), nothing in this Act affects—

- (a) the liability, trial or punishment of a person for an offence against the common law or against any other law in force in Gibraltar other than this Act;
- (b) any of the statutes, Acts, regulations or articles for the time being in force for the government of armed forces of the Crown or the military or police forces of Gibraltar.

(5) If a person does an act which is punishable under this Act and is also punishable under another law of any of the kinds mentioned in this section, he may not be punished for that act both under this Act and under that other law.

Transitional provisions.

157.(1) Proceedings for an offence under the repealed Act that had commenced before the commencement of this Act must continue under the repealed Act as if it had not been repealed.

(2) If proceedings for an offence committed under the repealed Act have not been commenced at the commencement of this Act—

- (a) if there is an equivalent offence under this Act - proceedings must be brought under this Act;
- (b) if there is no equivalent offence - proceedings cannot be brought.

(3) The maximum sentence for an offence under the repealed Act that can be imposed for an offence under that Act committed before the

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commencement of this Act is the maximum sentence for that offence under that Act.

(4) If an offence committed before the commencement of this Act is by any Act in force that was passed before the commencement of this Act made punishable only on summary conviction, it remains only so punishable.

(5) An appeal against conviction or sentence in respect of an offence committed before the commencement of this Act must be conducted as if this Act had not been enacted.

(6) Subsection (1) does not apply in relation to an offence of conspiracy if the agreement was entered into before the commencement of this Act and the conspiracy continued to exist after that date.

(7) For purposes of this section, proceedings for an offence commence on—

- (a) arrest without warrant;
- (b) the issue of a warrant for arrest;
- (c) the issue of a summons to appear;
- (d) the service of an indictment or other document specifying the charge;
- (e) an oral charge,

in respect of the offence.

(8) For the purposes of this section, an offence is committed wholly or partly before the commencement of this Act if any of the conduct or events alleged to constitute the offence occurred before that commencement.

Consequential amendments.

158.(1) A reference in any other Act to the repealed Act is, to the extent possible, to be read as a reference to the corresponding provision of this Act.

(2) The Government may by order declare the consequential amendments to other enactments that are required as a result of the commencement of this Act.

Amendments to Criminal Procedure and Evidence Act 2011.

This version is out of date

159.(1) The Criminal Procedure and Evidence Act 2011 (“the Act”) is amended in accordance with this section.

(2) In section 2 of the Act-

(a) insert at subsection (1) the following definitions after the definition of “suspended sentence”-

““terrorism” has the meaning attributed to it in section 4 of the Terrorism Act 2018;

“terrorism provisions” means section 85 of the Terrorism Act 2018, and any provision of Schedule 10 to that Act conferring a power of detention;”;

(b) substitute at subsection (2) the following paragraph for paragraph (a)-

“(a) has been taken to a police station after-

(i) being arrested for an offence; or

(ii) being arrested under section 85 of the Terrorism Act 2018; or

(iii) for any other reason; or”.

(3) In section 48 of the Act substitute the following subsection after subsection (10)-

“(11) This section does not affect the powers of arrest and detention in under any provision of the Terrorism Act 2018.”.

(4) In section 54 of the Act insert the following subsection after subsection (9)-

“(10) Nothing in this section shall be taken to affect the power conferred by section 87 of the Terrorism Act 2018.”.

(5) Substitute section 76 of the Act for the following section-

“**Savings.**

76. Nothing in this Part of this Act shall affect-

(a) any right of a person in police detention to apply for a writ of *habeas corpus* or other prerogative remedy;

(b) the powers conferred by virtue of section 85 of, or Schedule 10 to, the Terrorism Act 2018.”.

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(6) In section 77(1) of the Act substitute the following definition for the definition of “qualifying offence”-

““qualifying offence” means a sexual offence, an offence of violence or an offence listed in section 109(1) of the Terrorism Act 2018;”.

(7) In section 83 of the Act insert the following subsection after subsection (9)-

“(10) Nothing in this section applies to a person arrested or detained under the terrorism provisions.”.

(8) In section 84 of the Act insert the following subsections after subsection (7)-

“(8) The reference in subsection (1) to a juvenile who is in police detention includes a reference to a juvenile who has been detained under terrorism provisions; and in subsection (3) above “arrest” includes such detention.”.

(9) In section 85 of the Act insert the following subsection after subsection (2)-

“(3) Nothing in this section applies to a person arrested or detained under the terrorism provisions.”.

(10) In section 86 of the Act insert the following subsection after subsection (21)-

“(22) Nothing in this section applies to a person arrested or detained under the terrorism provisions.”.

(11) In section section 87 of the Act substitute the following subsection for subsection (8)-

“(8) Nothing in this section applies to any person-

- (a) arrested or detained under the terrorism provisions;
- (b) arrested under an extradition arrest power.”.

(12) In section 88 of the Act insert the following subsection after subsection (16)-

“(17) Nothing in this section applies to a person arrested or detained under the terrorism provisions; and subsection (2) shall not apply where the non-intimate samples mentioned in that

subsection were taken under paragraph 8 of Schedule 9 to the Terrorism Act 2018.”.

(13) In section 89 of the Act insert the following subsection after subsection (21)-

“(22) Nothing in this section applies to a person arrested or detained under the terrorism provisions.”.

(14) Insert the following section after section 94 of the Criminal Procedure and Evidence Act 2011–

“Destruction of samples.

94A.(1) This section applies to samples–

- (a) taken from a person under any power conferred by this Part of this Act; or
 - (b) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police.
- (2) Samples to which this section applies must be destroyed if it appears to the Commissioner of Police that—
- (a) the taking of the samples was unlawful; or
 - (b) the samples were taken from a person in connection with that person's arrest and the arrest was unlawful or based on mistaken identity.
- (3) Subject to this, the rule in subsection (4) or (as the case may be) (5) applies.
- (4) A DNA sample to which this section applies must be destroyed–
- (a) as soon as a DNA profile has been derived from the sample; or
 - (b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.
- (5) Any other sample to which this section applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.

- (6) The Commission of Police may apply to the magistrates' court for an order to retain a sample to which this section applies beyond the date on which the sample would otherwise be required to be destroyed by virtue of subsection (4) or (5) if—
- (a) the sample was taken from a person in connection with the investigation of a qualifying offence; and
 - (b) the responsible chief officer of police considers that the condition in subsection (7) is met.
- (7) The condition is that, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—
- (a) disclosure to, or use by, a defendant; or
 - (b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.
- (8) An application under subsection (6) must be made before the date on which the sample would otherwise be required to be destroyed by virtue of subsection (4) or (5).
- (9) If, on an application made by the Commissioner of Police under subsection (6), the magistrates' court is satisfied that the condition in subsection (7) is met, the magistrates' court may make an order under this subsection which—
- (a) allows the sample to be retained for a period of 12 months beginning with the date on which the sample would otherwise be required to be destroyed by virtue of subsection (4) or (5); and
 - (b) may be renewed (on one or more occasions) for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.
- (10) An application for an order under subsection (9) (other than an application for renewal)—

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- (a) may be made without notice of the application having been given to the person from whom the sample was taken; and
 - (b) may be heard and determined in private in the absence of that person.
- (11) A sample retained by virtue of an order under subsection (9) must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.
- (12) A sample that ceases to be retained by virtue of an order under subsection (9) must be destroyed.
- (13) Nothing in this section prevents a speculative search, in relation to samples to which this section applies, from being carried out within such time as may reasonably be required for the search if the Commissioner of Police considers the search to be desirable.”.
- (15) Insert the following section after section 106 of the Act-

“Exclusions for the Terrorism Act 2018.

- 106A.(1) Sections 93, 94, 102, 103, 105 and 106 do not apply to material to which paragraphs 14 to 23 of Schedule 9 to the Terrorism Act 2018 (destruction, retention and use of material taken from terrorist suspects) apply.
- (2) Any reference in those sections to a person being arrested for, or charged with, an offence does not include a reference to a person-
- (a) being arrested under section 85 of the Terrorism Act 2018; or
 - (b) being charged with an offence following an arrest under that section.
- (3) Sections 93, 94, 102, 103, 105 and 106 do not apply to material which-
- (a) is taken from a person; but
 - (b) relates to another person.”.

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(16) In section 685 of the Act insert the following subsection after subsection (2)-

“(3) Nothing in this section requires the Minister to issue a code of practice in relation to any matter falling within the code of practice issued under section 91 of the Terrorism Act 2018, as that code is altered or replaced from time to time, (code of practice in relation to terrorism powers to search persons and vehicles and to stop and search in specified locations).”.

Amendments to the Proceeds of Crime Act 2015.

160.(1) The Proceeds of Crime Act 2015 (“the Act”) is amended in accordance with this section.

(1A) Substitute the following paragraph for paragraph (a) of section 1C of the Act-

“(a) to gather, store, analyse and disseminate intelligence related to criminal conduct, (including but not limited to money laundering, the financing of terrorism and the proliferation of weapons of mass destruction), transacted or attempted to be transacted through relevant financial businesses;”.

(2) Substitute the following paragraph for paragraph (b) of section 5(9) of the Act-

“(b) doing any act which constitutes an offence under section 35, 36, 37 or 39 of the Terrorism Act 2018;”.

(3) Substitute the following paragraph for paragraph (b) in the definition of “money laundering” in section 7(2) of the Act-

“(b) under section 35, 36, 37 or 39 of the Terrorism Act 2018;”.

**SCHEDULE 1
LIST OF TERRORIST OFFENCES**

section 12

The following offences constitute “an offence listed in Schedule 1” for the purposes of this Act-

Explosive offences.

1.(1) Subject to subparagraph (3), an offence under any of sections 136, 137, 138 and 139 of the Crimes Act 2011.

(2) Subject to subparagraph (3), an offence under any of the following provisions of the Crimes Act 2011–

- (a) section 140;
- (b) section 141;
- (c) section 142;
- (d) section 143.

(3) An offence is a listed offence by virtue of this paragraph only if it consists in–

- (a) the doing of an act as an act of terrorism; or
- (b) an action for the purposes of terrorism.

Biological weapons.

2. An offence under section 3 of the Weapons of Mass Destruction Act 2004.

Offences against internationally protected persons.

3.(1) Subject to subparagraph (4), an offence mentioned in paragraph 1(1)(a) of Schedule 1 of the Internationally Protected Persons Act 1978 (Overseas Territories) Order 1979 which is committed, whether in the United Kingdom or elsewhere, in relation to a protected person.

(2) Subject to subparagraph (4), an offence mentioned in paragraph 1(1)(b) of Schedule 1 of the Internationally Protected Persons Act 1978

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(Overseas Territories) Order 1979 which is committed, in the United Kingdom or elsewhere, in connection with an attack—

- (a) on relevant premises or on a vehicle ordinarily used by a protected person; and
- (b) at a time when a protected person is in or on the premises or vehicle.

(3) Subject to subparagraph (4), an offence under paragraph 1(3) of the Internationally Protected Persons Act 1978 (Overseas Territories) Order 1979.

(4) An offence is a listed offence by virtue of this paragraph only if it consists in—

- (a) the doing of an act as an act of terrorism; or
- (b) an action for the purposes of terrorism.

(5) Expressions used in this paragraph and paragraph (1) of the Internationally Protected Persons Act 1978 (Overseas Territories) Order 1979 have the same meanings in this paragraph as in that paragraph.

Hostage-taking.

4. An offence under section 34 of this Act.

Imports and exports.

5. Any of the following offences under the Imports and Exports Act, 1986-

- (a) an offence under section 102 to 105 in connection with a prohibition or restriction relating to the importation of nuclear material;
- (b) an offence under section 79(3) in connection with a prohibition or restriction relating to the exportation or shipment as stores of nuclear material;
- (c) an offence under section 106 in connection with a prohibition or restriction relating to the importation, exportation or shipment as stores of nuclear material.

Maritime security.

6. Offences under any of the following provisions of the Maritime Security Act—

- (a) section 2 (hijacking of ships);
- (b) section 3 (seizing or exercising control of fixed platforms);
- (c) section 4 (destroying ships or fixed platforms or endangering their safety);
- (d) section 5 (other acts endangering or likely to endanger safe navigation);
- (e) section 6 (offences involving threats relating to ships or fixed platforms);
- (f) section 7 (ancillary offences).

Chemical weapons.

7. An offence under section 10 of the Weapons of Mass Destruction Act 2004.

Terrorist funds.

8. An offence under any of the following sections of this Act—

- (a) section 35 (terrorist fund-raising);
- (b) section 36 (use or possession of terrorist funds);
- (c) section 37 (funding arrangements for terrorism);
- (d) section 39 (money laundering of terrorist funds).

Directing terrorist organisations.

9. An offence under any of section 20 of this Act (directing a terrorist organisation).

Conspiracy.

10. Any of the following offences—

- (a) conspiracy to commit an offence listed in this Schedule;
- (b) inciting the commission of an offence listed in this Schedule;

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- (c) attempting to commit an offence listed in this Schedule;
- (d) aiding, abetting, counselling or procuring the commission of an offence listed in this Schedule.

SCHEDULE 2**REGULATED SECTOR AND SUPERVISORY AUTHORITIES**

Section 40

Part 1
Regulated Sector**Business in the Regulated Sector.**

- 1.(1) A business is in the regulated sector to the extent that it consists of-
- (a) the acceptance by a credit institution of deposits or other repayable funds from the public, or the granting by a credit institution of credits for its own account;
 - (b) the carrying on of one or more of the activities listed in points 2 to 12, 14 and 15 of Annex 1 to the Capital Requirements Directive by an undertaking other than-
 - (i) a credit institution, or
 - (ii) an undertaking whose only listed activity is trading for own account in one or more of the products listed in point 7 of Annex 1 to the Capital Requirements Directive and which does not act on behalf of a customer (that is, a third party which is not a member of the same group as the undertaking);
 - (c) the carrying on of activities covered by the Solvency 2 Directive by an insurance company authorised in accordance with that Directive;
 - (d) the provision of investment services or the performance of investment activities by a person (other than a person falling within Article 2 of the Markets in Financial Instruments Directive) whose regular occupation or business is the provision to other persons of an investment service or the performance of an investment activity on a professional basis;
 - (e) the marketing or other offering of units or shares by a collective investment undertaking;
 - (f) the activities of an insurance intermediary as defined in Article 2(5) of the Insurance Mediation Directive, other than a tied insurance intermediary as mentioned in Article 2(7) of that

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Directive, in respect of contracts of long-term insurance within the meaning given by Schedule 1 and 2 of the Financial Services (Insurance Companies) Act;

- (g) the carrying on of any of the activities mentioned in paragraphs (b) to (f) by a branch located in a Member State of a person referred to in those paragraphs (or of an equivalent person in any other State), wherever its head office is located;
- (h) the activities of the Gibraltar Savings Bank;
- (i) any activity carried on for the purpose of raising money authorised to be raised under the Loan and Stock Act under the auspices of the Director of Savings;
- (j) the carrying on of statutory audit work within the meaning of section 2 of the Financial Services (Auditors) Act 2009 by any firm or individual who is regulated under that Act;
- (k) the activities of a person appointed to act as an insolvency practitioner within the meaning of 476 of the Insolvency Act (meaning of "act as insolvency practitioner");
- (l) the provision to other persons of accountancy services by a firm or sole practitioner who by way of business provides such services to other persons;
- (m) the provision of advice about the tax affairs of other persons by a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons;
- (n) the participation in financial or real property transactions concerning—
 - (i) the buying and selling of real property or business entities,
 - (ii) the managing of client money, securities or other assets,
 - (iii) the opening or management of bank, savings or securities accounts,
 - (iv) the organisation of contributions necessary for the creation, operation or management of companies, or
 - (v) the creation, operation or management of trusts, companies or similar structures,

by a firm or sole practitioner who by way of business provides legal or notarial services to other persons;

- (o) the provision to other persons by way of business by a firm or sole practitioner of any of the services mentioned in subparagraph (4);
- (p) the carrying on of estate agency work by a firm or a sole practitioner who carries on, or whose employees carry on, such work;
- (q) the trading in goods (including dealing as an auctioneer) whenever a transaction involves the receipt of a payment or payments in cash of at least 15,000 euros in total, whether the transaction is executed in a single operation or in several operations which appear to be linked, by a firm or sole trader who by way of business trades in goods;
- (r) the carrying on of gambling services as defined in section 7 of the Proceeds of Crime Act 2015;
- (s) the auctioning by an auction platform of two-day spot or five-day futures, within the meanings given by Article 3 of the Emission Allowance Auctioning Regulation;
- (t) bidding directly, on behalf of clients, in auctions of emissions allowances in accordance with the Emission Allowance Auctioning Regulation.

(2) For the purposes of subparagraph (1)(a) and (b) “credit institution” means—

- (a) a credit institution as defined in Article 4(1)(1) of the Capital Requirements Regulation; or
- (b) a branch (within the meaning of Article 4(1)(17) of that Regulation) located in an member state of an institution falling within paragraph (a) (or of an equivalent institution in any other State) wherever its head office is located.

(3) For the purposes of subparagraph (1)(n) a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction.

