

DRAFT TERRORISM (JERSEY) LAW 200-

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European Convention on Human Rights

The President of the Home Affairs Committee has made the following statement -

In the view of the Home Affairs Committee the provisions of the Draft Terrorism (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Deputy A.J. Layzell of St. Brelade**

REPORT

Introduction

This Report explains -

- The background to the draft Terrorism (Jersey) Law 200-
- The composition of the proposed new Law, including the major changes it would make compared with existing legislation.
- The steps that the Home Affairs Committee has taken to ensure that the new legislation is a relevant and appropriate response to current and future terrorist threats.

The Report should be read in conjunction with the Explanatory Note to the Law which gives a more detailed and comprehensive explanation of the purpose of each Article.

Background

The current legislation - the Prevention of Terrorism (Jersey) Law 1996 - was already in the process of being updated at the time of the 11th September terrorist attacks on America. This was for two main reasons. First, the Home Affairs Committee had agreed, in order that the Island should be seen to be lending its full support to the international efforts to combat terrorism, to ask for the extension to the Island of the United Kingdom's ratification of two important United Nations conventions on prevention of terrorism. These are the Convention for the Suppression of Terrorism Bombings and the Convention for the Suppression of the Financing of Terrorism. Secondly, the 1996 Law was designed to respond to terrorism connected with the affairs of Northern Ireland, although some of its provisions were subsequently extended to certain categories of international terrorism. It did not apply to terrorism connected with domestic affairs. Under the new Law, which would repeal the 1996 Law, these restrictions are effectively lifted so that counter-terrorist measures are to be applicable to all forms of terrorism: Irish, domestic and international. For example, there are provisions to counter the financing and laundering of terrorist funds. Furthermore, the new Law will enable the removal of the existing derogation from Article 5 of the European Convention on Human Rights - detention without judicial supervision. It is thus possible for the proposed Law to be given a (voluntary) statement of compatibility with the Convention rights.

Following the 11th September attacks, the priority for updating the 1996 Law was reviewed, both by the Home Affairs and Policy and Resources Committees, in the light of what was proposed in the United Kingdom. It was decided to press ahead with the changes to the Prevention of Terrorism (Jersey) Law 1996 to mirror the United Kingdom's Terrorism Act 2000 but, in the event, most of the new provisions introduced in the United Kingdom by the Anti-Terrorism, Crime and Security Act 2001, including the controversial powers of detention without trial of suspected terrorist asylum seekers and new offences of incitement to racial hatred, were not included. The result is a draft Law that is a modified version of the Terrorism Act 2000, incorporating some of the amendments made by the Anti-Terrorism, Crime and Security Act 2001, but none of those which gave rise to the controversy which accompanied the introduction of the United Kingdom Government's 2001 Act.

Composition of the draft Terrorism (Jersey) Law 200-

The following new provisions are particularly drawn to the attention of Members -

Articles 7 to 11 - these contain new safeguard provisions relating to the right of removal from the list of proscribed organisations. The initial list is in Schedule 1 to the draft Law.

Part 3 - Terrorist property provisions - these expand the 1996 Law. New money laundering provisions are based on those in the 2000 Act. Note especially the Police co-operation provisions in Article 22 and new requirements in Article 23 on financial institutions to make disclosures of suspicious activities to the Police.

Article 27 and Schedule 4 - This Article and Schedule deals with a new power of civil forfeiture of terrorist funds. A conviction is not needed. The Police can seize funds on suspicion that they are terrorist funds and then obtain a court order for forfeiture. The Royal Court would decide the matter on a balance of probabilities and there are appeal provisions.

Part 4 - terrorist investigations. This part introduces new powers for designating "cordoned areas" for the purpose of a terrorist investigation, and gives new police powers in those areas.

Article 33 and Schedule 7 - account-monitoring orders. These give new powers to require financial institutions to provide information for terrorist investigations provided the Bailiff is satisfied that it constitutes a proper request.

Article 37 and Schedule 9 - arrest and detention of terrorist suspects. See in particular Part 3 of the Schedule which requires judicial authority for extended detention of suspects. These are the provisions which will enable the Island to request the withdrawal of the existing derogation from Article 5 of the ECHR. See Article 66(2) for the consequential amendment of the Human Rights (Jersey) Law 2000.

Articles 44 to 48 - give new powers to prohibit or restrict parking for the purposes of preventing terrorist acts.

New terrorist offences will be created by Part 6 of the new Law, the extra territorial application of which, together with Part 3, will enable the Island to implement the two UN conventions mentioned above-

Article 50 - weapons training;

Article 51 - directing a terrorist organization;

Article 52 - possession of articles for terrorist purposes;

Article 53 - collecting information useful for acts of terrorism;

Article 54 - inciting terrorism overseas;

Article 55 - causing terrorist bombing;

Article 59 - defences - sets out, in relation to the various offences listed, that where the defendant has a defence, if he can prove a particular matter the so called reverse burden of proof is set at a low level.