(4) The services referred to in subparagraph (1)(o) are-

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- (a) forming companies or other legal persons;
 - (b) acting, or arranging for another person to act-
 - (i) as a director or secretary of a company,
 - (ii) as a partner of a partnership, or
 - (iii) in a similar position in relation to other legal persons;
 - (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;
 - (d) acting, or arranging for another person to act, as-
 - (i) a trustee of an express trust or similar legal arrangement;
or
 - (ii) a nominee shareholder for a person other than a company whose securities are listed on a regulated market.
- (5) For the purposes of subparagraph (4)(d) "regulated market"–
- (a) in relation to any Member State, has the meaning given by point 14 of Article 4(1) of the Markets in Financial Instruments Directive; and
 - (b) in relation to any other State, means a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are contained in international standards and are equivalent to the specified disclosure obligations.
- (6) For the purposes of subparagraph (5) “the specified disclosure obligations” means–
- (a) disclosure requirements set out in Articles 17 and 19 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation);
 - (b) disclosure requirements consistent with Articles 3, 5, 7, 8, 10, 14 and 16 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading;

- (c) disclosure requirements consistent with Articles 4 to 6, 14, 16 to 19 and 30 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market; or
- (d) disclosure requirements consistent with EU legislation made under the provisions mentioned in paragraphs (a) to (c).

(7) For the purposes of subparagraph (1)(j) and (l) to (q) “firm” means any entity, whether or not a legal person, that is not an individual and includes a body corporate and a partnership or other unincorporated association.

(8) For the purposes of subparagraph (1)(q) “cash” means notes, coins or travellers' cheques in any currency.

(9) For the purposes of subparagraph (1)(s) “auction platform” means a platform on which auctions of emissions allowances are held in accordance with the Emission Allowance Auctioning Regulation.

Excluded Activities.

2.(1) A business is not in the regulated sector to the extent that it consists of-

- (a) the issuing of withdrawable share capital within the limit set by section 28 Co-operative Societies Act (maximum interest in a society's withdrawable shares), or the acceptance of deposits from the public within the limit set by rule 20 of the Co-operative Society Rules (carrying on of banking by societies), by a society registered under that Act; or
- (b) the engaging in financial activity which fulfils all of the conditions set out in paragraphs (a) to (g) of subparagraph (3) of this paragraph by a person whose main activity is that of a high value dealer;
- (c) a business named in an Order made by the Minister for such purposes.

(2) For the purposes of subparagraph (1)(e) a “high value dealer” means a person mentioned in paragraph 1(1)(q) when carrying on the activities mentioned in that paragraph.

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(3) A business is not in the regulated sector to the extent that it consists of financial activity if—

- (a) the person's total annual turnover in respect of the financial activity does not exceed £64,000;
- (b) the financial activity is limited in relation to any customer to no more than one transaction exceeding 1,000 euros, whether the transaction is carried out in a single operation, or a series of operations which appear to be linked;
- (c) the financial activity does not exceed 5% of the person's total annual turnover;
- (d) the financial activity is ancillary to the person's main activity and directly related to that activity;
- (e) the financial activity is not the transmission or remittance of money (or any representation of monetary value) by any means;
- (f) the main activity of the person carrying on the financial activity is not an activity mentioned in paragraph 1(1)(a) to (p) or (r); and
- (g) the financial activity is provided only to customers of the person's main activity and is not offered to the public.

(4) A business is not in the regulated sector if it is carried on by—

- (a) the Financial Secretary of the Government of Gibraltar; or
- (b) the Registrar of the Supreme Court, when acting as trustee in his official capacity.

Interpretation.

3.(1) In this Part—

“the Capital Requirements Regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council, as the same may be amended from time to time;

“the Emission Allowance Auctioning Regulation” means Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council

establishing a scheme for greenhouse gas emission allowances trading within the Community, as the same may be amended from time to time;

“the Insurance Mediation Directive” means directive 2002/92/EC of the European Parliament and of the Council of 9th December 2002 on insurance mediation, as the same may be amended from time to time; and

“the Markets in Financial Instruments Directive” means directive 2004/39/EC of the European Parliament and of the Council of 12th April 2004 on markets in financial instruments, as the same may be amended from time to time;

“the Solvency 2 Directive” means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), as the same may be amended from time to time.

(2) In this Part references to amounts in euros include references to equivalent amounts in another currency.

(3) Terms used in this Part and in the Capital Requirements Regulation or the Markets in Financial Instruments Directive have the same meaning in this Part as in those Directives.

Part 2

Supervisory Authorities

Supervisory Authorities.

4. The bodies listed of Part 1 of Schedule 2 of the Proceeds of Crime Act 2015 are “supervisory authorities”.

Part 3

Power to amend

5. The Minister may by order amend Part 1 or 2 of this Schedule.

SCHEDULE 3**FORFEITURE ORDERS**

section 58

*Part 1***Interpretation.**

1. In this Part of this Schedule—

“forfeiture order” means an order made by the court under sections 56 or 57;

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

“relevant offence” means—

- (a) an offence under any of sections 35 to 39; or
- (b) an offence to which section 57 applies;
- (c) in relation to a restraint order, any offence specified in Schedule 14.

Implementation of forfeiture orders.

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

- (a) require any of the forfeited property to be paid or handed over to the proper officer or to a constable designated for the purpose by the chief officer of police of a police force specified in the order;
- (b) direct any of the forfeited property other than money or land to be sold or otherwise disposed of in such manner as the court may direct and the proceeds (if any) to be paid to the proper officer;
- (c) appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property, to realise it in such manner as the court may direct and to pay the proceeds to the proper officer;

- (d) direct a specified part of any forfeited money, or of the proceeds of the sale, disposal or realisation of any forfeited property, to be paid by the proper officer to a specified person falling within section 58(1).

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

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

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

(2) If and so far as those proceeds are insufficient, the receiver shall be entitled to be paid his remuneration and expenses by the prosecutor.

(3) A receiver appointed under paragraph 2 shall not be liable to any person in respect of any loss or damage resulting from action—

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

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

4.(1) In paragraphs 2 and 3 “the proper officer” means—

- (a) where the forfeiture order is made by a magistrates' court, the designated officer for that court;
- (b) where the forfeiture order is made by the Supreme Court and the defendant was committed to the Supreme Court by the magistrates' court, the designated officer for the magistrates' court; and

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- (c) where the forfeiture order is made by the Supreme Court and the proceedings were instituted by a bill of indictment, the designated officer for the magistrates' court.
- (2) The proper officer shall issue a certificate in respect of a forfeiture order if an application is made by—
- (a) the prosecutor in the proceedings in which the forfeiture order was made;
 - (b) the defendant in those proceedings; or
 - (c) a person whom the court heard under section 58(1) before making the order.
- (3) The certificate shall state the extent (if any) to which, at the date of the certificate, effect has been given to the forfeiture order.

Application of proceeds to compensate victims.

Application of proceeds to compensate victims.

- 5.(1) Where a court makes a forfeiture order in a case where—
- (a) the offender has been convicted of an offence that has resulted in a person suffering personal injury, loss or damage; or
 - (b) any such offence is taken into consideration by the court in determining sentence, the court may also order that an amount not exceeding a sum specified by the court is to be paid to that person out of the proceeds of the forfeiture.
- (2) For this purpose the proceeds of the forfeiture means the aggregate amount of—
- (a) any forfeited money; and
 - (b) the proceeds of the sale, disposal or realisation of any forfeited property, after deduction of the costs of the sale, disposal or realisation, reduced by the amount of any payment under paragraph 2(1)(d) or 3(1).
- (3) The court may make an order under this paragraph only if it is satisfied that but for the inadequacy of the offender's means it would have made a compensation order under section 595 Criminal Procedure and Evidence Act 2011 under which the offender would have been required to pay compensation of an amount not less than the specified amount.

Restraint orders

Restraint orders.

6.(1) The Supreme Court may make a restraint order under this paragraph where—

- (a) proceedings have been instituted for a relevant offence;
- (b) the proceedings have not been concluded;
- (c) an application for a restraint order is made to the Supreme Court by the prosecutor; and
- (d) a forfeiture order has been made, or it appears to the Supreme Court that a forfeiture order may be made, in the proceedings for the offence.

(2) The Supreme Court may also make a restraint order under this paragraph where—

- (a) a criminal investigation has been started in with regard to a relevant offence;
- (b) an application for a restraint order is made to the Supreme Court by the person who the Supreme Court is satisfied will have the conduct of any proceedings for the offence; and
- (c) it appears to the Supreme Court that a forfeiture order may be made in any proceedings for the offence.

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

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

(5) In this paragraph a reference to dealing with property includes a reference to removing the property from Gibraltar.

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

This version is out of date

7.(1) A restraint order shall provide for notice of it to be given to any person affected by the order.

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

(3) A restraint order made under paragraph 6(1) shall in particular be discharged on an application under subparagraph (2) if the proceedings for the offence have been concluded.

(4) A restraint order made under paragraph 6(2) shall in particular be discharged on an application under subparagraph (2)–

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

8.(1) A police officer may seize any property subject to a restraint order for the purpose of preventing it from being removed from Gibraltar.

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

9.(1) This paragraph applies where a restraint order is discharged under paragraph 7(4)(a).

(2) This paragraph also applies where a forfeiture order or a restraint order is made in or in relation to proceedings for a relevant offence which–

- (a) do not result in conviction for a relevant offence;
- (b) result in conviction for a relevant offence in respect of which the person convicted is subsequently pardoned by Her Majesty; or
- (c) result in conviction for a relevant offence which is subsequently quashed.

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

(4) The Supreme Court may order compensation to be paid to the applicant if satisfied–

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- (a) that there was a serious default on the part of a person concerned in the investigation or prosecution of the offence;
- (b) that the person in default was or was acting as a member of a police force, or was a member of the Office of Criminal Prosecutions and Litigation or was acting on behalf of that office;
- (c) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of the forfeiture order or restraint order; and
- (d) that, having regard to all the circumstances, it is appropriate to order compensation to be paid.

(5) The Supreme Court shall not order compensation to be paid where it appears to it that proceedings for the offence would have been instituted even if the serious default had not occurred.

(6) Compensation payable under this paragraph shall be paid—

- (a) where the person in default was or was acting as a member of a police force, out of the police fund out of which the expenses of that police force are met; and
- (b) where the person in default was a member of the Office of Criminal Prosecutions and Litigation, or was acting on behalf of the Office, by the Attorney General.

10.(1) This paragraph applies where—

- (a) a forfeiture order or a restraint order is made in or in relation to proceedings for a relevant offence; and
- (b) the proceedings result in a conviction which is subsequently quashed on appeal.

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

(3) The Supreme Court may order compensation to be paid to the applicant if satisfied—

- (a) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of the forfeiture order or restraint order; and

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(b) that, having regard to all the circumstances, it is appropriate to order compensation to be paid.

(4) Compensation payable under this paragraph shall be paid by the Ministry for Justice.

Proceedings for an offence: timing

11.(1) For the purposes of this Part of this Schedule proceedings for an offence are instituted—

- (a) when a justice of the peace issues a summons or warrant under section 134 of the Criminal Procedure and Evidence Act 2011 in respect of the offence;
- (b) when a person is charged with the offence after being taken into custody without a warrant;
- (c) when a bill of indictment charging a person with the offence is preferred by virtue of section 289 of the Criminal Procedure and Evidence Act 2011.

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

(3) For the purposes of this Part of this Schedule proceedings are concluded—

- (a) when a forfeiture order has been made in those proceedings and effect has been given to it in respect of all the forfeited property;
or
- (b) when no forfeiture order has been made in those proceedings and there is no further possibility of one being made as a result of an appeal (disregarding any power of a court to grant leave to appeal out of time).

Part 2
Insolvency

General.

12. In this Part of this Schedule—

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

“forfeiture order” means—

- (a) an order made under sections 56 or 57; or
- (b) a forfeiture order from a Member State which is enforceable in Gibraltar by virtue of the European Freezing and Confiscation Orders Regulations 2014.

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

“restraint order” means—

- (a) an order made under paragraph 6; or
- (b) a restraint order from a Member State which is enforceable in Gibraltar by virtue of the European Freezing and Confiscation Orders Regulations 2014.

Protection of creditors against forfeiture.

13.(1) During the period of 6 months beginning with the making of a forfeiture order, the following shall not be finally disposed of under this Schedule—

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

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

- (a) it is paid into the Consolidated Fund; or
- (b) it is disposed of in accordance with article 16 of Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

14.(1) This paragraph applies where—

- (a) before or after a forfeiture order is made, the commencement of an insolvency occurs in qualifying insolvency proceedings;

- (b) an insolvency practitioner would, but for the forfeiture order, exercise a function in those proceedings in relation to property to which the forfeiture order applies; and
 - (c) he gives written notice to the relevant officer of the matters referred to in paragraphs (a) and (b) before the end of the period of 6 months beginning with the making of the forfeiture order.
- (2) Subparagraph (3) shall apply to—
 - (a) the property in relation to which the insolvency practitioner would, but for the forfeiture order, exercise a function as described in subparagraph (1)(b); and
 - (b) the proceeds of sale of that property.
- (3) The property—
 - (a) shall cease to be subject to the forfeiture order and any ancillary order; and
 - (b) shall be dealt with in the insolvency proceedings as if the forfeiture order had never been made.
- (4) But—
 - (a) the property to which subparagraph (3) applies is the balance remaining after the relevant officer has exercised his powers under paragraph 17(1); and
 - (b) subparagraph (3) shall not take effect in respect of property in relation to which the relevant officer, or any person acting in pursuance of an ancillary order, has incurred obligations until those obligations have been discharged.
- (5) In this paragraph “the commencement of an insolvency” means—
 - (a) the making of a bankruptcy order;
 - (b) the award of sequestration;
 - (c) in the case of the insolvent estate of a deceased person, the making of an insolvency administration order; or

- (d) in the case of a company, the passing of a resolution for its winding up, or where no such resolution has been passed, the making of an order by the court for the winding up of the company.
- 15.(1) Where by virtue of paragraph 14(3) property falls to be dealt with in insolvency proceedings, the Minister shall be taken to be a creditor in those proceedings to the amount or value of the property.
- (2) Except in a sequestration, his debt—
 - (a) shall rank after the debts of all other creditors; and
 - (b) shall not be paid until they have been paid in full with interest under the relevant provision.
 - (3) In subparagraph (2)(b) the “relevant provision” means—
 - (a) in relation to the winding up of a company section 207 of the Insolvency Act 2011;
 - (b) in relation to a bankruptcy, section 375 of the Insolvency Act 2011.
 - (4) Subparagraphs (2) to (3) apply notwithstanding any provision contained in or made under any other enactment.
- 16.(1) This paragraph applies to property which ceased to be subject to a forfeiture order by virtue of paragraph 14(3) in consequence of the making of a bankruptcy order or an award of sequestration.
- (2) The property shall again become subject to the forfeiture order and, if applicable, any ancillary order if—
 - (a) the bankruptcy order is annulled; or
 - (b) the award of sequestration is recalled or reduced.
 - (3) Where the property is money or has been converted into money—
 - (a) the relevant court shall make an order specifying property comprised in the estate of the bankrupt or debtor to the amount or value of the property; and
 - (b) the specified property shall become subject to the forfeiture order, and any applicable ancillary order, in place of the property.

(4) In subparagraph (3) the “relevant court” means–

- (a) the court which ordered the annulment of the bankruptcy; or
- (b) the court which recalled or reduced the award of sequestration.

Expenses incurred in connection with forfeiture.

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

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

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

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

(3) In this paragraph “allowable forfeiture expenses”–

- (a) means expenses incurred in relation to the forfeited property by the relevant officer;
- (b) means expenses incurred in relation to the forfeited property by a receiver, administrator or other person appointed by the relevant officer;
- (c) includes sums paid or required to be paid under paragraph 2(1)(d).

Protection of insolvency practitioners.

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

- (a) he reasonably believes that he is entitled to do so in the exercise of his functions; and
 - (b) he would be so entitled if the property were not subject to a forfeiture order or a restraint order.
- (2) The insolvency practitioner shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence.
- (3) The insolvency practitioner shall have a lien on the property seized or the proceeds of its sale—
- (a) for such of his expenses as were incurred in connection with the insolvency proceedings in relation to which the seizure or disposal purported to take place; and
 - (b) for so much of his remuneration as may be reasonably assigned for his acting in connection with those proceedings.
- (4) Subparagraphs (1) to (3) are without prejudice to the generality of any provision contained in the Insolvency Act 2011.
- (5) In this paragraph “insolvency practitioner” means a person acting as an insolvency practitioner in Gibraltar.

Interpretation.

19.(1) In this Part of this Schedule (other than in paragraph 18) “insolvency practitioner” means a person acting in any qualifying insolvency proceedings as—

- (a) a liquidator of a company or partnership;
 - (b) a trustee in bankruptcy;
 - (c) the permanent or interim trustee on the debtor's estate;
 - (d) an administrator of the insolvent estate of a deceased person;
or
 - (e) a receiver or manager of any property.
- (2) In this Part of this Schedule “qualifying insolvency proceedings” means—

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- (a) any proceedings under the Insolvency Act 2011 for the winding up of a company or an unregistered company and includes any voluntary winding up of a company;
 - (b) any proceedings under the Insolvency Act 2011 for the winding up of an insolvent partnership;
 - (c) any proceedings in bankruptcy of a debtor's estate; or
 - (d) any proceedings under the Insolvency Act 2011 in relation to the insolvent estate of a deceased person.
- (3) In this Part of this Schedule “the relevant officer” means—
- (a) the proper officer within the meaning given in paragraph 4; or
 - (b) in any other case, the appropriate officer of the Supreme Court.
- (4) In this Part of this Schedule references to the proceeds of sale or realisation of property are references to the proceeds after deduction of the costs of sale or realisation.

SCHEDULE 4

FORFEITURE OF TERRORIST CASH

section 62

Part 1
*Introductory***Terrorist cash.**

1.(1) This Schedule applies to cash (“terrorist cash”) which-

- (a) is within subsection (1)(a) or (b) of section 62; or
- (b) is property earmarked as terrorist property.

(2) “Cash” means-

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

found at any place in Gibraltar.

(3) Cash also includes any kind of monetary instrument which is found at any place in Gibraltar, if the instrument is specified by the Minister by order.

Part 2
*Seizure and Detention***Seizure of cash.**

2.(1) A customs officer or a police officer may seize any cash if he has reasonable grounds for suspecting that it is terrorist cash.

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

Detention of seized cash.

3.(1) While a customs officer or a police officer continues to have reasonable grounds for his suspicion, cash seized under this Schedule may be detained initially for a period of 48 hours.

(2) In determining the period of 48 hours specified in subparagraph (1) there shall be disregarded-

- (a) any Saturday or Sunday;
- (b) Christmas Day;
- (c) Good Friday;
- (d) any day that is a bank or public holiday under the Banking and Financial Dealings Act and the Interpretation and General Clauses Act.

(2) The period for which the cash or any part of it may be detained may be extended by an order made by a magistrates' court; but the order may not authorise the detention of any of the cash-

- (a) beyond the end of the period of three months beginning with the date of the order; and
- (b) in the case of any further order under this paragraph, beyond the end of the period of two years beginning with the date of the first order.

(3) A justice of the peace may also exercise the power of a magistrates' court to make the first order under subparagraph (3) extending the period.

(4) An application to a justice of the peace for an order under subparagraph (3) making the first extension of the period-

- (a) may be made and heard without notice of the application or hearing having been given to any of the persons affected by the application or to the legal representative of such a person; and
- (b) may be heard and determined in private in the absence of persons so affected and of their legal representatives.

(5) An order under subparagraph (3) must provide for notice to be given to persons affected by it.

(6) An application for an order under subparagraph (3) may be made by a customs officer or a police officer and the court or justice may make the

order if satisfied, in relation to any cash to be further detained, that one of the following conditions is met.

(7) The first condition is that there are reasonable grounds for suspecting that the cash is intended to be used for the purposes of terrorism and that either-

- (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in Gibraltar or elsewhere) proceedings against any person for an offence with which the cash is connected; or
- (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(8) The second condition is that there are reasonable grounds for suspecting that the cash consists of resources of an organisation which is a proscribed organisation and that either-

- (a) its continued detention is justified while investigation is made into whether or not it consists of such resources or consideration is given to bringing (in Gibraltar or elsewhere) proceedings against any person for an offence with which the cash is connected; or
- (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(9) The third condition is that there are reasonable grounds for suspecting that the cash is property earmarked as terrorist property and that either-

- (a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in Gibraltar or elsewhere) proceedings against any person for an offence with which the cash is connected; or
- (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

Payment of detained cash into an account.

4.(1) If cash is detained under this Schedule for more than 48 hours (determined in accordance with paragraph 3(2)), it is to be held in an interest-bearing account and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of cash seized under paragraph 2(2), the authorised officer must, on paying it into the account, release so much of the cash then held in the account as is not attributable to terrorist cash.

(3) Subparagraph (1) does not apply if the cash is required as evidence of an offence or evidence in proceedings under this Schedule.

Release of detained cash

5.(1) This paragraph applies while any cash is detained under this Schedule.

(2) A magistrates' court may direct the release of the whole or any part of the cash if satisfied, on an application by the person from whom it was seized, that the conditions in paragraph 3 for the detention of cash are no longer met in relation to the cash to be released.

(3) A customs officer or a police officer may, after notifying the magistrates' court or justice under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

(4) But cash is not to be released-

- (a) if an application for its forfeiture under paragraph 6, or for its release under paragraph 9, is made, until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded,
- (b) if (in Gibraltar or elsewhere) proceedings are started against any person for an offence with which the cash is connected, until the proceedings are concluded.

Part 3 Forfeiture

Forfeiture.

6.(1) While cash is detained under this Schedule, an application for the forfeiture of the whole or any part of it may be made to the magistrates' court by a customs officer or a police officer.

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

(3) In the case of property earmarked as terrorist property which belongs to joint tenants one of whom is an excepted joint owner, the order may not

apply to so much of it as the court thinks is attributable to the excepted joint owner's share.

(4) An excepted joint owner is a joint tenant who obtained the property in circumstances in which it would not (as against him) be earmarked; and references to his share of the earmarked property are to so much of the property as would have been his if the joint tenancy had been severed.

Appeal against decision in forfeiture proceedings.

7.(1) A party to proceedings for an order under paragraph 6 ("a forfeiture order") who is aggrieved by a forfeiture order made in the proceedings or by the decision of the court not to make a forfeiture order may appeal to the Supreme Court.

(2) The appeal must be brought before the end of the period of 30 days beginning with the date on which the order is made or, as the case may be, the decision is given, but this is subject to paragraph 8 (extended time for appealing in certain cases of deproscription).

(3) The court hearing the appeal may make any order that appears to the court to be appropriate.

(4) If an appeal against a forfeiture order is upheld, the court may order the release of the cash.

Extended time for appealing in certain cases where deproscription order made.

8.(1) This paragraph applies where-

- (a) a successful application for a forfeiture order relies (wholly or partly) on the fact that an organisation is proscribed;
- (b) an application under section 4 of the UK Act for a deproscription order in respect of the organisation is refused by the Secretary of State;
- (c) the forfeited cash is seized under this Schedule on or after the date of the refusal of that application;
- (d) an appeal against that refusal is allowed under section 5 of the UK Act;
- (e) a deproscription order is made accordingly; and

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- (f) if the order is made in reliance on section 123(5) of the UK Act, a resolution is passed by each House of Parliament under section 123(5)(b) of the UK Act.

(2) Where this paragraph applies, an appeal under paragraph 7 against the forfeiture order may be brought at any time before the end of the period of 30 days beginning with the date on which the deproscription order comes into force.

(3) In this paragraph a “deproscription order” means an order under section 3(3)(b) or (8) of the UK Act.

Application of forfeited cash

9.(1) Cash forfeited under this Schedule, and any accrued interest on it is to be paid into the Consolidated Fund.

(2) But it is not to be paid in-

- (a) before the end of the period within which an appeal under paragraph 7 may be made, or
- (b) if a person appeals under that paragraph, before the appeal is determined or otherwise disposed of.

Part 4 Miscellaneous

Victims.

10.(1) A person who claims that any cash detained under this Schedule, or any part of it, belongs to him may apply to a magistrates’ court for the cash or part to be released to him.

(2) The application may be made in the course of proceedings under paragraph 3 or 6 or at any other time.

(3) If it appears to the court that-

- (a) the applicant was deprived of the cash claimed, or of property which it represents, by criminal conduct;
- (b) the property he was deprived of was not, immediately before he was deprived of it, property obtained by or in return for criminal conduct and nor did it then represent such property; and
- (c) the cash claimed belongs to him,

the court may order the cash to be released to the applicant.

Compensation.

11.(1) If no forfeiture order is made in respect of any cash detained under this Schedule, the person to whom the cash belongs or from whom it was seized may make an application to the magistrates' court for compensation.

(2) If, for any period after the initial detention of the cash for 48 hours (determined in accordance with paragraph 3(2)), the cash was not held in an interest-bearing account while detained, the court may order an amount of compensation to be paid to the applicant.

(3) The amount of compensation to be paid under subparagraph (2) is the amount the court thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.

(4) If the court is satisfied that, taking account of any interest to be paid under this Schedule or any amount to be paid under subparagraph (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the court may order compensation (or additional compensation) to be paid to him.

(5) The amount of compensation to be paid under subparagraph (4) is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(6) If the cash was seized by a customs officer, the compensation is to be paid by HM Customs.

(7) If the cash was seized by a police officer, the compensation is to be paid out of the fund from which the expenses of the Royal Gibraltar Police are met.

(8) If a forfeiture order is made in respect only of a part of any cash detained under this Schedule, this paragraph has effect in relation to the other part.

(9) This paragraph does not apply if the court makes an order under paragraph 10.

Part 5

Property Earmarked as Terrorist Property

Property obtained through terrorism.

This version is out of date

12.(1) A person obtains property through terrorism if he obtains property by or in return for acts of terrorism, or acts carried out for the purposes of terrorism.

(2) In deciding whether any property was obtained through terrorism-

- (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the acts;
- (b) it is not necessary to show that the act was of a particular kind if it is shown that the property was obtained through acts of one of a number of kinds, each of which would have been an act of terrorism, or an act carried out for the purposes of terrorism.

Property earmarked as terrorist property.

13.(1) Property obtained through terrorism is earmarked as terrorist property.

(2) But if property obtained through terrorism has been disposed of (since it was so obtained), it is earmarked as terrorist property only if it is held by a person into whose hands it may be followed.

(3) Earmarked property obtained through terrorism may be followed into the hands of a person obtaining it on a disposal by-

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

Tracing property.

14.(1) Where property obtained through terrorism (“the original property”) is or has been earmarked as terrorist property, property which represents the original property is also earmarked.

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

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

the other property represents the original property.

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

Mixing property.

15.(1) Subparagraph (2) applies if a person's property which is earmarked as terrorist property is mixed with other property (whether his property or another's).

(2) The portion of the mixed property which is attributable to the property earmarked as terrorist property represents the property obtained through terrorism.

(3) Property earmarked as terrorist property is mixed with other property if (for example) it is used-

- (a) to increase funds held in a bank account;
- (b) in part payment for the acquisition of an asset;
- (c) for the restoration or improvement of land;
- (d) by a person holding a leasehold interest in the property to acquire the freehold.

Accruing profits.

16.(1) This paragraph applies where a person who has property earmarked as terrorist property obtains further property consisting of profits accruing in respect of the earmarked property.

(2) The further property is to be treated as representing the property obtained through terrorism.

General exceptions.

17.(1) If-

- (a) a person disposes of property earmarked as terrorist property;
and
- (b) the person who obtains it on the disposal does so in good faith,
for value and without notice that it was earmarked,

the property may not be followed into that person's hands and, accordingly, it ceases to be earmarked.

(2) If-

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

the property ceases to be earmarked.

(3) If-

- (a) a payment is made to a person in pursuance of a compensation order under section 595 Criminal Procedure and Evidence Act 2011; and
- (b) apart from this subparagraph, the sum received would be earmarked as terrorist property, the property ceases to be earmarked.

(4) If-

- (a) a payment is made to a person in pursuance of a restitution order under section 600 Criminal Procedure and Evidence Act 2011 or a person otherwise obtains any property in pursuance of such an order; and
- (b) apart from this subparagraph, the sum received, or the property obtained, would be earmarked as terrorist property,

the property ceases to be earmarked.

(5) If-

- (a) in pursuance of a requirement of the Financial Services Commission, an amount is paid to or distributed among any persons in accordance with the court's directions; and
- (b) apart from this subparagraph, the sum received by them would be earmarked as terrorist property,

the property ceases to be earmarked.

(6) Where-

- (a) a person enters into a transaction to which paragraph 14(2) applies; and
- (b) the disposal is one to which subparagraph (1) applies,

this paragraph does not affect the question whether (by virtue of paragraph 14(2)) any property obtained on the transaction in place of the property disposed of is earmarked.

Part 6
Interpretation

Property.

18.(1) Property has the meaning given in section 3 and any reference to a person's property (whether expressed as a reference to the property he holds or otherwise) is to be read as follows.

(3) In relation to land, it is a reference to any interest which he holds in the land.

(4) In relation to property other than land, it is a reference-

- (a) to the property (if it belongs to him); or
- (b) to any other interest which he holds in the property.

Obtaining and disposing of property.

19.(1) References to a person disposing of his property include a reference-

- (a) to his disposing of a part of it; or
- (b) to his granting an interest in it,

(or to both); and references to the property disposed of are to any property obtained on the disposal.

(2) If a person grants an interest in property of his which is earmarked as terrorist property, the question whether the interest is also earmarked is to be determined in the same manner as it is on any other disposal of earmarked property.

(3) A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes.

(4) Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other.

(5) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

General interpretation.

20.(1) In this Schedule-

“cash” has the meaning given by paragraph 1;

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

“forfeiture order” has the meaning given by paragraph 7;

“interest”, in relation to land means any legal estate and any equitable interest or power;

“interest”, in relation to property other than land, includes any right (including a right to possession of the property);

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

“property obtained through terrorism” has the meaning given by paragraph 12;

“property earmarked as terrorist property” is to be read in accordance with Part 5;

“terrorist cash” has the meaning given by paragraph 1;

“UK Act” means the Terrorism Act 2000 of the United Kingdom;

“value” means market value.

(2) Paragraphs 18 and 19 and the following provisions apply for the purposes of this Schedule.

(3) For the purpose of deciding whether or not property was earmarked as terrorist property at any time (including times before commencement), it is

to be assumed that this Schedule was in force at that and any other relevant time.

(4) References to anything done or intended to be done for the purposes of terrorism include anything done or intended to be done for the benefit of a proscribed organisation.

(5) An organisation's resources include any cash which is applied or made available, or is to be applied or made available, for use by the organisation.

(6) Proceedings against any person for an offence are concluded when-

- (a) the person is convicted or acquitted;
- (b) the prosecution is discontinued; or
- (c) the jury is discharged without a finding otherwise than in circumstances where the proceedings are continued without a jury.

SCHEDULE 5
FREEZING ORDERS

Section 64

Interpretation.

1. References in this Schedule to a person specified in a freezing order as a person to whom or for whose benefit funds are not to be made available are to be read in accordance with section 64(4).

Funds.

2. A freezing order may include provision that funds include gold, cash, deposits, securities (such as stocks, shares and debentures) and such other matters as the order may specify.

Making funds available.

3.(1) A freezing order must include provision as to the meaning (in relation to funds) of making available to or for the benefit of a person.

(2) In particular, an order may provide that the expression includes—

- (a) allowing a person to withdraw from an account;
- (b) honouring a cheque payable to a person;
- (c) crediting a person's account with interest;
- (d) releasing documents of title (such as share certificates) held on a person's behalf;
- (e) making available the proceeds of realisation of a person's property;
- (f) making a payment to or for a person's benefit (for instance, under a contract or as a gift or under any enactment such as the enactments relating to social security);
- (g) such other acts as the order may specify.

Licences.

4.(1) A freezing order must include-

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- (a) provision for the granting of licences authorising funds to be made available;
 - (b) provision that a prohibition under the order is not to apply if funds are made available in accordance with a licence.
- (2) In particular, an order may provide-
- (a) that a licence may be granted generally or to a specified person or persons or description of persons;
 - (b) that a licence may authorise funds to be made available to or for the benefit of persons generally or a specified person or persons or description of persons;
 - (c) that a licence may authorise funds to be made available generally or for specified purposes;
 - (d) that a licence may be granted in relation to funds generally or to funds of a specified description;
 - (e) for a licence to be granted in pursuance of an application or without an application being made;
 - (f) for the form and manner in which applications for licences are to be made;
 - (g) for licences to be granted by the Minister or a person authorised by the Minister;
 - (h) for the form in which licences are to be granted;
 - (i) for licences to be granted subject to conditions;
 - (j) for licences to be of a defined or indefinite duration;
 - (k) for the charging of a fee to cover the administrative costs of granting a licence;
 - (l) for the variation and revocation of licences.

Information and documents.

5.(1) A freezing order may include provision that a person-

- (a) must provide information if required to do so and it is reasonably needed for the purpose of ascertaining whether an offence under the order has been committed;

- (b) must produce a document if required to do so and it is reasonably needed for that purpose.
- (2) In particular, an order may include-
- (a) provision that a requirement to provide information or to produce a document may be made by the Minister or a person authorised by the Minister;
 - (b) provision that information must be provided, and a document must be produced, within a reasonable period specified in the order and at a place specified by the person requiring it;
 - (c) provision that the provision of information is not to be taken to breach any restriction on the disclosure of information (however imposed);
 - (d) provision restricting the use to which information or a document may be put and the circumstances in which it may be disclosed;
 - (e) provision that a requirement to provide information or produce a document does not apply to privileged information or a privileged document;
 - (f) provision that information is privileged if the person would be entitled to refuse to provide it on grounds of legal professional privilege in proceedings in the Supreme Court;
 - (g) provision that a document is privileged if the person would be entitled to refuse to produce it on grounds of legal professional privilege in proceedings in the Supreme Court;
 - (h) provision that information or a document held with the intention of furthering a criminal purpose is not privileged.

Disclosure of information.

6.(1) A freezing order may include provision requiring a person to disclose information as mentioned below if the following three conditions are satisfied.

(2) The first condition is that the person required to disclose is specified or falls within a description specified in the order.

(3) The second condition is that the person required to disclose knows or suspects, or has grounds for knowing or suspecting, that a person specified

in the freezing order as a person to whom or for whose benefit funds are not to be made available-

- (a) is a customer of his or has been a customer of his at any time since the freezing order came into force; or
- (b) is a person with whom he has dealings in the course of his business or has had such dealings at any time since the freezing order came into force.