In addition to the change from Part 3 of the draft Law as circulated to members in December 2001, and a number of minor drafting changes, the following changes have been made to that draft Law -

Article 1(1) - the new definition of "financial institution" by reference to the Proceeds of Crime (Jersey) Law 1999, broadens the scope of this to include some bodies which are not regulated by the Financial Services Commission. This is important in relation to Article 23.

Article 3, 13 and Schedule 3 - references to "money or other property" have been changed to references to "property". The effect, however, remains the same by virtue of the definition of property in Article 1.

Article 21(1) - disclosure can now be made to a customs officer as well as a States police officer.

Article 27 and Schedule 4 - are now more clearly expressed to apply to detention and forfeiture of funds in civil proceedings.

Article 50 - definition of "radioactive material" added.

Article 66 - as mentioned, this Article now amends the Human Rights (Jersey) Law 2000.

Schedule 2 paragraph 5 - rules for the Proscribed Organisations Appeals Committee now to be made by the Bailiff (and the consequential change in Article 65(3)).

Schedule 3 - references to a "receiver" deleted.

Schedule 7, paragraph 5 account monitoring orders are expressed to have effect as an order of the Royal Court (and thus become subject to rights of appeal, rather than only subject to judicial review).

Schedule 8 paragraph 10(2)(b) - categories of officer who can approve arrangements for a ship or aircraft to call at a port or the airport is now to be States police officer, customs or immigration officer only.

Preparation and consultation

The Home Affairs Committee has met on seven separate occasions and considered seven drafts of the Terrorism (Jersey) Law

200-. To ensure that members' comments could be taken into account at an early stage, the Committee circulated an early draft in December 2001 prior to holding a briefing on the provisions of the new law on 11th January 2002, which was attended by twenty-three members.

Consultation has also taken place with other interested parties, including the Bailiff, the States of Jersey Police, the Honorary Police, the Jersey Financial Services Commission and the Law Society.

Financial/manpower implications

There will be resource implications for the States of Jersey Police in fulfilling their responsibilities under the Law. These will be related mainly to specific security operations but others will be of a more routine nature; for example, it is anticipated that there will be an increase in the number of disclosure issues that the police have to deal with, particularly regarding suspicious transaction reports. Following the outcome of the recent revenue decision conferencing exercise, the Committee believes there will be some flexibility in its being able to apply to the Treasury for additional funding for tasks that can be categorised as 'urgent and unforeseen'.

Two additional uniformed posts and one civilian post will be required in the Financial Crime Unit of the States of Jersey Police if the Island is to be able to meet its international obligations in respect of financial crimes.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 25th April 2002 the Home Affairs Committee made the following statement before Second Reading of this projet in the States Assembly -

In the view of the Home Affairs Committee the provisions of the Draft Terrorism (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

The purpose of this draft Law is to make new provision to combat terrorism, replacing the Prevention of Terrorism (Jersey) Law 1996 (the “1996 Law”).

PART 1

GENERAL INTERPRETATION

Articles 1 to 5 provide for the interpretation of expressions used in the draft Law.

PART 2

PROSCRIBED ORGANIZATIONS

PART 2 is concerned with the naming of terrorist organizations, described as “proscribed organizations”, for the purpose of the application of certain offences and powers in the draft Law. It replaces Article 2 of the 1996 Law.

Article 6 provides that an organization listed in *Schedule 1* is proscribed. The Home Affairs Committee (the “Committee”) can amend *Schedule 1* by Order, but can only add an organization if it believes the organization is concerned with terrorism.

Article 7 provides for applications to the Committee for an organization to be removed from *Schedule 1*, a procedure described as “deproscription”. The Committee must establish a procedure for applications by Order.

Article 8 confers a right to appeal against a refusal to deproscribe. Appeals are to the Proscribed Organizations Appeal Commission, which will be constituted and conduct its proceedings in accordance with *Schedule 2*. If the Commission allows an appeal, the Committee must make an Order deproscribing the organization.

Article 9 confers a further right of appeal from a decision of the Commission to the Court of Appeal.

Article 10 deals with a person convicted of an offence in respect of a proscribed organization which is deproscribed on appeal. If the act constituting the offence occurred after the Committee refused to deproscribe the organization, the person can appeal against his conviction and the court must allow the appeal.

Article 11 deals with admissibility of evidence in proceedings for certain offence under the Law. Evidence of anything done pursuant to *Article 7, 8 or 9* is not admissible on behalf of the prosecution.

Offences

Articles 12 to 14 replace Articles 3 and 4 of the 1996 Law.

Article 12 makes it an offence to belong to a proscribed organization. The penalty is up to 10 years’ imprisonment and/or an unlimited fine.

Article 13 makes it an offence to invite or encourage support (financial or otherwise) for a proscribed organization. The penalty is up to 10 years’ imprisonment and/or an unlimited fine.

Article 14 makes it an offence for a person to wear, carry or display anything indicating membership of or support for a proscribed organization. The penalty is up to 6 months’ imprisonment and/or a fine up to level 4 on the standard scale.

PART 3

TERRORIST PROPERTY

Part 3 creates offences connected with raising, having or concealing terrorist property and requirements for the disclosure of any suspicion that property is terrorist property. It replaces Articles 8 to 12 of the 1996 Law.