(4) The third condition is that the information-

- (a) on which the knowledge or suspicion of the person required to disclose is based; or
- (b) which gives grounds for his knowledge or suspicion, came to him in the course of a business in the regulated sector.

(5) The freezing order may require the person required to disclose to make a disclosure to the Minister of that information as soon as is practicable after it comes to him.

(6) The freezing order may include-

- (a) provision that Schedule 2 is to have effect for the purpose of determining what is a business in the regulated sector;
- (b) provision that the disclosure of information is not to be taken to breach any restriction on the disclosure of information (however imposed);
- (c) provision restricting the use to which information may be put and the circumstances in which it may be disclosed by the Minister;
- (d) provision that the requirement to disclose information does not apply to privileged information;
- (e) provision that information is privileged if the person would be entitled to refuse to disclose it on grounds of legal professional privilege in proceedings in the Supreme Court;
- (f) provision that information held with the intention of furthering a criminal purpose is not privileged.

Offences.

This version is out of date

7.(1) A freezing order may include any of the provisions set out in this paragraph.

(2) A person commits an offence if he fails to comply with a prohibition imposed by the order.

(3) A person commits an offence if he engages in an activity knowing or intending that it will enable or facilitate the commission by another person of an offence under a provision included under subparagraph (2).

(4) A person commits an offence if-

- (a) he fails without reasonable excuse to provide information, or to produce a document, in response to a requirement made under the order;
- (b) he provides information, or produces a document, which he knows is false in a material particular in response to such a requirement or with a view to obtaining a licence under the order;
- (c) he recklessly provides information, or produces a document, which is false in a material particular in response to such a requirement or with a view to obtaining a licence under the order;
- (d) he fails without reasonable excuse to disclose information as required by a provision included under paragraph 6.

(5) A person does not commit an offence under a provision included under subparagraph (2) or (3) if he proves that he did not know and had no reason to suppose that the person to whom or for whose benefit funds were made available, or were to be made available, was the person (or one of the persons) specified in the freezing order as a person to whom or for whose benefit funds are not to be made available.

(6) A person guilty of an offence under a provision included under subparagraph (2) or (3) is liable-

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

(7) A person guilty of an offence under a provision included under subparagraph (4) is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale or to both.

Offences: procedure.

8.(1) A freezing order may include any of the provisions set out in this paragraph.

(2) Proceedings for an offence under the order are not to be instituted in except by or with the consent of the Attorney General.

(3) Despite anything in section 65 of the Magistrates' Courts Act (information to be laid within 6 months of offence) an information relating to an offence under the order which is triable by the magistrates' court may be so tried if it is laid at any time in the period of one year starting with the date of the commission of the offence.

Offences by bodies corporate etc.

9.(1) A freezing order may include any of the provisions set out in this paragraph.

(2) If an offence under the order-

- (a) is committed by a body corporate; and
- (b) is proved to have been committed with the consent or connivance of an officer, or to be attributable to any neglect on his part,

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

(3) These are officers of a body corporate-

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

(4) If the affairs of a body corporate are managed by its members subparagraph (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were an officer of the body.

Compensation.

10.(1) A freezing order may include provision for the award of compensation to or on behalf of a person on the grounds that he has suffered loss as a result of-

- (a) the order;
- (b) the fact that a licence has not been granted under the order;
- (c) the fact that a licence under the order has been granted on particular terms rather than others;
- (d) the fact that a licence under the order has been varied or revoked.

(2) In particular, the order may include-

- (a) provision about the person who may make a claim for an award;
- (b) provision about the person to whom a claim for an award is to be made (which may be provision that it is to be made to the Supreme Court);
- (c) provision about the procedure for making and deciding a claim;
- (d) provision that no compensation is to be awarded unless the claimant has behaved reasonably (which may include provision requiring him to mitigate his loss, for instance by applying for a licence);
- (e) provision that compensation must be awarded in specified circumstances or may be awarded in specified circumstances (which may include provision that the circumstances involve negligence or other fault);
- (f) provision about the amount that may be awarded;
- (g) provision about who is to pay any compensation awarded;
- (h) provision about how compensation is to be paid (which may include provision for payment to a person other than the claimant).

Minister's duty to give reasons.

11.(1) A freezing order must include provision that if-

- (a) a person is specified in the order as a person to whom or for whose benefit funds are not to be made available; and
- (b) he makes a written request to the Minister to give him the reason why he is so specified, as soon as is practicable the Minister must give the person the reason in writing.

(2) Subparagraph (1) does not apply if, or to the extent that, particulars of the reason would not be required to be disclosed to the applicant in proceedings to set aside the freezing order.

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SCHEDULE 6
EXTENSION OF EXISTING DISCLOSURE POWERS

section 71

**SCHEDULE 7
FINANCIAL INFORMATION**

section 80

Orders.

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

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

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

(3) The information shall be provided—

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

(4) An institution which fails to comply with a requirement under this paragraph shall be guilty of an offence.

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

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

(6) An institution guilty of an offence under subparagraph (4) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Procedure.

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2. An order under paragraph 1 may be made only on the application of—
 - (a) a police officer of at least the rank of superintendent; or
 - (b) the Attorney General.
3. An order under paragraph 1 may be made only by the stipendiary magistrate or a judge of the Supreme Court.

Criteria for making an order.

4. An order under paragraph 1 may be made only if the person making it 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.

Financial institution.

- 5.(1) In this Schedule “financial institution”—
 - (a) has the meaning attributed to it in section 7(1) of the Proceeds of Crime Act 2015;
 - (b) includes meaning attributed to “relevant financial business” in section 9(1) of the Proceeds of Crime Act 2015; and
 - (c) includes the meaning attributed to “credit institution” in section 7(1) of the Proceeds of Crime Act 2015.
- (2) The Minister may by order provide for a class of person—
 - (a) to be a financial institution for the purposes of this Schedule; or
 - (b) to cease to be a financial institution for the purposes of this Schedule.
- (4) An institution which ceases to be a financial institution for the purposes of this Schedule shall continue to be treated as a financial institution for the purposes of any requirement under paragraph 1 to provide customer information which relates to a time when the institution was a financial institution.

Customer information.

6.(1) In this Schedule “customer information” means (subject to subparagraph (3))–

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

Offence by body corporate, etc.

7.(1) This paragraph applies where an offence under paragraph 1(3) is committed by an institution and it is proved that the offence–

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

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

(3) Where an individual is convicted of an offence under paragraph 1(3) by virtue of this paragraph, he shall be liable on summary conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale or to both.

(4) In the case of an institution which is a body corporate, in this paragraph “officer” includes–

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

(5) In the case of an institution which is a partnership, in this paragraph “officer” means a partner.

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

Self-incrimination.

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

(2) Subparagraph (1) shall not apply in relation to proceedings for an offence under paragraph 1(3) (including proceedings brought by virtue of paragraph (7)).

SCHEDULE 8
ACCOUNT MONITORING ORDERS

section 81

Introduction.

- 1.(1) This paragraph applies for the purposes of this Schedule.
- (2) A judge is a stipendiary magistrate.
- (3) The court is the Supreme Court.
- (4) An appropriate officer is a police officer.
- (5) “Financial institution” has the same meaning as in Schedule 7.

Account monitoring orders.

- 2.(1) A judge may, on an application made to him by an appropriate officer, make an account monitoring order if he is satisfied that—
 - (a) the order is sought for the purposes of a terrorist investigation;
 - (b) the tracing of terrorist property is desirable for the purposes of the investigation; and
 - (c) the order will enhance the effectiveness of the investigation.
- (2) The application for an account monitoring order must state that the order is sought against the financial institution specified in the application in relation to information which—
 - (a) relates to an account or accounts held at the institution by the person specified in the application (whether solely or jointly with another); and
 - (b) is of the description so specified.
- (3) The application for an account monitoring order may specify information relating to—
 - (a) all accounts held by the person specified in the application for the order at the financial institution so specified;
 - (b) a particular description, or particular descriptions, of accounts so held; or

(c) a particular account, or particular accounts, so held.

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

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

provide information of the description specified in the application to an appropriate officer.

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

Applications.

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

(2) The description of information specified in an application for an account monitoring order may be varied by the person who made the application.

(3) If the application was made by a police officer, the description of information specified in it may be varied by a different police officer.

Discharge or variation.

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

- (a) the person who applied for the order;
- (b) any person affected by the order.

(2) If the application for the account monitoring order was made by a police officer, an application to discharge or vary the order may be made by a different police officer.

(3) The court—

- (a) may discharge the order;
- (b) may vary the order.

Rules of court.

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

Effect of orders.

6.(1) An account monitoring order has effect as if it were an order of the court.

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

Statements.

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

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

- (a) in the case of proceedings for contempt of court;
- (b) in the case of proceedings under section 56 where the financial institution has been convicted of an offence under any of sections 35 to 39;
- (c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subparagraph (1).

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

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

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

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SCHEDULE 9
DETENTION - TREATMENT, REVIEW AND EXTENSION

section 85

Part 1

Treatment of persons detained under section 85

Place of detention.

1.(1) The Minister shall designate places at which persons may be detained under Schedule 10 or under section 85.

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

(3) Where a person is detained under Schedule 10, he may be taken in the custody of an examining officer or of a person acting under an examining officer's authority to and from any place where his attendance is required for the purpose of-

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

(4) A police officer who arrests a person under section 85 shall take him as soon as is reasonably practicable to the police station which the police officer considers the most appropriate.

(5) In this paragraph "examining officer" has the meaning given in Schedule 10.

Identification.

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

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

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

- (a) a police officer;
- (b) a prison officer;
- (c) a person authorised by the Minister; and
- (d) in the case of a person detained under Schedule 10 an examining officer within the meaning of that Schedule.

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

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 Schedule 10 or section 85 at a police station shall be entitled, if he so requests, to have one named person informed as soon as is reasonably practicable that he is being detained there.

(2) The person named must be—

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

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

Legal assistance.

5.(1) Subject to paragraphs 6 and 7, a person detained under Schedule 10 or section 85 shall be entitled, if he so requests, to consult a lawyer 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.

Delay in informing named person.

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

- (a) in informing the person named by a detained person under paragraph 4;
- (b) in permitting a detained person to consult a solicitor under paragraph 5.

(2) Where a person is detained under section 85 he must be permitted to exercise his rights under paragraphs 4 and 5 before the end of the period mentioned in subsection (3) of that section.

(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) Those consequences are-

- (a) interference with or harm to evidence of a serious offence;
- (b) interference with or physical injury to any person;
- (c) the alerting of persons who are suspected of having committed a serious offence but who have not been arrested for it;
- (d) the hindering of the recovery of property obtained as a result of a serious offence or in respect of which a forfeiture order could be made under section 56;
- (e) interference with the gathering of information about the commission, preparation or instigation of acts of terrorism;
- (f) the alerting of a person and thereby making it more difficult to prevent an act of terrorism; and

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- (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) A police officer may also give an authorisation under subparagraph (1) if he has reasonable grounds for believing that-

- (a) the detained person has benefited from his criminal conduct; and
- (b) the recovery of the value of the property constituting the benefit will be hindered by-
 - (i) informing the named person of the detained person's detention (in the case of an authorisation under subparagraph (1)(a)); or
 - (ii) the exercise of the right under paragraph 5 (in the case of an authorisation under subparagraph (1)(b)).

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

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

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

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

(9) In this paragraph, references to a "serious offence" are to an indictable offence, but also include-

- (a) an offence under any of the provisions mentioned in section 84(1)(a) of this Act; and
- (b) an attempt or conspiracy to commit an offence under any of the provisions mentioned in section 84(1)(a).

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(10) For the purposes of subparagraph (5) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part IV of the Proceeds of Crime Act 2015.

Supervised legal assistance.

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 lawyer only in the sight and hearing of a qualified police officer.

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

(3) A direction under this paragraph may be given only if the officer giving it has reasonable grounds for believing—

- (a) 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); or
- (b) that the detained person has benefited from his criminal conduct and that, unless the direction is given, the exercise of the right by the detained person will hinder the recovery of the value of the property constituting the benefit.

(4) In this paragraph “a qualified officer” means a police officer who-

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

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

Fingerprints and samples.

8.(1) This paragraph applies where a persons is detained under Schedule 10 or section 85.

(2) Fingerprints may be taken from the detained person only if they are taken by a police officer—

- (a) with the appropriate consent in writing;

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- (b) 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 in writing;
 - (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-
- (a) he is detained at a police station and a police officer of at least the rank of superintendent authorises the fingerprints or non-intimate sample to be taken; or
 - (b) he has been convicted of a recordable offence.
- (5) An intimate sample may be taken from a person detained under section 85, but only if-
- (a) he is detained at a police station;
 - (b) the appropriate consent is given in writing;
 - (c) a police officer of at least the rank of superintendent authorises the sample to be taken; and
 - (d) subject to paragraph 11(2) and (3), the sample is taken by a police officer.
- (6) Subject to subparagraph (7) a police officer may give an authorisation under subparagraph (4)(a) or (5)(c) only if-
- (a) in the case of a person detained under section 85, the officer reasonably suspects that the person has been involved in an offence under any of the provisions mentioned in section 84(1)(a), and the officer reasonably believes that the fingerprints or non-intimate sample will tend to confirm or disprove his involvement; or
 - (b) in any case in which an authorisation under that subparagraph may be given, the officer is satisfied that the taking of the fingerprints or non-intimate sample from the person is necessary in order to assist in determining whether he falls within section 84(1)(b).

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(7) A police officer may also give an authorisation under subparagraph (4)(a) for the taking of fingerprints if—

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

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

Fingerprints and samples - information.

9.(1) Before fingerprints or a sample are taken from a person under paragraph 8, he shall be informed—

- (a) that the fingerprints or non-intimate sample may be used for the purposes of a relevant search (within the meaning given by paragraph 14(6)) or for the purposes of section 90 Criminal Procedure and Evidence Act 2011; and
- (b) where the fingerprints or non-intimate sample are to be taken from a person upon an authorisation given under paragraph 8(3)(a), (4)(a) or (5)(b), of the reason for taking the fingerprints or non-intimate sample.

(2) Before fingerprints or a non-intimate sample are taken from a person upon an authorisation given under paragraph 8(5)(a) or (6)(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 non-intimate 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);

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- (b) the reason referred to in subparagraph (1)(b);
- (c) the authorisation given under paragraph 8(5)(a) or (6)(c);
- (d) the grounds upon which that authorisation has been given; and
- (e) the fact that the appropriate consent has been given.

Further samples.

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 superintendent authorises the sample to be taken; and
- (c) subject to paragraph 11(2) and (3), the sample is taken by a police officer.

(3) Paragraphs 8(7) and (8) and 9 shall apply in relation to the taking of an intimate sample under this paragraph, and a reference to a person detained under section 85 shall be taken as a reference to a person who was detained under section 85 when the non-intimate samples mentioned in subparagraph (1)(a) were taken.

Refusal of intimate sample.

11.(1) Where appropriate written consent to the taking of an intimate sample from a person under paragraph 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

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- (b) the court or jury, in determining whether that person is guilty of the offence charged, may draw such inferences from the refusal as appear proper.

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

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

(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.

Interpretation of paragraphs 8 to 11.

12.(1) In the application of paragraphs 8 to 11 in relation to a person detained the following expressions shall have the meaning given by section 77 of the Criminal Procedure and Evidence Act 2011—

- (a) “appropriate consent”;
- (b) “fingerprints”;
- (c) “insufficient”;
- (d) “intimate sample”;
- (e) “non-intimate sample”; and
- (f) “sufficient”.

(2) In the application of paragraphs 8 to 11 in relation to a person detained “registered dentist” shall have the meaning given by section 77 of the Criminal Procedure and Evidence Act 2011 to “registered”;

(3) In the application of section 77(2) of the Criminal Procedure and Evidence Act 2011 for the purposes of subparagraph (1) of this paragraph, the reference to the destruction of a sample under section 94A of that Act is a reference to the destruction of a sample under paragraph 20 of this Schedule.

(4) In paragraph 8 “recordable offence” shall have in relation to a person detained in Gibraltar, the meaning given by section 2 of the Criminal Procedure and Evidence Act 2011.

Lawyer under Schedule 10.

13.(1) This paragraph applies where a person detained under Schedule 10 requests to consult a lawyer.

(2) The examining officer may not question the detained person under paragraph 2 or 3 of Schedule 10 until the person has consulted a lawyer or no longer wishes to do so.

(3) Subparagraph (2) does not apply if the examining officer reasonably believes that postponing the questioning until then would be likely to prejudice determination of the relevant matters.

(4) The powers given by paragraph 8 of Schedule 10 (search powers where a person is questioned under paragraph 2 of Schedule 10) may be used when questioning is postponed because of subparagraph (2).

(5) The detained person is entitled to consult a lawyer in person.

(6) Subparagraph (5) does not apply if the examining officer reasonably believes that the time it would take to consult a lawyer in person would be likely to prejudice determination of the relevant matters.

(7) In that case the examining officer may require any consultation to take place in another way.

(8) In this paragraph “the relevant matters” means the matters the examining officer seeks to determine under paragraph 2 or 3 of Schedule 10.

Destruction and retention of fingerprints and samples etc

Destruction and retention.

14.(1) This paragraph applies to—

- (a) fingerprints taken under paragraph 8; and
- (b) a DNA profile derived from a DNA sample taken under paragraph 8 or 10.

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(2) Fingerprints, relevant physical data and DNA profiles to which this paragraph applies (“paragraph 14 material”) must be destroyed if it appears to the Commissioner of Police that—

- (a) the taking or providing of the material or, in the case of a DNA profile, the taking of the sample from which the DNA profile was derived, was unlawful; or
- (b) the material was taken or provided, or (in the case of a DNA profile) was derived from a sample taken, from a person in connection with that person's arrest under section 85 and the arrest was unlawful or based on mistaken identity.

(3) In any other case, paragraph 14 material must be destroyed unless it is retained under any power conferred by paragraphs 15 to 18.

(4) Paragraph 14 material which ceases to be retained under a power mentioned in subparagraph (3) may continue to be retained under any other such power which applies to it.

(5) Nothing in this paragraph prevents a relevant search, in relation to paragraph 14 material, from being carried out within such time as may reasonably be required for the search if the Commissioner of Police considers the search to be desirable.

(6) For the purposes of subparagraph (5), “a relevant search” is a search carried out for the purpose of checking the material against—

- (a) other fingerprints or samples taken under paragraph 8 or 10 or a DNA profile derived from such a sample;
- (b) any of the fingerprints, samples and information mentioned in section 90 of the Police and Criminal Evidence Act 2011 (Fingerprints and samples: Speculative searches.).

Paragraph 14 material where detained under s. 85.

15.(1) This paragraph applies to paragraph 14 material relating to a person who is detained under section 85.

(2) In the case of a person who has previously been convicted of a recordable offence (other than a single exempt conviction), or is so convicted before the end of the period within which the material may be retained by virtue of this paragraph, the material may be retained indefinitely.

(3) In the case of a person who has no previous convictions, or only one exempt conviction, the material may be retained until the end of the retention period specified in subparagraph (4).

(4) The retention period is—

- (a) in the case of fingerprints or relevant physical data, the period of 3 years beginning with the date on which the fingerprints or relevant physical data were taken or provided; 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 was taken).

(5) The Commissioner of Police may apply to the magistrates' court for an order extending the retention period.

(6) An application for an order under subparagraph (5) must be made within the period of 3 months ending on the last day of the retention period.

(7) An order under subparagraph (5) may extend the retention period by a period which—

- (a) begins with the date on which the material would otherwise be required to be destroyed under this paragraph; and
- (b) ends with the end of the period of 2 years beginning with that date.

(8) The following persons may appeal to the Supreme Court against an order under subparagraph (5), or a refusal to make such an order—

- (a) the Commissioner;
- (b) the person from whom the material was taken.

Paragraph 14 material where detained under Schedule 10.

16.(1) This paragraph applies to paragraph 14 material relating to a person who is detained under Schedule 10.

(2) In the case of a person who has previously been convicted of a recordable offence (other than a single exempt conviction), or is so convicted before the end of the period within which the material may be

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retained by virtue of this paragraph, the material may be retained indefinitely.

(3) In the case of a person who has no previous convictions, or only one exempt conviction, the material may be retained until the end of the retention period specified in subparagraph (4).

(4) The retention period is—

- (a) in the case of fingerprints or relevant physical data, the period of 6 months beginning with the date on which the fingerprints or relevant physical data were taken or provided; and
- (b) in the case of a DNA profile, the period of 6 months 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 was taken).

Recordable offence.

17.(1) For the purposes of paragraphs 15 and 16, a person is to be treated as having been convicted of an offence if in relation to a recordable offence—

- (a) the person has been given a caution in respect of the offence which, at the time of the caution, the person has admitted;
- (b) the person has been found not guilty of the offence by reason of insanity;
- (c) the person has been found to be under a disability and to have done the act charged in respect of the offence.

(2) Paragraphs 15, 16 and this paragraph, so far as they relate to persons convicted of an offence, have effect despite anything in Part 25 of the Criminal Procedure and Evidence Act 2011.

(3) For the purposes of paragraphs 15 and 16—

- (a) a person has no previous convictions if the person has not previously been convicted in Gibraltar of a recordable offence; and
- (b) if the person has previously been convicted of a recordable offence in Gibraltar, the conviction is exempt if it is in respect of a recordable offence, other than a qualifying offence, committed when the person was aged under 18.

(4) If a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purposes of calculating under paragraph 15 or 16 whether the person has been convicted of only one offence.

(5) Nothing in paragraph 15 or 16 prevents the start of a new retention period in relation to paragraph 14 material if a person is detained again under section 85 or (as the case may be) Schedule 10 when an existing retention period (whether or not extended) is still in force in relation to that material.

Security determination.

18.(1) Paragraph 14 material may be retained for as long as a security determination made by the Commissioner of the Police has effect in relation to it.

(2) A security determination is made if the Commissioner of Police determines that it is necessary for any paragraph 14 material to be retained for the purposes of security.

(3) A security determination by a police officer of at least the rank of superintendent—

- (a) must be made in writing by the superintendent;
- (b) has effect for a maximum of 2 years beginning with the date on which the determination is made; and
- (c) may be renewed.

Destruction of paragraph 14 material.

19.(1) If fingerprints or relevant physical data are required by paragraph 14 to be destroyed, any copies of the fingerprints or relevant physical data held by the Royal Gibraltar Police must also be destroyed.

(2) If a DNA profile is required by paragraph 14 to be destroyed, no copy may be retained by the Royal Gibraltar Police except in a form which does not include information which identifies the person to whom the DNA profile relates.

Destruction of samples taken under paragraph 8 or 10.

20.(1) This paragraph applies to samples taken under paragraph 8 or 10.

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(2) Samples which this paragraph applies must be destroyed if it appears to the Commissioner of Police that—

- (a) the taking of the sample was unlawful; or
- (b) the sample was taken from a person in connection with that person's arrest under section 85 and the arrest was unlawful or based on mistaken identity.

(3) Subject to this, the rule in subparagraph (4) or, as the case may be, (5) applies.

(4) A DNA sample to which this paragraph applies must be destroyed—

- (a) as soon as a DNA profile has been derived from the sample; or
- (b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.

(5) Any other sample to which this paragraph applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.

(6) The Commissioner of Police may apply to the magistrates' court for an order to retain a sample to which this paragraph applies beyond the date on which the sample would otherwise be required to be destroyed by virtue of subparagraph (4) or (5) if—

- (a) the sample was taken from a person detained under section 85 in connection with the investigation of a qualifying offence; and
- (b) the Commissioner of Police considers that the condition in subparagraph (7) is met.

(7) The condition is that, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—

- (a) disclosure to, or use by, a defendant; or
- (b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.

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(8) An application under subparagraph (6) must be made before the date on which the sample would otherwise be required to be destroyed by virtue of subparagraph (4) or (5).

(9) If, on an application made by the Commissioner of Police under subparagraph (6), the magistrates' court is satisfied that the condition in subparagraph (7) is met, it may make an order under this subparagraph which—

- (a) allows the sample to be retained for a period of 12 months beginning with the date on which the sample would otherwise be required to be destroyed by virtue of subparagraph (4) or (5); and
- (b) may be renewed, on one or more occasions, for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.

(10) An application for an order under subparagraph (9) (other than an application for renewal)—

- (a) may be made without notice of the application having been given to the person from whom the sample was taken; and
- (b) may be heard and determined in private in the absence of that person.

(11) A sample retained by virtue of an order under subparagraph (9) must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(12) A sample that ceases to be retained by virtue of an order under subparagraph (9) must be destroyed.

(13) Nothing in this paragraph prevents a relevant search, in relation to samples to which this paragraph applies, from being carried out within such time as may reasonably be required for the search if the Commissioner of Police considers the search to be desirable.

(14) In this paragraph—

“relevant search” has the meaning given by paragraph 14(6).

Uses of paragraph 14 and 20 material.

21.(1) Any material to which paragraph 14 or 20 applies must not be used other than—

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- (a) in the interests of security;
- (b) for the purposes of a terrorist investigation;
- (c) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; or
- (d) for purposes related to the identification of a deceased person or of the person to whom the material relates.

(2) Subject to subparagraph (1), a relevant search may be carried out in relation to material to which paragraph 14 or 20 applies if the Commissioner of Police considers the search to be desirable.

(3) Material which is required by paragraph 14 or 20 to be destroyed must not at any time after it is required to be destroyed be used-

- (a) in evidence against the person to whom the material relates; or
- (b) for the purposes of the investigation of any offence.

(4) In this paragraph—

- (a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person;
- (b) the reference to crime includes a reference to any conduct which-
 - (i) constitutes one or more criminal offences (whether under the law Gibraltar or of a country or territory outside Gibraltar); or
 - (ii) is, or corresponds to, any conduct which, if it all took place in Gibraltar, would constitute one or more criminal offences;
- (c) the references to an investigation and to a prosecution include references, respectively, to any investigation outside Gibraltar of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside Gibraltar; and
- (d) “relevant search” has the meaning given by paragraph 14(6).

Relation between paragraphs 14 to 21 and section 85.

22.(1) Paragraphs 14 to 21 do not apply to material relating to a person detained under section 85 which is, or may become, disclosable under-

- (a) the Criminal Procedure and Evidence Act 2011; or
- (b) a code of practice prepared under section 687 of that Act and in operation by virtue of an order under section 690 of that Act.

(2) A sample that–

- (a) falls within subparagraph (1); and
- (b) but for that subparagraph would be required to be required to be destroyed under paragraph 20, must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(3) A sample that once fell within subparagraph (1) but no longer does, and so becomes a sample to which paragraph 20 applies, must be destroyed immediately if the time specified for its destruction under that paragraph has already passed.

Definitions - paragraphs 14 to 22.

23. In paragraphs 14 to 22–

“DNA profile” means any information derived from a DNA sample;

“DNA sample” means any material that has come from a human body and consists of or includes human cells;

“fingerprints” has the meaning given by section 77 of the Criminal Procedure and Evidence Act 2011;

“paragraph 14 material” has the meaning given by paragraph 14(2);

“recordable offence” has the meaning given by section 2 of the Criminal Procedure and Evidence Act 2011;

“relevant physical data” means any-

- (a) fingerprint;
- (b) palm print;

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- (c) print or impression other than those mentioned in paragraph (a) and (b) above, of an external part of the body;
- (d) record of a person's skin on an external part of the body.

Part 2

Review of detention under Schedule 10

General requirements.

24.(1) A person's detention under Schedule 10 must be periodically reviewed by a review officer.

(2) The first review must be carried out before the end of the period of one hour beginning with the person's detention under that Schedule.

(3) Subsequent reviews must be carried out at intervals of not more than two hours.

(4) The review officer may authorise a person's continued detention under Schedule 10 for longer than four hours only if, in addition, the review officer holds a reasonable suspicion that the person falls within the description of a "terrorist" within the meaning of section 84(1)(b). The reasonable suspicion must be based on circumstance or information that give rise to the reasonable suspicion.

(5) If on a review under this paragraph the review officer does not authorise a person's continued detention, the person must be released, unless detained under another power.

(6) In this Part of this Schedule "review officer" means a senior officer who has not been directly involved in questioning the detained person under paragraph 2 or 3 of Schedule 10.

(7) "Senior officer" means—

- (a) a police officer, a police officer of a higher rank than the examining officer;
- (b) where the examining officer is customs officer, an customs officer of a higher grade than the examining officer; and
- (c) where the examining officer is a borders and coastguard officer, a border and coastguard officer of a higher grade than the examining officer.

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(8) The Minister must under paragraph 6 of Schedule 15 issue a code of practice about reviews under this Part of this Schedule.

(9) The code of practice must include provision about training to be undertaken by persons who are to act as review officers.

Representations.

25.(1) Before determining whether to authorise a person's continued detention, a review officer must give either of the following persons an opportunity to make representations about the detention—

- (a) the detained person; or
- (b) a solicitor representing the detained person who is available at the time of the review.

(2) Representations may be oral or written.

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

Rights.

26.(1) Where a review officer authorises continued detention the officer must inform the detained person—

- (a) of any of the detained person's rights under paragraphs 6 and 7 which have not yet been exercised; and
- (b) if the exercise of any of those rights is being delayed in accordance with the provisions of paragraph 8, of the fact that it is being delayed.

(2) Where a review of a person's detention is being carried out at a time when the person's exercise of a right under paragraph 6 or 7 is being delayed—

- (a) the review officer must consider whether the reason or reasons for which the delay was authorised continue to subsist; and
- (b) if in the review officer's opinion the reason or reasons have ceased to subsist, the review officer must inform the officer who authorised the delay of that opinion, unless the review officer was that officer.

Record.

27.(1) A review officer carrying out a review must make a written record of the outcome of the review and of any of the following which apply-

- (a) the fact that the officer is satisfied that continued detention is necessary for the purposes of exercising a power under paragraph 2 or 3 of Schedule 10;
- (b) the fact that the detained person has been informed as required under paragraph 26(1);
- (c) the officer's conclusion on the matter considered under paragraph 26(2)(a); and
- (d) the fact that the officer has taken action under paragraph 26(2)(b).

(2) The review officer must inform the detained person whether the officer is authorising continued detention, and if so that the officer is satisfied that continued detention is necessary for the purposes of exercising a power under paragraph 2 or 3 of Schedule 10.

(3) Subparagraph (2) does not apply where the detained person is—

- (a) incapable of understanding what is said;
- (b) violent or likely to become violent; or
- (c) in urgent need of medical attention.

Part 3**Review of detention under section 85.****Requirement.**

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

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

(3) Subsequent reviews shall, subject to paragraph 29, be carried out at intervals of not more than 12 hours.

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

Postponement.

29.(1) A review may be postponed if at the latest time at which it may be carried out in accordance with paragraph 28-

- (a) the detained person is being questioned by a police officer and an officer is satisfied that an interruption of the questioning to carry out the review would prejudice the investigation in connection with which the person is being detained;
- (b) no review officer is readily available; or
- (c) it is not practicable for any other reason to carry out the review.

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

(3) For the purposes of ascertaining the time within which the next review is to be carried out, a postponed review shall be deemed to have been carried out at the latest time at which it could have been carried out in accordance with paragraph 28.

Grounds for continued detention.

30.(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 the result of an examination or analysis of any relevant evidence or of anything the examination or analysis of which is to be or is being carried out with a view to obtaining relevant evidence;
- (d) pending a decision whether to apply to the magistrates' court or Governor for a deportation notice to be served on the detained person;
- (e) pending the making of an application to the magistrates' court or Governor for a deportation notice to be served on the detained person;

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- (f) pending consideration by the magistrates' court or Governor whether to serve a deportation notice on the detained person; or
- (g) pending a decision whether the detained person should be charged with an offence.

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

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

(4) In this paragraph "relevant evidence" means evidence which-

- (a) relates to the commission by the detained person of an offence under any of the provisions mentioned in section 84(1)(a), or
- (b) indicates that the detained person falls within section 84(1)(b).

(5) In subparagraph (1) "deportation notice" means notice of a decision to make a deportation order under the Immigration and Asylum Act 2018.

Review officer.

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

(2) In the case of a review carried out within the period of 24 hours beginning with the time of arrest, the review officer shall be an officer of at least the rank of inspector.

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

Review officer referral.

32.(1) This paragraph applies where-

- (a) the review officer is of a rank lower than superintendent;

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- (b) an officer of higher rank than the review officer gives directions relating to the detained person; and
- (c) those directions are at variance with the performance by the review officer of a duty imposed on him under this Schedule.

(2) The review officer shall refer the matter at once to an officer of at least the rank of superintendent.

Representations.

33.(1) Before determining whether to authorise a person's continued detention, a review officer shall give either of the following persons an opportunity to make representations about the detention-

- (a) the detained person; or
- (b) a solicitor representing him who is available at the time of the review.

(2) Representations may be oral or written.

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

Rights.

34.(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 the his exercise of a right under either of those paragraphs is being delayed-

- (a) the review officer must consider whether the reason or reasons for which the delay was authorised continue to subsist; and

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

Record.

35.(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 34(1);
- (d) the officer's conclusion on the matter considered under paragraph 34(2)(a);
- (e) the fact that he has taken action under paragraph 34(2)(b); and
- (f) the fact that the detained person is being detained by virtue of section 85(5) or (6).

(2) The review officer shall-

- (a) make the record in the presence of the detained person; and
- (b) inform him at that time whether the review officer is authorising continued detention, and if he is, of his grounds.

(3) Subparagraph (2) shall not apply where, at the time when the record is made, the detained person is-

- (a) incapable of understanding what is said to him;
- (b) violent or likely to become violent; or
- (c) in urgent need of medical attention.

Part 4

Extension of detention under section 85.

Warrant of further detention.

36.(1) A Crown Counsel may apply to the magistrates' 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 85 of a specified person for a specified period; and
- (b) shall state the time at which it is issued.

(3) Subject to subparagraph (4) and paragraph 43, the specified period in relation to a person shall be the period of 7 days beginning-

- (a) with the time of his arrest under section 85; or
- (b) if he was being detained under Schedule 10 when he was arrested under section 85, with the time when his examination under that Schedule began.

(4) A magistrate may issue a warrant of further detention in relation to a person which specifies a shorter period as the period for which that person's further detention is authorised if-

- (a) the application for the warrant is an application for a warrant specifying a shorter period; or
- (b) the magistrate is satisfied that there are circumstances that would make it inappropriate for the specified period to be as long as the period of 7 days mentioned in subparagraph (3).