Article 15 makes it an offence to raise funds for terrorist purposes. The penalty is up to 14 years’ imprisonment and/or an unlimited fine.

Article 16 makes it an offence to use property for terrorist purposes or have property with the intent or suspicion that it is

used for terrorist purposes. The penalty is up to 14 years' imprisonment and/or an unlimited fine.

Article 17 makes it an offence to become involved in an arrangement for property to be made available to another person, knowing or suspecting it will be used for terrorist purposes. The penalty is up to 14 years' imprisonment and/or an unlimited fine.

Article 18 makes it an offence to assist another to keep or control terrorist property by concealing it, taking it out of the Island, transferring it to nominees or by any other means. The penalty is up to 14 years' imprisonment and/or an unlimited fine.

Article 19 makes it possible to prosecute a person in the Island for an act committed outside the Island which, if done here, would constitute an offence under any of *Articles 15 to 18*.

Article 20 imposes a duty on a person who, in the course of his business or employment, receives information causing him to believe or suspect that an offence has been committed under any of *Articles 15 to 18*, to disclose the information to an officer of the States of Jersey Police Force (the "Force") or a customs officer. Failure to disclose is an offence. The penalty is up to 5 years' imprisonment and/or an unlimited fine. This Article does not apply to information received in the course of the business of a financial institution, for which separate provision is made in *Article 23*.

Article 21 has the effect that legislative or contractual restrictions on the disclosure of information do not apply when a person discloses to an officer of the Force or a customs officer any suspicion that property is terrorist property or makes a disclosure under *Article 20*. Alternatively, if the person is employed, he can make the disclosure in accordance with his employer's disclosure procedures.

Article 22 describes 3 circumstances in which doing an act under any of *Articles 15 to 18* will not be an offence. The act can be done with the consent of an officer of the Force or customs officer. A person involved in a transaction or property arrangement does not commit an offence if, after he becomes involved, he discloses any suspicion that the property is terrorist property both of his own initiative and as soon as he can. But, he must end his involvement if the officer forbids him to continue. Lastly, a person does not commit an offence if he intended to make a disclosure but has a reasonable excuse for not doing so.

Article 23 imposes a duty on a person in a financial institution to inform an officer of the Force, a customs officer or a nominated officer in the institution if he knows or suspects or has reasonable grounds for knowing or suspecting a person has committed an offence under any of *Articles 15 to 18*. The duty differs from that in *Article 20* in that actual knowledge or suspicion is not essential. It is enough that the person ought to have known of or suspected the offence, having regard to the information in his possession. Failure to disclose is an offence, but there is a defence if the person has a reasonable excuse for not disclosing the information or if it is privileged. The penalty is up to 5 years' imprisonment and/or an unlimited fine.

Article 24 relates to *Article 23*. It has the effect that legislative or contractual restrictions on the disclosure of information do not apply when a disclosure is made under that Article.

Article 25 amends the Proceeds of Crime (Jersey) Law 1999. The amendments have the effect that the disclosure provisions and money laundering and tipping off offences under that Law do not apply to disclosures and acts which constitute an offence under this draft Law.

Forfeiture

Article 26 empowers a court convicting a person of an offence under any of *Articles 15 to 18* to make a forfeiture order in respect of property intended for use or which might be used for terrorism or which is received as any reward for commission of the offence. *Schedule 3* contains the detailed provisions for the making of forfeiture orders. This Article replaces Article 12(4) to (7) of the 1996 Law.

Article 27 gives effect to *Schedule 4* which contains additional powers to detain and forfeit terrorist cash in civil proceedings.

PART 4

TERRORIST INVESTIGATIONS

Cordons

Article 28 empowers a police chief inspector to designate a cordoned area for the purposes of a terrorist investigation. An

officer of lower rank may designate a cordoned area in an emergency.

Article 29 provides that a designation cannot initially have effect for more than 14 days, but may be extended so as to last for a maximum of 28 days.

Article 30 describes the powers of a police officer within a cordoned area. A person who, without reasonable excuse, does not comply with those powers commits an offence. The penalty is imprisonment for up to 3 months and/or a fine up to level 3 on the standard scale.

Information and evidence

Article 31 gives effect to *Schedule 5* which confers general powers needed to conduct a terrorist investigation. It replaces Article 18 of the 1996 Law.

Article 32 gives effect to *Schedule 6* which confers power, for the purposes of a terrorist investigation, to require financial institutions to provide information regarding customers.

Article 33 gives effect to *Schedule 7* which confers power, for the purposes of a terrorist investigation, to make an order for an account to be monitored for up to 90 days.

Article 34 makes it an offence not to disclose information to an officer of the Force which might assist in preventing an act of terrorism or in bringing a suspected terrorist offender to justice. The penalty is imprisonment for up to 5 years and/or a fine.

Article 35 makes it an offence to make a disclosure prejudicial to a terrorist investigation or to interfere with material relevant to a terrorist investigation. The penalty is imprisonment for up to 5 years and/or an unlimited fine.