Time limit.

37.(1) An application for a warrant shall be made-

- (a) during the period mentioned in section 85(3); or
- (b) within 6 hours of the end of that period.

(2) The magistrate hearing an application made by virtue of subparagraph (1)(b) shall dismiss the application if he considers that it would have been reasonably practicable to make it during the period mentioned in section 85(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 a magistrate.

Notice.

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38. 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.

39.(1) A magistrate may issue a warrant of further detention only if satisfied that-

- (a) the person to whom the application relates was lawfully arrested;
- (b) that person was told with sufficient clarity the offences he was suspected of committing and the reasons leading to his arrest;
- (c) there are reasonable grounds for believing that the further detention of that person is necessary as mentioned in subparagraph (2);
- (d) the investigation in connection with which the person is detained is being conducted diligently and expeditiously;
- (e) there is a sufficient prospect of evidence emerging during the period for which further detention is sought; and
- (f) continued detention for the period authorised is proportionate in all the circumstances.

(2) The further detention of a person is necessary as mentioned in this subparagraph if it is necessary-

- (a) to obtain relevant evidence whether by questioning him or otherwise;
- (b) to preserve relevant evidence; or
- (c) pending the result of an examination or analysis of any relevant evidence or of anything the examination or analysis of which is to be or is being carried out with a view to obtaining relevant evidence.

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(3) In this paragraph “relevant evidence” means, in relation to the person to whom the application relates, evidence which-

- (a) relates to his commission of an offence under any of the provisions mentioned in section 84(1)(a); or
- (b) indicates that he is a person falling within section 84(1)(b).

Representation.

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

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

(2) A magistrate shall adjourn the hearing of an application to enable the person to whom the application relates to obtain legal representation where-

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

(3) A magistrate may exclude any of the following persons from any part of the hearing-

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

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

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

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

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

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

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

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

(8) A magistrate shall not give a direction under subparagraph (4) unless—

- (a) it has been notified by the Minister that facilities are available at the place where the person to whom the application relates is held for the judicial authority to conduct a hearing by means falling within subparagraph (5); and
- (b) that notification has not been withdrawn.

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

Information.

41.(1) The person who has made an application for a warrant may apply to the magistrates' court for an order that specified information upon which he intends to rely be withheld from-

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

(2) Subject to subparagraph (3), a magistrate may make an order under subparagraph (1) in relation to specified information only if satisfied that

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there are reasonable grounds for believing that if the information were disclosed-

- (a) evidence of an offence under any of the provisions mentioned in section 84(1)(a) would be interfered with or harmed;
- (b) the recovery of property obtained as a result of an offence under any of those provisions would be hindered;
- (c) the recovery of property in respect of which a forfeiture order could be made under section 56 would be hindered;
- (d) the apprehension, prosecution or conviction of a person who is suspected of falling within section 84(1)(a) or (b) would be made more difficult as a result of his being alerted;
- (e) the prevention of an act of terrorism would be made more difficult as a result of a person being alerted;
- (f) the gathering of information about the commission, preparation or instigation of an act of terrorism would be interfered with; or
- (g) a person would be interfered with or physically injured.

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

- (a) the detained person has benefited from his criminal conduct; and
- (b) the recovery of the value of the property constituting the benefit would be hindered if the information were disclosed.

(4) For the purposes of subparagraph (3) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part IV of the Proceeds of Crime Act 2015.

(5) The magistrate 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.

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42.(1) A magistrate 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 85(3).

(2) This paragraph shall not apply to an adjournment under paragraph 39(2).

Extensions of warrants.

43.(1) A Crown Counsel may apply for the extension or further extension of the period specified in a warrant of further detention.

(2) The person to whom an application under subparagraph (1) may be made is a magistrate.

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

(4) Subject to subparagraph (6), the period by which the specified period is extended or further extended shall be the period which-

- (a) begins with the time specified in subparagraph (5); and
- (b) ends with whichever is the earlier of-
 - (i) the end of the period of seven days beginning with that time; and
 - (ii) the end of the period of 14 days beginning with the relevant time.

(5) The time referred to in subparagraph (4)(a) is-

- (a) in the case of a warrant specifying a period which has not previously been extended under this paragraph, the end of the period specified in the warrant; and
- (b) in any other case, the end of the period for which the period specified in the warrant was last extended under this paragraph.

(6) A magistrates' court may extend or further extend the period specified in a warrant by a shorter period than is required by subparagraph (4) if-

- (a) the application for the extension is an application for an extension by a period that is shorter than is so required; or

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- (b) the magistrate is satisfied that there are circumstances that would make it inappropriate for the period of the extension to be as long as the period so required.
- (7) In this paragraph “the relevant time”, in relation to a person, means-
- (a) the time of his arrest under section 85; or
 - (b) if he was being detained under Schedule 10 when he was arrested under section 85, the time when his examination under that Schedule began.
- (8) Paragraphs 37(3) and 38 to 41 shall apply to an application under this paragraph as they apply to an application for a warrant of further detention.
- (9) A magistrate 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.
- (10) Subparagraph (5) shall not apply to an adjournment under paragraph 40(2).
- (11) When a person who is in police detention is removed to hospital because he is in need of medical treatment-
- (a) any time during which he is being questioned in hospital or on the way there or back by a police officer for the purpose of obtaining evidence relating to an offence is included in any period which falls to be calculated for the purposes of this paragraph; but
 - (b) any other time while he is in hospital or on his way there or back is not so included.

Extension of maximum period of extension of warrants under paragraph 43.

44.(1) A Crown Counsel may apply for a final extension of the period specified in a warrant of extension of a warrant of further detention, to the Supreme Court.

(2) The Supreme Court may make a final extension order if the Supreme Court considers that such an extension is necessary.

(3) Paragraphs 37(3) and 38 to 41 shall apply to an application under subparagraph (1) as they apply to an application for a warrant of extension of a warrant of detention.

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(4) A final extension order is an order by which the Supreme Court may provide for a further extension of detention of up to 72 hours, following the expiry of the period of 14 days referred to in paragraph 43(4)(b)(ii).

(5) When a person who is in police detention is removed to hospital because he is in need of medical treatment-

- (a) any time during which he is being questioned in hospital or on the way there or back by a police officer for the purpose of obtaining evidence relating to an offence is included in any period which falls to be calculated for the purposes of this paragraph; but
- (b) any other time while he is in hospital or on his way there or back is not so included.

Paragraph 45 release.

45.(1) This paragraph applies where-

- (a) a person ('the detained person') is detained by virtue of a warrant issued under this Part of this Schedule; and
- (b) his detention is not authorised by virtue of section 85(5) or (6) or otherwise apart from the warrant.

(2) If it at any time appears to the police officer or other person in charge of the detained person's case that any of the matters mentioned in paragraph 39(1)(a) and (b) on which the magistrate last authorised his further detention no longer apply, he must-

- (a) if he has custody of the detained person, release him immediately; and
- (b) if he does not, immediately inform the person who does have custody of the detained person that those matters no longer apply in the detained person's case.

(3) A person with custody of the detained person who is informed in accordance with this paragraph that those matters no longer apply in his case must release that person immediately.

Part 5

Emergency power for temporary extension of maximum period for extension of detention under section 85.

- 46.(1) The Minister may make a temporary extension order if-
- (a) Parliament is dissolved; and
 - (b) the Minister considers that it is necessary by reason of urgency to make such an order.
- (2) A temporary extension order is an order which provides, in relation to the period of 3 months beginning with the coming into force of the order, for paragraphs 43 and 45 to be read as if-
- (a) in paragraph 43(4)(b)(ii) for “14 days” there were substituted “28 days”; and
 - (b) the other modifications in subparagraphs (3) and (4) were made.
- (3) The other modifications of paragraph 43 are-
- (a) the insertion at the beginning of subparagraph (1) of “Subject to subparagraphs (1A) to (1G),”;
 - (b) the insertion, after subparagraph (1), of-
 - “(1A) Subparagraph (1B) applies in relation to any proposed application under subparagraph (1) for the further extension of the period specified in a warrant of further detention where the grant, (otherwise than in accordance with subparagraph (6)(b)) of the application would extend the specified period to a time that is more than 14 days after the relevant time.
 - (1B) No person may make such an application without the consent of the Attorney General unless the person making the application is the person whose consent is required.
 - (1C) The Attorney General must exercise personally any function under subparagraph (1B) of giving consent.
 - (1D) The only exception is if-
 - (a) the Attorney General is unavailable; and
 - (b) there is another person who is designated in writing by the Attorney General acting personally as the person who is authorised to

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exercise any such function when the Attorney General is unavailable.

- (1E) In that case-
 - (a) the other person may exercise the function but must do so personally; and
 - (b) the Attorney General acting personally-
 - (i) must review the exercise of the function as soon as practicable; and
 - (ii) may revoke any consent given.
- (1F) Where the consent is so revoked after an application has been made or extension granted, the application is to be dismissed or (as the case may be) the extension is to be revoked.
- (1G) Subparagraphs (1C) to (1F) apply instead of any other provisions which would otherwise have enabled any function of the Attorney General under subparagraph (1B) of giving consent to be exercised by a person other than the Attorney General.”;
- (c) the substitution, for “a magistrate” in subparagraph (2), of “-
 - “(a) in the case of an application falling within subparagraph (1B), a magistrate; and
 - (b) in any other case, a judge of the Supreme Court”;
- (d) the insertion, after subparagraph (2), of-
 - “(2B) An application for the extension or further extension of a period falls within this subparagraph if-
 - (a) the grant of the application otherwise than in accordance with paragraph 43(b) would extend that period to a time that is no more than 14 days after the relevant time; and
 - (b) no application has previously been made to a senior judge in respect of that period.”;

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- (e) the insertion, after “magistrate” in both places in subparagraph (6) where it appears, of “or judge of the Supreme Court”;
 - (f) the insertion, after “detention” in subparagraph (8), of “but, in relation to an application made by virtue of subparagraph (2)(b) to a judge of the Supreme Court, as if-
 - (a) references to a magistrate were references to a judge of the Supreme Court; and
 - (b) references to the magistrate in question were references to the judge of the Supreme Court in question”; and
 - (g) the insertion, after “magistrate” in subparagraph (9), of “or judge of the Supreme Court”.
- (4) The modification of paragraph 45 is the insertion, in subparagraph (2), after “magistrate”, of “or judge of the Supreme Court”.
- (5) A temporary extension order applies, except so far as it provides otherwise, to any person who is being detained under section 85 when the order comes into force (as well as any person who is subsequently detained under that section).
- (6) The Minister may by order revoke a temporary extension order if he considers it appropriate to do so (whether or not the conditions mentioned in paragraphs (a) and (b) of subparagraph (1) are met).
- (7) Subparagraph (8) applies if-
- (a) any of the following events occurs-
 - (i) the revocation without replacement of a temporary extension order;
 - (ii) the expiry of the period of three months mentioned in subparagraph (2) in relation to such an order;
 - (iii) the ceasing to have effect of such an order by virtue of section 152(8); and
 - (b) at that time-
 - (i) a person is being detained by virtue of a further extension under paragraph 43;

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- (ii) the person's further detention was authorised by virtue of the temporary extension order concerned (before its revocation, expiry or ceasing to have effect) for a period ending more than 14 days after the relevant time (within the meaning given by paragraph 43(7));
 - (iii) that 14 days has expired; and
 - (iv) the person's detention is not otherwise authorised by law.
- (8) The person with custody of that individual must release the individual immediately.
- (9) Subject to subparagraphs (7) and (8), the fact that—
- (a) a temporary extension order is revoked;
 - (b) the period of three months mentioned in subparagraph (2) has expired in relation to such an order; or
 - (c) such an order ceases to have effect by virtue of section 152(8), is without prejudice to anything previously done by virtue of the order or to the making of a new order.

Part 6
Code of practice

- 47.(1) The Minister shall—
- (a) issue a code of practice about the audio recording of interviews to which this paragraph applies; and
 - (b) make an order requiring the audio recording of interviews to which this paragraph applies in accordance with any relevant code of practice under paragraph (a).
- (2) The Minister may make an order requiring the video recording of interviews to which this paragraph applies.
- (3) An order under subparagraph (2) shall specify whether the video recording which it requires is to be silent or with sound.
- (4) Where an order is made under subparagraph (2)—
- (a) the Minister shall issue a code of practice about the video recording of interviews to which the order applies; and

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- (b) the order shall require the interviews to be video recorded in accordance with any relevant code of practice under paragraph (a).

(5) Where the Minister has made an order under subparagraph (2) requiring certain interviews to be video recorded with sound—

- (a) he need not make an order under subparagraph (1)(b) in relation to those interviews; but
- (b) he may do so.

(6) This paragraph applies to any interview by a police officer of a person detained under Schedule 10 or section 85 if the interview takes place in a police station.

48.(1) This paragraph applies to a code of practice under paragraph 47.

(2) Where the Minister proposes to issue a code of practice he shall—

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

(3) The Minister shall lay a draft of the code before Parliament.

(4) When the Minister has laid a draft code before Parliament he may bring it into operation by order.

(5) The Minister may revise a code and issue the revised code and subparagraph (2) to (4) shall apply to a revised code as they apply to an original code.

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

(7) A code—

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

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**SCHEDULE 10
PORT AND BORDER CONTROLS**

section 100

Interpretation

Interpretation.

1.(1) In this Schedule “examining officer” means any of the following-

- (a) a police officer;
- (b) a borders and coastguard officer;
- (c) a customs officer.

(2) In this Schedule-

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

“port” includes an airport and a hoverport;

“ship” includes a hovercraft; and

“vehicle” includes a train.

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

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

Power to stop, question and detain

Power to question.

2.(1) An examining officer may question a person to whom this paragraph applies for the purpose of determining whether he appears to be a person falling within section 84(1)(b).

(2) This paragraph applies to a person if-

- (a) he is at a port or in the border area; and

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- (b) the examining officer believes that the person's presence at the port or in the area is connected with his entering or leaving Gibraltar or his travelling within Gibraltar.

(3) This paragraph also applies to a person on a ship or aircraft which has arrived at any place in Gibraltar (whether from within or outside Gibraltar), and which for the avoidance of doubt includes anywhere within British Gibraltar Territorial Waters.

(4) An examining officer may exercise his powers under this paragraph whether or not he has grounds for suspecting that a person falls within section 84(1)(b).

(5) In this paragraph a reference to "the border area" is to that area lying to the north of the runway at Gibraltar airport and includes the runway.

Power to question.

3. An examining officer may question a person who is in the border area for the purpose of determining whether his presence in the area is connected with his entering or leaving Gibraltar.

Information.

4. A person who is questioned under paragraph 2 or 3 must-

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

Power to detain.

5.(1) For the purposes of exercising a power under paragraph 2 or 3 an examining officer may-

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

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

(3) Where a person is detained under this paragraph the provisions of Parts 1 and 2 of Schedule 9 (treatment and review of detention) shall apply.

Length of detention.

6.(1) This paragraph applies where a person is questioned under paragraph 2 or 3.

(2) After the end of the 1 hour period, the person may not be questioned under either of those paragraphs unless the person is detained under paragraph 5.

(3) If the person is detained under paragraph 5 the person must be released not later than the end of the 6 hour period (unless detained under another power).

(4) In this paragraph-

“the 1 hour period” is the period of 1 hour beginning with the time the person is first questioned under paragraph 2 or 3;

“the 6 hour period” is the period of 6 hours beginning with that time.

(5) When a person who is in detention by an examining officer is removed to hospital because he is in need of medical treatment-

(a) any time during which he is being questioned in hospital or on the way there or back by an examining officer for the purpose of obtaining evidence relating to an offence is included in any period which falls to be calculated for the purposes of this paragraph; but

(b) any other time while he is in hospital or on his way there or back is not so included.

(6) When a person who is in detention by an examining officer is removed from a ship and is conveyed to a place on land-

(a) any time during which he is being questioned on the way there or back by an examining officer for the purpose of obtaining evidence relating to an offence is included in any period which falls to be calculated for the purposes of this paragraph; but

- (b) any other time while he is on his way there or back is not so included.

Searches

Search for questioning.

7. For the purpose of satisfying himself whether there are any persons whom he may wish to question under paragraph 2 an examining officer may-

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

Determination if section 84(1).

8.(1) An examining officer who questions a person under paragraph 2 may, for the purpose of determining whether he falls within section 84(1)(b)-

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

(2) Where an examining officer questions a person in the border area under paragraph 2 he may (in addition to the matters specified in subparagraph (1)), for the purpose of determining whether the person falls within section 84(1)(b)-

- (a) search a vehicle;

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- (b) search anything in or on a vehicle;
 - (c) search anything which he reasonably believes has been, or is about to be, in or on a vehicle.
- (3) A search of a person under this paragraph must be carried out by someone of the same sex.
- (4) An intimate search of a person may not be carried out under this paragraph.
- (5) A strip search of a person may not be carried out under this paragraph unless-
- (a) the person is detained under paragraph 5;
 - (b) the examining officer has reasonable grounds to suspect that the person is concealing something which may be evidence that the person falls within section 84(1)(b); and
 - (c) the search is authorised by a senior officer who has not been directly involved in questioning the person.
- (6) “Senior officer” means-
- (a) where the examining officer is a police officer, a police officer of a higher rank than the examining officer;
 - (b) where the examining officer is an borders and coastguard officer, a borders and coastguard officer of a higher grade than the examining officer; and
 - (c) where the examining officer is a customs officer, a customs officer of a higher grade than the examining officer.
- (7) In this paragraph-
- “intimate search” means a search which consists of a physical examination of a person's body orifices other than the mouth;
- “strip search” means a search which is not an intimate search but involves the removal of an article of clothing which-
- (a) is being worn wholly or partly on the trunk; and

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- (b) is being so worn either next to the skin or next to an article of underwear.