PART 5

COUNTER-TERRORIST POWERS

Suspected terrorists

Article 36 defines “terrorist” for the purposes of Part 5. It replaces the description of person in Article 13(1) of the 1996 Law.

Article 37 empowers a police officer to arrest a suspected terrorist. The suspect is then detained in accordance with *Schedule 9*. The maximum initial period of detention is 48 hours but *Schedule 9* contains procedures for extending this. It replaces Article 13 of the 1996 Law.

Article 38 empowers the Bailiff to issue a warrant for the search of premises for a suspected terrorist. It replaces Article 14(1) of the 1996 Law.

Article 39 empowers a police officer to stop and search a suspected terrorist or to search a person arrested under *Article 37*.

Power to stop and search

Article 40 empowers a police chief inspector, for the purpose of preventing acts of terrorism, to authorize officers of the Force to stop and search vehicles and pedestrians in a specified place or area.

Article 41 makes further provision for the power under *Article 40*.

Article 42 makes provision for the duration of an authorization under *Article 40*. It lapses unless confirmed by the Committee within 48 hours and lasts for a maximum of 28 days, but can be renewed.

Article 43 makes it an offence not to comply with the exercise of the police powers conferred by an authorization. The penalty is imprisonment for up to 6 months and/or a fine up to level 4 on the standard scale.

Parking

Article 44 defines certain expressions relating to parking, for the purposes of the following Articles.

Article 45 empowers a police chief inspector, for the purpose of preventing acts of terrorism, to authorize the prohibition or

restriction of parking on specified roads.

Article 46 requires that a road specified in an authorization must be identified by a traffic sign and empowers a police officer to suspend a parking space on such a road.

Article 47 provides that an authorization cannot take effect for more than 28 days, but may be renewed.

Article 48 creates 2 offences. It is an offence to park a car in contravention of an authorization under *Article 45*. The penalty is a fine up to level 4 on the standard scale. It is an offence to fail to comply, without reasonable excuse, with the exercise of the powers conferred by an authorization. The penalty is imprisonment for up to 3 months and/or a fine up to level 3 on the standard scale.

Port controls

Article 49 gives effect to *Schedule 8* which confers various powers exercisable at ports.

PART 6

FURTHER TERRORIST OFFENCES

Article 50 makes it an offence to provide training in the use of weapons for any purpose connected with terrorism. The penalty is imprisonment for up to 10 years and/or an unlimited fine. On a conviction, the court can order the forfeiture of items connected with the offence.

Article 51 makes it an offence to direct the activities of a terrorist organization. The penalty is life imprisonment.

Article 52 makes it an offence to possess anything for purposes connected with terrorism. The penalty is imprisonment for up to 10 years and/or an unlimited fine.

Article 53 makes it an offence, without reasonable excuse, to collect or have a record of information likely to be useful in connection with terrorist acts. The penalty is imprisonment for up to 10 years and/or an unlimited fine. On a conviction, the court can order the forfeiture of the records.

Article 54 makes it an offence to incite another to commit an act of terrorism outside the Island, if that act is murder, grave and criminal assault or malicious damage to property. The penalty for the incitement offence corresponds to the penalty for the act, if it had taken place in the Island.

Article 55 makes it possible to prosecute a person in the Island for an act committed outside the Island which, if done here, would constitute an offence regarding the use of explosives, biological weapons or chemical weapons.

PART 7

GENERAL

Article 56 makes it clear that a police officer may use reasonable force to exercise powers conferred by the Law and may retain anything seized under the draft Law only for so long as is necessary.

Article 57 empowers customs and immigration officers exercising powers under the draft Law to use reasonable force and to enter vehicles.

Article 58 extends the powers of stop and search. A power to search premises includes a power to search a container. A power to stop a person includes a power to stop a vehicle. It is an offence not to comply. The penalty is imprisonment for up to 6 months and/or a fine up to level 4 on the standard scale.

Article 59 makes provision for the burden of proof for defences to certain offences under the Law. The defence is proved if there is enough evidence to raise an issue regarding the matter - unless the prosecution can disprove it, beyond reasonable doubt. Similarly, where an offence under the Law allows the court to make an assumption as to certain facts, it is enough for the defence to disprove them by adducing sufficient evidence to raise an issue regarding the fact - unless the prosecution can disprove it, beyond reasonable doubt.

Article 60 provides for the production in evidence of notices etc. given under the Law.

Article 61 empowers the Committee, by Order, to make provision for the application of certain Articles of the draft Law to Crown servants and regulators.

Article 62 is the standard provision for the commission of an offence by an aider or abettor.

Article 63 is the standard provision for the commission of an offence by an officer of a body corporate or limited liability partnership.

Article 64 specifies that proceedings for an offence under the Law cannot be instituted without the consent of the Attorney General.

Article 65 empowers the Committee to amend the definition “financial institution” in *Article 1*, to prescribe anything for the purposes of the Law and makes general provision for Orders.

Article 66 makes a minor consequential amendment to the Drug Trafficking Offences (Jersey) Law 1988 and amends the Human Rights (Jersey) Law 2000 to remove the derogation in respect of the 1996 Law.