Examination of goods.

9.(1) An examining officer may examine goods to which this paragraph applies for the purpose of determining whether they have been used in the commission, preparation or instigation of acts of terrorism.

(2) This paragraph applies to-

- (a) goods which have arrived in or are about to leave Gibraltar on a ship or vehicle; and
- (b) goods which have arrived at or are about to leave Gibraltar on an aircraft.

(3) The reference in subparagraph (2)(a) to goods which are about to leave Gibraltar on a ship includes goods which-

- (a) are held at premises operated by a sea cargo agent; and
- (b) are to be delivered to a place in Gibraltar for carriage on a ship.

(4) The reference in subparagraph (2)(b) to goods which are about to leave Gibraltar on an aircraft includes goods which-

- (a) are held at premises operated by an air cargo agent; and
- (b) are to be delivered to a place in Gibraltar for carriage on an aircraft.

(5) An examination under this paragraph may be carried out only-

- (a) at a port;
- (b) at premises operated by a sea cargo agent or an air cargo agent;
- (c) at a transit shed;
- (d) at a location designated by the Minister under subparagraph (6) (a “designated examination location”).

(6) The Minister may by an Order designate a location for the purposes of subparagraph (5)(d) only if he reasonably believes that it is necessary to designate that location in order for examining officers to be able to exercise their functions under this paragraph.

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(7) The Minister must maintain and publish a list of designated examination locations in the Gazette.

(8) In this paragraph-

“air cargo agent” means persons who carry on a business of handling cargo which is to be delivered (whether by them or any other person) to the operator of any aircraft for carriage from Gibraltar International Airport by a civil aircraft;

“goods” includes property of any description, and containers;

“sea cargo agent” has the meaning given by section 33(1) of the Maritime Security Act;

“transit shed” has the meaning given by section 2(1) of the Imports and Exports Act, 1986.

(9) For the purposes of determining whether to carry out an examination under this paragraph an examining officer may-

- (a) board a ship or aircraft;
- (b) enter a vehicle;
- (c) enter premises operated by a sea cargo agent or an air cargo agent;
- (d) enter a transit shed;
- (e) enter a designated examination location.

Delegation of search powers.

10.(1) An examining officer may authorise a person to carry out on his behalf a search or examination under any of paragraphs 7 to 9.

(2) A person authorised under this paragraph shall be treated as an examining officer for the purposes of-

- (a) paragraphs 9(9) and 11 of this Schedule; and
- (b) paragraphs 2 and 3 of Schedule 15.

Detention of Property

Delegation of property.

11.(1) This paragraph applies to anything which-

- (a) is given to an examining officer in accordance with paragraph 4(d);
- (b) is searched or found on a search under paragraph 8; or
- (c) is examined under paragraph 9.

(2) An examining officer may detain the thing-

- (a) for the purpose of examination, for a period not exceeding 7 days beginning with the day on which the detention commences;
- (b) while he believes that it may be needed for use as evidence in criminal proceedings; or
- (c) while he believes that it may be needed in connection with a decision by the court whether to make a deportation order under the Immigration and Asylum Act 2018.

Power to make and retain copies

Copies.

12.(1) This paragraph applies where the examining officer is a police officer.

(2) The examining officer may copy anything which-

- (a) is given to the examining officer in accordance with paragraph 4;
- (b) is searched or found on a search under paragraph 8; or
- (c) is examined under paragraph 9.

(3) The copy may be retained-

- (a) for so long as is necessary for the purpose of determining whether a person falls within section 84(1)(b);
- (b) while the examining officer believes that it may be needed for use as evidence in criminal proceedings; or

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- (c) while the examining officer believes that it may be needed in connection with a decision by the court whether to make a deportation order under the Immigration and Asylum Act 2018.

Embarkation and disembarkation

Control areas - owners or agents.

13.(1) The Minister may by notice in writing to the owners or agents of ships or aircraft-

- (a) designate control areas in a port in Gibraltar;
- (b) specify conditions for or restrictions on the embarkation or disembarkation of passengers in a control area.

(2) Where owners or agents of a ship or aircraft receive notice under subparagraph (1) in relation to a port they shall take all reasonable steps to ensure, in respect of the ship or aircraft-

- (a) that passengers do not embark or disembark at the port outside a control area; and
- (b) that any specified conditions are met and any specified restrictions are complied with.

Control areas - port managers.

14.(1) The Minister may by notice in writing to persons concerned with the management of a port in Gibraltar (“the port managers”)-

- (a) designate control areas in the port;
- (b) require the port managers to provide at their own expense specified facilities in a control area for the purposes of the embarkation or disembarkation of passengers or their examination under this Schedule;
- (c) require conditions to be met and restrictions to be complied with in relation to the embarkation or disembarkation of passengers in a control area;
- (d) require the port managers to display, in specified locations in control areas, notices containing specified information about the provisions of this Schedule in such form as may be specified.

(2) Where port managers receive notice under subparagraph (1) they shall take all reasonable steps to comply with any requirement set out in the notice.

Provision of passenger information

Information request.

15.(1) This paragraph applies to a ship or aircraft which-

- (a) arrives or is expected to arrive in Gibraltar; or
- (b) leaves or is expected to leave Gibraltar.

(2) If an examining officer gives the owners or agents of a ship or aircraft to which this paragraph applies a written request to provide specified information, the owners or agents shall comply with the request as soon as is reasonably practicable.

(3) A request to an owner or agent may relate-

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

(4) Information may be specified in a request only if it is of a kind which is prescribed by order of the Minister and which relates-

- (a) to passengers;
- (b) to crew;
- (c) to vehicles belonging to passengers or crew; or
- (d) to goods.

(5) A passenger or member of the crew on a ship or aircraft shall give the captain any information required for the purpose of enabling the owners or agents to comply with a request under this paragraph.

Offences

Penalties.

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16.(1) A person commits an offence if he-

- (a) wilfully fails to comply with a duty imposed under or by virtue of this Schedule;
- (b) wilfully contravenes a prohibition imposed under or by virtue of this Schedule; or
- (c) wilfully obstructs, or seeks to frustrate, a search or examination under or by virtue of this Schedule.

(2) A person guilty of an offence under this paragraph shall be liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or to both.

Inadmissibility of Answers or Information

Inadmissibility of answers or questions.

17.(1) Subject to subparagraph (2), where a person is questioned under paragraphs 2 or 3 of this Schedule any answers or information obtained as a result of that questioning shall be inadmissible against that person in civil or criminal proceedings.

(2) Answers or information obtained as a result of questioning as described in subparagraph (1) shall be admissible in civil or criminal proceedings-

- (a) under paragraph 15 of this Schedule; or
- (b) where the person has deliberately given false information in relation to such questioning.

SCHEDULE 11
SEARCHES IN SPECIFIED AREAS OR PLACES

section 89

Extent of search powers: supplementary

Clothing.

1. A police officer exercising the power conferred by an authorisation under section 89 may not require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.

Duration and location.

2.(1) Subparagraph (2) applies if a police officer proposes to search a person or vehicle by virtue of section 89(2) or (3).

(2) The police officer 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.

Requirements as to writing

Confirmation in writing.

3. Where the Commissioner of Police gives an oral authorisation under section 89 he must confirm it in writing as soon as reasonably practicable.

Request for written statement.

4.(1) Where-

- (a) a vehicle or pedestrian is stopped by virtue of section 89(2) or (3); and
- (b) the driver of the vehicle or the pedestrian applies for a written statement that the vehicle was stopped, or that the pedestrian was stopped, by virtue of section 89(2) or (as the case may be) (3),

the written statement must be provided.

(2) An application under subparagraph (1) must be made within the period of 12 months beginning with the date on which the vehicle or pedestrian was stopped.

Duration of authorisations

Period of authorisation.

- 5.(1) An authorisation under section 89 has effect during the period-
- (a) beginning at the time when the authorisation is given; and
 - (b) ending with the specified date or at the specified time.
- (2) This paragraph is subject as follows.

14 day limit.

6. The specified date or time must not occur after the end of the period of 14 days beginning with the day on which the authorisation is given.

Ministerial confirmation.

- 7.(1) Where the Commissioner of Police gives an authorisation he must inform the Minister of it as soon as reasonably practicable.
- (2) An authorisation ceases to have effect at the end of the period of 48 hours beginning with the time when it is given unless it is confirmed by the Minister before the end of that period.
- (3) An authorisation ceasing to have effect by virtue of subparagraph (2) does not affect the lawfulness of anything done in reliance on it before the end of the period concerned.
- (4) When confirming an authorisation, the Minister may-
- (a) substitute an earlier date or time for the specified date or time;
 - (b) substitute a more restricted area or place for the specified area or place.

Ministerial cancellation.

8. The Minister may cancel an authorisation with effect from a time identified by the Minister.

Alteration by the Commissioner.

- 9.(1) The Commissioner of Police may-
- (a) cancel an authorisation with effect from a time identified by himself;

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- (b) substitute an earlier date or time for the specified date or time;
- (c) substitute a more restricted area or place for the specified area or place.

(2) Any such cancellation or substitution in relation to an authorisation confirmed by the Minister under paragraph 7 does not require confirmation by the Minister.

Additional authorisations.

10. The existence, expiry or cancellation of an authorisation does not prevent the giving of a new authorisation.

Specified areas or places

Multiple authorisations.

11. Where an authorisation specifies more than one area or place-

- (a) the power of the Commissioner of Police under paragraph 5(1)(b) to specify a date or time includes a power to specify different dates or times for different areas or places (and the other references in this Schedule to the specified date or time are to be read accordingly); and
- (b) the power of the Minister under paragraph 7(4)(b), and of the Commissioner of Police under paragraph 9(1)(c), includes a power to remove areas or places from the authorisation.

Interpretation

Definitions.

12. In this Schedule-

“driver” has the meaning given by section 89(4);

“specified” means specified in an authorisation.

SCHEDULE 12
NOTIFICATION ORDERS

section 130

Introduction.

1. A “notification order” is an order applying the notification requirements of this Part to a person who has been dealt with outside Gibraltar in respect of a corresponding foreign offence.

Corresponding foreign offences.

2.(1) A “corresponding foreign offence” means an act that-

- (a) constituted an offence under the law in force in a country outside Gibraltar; and
- (b) corresponds to an offence to which this Part applies.

(2) For this purpose an act punishable under the law in force in a country outside Gibraltar is regarded as constituting an offence under that law however it is described in that law.

(3) An act corresponds to an offence to which this Part applies if-

- (a) it would have constituted an offence to which this Part applies by virtue of section 109 if it had been done in Gibraltar; or
- (b) it was, or took place in the course of, an act of terrorism or was done for the purposes of terrorism.

(4) On an application for a notification order the condition in subparagraph (3)(a) or (b) is to be taken to be met unless-

- (a) the defendant serves on the applicant, not later than rules of court may provide, a notice-
 - (i) stating that, on the facts as alleged with respect to the act concerned, the condition is not in the defendant's opinion met;
 - (ii) showing the defendant's grounds for that opinion; and
 - (iii) requiring the applicant to prove that the condition is met;or

- (b) the court permits the defendant to require the applicant to prove that the condition is met without service of such a notice.

Conditions for making a notification order.

3.(1) The conditions for making a notification order in respect of a person are as follows.

(2) The first condition is that under the law in force in a country outside Gibraltar-

- (a) the person has been convicted of a corresponding foreign offence and has received in respect of the offence a sentence equivalent to a sentence mentioned in section 113(1)(a); or
- (b) a court exercising jurisdiction under that law has, in respect of a corresponding foreign offence-
 - (i) convicted the person or made a finding in relation to the person equivalent to a finding mentioned in section 113(1)(b)(ii) or (iii) (finding of insanity or disability); and
 - (ii) made the person subject to an order equivalent to a hospital order.

(3) This condition is not met if there was a flagrant denial of the person's right to a fair trial.

(4) The second condition is that-

- (a) the sentence was imposed or order made after the commencement of this Part; or
- (b) the sentence was imposed or order made before the commencement of this Part and immediately before that time the person-
 - (i) was imprisoned or detained in pursuance of the sentence or order;
 - (ii) would have been so imprisoned or detained but for being unlawfully at large or otherwise unlawfully absent, lawfully absent on a temporary basis or on bail pending an appeal; or

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- (iii) had been released on licence, or was subject to an equivalent form of supervision, having served the whole or part of a sentence of imprisonment for the offence.

(5) The third condition is that the period for which the notification requirements would apply in respect of the offence (in accordance with section 112 as modified by paragraph 6(d)) has not expired.

(6) If on an application for a notification order it is proved that the conditions in subparagraphs (2), (4) and (5) are met, the court must make the order.

Application for notification order.

4.(1) An application for a notification order in respect of a person may only be made by the Commissioner of Police.

(2) An application may only be made if-

- (a) the person resides in Gibraltar; or
- (b) the Commissioner of Police believes that the person is in, or is intending to come to, Gibraltar.

(3) The application must be made to the Supreme Court.

Effect of notification order.

5. The effect of a notification order is that the notification requirements of this Part apply to the person in respect of whom it is made.

Adaptation of provisions of this Part in relation to foreign proceedings.

6. The provisions of this Part have effect with the following adaptations in relation to foreign proceedings and cases where the notification requirements apply because a notification order has been made-

- (a) in section 133(1) (references to dealing with an offence) for “being sentenced, or made subject to a hospital order” substitute “being made subject by the foreign court to a sentence or order within paragraph 3(2)(a) or (b) of Schedule 12”;
- (b) in section 133(2) (references to time when person dealt with for an offence) for “by the magistrates’ court or the Supreme Court” substitute “by the foreign court of first instance”;

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- (c) for the purposes of section 115 (initial notification) the period within which notification is to be made begins with the date of service of the notification order;
- (d) in section 120 (period for which notification requirements apply) a reference to a sentence or order of any description is to be read as a reference to an equivalent sentence or order of the foreign court.

**SCHEDULE 13
FOREIGN TRAVEL RESTRICTION ORDERS**

section 131

Introduction.

1. A foreign travel restriction order is an order prohibiting the person to whom it applies from doing whichever of the following is specified in the order-

- (a) travelling to a country outside Gibraltar named or described in the order;
- (b) travelling to any country outside Gibraltar other than a country named or described in the order;
- (c) travelling to any country outside Gibraltar.

Conditions for making a foreign travel restriction order.

2.(1) The conditions for making a foreign travel restriction order in respect of a person are as follows.

(2) The first condition is that the notification requirements apply to the person.

(3) The second condition is that the person's behaviour since the person was dealt with for the offence by virtue of which those requirements apply makes it necessary for a foreign travel restriction order to be made to prevent the person from taking part in terrorism activity outside Gibraltar.

(4) If the person was dealt with for the offence before the commencement of Part 9, the condition in subparagraph (3) is not met unless the person has acted in that way since the commencement of Part 9.

(5) If on an application for a foreign travel restriction order the court is satisfied that the conditions in subparagraphs (2) and (3) are met, it may make a foreign travel restriction order.

Application for foreign travel restriction order.

3.(1) In Gibraltar an application for a foreign travel restriction order in respect of a person may only be made by the Commissioner of Police.

(2) An application may only be made if-

- (a) the person resides in Gibraltar; or
 - (b) the Commissioner of Police believes that the person is in, or is intending to come to, Gibraltar.
- (3) The application must be made by complaint to the magistrates' court.

Provisions of a foreign travel restriction order.

4.(1) A foreign travel restriction order may prohibit the person to whom it applies-

- (a) from travelling to any country outside Gibraltar named or described in the order; or
- (b) from travelling to any country outside Gibraltar other than a country named or described in the order; or
- (c) from travelling to any country outside Gibraltar.

(2) The order must only impose such prohibitions as are necessary for the purpose of preventing the person from taking part in terrorism activity outside Gibraltar.

(3) A foreign travel restriction order containing a prohibition within subparagraph (1)(c) must require the person to whom it applies to surrender all that person's passports, at a police station specified in the order-

- (a) on or before the date when the prohibition takes effect; or
- (b) within a period specified in the order.

(4) Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a foreign travel restriction order containing such a prohibition.

Duration of foreign travel restriction order.

5.(1) A foreign travel restriction order has effect for a fixed period of not more than 6 months.

(2) The period must be specified in the order.

(3) A foreign travel restriction order ceases to have effect if a court (whether the same or another court) makes another foreign travel restriction order in relation to the person to whom the earlier order applies.

Variation, renewal or discharge of order.

6.(1) An application for an order varying, renewing or discharging a foreign travel restriction order may be made by-

- (a) the person subject to the order; or
- (b) the Commissioner of Police.

(2) The application must be made by complaint to the magistrates' court.

(3) On an application under this paragraph the court may make such order varying, renewing or discharging the foreign travel restriction order as it considers appropriate.

(4) Before doing so it must hear the person making the application and (if they wish to be heard) the other person mentioned in subparagraph (1).