Article 67 repeals the 1996 Law and makes transitional arrangements.

Article 68 is the citation and commencement provision.

Schedule 1 is the list of proscribed organizations. It replaces the First Schedule to the 1996 Law.

Schedule 2 provides for the constitution and procedures of the Proscribed Organizations Appeal Commission.

Schedule 3 makes provision for the effect and enforcement of forfeiture orders made under *Article 26* and overseas orders and empowers the Royal Court to make restraint orders. It replaces the Fourth Schedule to the 1996 Law.

Schedule 4 empowers officers of the Force, customs and immigration officers to seize suspected terrorist cash for up to 48 hours. The Bailiff may authorize continued detention for up to 3 months, which may be renewed for up to 2 years. If the Royal Court is satisfied that the cash is terrorist cash, it may order its forfeiture. If the cash represents the proceeds of criminal conduct, the victim of that conduct can apply for its release to him. If cash is seized, but it is not established that it is terrorist cash, a person disadvantaged by the seizure can seek compensation.

Schedule 5 confers powers for the purposes of terrorist investigations. The Bailiff can issue a warrant for the search of premises. A police chief inspector can authorize a search of premises within a cordoned area (*see Article 28*). The Royal Court can make an order for production of material or for an explanation of any such material. In an urgent case, a police chief inspector may authorize a search of any premises or require an explanation of material. It replaces the Seventh and Eighth Schedules to the 1996 Law.

Schedule 6 empowers the Bailiff to make an order requiring financial institutions to provide customer information to officers of the Force for the purposes of a terrorist investigation.

Schedule 7 empowers the Bailiff to make an order enabling officers of the Force to monitor an account for up to 90 days, for the purposes of a terrorist investigation.

Schedule 8 confers powers on officers of the Force, immigration officers and customs officers at ports, including the airport. Officers may question suspected terrorists. For that purpose, officers may stop a person or vehicle and detain a person, search a ship or aircraft, or a person and his belongings, examine goods, and detain property. It also confers powers to monitor and regulate embarkation and disembarkation at ports and to require carriers to provide passenger information. It replaces the Fifth and Sixth Schedules to the 1996 Law.

Schedule 9 regulates the treatment of suspected terrorists whilst detained under the draft Law. It replaces the Third Schedule to the 1996 Law.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £50, level 2 is £500, level 3 is £2,000 and level 4 is £5,000.

TERRORISM (JERSEY) LAW 200-

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TERRORISM (JERSEY) LAW 200-

A LAW to replace the Prevention of Terrorism (Jersey) Law 1996 and to make further provision about terrorism; sanctioned by Order of Her Majesty in Council of the

(Registered on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

PART I

GENERAL INTERPRETATION

ARTICLE 1

Interpretation

(1) In this Law unless the context otherwise requires -

“2000 Act” means the Terrorism Act 2000 of the United Kingdom Parliament;

“act” and “action” include omission;

“action taken for the purposes of terrorism” shall be construed in accordance with Article 2(5);

“article” includes substance and any other thing;

“authorized officer” means any officer of the Force, customs officer or immigration officer;

“Commission” means the Proscribed Organizations Appeal Commission constituted under Article 8;

“Committee” means the Home Affairs Committee;

“cordoned area” shall be construed in accordance with Article 28;

“customs officer” means the Agent of the Impôts and any other officer appointed pursuant to Article 4 of the Customs and Excise (Jersey) Law 1999,^[1]

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

“explosive” means -

- (a) 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 sub-paragraph (a) or (c) above;

“financial institution” means a person carrying on any business described in the Second Schedule to the Proceeds of Crime (Jersey) Law 1999;^[2]

“firearm” includes an air gun or air pistol;

“Force” means the States of Jersey Police Force;

“Immigration Act 1971” means the Immigration Act 1971 of the United Kingdom Parliament as it is extended to the Island by Order in Council;

“immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;

“the Islands” means the Bailiwick of Guernsey and the Isle of Man;

“items subject to legal privilege” shall be construed in accordance with Article 5;

“Jersey Financial Services Commission” means the Commission established under the Financial Services Commission (Jersey) Law 1998;^[3]

“legal representative” means -

(a) an advocate;

(b) a solicitor; or

(c) any person employed by a firm of advocates or solicitors who is not an advocate or solicitor but who is, for the time being, notified by his employer to the Chief Officer of the Force as a legal representative for the purposes of this Law;

“organization” includes any association or combination of persons;

“police officer” means an officer of the Force or a member of the Honorary Police;

“premises” includes any place and in particular includes -

(a) a vehicle;

(b) an offshore installation; and

(c) a tent or moveable structure;

“prescribe” means prescribe by Order of the Committee;

“property” includes all property whether movable or immovable, vested or contingent and whether situated in the Island or elsewhere;

“proscribed organization” shall be construed in accordance with Article 6;

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

“road” has the same meaning as in the Road Traffic (Jersey) Law 1956;^[4]

“terrorism” shall be construed in accordance with Article 2;

“terrorist investigation” shall be construed in accordance with Article 4;

“terrorist property” shall be construed in accordance with Article 3;

“vehicle”, except in Articles 44 to 48 and Schedule 8, includes an aircraft, hovercraft or vessel.