Provisions of renewed or varied order.

7.(1) A foreign travel restriction order may be renewed, or varied so as to impose additional prohibitions, but only if it is necessary to do so for the purpose of preventing the person subject to the order from taking part in terrorism activities outside Gibraltar.

(2) Any renewed or varied order must contain only the prohibitions necessary for that purpose.

Appeals.

8.(1) A person against whom a foreign travel restriction order is made may appeal against the making of the order.

(2) A person subject to a foreign travel restriction order may appeal against-

- (a) an order under paragraph 6 varying or renewing the order; or
- (b) a refusal to make an order under that paragraph varying or discharging the order.

(3) The appeal lies to the Supreme Court.

(4) On an appeal under this paragraph the court may make-

- (a) such orders as it considers necessary to give effect to its determination of the appeal; and

- (b) such incidental and consequential orders as appear to it to be just.

Breach of foreign travel restriction order an offence.

9.(1) A person commits an offence who, without reasonable excuse-

- (a) does anything they are prohibited from doing by a foreign travel restriction order; or
- (b) fails to comply with a requirement imposed on them by such an order.

(2) A person guilty of an offence under this paragraph is liable-

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.

(3) Where a person is convicted of an offence under this paragraph, it is not open to the court by or before which they are convicted to make an order for a suspended sentence or for a conditional discharge in respect of the offence.

Meaning of “terrorism activity”.

10. In this Schedule “terrorism activity” means anything that-

- (a) if done in Gibraltar, would constitute an offence to which this Part applies by virtue of section 109; or
- (b) is, or takes place in the course of, an act of terrorism or is for the purposes of terrorism.

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SCHEDULE 14 OFFENCES WHERE A TERRORIST CONNECTION IS TO BE CONSIDERED

section 110 and 146

Common law offences

Murder.
Manslaughter.
Culpable homicide.
Kidnapping.
Abduction.

Statutory offences

An offence under any of the following sections of the Crimes Act 2011-

- (a) section 156 (Soliciting to commit murder);
- (b) section 170 (Administering poison);
- (c) section 136 (Causing grievous harm by explosion);
- (d) section 137 (Causing explosion, etc. with intent);
- (e) section 138 (Placing explosives with intent);
- (f) section 139 (Possession of explosives, etc. with intent.);
- (g) section 140 (Causing explosion likely to endanger life or property);
- (h) section 141 (Acting or conspiring to cause explosion, or making or keeping explosives with intent);
- (i) section 142 (Making or possessing explosives under suspicious circumstances);

An offence under any of the following sections of the Weapons of Mass Destruction Act 2004-

- (a) section 3 (Restriction on development etc. of certain biological agents and toxins and of biological weapons);
- (b) section 10 (Use etc. of chemical weapons);

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- (c) section 19 (Premises or equipment for producing chemical weapons);
- (d) section 43 (Use etc. of nuclear weapon)

An offence under any of the following sections of this Act-

- (a) section 32 (Use of noxious substances or things to cause harm and intimidate);
- (b) section 33 (Hoaxes involving noxious substances or things);
- (c) section 34 (Hostage-taking);

Ancillary offences

Any ancillary offence in relation to an offence specified in this Schedule.

SCHEDULE 15**EXERCISE OF FUNCTIONS BY EXAMINING OFFICERS FOR
THE PURPOSES OF SCHEDULE 10**

Section 142

Definition.

1. In this Schedule an “officer” means, subject to paragraph 7,-
 - (a) an authorised officer within the meaning given by Schedule 4;
and
 - (b) an examining officer within the meaning of Schedule 10.

Power of entry.

2. An officer may enter a vehicle, within the meaning of section 3, for the purpose of exercising any of the function conferred on him by virtue of this Act.

Reasonable force.

3. An officer may if necessary use reasonable force for the purpose of exercising a power conferred on him by virtue of this Act, **apart from paragraphs 2 and 3 of Schedule 10.**

Information.

- 4.(1) Information acquired by an officer may be supplied-
 - (a) to the Minister for use in relation to immigration;
 - (b) to the Collector of Customs or a customs officer;
 - (c) to the Commissioner of Police or to a police officer;
 - (d) to the Gibraltar Financial Intelligence Unit;
 - (e) to the Chief Executive Officer of the Border and Coastguard Agency;
 - (f) to a person specified by order of the Minister for use of a kind specified in the order.

(2) Information acquired by a customs officer may be supplied to an examining officer within the meaning of Schedule 10.

Code of practice.

5. An officer shall perform functions conferred on him by virtue of this Act in accordance with any relevant code of practice in operation under paragraph 6.

Code of practice - issuing.

6.(1) The Minister shall issue codes of practice about the exercise by officers of functions conferred on them by virtue of this Act.

(2) The failure by an officer to observe a provision of a code of practice shall not in itself make him liable to criminal or civil proceedings.

(3) A code-

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

(4) The Minister may revise a code of practice and issue the revised code of practice.

Definition for paragraphs 5 and 6.

7. In paragraphs 5 and 6, “officer” includes a police officer or customs officer who—

- (a) has functions under Schedule 10; or
- (b) has functions under Schedule 9 in relation to a person detained under Schedule 10, otherwise than as an examining officer.

Code of practice - prior to issuing.

8.(1) Before issuing a code of practice the Minister shall-

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

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- (2) The Minister shall lay a draft of the code before Parliament.
- (3) When the Minister has laid a draft code before Parliament he may bring it into operation by order.
- (4) This paragraph has effect in relation to the issue of a revised code as it has effect in relation to the first issue of a code.

SCHEDULE 16

QUALIFYING OFFENCES

section 3

The following offences constitute a “qualifying offence” for the purposes of this Act-

1. An offence under section 109 of this Act.
2. Assisting offenders, in relation to murder, under section 48 of the Crimes Act 2011.
3. Riot under section 55 of the Crimes Act 2011.
4. Causing explosion likely to endanger life or property under section 140 of the Crimes Act.
5. Acting or conspiring to cause explosion, or making or keeping explosives with intent under section 140 of the Crimes Act 2011.
6. Murder at common law or under section 149 of the Crimes Act 2011.
7. Manslaughter at common law or under section 153 of the Crimes Act 2011.
8. Infanticide under section 160 of the Crimes Act 2011.
9. Child destruction under section 161 of the Crimes Act 2011.
10. Cruelty to young persons under section 172 of the Crimes Act 2011.
11. Kidnapping under section 189 of the Crimes Act 2011.
12. False imprisonment at common law or under section 189 of the Crimes Act 2011.
13. Genital exposure under section 292 of the Crimes Act 2011.
14. Conspiracy, in relation to murder, under section 27 of the Crimes Act 2011.
15. Threats to kill under section 157 of the Crimes Act 2011.
16. Wounding, etc. with intent to do grievous bodily harm under section 166 of the Crimes Act 2011.

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17. Malicious wounding under section 167 of the Crimes Act 2011.
18. Administering poison under section 170 of the Crimes Act 2011.
19. Common assault under section 175 of the Crimes Act 2011.
20. Causing or allowing the death of a child or vulnerable adult under section 183 of the Crimes Act 2011.
21. Offence of abduction of child by other persons under section 186 of the Crimes Act 2011.
22. Human trafficking under section 191A of the Crimes Act 2011.
23. Rape under section 213 of the Crimes Act 2011.
24. Assault by penetration under section 214 of the Crimes Act 2011.
25. Sexual assault under section 215 of the Crimes Act 2011.
26. Causing a person to engage in sexual activity without consent under section 216 of the Crimes Act 2011.
27. Rape of a child under 13 under section 217 of the Crimes Act 2011.
28. Assault of a child under 13 by penetration under section 218 of the Crimes Act 2011.
29. Sexual assault of a child under 13 under section 219 of the Crimes Act 2011.
30. Causing or encouraging or assisting a child under 13 to engage in sexual activity under section 220 of the Crimes Act 2011.
31. Sexual activity with a child under section 221 of the Crimes Act 2011.
32. Causing or encouraging or assisting a child to engage in sexual activity under section 222 of the Crimes Act 2011.
33. Engaging in sexual activity in the presence of a child under section 223 of the Crimes Act 2011.
34. Causing a child to watch a sexual act under section 224 of the Crimes Act 2011.
35. Child sex offences committed by children or young persons under section 225 of the Crimes Act 2011.

36. Arranging or facilitating commission of a child sex offence under section 226 of the Crimes Act 2011.
37. Meeting a child following sexual grooming etc. under section 227 of the Crimes Act 2011.
38. Abuse of position of trust: Sexual activity with a child under section 228 of the Crimes Act 2011.
39. Abuse of position of trust: Causing or encouraging or assisting a child to engage in sexual activity under section 229 of the Crimes Act 2011.
40. Abuse of position of trust: Sexual activity in the presence of a child under section 230 of the Crimes Act 2011.
41. Abuse of position of trust: Causing a child to watch a sexual act under section 231 of the Crimes Act 2011.
42. Sexual activity with a child family member under section 236 of the Crimes Act 2011.
43. Encouraging or assisting a child family member to engage in sexual activity under section 237 of the Crimes Act 2011.
44. Sexual activity with a person with a mental disorder impeding choice under section 241 of the Crimes Act 2011.
45. Causing or encouraging or assisting a person with a mental disorder impeding choice to engage in sexual activity under section 242 of the Crimes Act 2011.
46. Engaging in sexual activity in the presence of a person with a mental disorder impeding choice under section 243 of the Crimes Act 2011.
47. Causing a person with a mental disorder impeding choice to watch a sexual act under section 244 of the Crimes Act 2011.
48. Inducement etc. to procure sexual activity with a person with a mental disorder under section 245 of the Crimes Act 2011.
49. Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement etc. under section 246 of the Crimes Act 2011.

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50. Engaging in sexual activity in the presence, procured by inducement etc., of a person with a mental disorder under section 247 of the Crimes Act 2011.
51. Causing a person with a mental disorder to watch a sexual act by inducement, etc. under section 248 of the Crimes Act 2011.
52. Care workers: Sexual activity with a person with a mental disorder under section 249 of the Crimes Act 2011.
53. Care workers: Causing or encouraging or assisting sexual activity under section 250 of the Crimes Act 2011.
54. Care workers: Sexual activity in the presence of a person with a mental disorder under section 251 of the Crimes Act 2011.
55. Care workers: Causing a person with a mental disorder to watch a sexual act under section 252 of the Crimes Act 2011.
56. Simple possession of indecent photograph of a child under section 256 of the Crimes Act 2011.
57. Taking and publishing indecent photographs of children under section 257 of the Crimes Act 2011.
58. Keeping a brothel under section 275 of the Crimes Act 2011.
59. Landlord letting premises for use as a brothel under section 276 of the Crimes Act 2011.
60. Tenant permitting premises to be used as a brothel under section 277 of the Crimes Act 2011.
61. Tennant permitting premises to be used for prostitution under section 278 of the Crimes Act 2011.
62. Arson under section 355 of the Crimes Act 2011.
63. Robbery under section 398 of the Crimes Act 2011.
64. Burglary under section 399 of the Crimes Act 2011.
65. Aggravated burglary under section 400 of the Crimes Act 2011.
66. Taking conveyance without authority, resulting in an accident which caused a person's death, under section 408 of the Crimes Act 2011.

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67. Penalty for possessing firearms with intent to injure under section 23 of the Firearms Act.
68. Penalty for use and possession of firearms or imitation firearms in certain cases under section 24 of the Firearms Act.
69. Hijacking of ships under section 2 of the Maritime Security Act.

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SCHEDULE 17

**TREATY OFFENCES CONTAINED IN THE CONVENTIONS AND
PROTOCOLS LISTED IN THE ANNEX OF THE
INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF
THE FINANCING OF TERRORISM
(ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED
NATIONS IN RESOLUTION 54/109 OF 9 DECEMBER 1999)**

section 39A.

| | <i>Convention</i> | <i>Conduct (Offence)</i> |
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| 1. | Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970. | <p>Seizing or exercising control of an aircraft in flight by force or by any other form of intimidation, or attempting to perform any such act on board an aircraft, or being an accomplice of a person who performs or attempts to perform any such act.</p> <p>(For the purposes of this paragraph 1, an aircraft shall be deemed to be in flight in the cases set out in section 2(2) of the Civil Aviation Act 2009).</p> |
| 2. | Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971. | <p>(a) Performing an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft.</p> <p>(b) Destroying an aircraft in service or causing damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight.</p> <p>(c) Placing or causing to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to causing damage to it which renders it incapable of flight, or causing damage to it which is likely to endanger its safety in flight.</p> <p>(d) Destroying or damaging air navigation facilities or interfering with their operation, if any such act is likely</p> |

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| | | <p>to endanger the safety of aircraft in flight.</p> <p>(e) Communicating information that is false, thereby endangering the safety of an aircraft in flight.</p> <p>(f) Attempting to commit any of the acts mentioned in sub-paragraphs 2(a) to (e) or being an accomplice of a person who commits or attempts to commit any such act.</p> <p>(For the purposes of this paragraph 2, an aircraft shall be deemed to be in flight in the cases set out in section 2(2) of the Civil Aviation Act 2009).</p> |
| 3. | <p>Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988</p> | <p>Using any device, substance or weapon-</p> <p>(a) to perform an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or</p> <p>(b) to destroy or seriously damage the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupting the services of the airport, if such an act endangers or is likely to endanger safety at that airport.</p> |
| 4. | <p>Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.</p> | <p>(a) A murder, kidnapping or other attack upon the person or liberty of an internationally protected person.</p> <p>(b) A violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty.</p> <p>(c) An attempt to commit any of the acts in sub-paragraph 4(a) or (b)</p> |

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| | | <p>(d) An act constituting participation as an accomplice in sub-paragraph 4(a) or (b).</p> <p>For the purposes of this paragraph 4- “internationally protected person” means –</p> <p>(a) a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in a foreign State, as well as members of his family who accompany him;</p> <p>(b) any representative or official of a State or an official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household;</p> <p>“kidnapping means an offence under section 189 of the Crimes Act 2011;</p> <p>“murder” means an offence under section 149 or 154 of the Crimes Act 2011.</p> |
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| 5. | International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979 | <p>(1) Seizing or detaining and threatening to kill, to injure or to continue to detain another person (the “hostage”) in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or legal person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage (“hostage-taking”).</p> <p>(2) Attempting to commit an act of hostage-taking, or participating as an accomplice of anyone who commits or attempts to commit an act of hostage-taking.</p> |
| 6. | Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980. | <p>(a) An act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property.</p> <p>(b) Theft or robbery of nuclear material.</p> <p>(c) Fraudulently obtaining nuclear material.</p> <p>(d) An act constituting a demand for nuclear material by use of force or by any other form of intimidation.</p> <p>(e) A threat-</p> <p style="padding-left: 20px;">(i) to use nuclear material to cause death or serious injury to any person or substantial property damage, or</p> <p style="padding-left: 20px;">(ii) to commit an act described in (b) in order to compel a natural or legal person,</p> |

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| | | <p>international organization or State to do or to refrain from doing any act.</p> <p>(f) An attempt to commit any act described in sub-paragraph 6(a), (b) or (c).</p> <p>(g) An act which constitutes participation in any act described in sub-paragraphs 6(a) to (f).</p> |
| 7 | <p>Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988</p> | <p>(a) Seizing or exercising control over a vessel by force or any other form of intimidation.</p> <p>(b) Performing an act of violence against a person on board a vessel if that act is likely to endanger the safe navigation of that vessel.</p> <p>(c) Destroying a vessel or causing damage to a vessel or to its cargo which is likely to endanger the safe navigation of that vessel.</p> <p>(d) Placing or causing to be placed on a vessel, by any means whatsoever, a device or substance which is likely to destroy that vessel, or cause damage to that vessel or its cargo which endangers or is likely to endanger the safe navigation of that vessel.</p> <p>(e) Destroying or seriously damaging maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a vessel.</p> <p>(f) Communicating information that is false, thereby endangering the safe navigation of a vessel.</p> |

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| | | <p>(g) Injuring or killing any person, in connection with the commission or the attempted commission of any of the acts set out in sub-paragraphs 7(a) to (f).</p> <p>For the purposes of this paragraph 7, “vessel” includes any ship or boat, or any other description of vessel used in navigation.</p> |
| 8. | <p>Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988</p> | <p>(a) Seizing or exercising control over a fixed platform by force or any other form of intimidation.</p> <p>(b) Performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety.</p> <p>(c) Destroying a fixed platform or causing damage to it which is likely to endanger its safety.</p> <p>(d) Placing or causing to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety.</p> <p>(e) Injuring or killing any person in connection with the commission or the attempted commission of any of the acts set out in sub-paragraphs 8(a) to (d).</p> <p>(f) An attempt to commit any of the acts set out in sub-paragraphs 8(a) to (e).</p> <p>(g) Abetting the commission of any acts in sub-paragraphs 8(a) to (e) or otherwise being an accomplice of a person who commits such</p> |

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| | | <p>acts.</p> <p>(h) Making a threat aimed at compelling a natural or legal person to do or refrain from doing any act set out in subparagraphs 8(f) or (g) if that threat is likely to endanger the safety of the fixed platform.</p> |
| 9. | <p>International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.</p> | <p>Delivering, placing, discharging or detonating an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility with the intent to cause death or serious bodily injury or with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss (or attempting to commit such an act).</p> |