(2) In this Law a reference to a Part, Article or Schedule by number only, and without further identification, is a reference to the Part, Article or Schedule of that number in this Law.

(3) A reference in an Article or Schedule of this Law to a paragraph, sub-paragraph or clause by number or letter only and without further identification is a reference to the paragraph, sub-paragraph or clause of that number or letter in the Article or Schedule in which it appears.

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

(5) For the purposes of paragraph (4), “enactment” includes an Act of the United Kingdom Parliament.

ARTICLE 2

“Terrorism”

(1) In this Law “terrorism” means the use or threat of action where -

(a) the action falls within paragraph (2);

(b) the use or threat is designed to influence the States of Jersey or the government of any other place or country or to intimidate the public or a section of the public; and

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

(2) Action falls within this paragraph 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.

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

(4) In this Article -

(a) “action” includes action outside the Island;

(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 place or country other than the Island.

(5) In this Law a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organization.

ARTICLE 3

“Terrorist property”

- (1) In this Law “terrorist property” means -
- (a) property which is likely to be used for the purposes of terrorism (including any resources of a proscribed organization);
 - (b) proceeds of the commission of acts of terrorism; and
 - (c) proceeds of acts carried out for the purposes of terrorism.
- (2) In paragraph (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 organization’s resources includes a reference to any property which is applied or made available, or is to be applied or made available, for use by the organization.

ARTICLE 4

Terrorist Investigation

In this Law “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 organization;
- (d) the possibility of making an order under Article 6(3);or
- (e) the commission, preparation or instigation of an offence under this Law.

ARTICLE 5

“Items subject to legal privilege”

- (1) Subject to paragraph (2), in this Law “items subject to legal privilege” means -
- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
 - (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
 - (c) items enclosed with or referred to in such communications and made in connection with the giving of legal advice or in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them.
- (2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

PART 2

PROSCRIBED ORGANIZATIONS

Procedure

ARTICLE 6

Proscription

- (1) For the purposes of this Law an organization is proscribed if -
 - (a) it is listed in Schedule 1; or
 - (b) it operates under the same name as an organization listed in that Schedule.
- (2) Paragraph (1)(b) shall not apply in relation to an organization listed in Schedule 1 if its entry is the subject of a note in that Schedule.
- (3) The Committee may by Order-
 - (a) add an organization to Schedule 1;
 - (b) remove an organization from that Schedule;
 - (c) amend that Schedule in some other way.
- (4) The Committee may exercise its power under paragraph (3)(a) in respect of an organization only if it believes that it is concerned in terrorism.
- (5) For the purposes of paragraph (4) an organization is concerned in terrorism if it-
 - (a) commits or participates in acts of terrorism;
 - (b) prepares for terrorism;
 - (c) promotes or encourages terrorism; or
 - (d) is otherwise concerned in terrorism.

ARTICLE 7

Deproscription: application

- (1) An application may be made to the Committee for the exercise of its power under Article 6(3)(b) to remove an organization from Schedule 1.
- (2) An application may be made by -
 - (a) the organization; or
 - (b) any person affected by the organization's proscription.
- (3) The Committee shall make an Order prescribing the procedure for applications under this Article.
- (4) An Order under paragraph (3) shall, in particular -
 - (a) require the Committee to determine an application within a specified period of time; and
 - (b) require an application to state the grounds on which it is made.

ARTICLE 8

Deproscription: appeal

- (1) There shall be a commission, to be known as the Proscribed Organizations Appeal Commission.
- (2) Where an application under Article 7 has been refused, the applicant may appeal to the Commission.

(3) The Commission shall allow an appeal against a refusal to deproscribe an organization if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review.

(4) Where the Commission allows an appeal under this Article by or in respect of an organization, it may make an order under this paragraph.

(5) Where an order is made under paragraph (4) the Committee shall as soon as is reasonably practicable make an Order under Article 6(3)(b) removing the organization from the list in Schedule 1.

(6) Schedule 2 shall have effect in respect of the constitution and procedures of the Commission.

ARTICLE 9

Further appeal

(1) A party to an appeal under Article 8 which the Commission has determined may bring a further appeal on a question of law to the Court of Appeal.

(2) An appeal under paragraph (1) may be brought only with the permission-

(a) of the Commission; or

(b) where the Commission refuses permission, of the Court of Appeal.

(3) An order under Article 8(4) shall not require the Committee to take any action until the final determination or disposal of an appeal under this Article (including any appeal to the Privy Council).

ARTICLE 10

Appeal: effect on conviction, etc.

(1) This Article applies where -

(a) an appeal under Article 8 has been allowed in respect of an organization;

(b) an order has been made under Article 6(3)(b) in respect of the organization in accordance with an order of the Commission under Article 8(4);

(c) a person has been convicted of an offence in respect of the organization under any of Articles 12 to 18, 20 and 52; and

(d) the activity to which the charge referred took place on or after the date of the refusal to deproscribe against which the appeal under Article 8 was brought.

(2) If the person mentioned in paragraph (1)(c) was convicted by or before the Royal Court-

(a) he may appeal against the conviction to the Court of Appeal; and

(b) the Court of Appeal shall allow the appeal.

(3) A person may appeal against a conviction by virtue of paragraph (2) whether or not he has already appealed against the conviction.

(4) An appeal by virtue of paragraph (2) -

(a) must be brought within the period of 28 days beginning with the date on which the order mentioned in paragraph (1)(b) comes into force; and

(b) shall be treated as an appeal under Article 24 of the Court of Appeal (Jersey) Law 1961^[5] (but does not require any leave).

- (5) If the person mentioned in paragraph (1)(c) was convicted by the Magistrate's Court -
 - (a) he may appeal against the conviction to the Royal Court; and
 - (b) the Royal Court shall allow the appeal.
- (6) A person may appeal against a conviction by virtue of paragraph (5) -
 - (a) whether or not he pleaded guilty;
 - (b) whether or not he has already appealed against the conviction; and
 - (c) whether or not he has made an application in respect of the conviction under Article 18 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949. ^[6]
- (7) An appeal by virtue of paragraph (5) -
 - (a) must be brought within the period of 28 days beginning with the date on which the order mentioned in paragraph (1)(b) comes into force; and
 - (b) shall be treated as an appeal under Article 14(1)(b) of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949. ^[7]

ARTICLE 11

Evidence: inadmissibility

- (1) The following shall not be admissible as evidence in proceedings for an offence under any of Articles 12 to 18, 20 and 52 -
 - (a) evidence of anything done in relation to an application to the Committee under Article 7;
 - (b) evidence of anything done in relation to proceedings before the Commission under Article 8;
 - (c) evidence of anything done in relation to proceedings under Article 9; and
 - (d) any document submitted for the purposes of proceedings mentioned in any of sub-paragraphs (a) to (c).
- (2) But paragraph (1) shall not prevent evidence from being adduced on behalf of the accused.

Offences

ARTICLE 12

Membership

- (1) A person commits an offence if he belongs or professes to belong to a proscribed organization.
- (2) It is a defence for a person charged with an offence under paragraph (1) to prove-
 - (a) that the organization 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 organization at any time while it was proscribed.
- (3) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 10 years or to a fine, or both.
- (4) In paragraph (2) "proscribed" means proscribed for the purposes of this Law.

ARTICLE 13

Support

- (1) A person commits an offence if -
 - (a) he invites support for a proscribed organization; and
 - (b) the support is not, or is not restricted to, the provision of property (within the meaning of Article 16).
- (2) A person commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is -
 - (a) to support a proscribed organization;
 - (b) to further the activities of a proscribed organization; or
 - (c) to be addressed by a person who belongs or professes to belong to a proscribed organization.
- (3) A person commits an offence if he addresses a meeting and the purpose of his address is to encourage support for a proscribed organization or to further its activities.
- (4) Where a person is charged with an offence under paragraph (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 paragraph (2)(c) would support a proscribed organization or further its activities.
- (5) In paragraph (2) to (4) -
 - (a) "meeting" means a meeting of 3 or more persons, whether or not the public are admitted; and
 - (b) a meeting is private if the public are not admitted.
- (6) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 10 years or to a fine, or both.

ARTICLE 14

Uniform

- (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 organization.
- (2) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 on the standard scale,^[8] or both.

PART 3

TERRORIST PROPERTY

ARTICLE 15

Fund-raising

- (1) A person commits an offence if he -

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

(2) A person commits an offence if he -

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

(3) A person commits an offence if he -

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

(4) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine, or both.

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

ARTICLE 16

Use and possession

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

(2) A person commits an offence if he -

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

(3) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine, or both.

ARTICLE 17

Funding arrangements

(1) A person commits an offence if -

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

(2) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine, or both.

ARTICLE 18

Money laundering

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

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

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

(3) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine, or both.

ARTICLE 19

Articles 15 to 18: jurisdiction

- (1) If -
 - (a) a person does anything outside the Island; and
 - (b) his action would have constituted the commission of an offence under any of Articles 15 to 18 if it had been done in the Island,

he shall be guilty of the offence.

(2) For the purposes of paragraph (1)(b), Article 18(1)(b) shall be read as if for “the Island” there were substituted “any country or place outside the Island”.

ARTICLE 20

Disclosure of information: duty

- (1) This Article applies where a person -
 - (a) believes or suspects that another person has committed an offence under any of Articles 15 to 18; and
 - (b) bases his belief or suspicion on information which comes to his attention in the course of a trade, profession, business or employment.

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

(3) The person commits an offence if he does not disclose to an officer of the Force or customs officer as soon as is reasonably practicable -

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

(4) It is a defence for a person charged with an offence under paragraph (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 paragraph (3); and

- (c) he is charged with an offence under that paragraph,

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

- (6) Paragraph (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 paragraph (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 paragraph (1)(a) a person shall be treated as having committed an offence under one of Articles 15 to 18 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 Articles if he had been in the Island at the time when he took the action or was in possession of the thing.

(9) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 5 years or to a fine, or both.

ARTICLE 21

Disclosure of information: permission

- (1) A person may disclose to an officer of the Force or customs officer -

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

(2) A person may make a disclosure to an officer of the Force or customs officer in the circumstances mentioned in Article 20(1) and (2).

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

- (4) Where -

- (a) a person is in employment; and
- (b) his employer has established a procedure for the making of disclosures of the kinds mentioned in paragraph (1) and Article 20(3),

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

ARTICLE 22

Co-operation with police

(1) A person does not commit an offence under any of Articles 15 to 18 if he is acting with the express consent of an officer of the Force or customs officer.

(2) Subject to paragraphs (3) and (4), a person does not commit an offence under any of Articles 15 to 18 by involvement in a transaction or arrangement relating to property if he discloses to an officer of the Force or customs officer -

(a) his suspicion or belief that the property is terrorist property; and

(b) the information on which his suspicion or belief is based.

(3) Paragraph (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 reasonably practicable.

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

(a) an officer of the Force or customs 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 Articles 15(2) and (3) and 16 to 18 to prove that -

(a) he intended to make a disclosure of the kind mentioned in paragraphs (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 an officer of the Force or customs officer under paragraph (2),

this Article shall have effect in relation to that person as if any reference to disclosure to an officer of the Force or customs officer included a reference to disclosure in accordance with the procedure.

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

ARTICLE 23

Failure to disclose: financial institutions

(1) A person commits an offence if each of the following 3 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 an offence under any of Articles 15 to 18.

(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 the business of a financial institution.

(4) The third condition is that he does not disclose the information or other matter to an officer of the Force, a customs 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 Article if -

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

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

- (a) issued by the Jersey Financial Services Commission; and
- (b) published in a manner approved by the Commission as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(7) 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 Article; 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.

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

- (a) by (or by a representative of) a client of 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.

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

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

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

(11) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 5 years or to a fine, or both.

ARTICLE 24

Protected disclosures

(1) A disclosure which satisfies the following 3 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 the business of a financial institution.

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

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

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

that another person has committed an offence under any of Articles 15 to 18.

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

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

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

ARTICLE 25

Proceeds of Crime (Jersey) Law 1999: amendments

In the Proceeds of Crime (Jersey) Law 1999 -

(a) in Article 1(1), in the definition "money laundering", for sub-paragraph (a)(iii) there shall be substituted the following sub-paragraph -

“(iii) under any of Articles 15 to 18 of the Terrorism (Jersey) Law 200-;”;

(b) in paragraph 1 of the First Schedule, for sub-paragraph (b) there shall be substituted the following sub-paragraph -

“(b) an offence under any of Articles 15 to 18 of the Terrorism (Jersey) Law 200-.”.

Forfeiture

ARTICLE 26

Forfeiture of property

(1) The court by or before which a person is convicted of an offence under any of Articles 15 to 18 may make a forfeiture order in accordance with the provisions of this Article.

(2) Where a person is convicted of an offence under Article 15(1) or (2) or Article 16 the court may order the forfeiture of any property -

(a) which, at the time of the offence, he had in his possession or under his control; and

(b) which, at that time, he intended should be used, or had reasonable cause to suspect might be used, for the purposes of terrorism.

(3) Where a person is convicted of an offence under Article 15(3) the court may order the forfeiture of any property -

(a) which, at the time of the offence, he had in his possession or under his control; and

(b) which, at that time, he knew or had reasonable cause to suspect would or might be used for the purposes of

terrorism.

- (4) Where a person is convicted of an offence under Article 17 the court may order the forfeiture of the property
 - (a) to which the arrangement in question related; and
 - (b) which, at the time of the offence, he knew or had reasonable cause to suspect would or might be used for the purposes of terrorism.
- (5) Where a person is convicted of an offence under Article 18 the court may order the forfeiture of the property to which the arrangement in question related.
- (6) Where a person is convicted of an offence under any of Articles 15 to 18, the court may order the forfeiture of any property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.
- (7) Where a person other than the convicted person claims to be the owner of or otherwise interested in anything which can be forfeited by an order under this Article, the court shall give him an opportunity to be heard before making an order.
- (8) Schedule 3 shall have effect to make further provision for forfeiture orders under this Article.

ARTICLE 27

Civil forfeiture of terrorist cash

- (1) Schedule 4 shall have effect to make provision for detention and forfeiture of terrorist cash in civil proceedings.
- (2) The powers conferred by Schedule 4 -
 - (a) are exercisable in relation to any cash, whether or not any proceedings have been brought for an offence in connection with the cash;
 - (b) are in addition to, and not in derogation of, the powers in Article 26.

PART 4

TERRORIST INVESTIGATION

Cordons

ARTICLE 28

Cordoned areas

- (1) An area is a cordoned area for the purposes of the Law if it is designated under this Article.
- (2) A designation may be made by an officer of the Force of at least the rank of chief inspector and only if he considers it expedient for the purposes of a terrorist investigation.
- (3) If a designation is made orally, the officer making it shall confirm it in writing as soon as is reasonably practicable.
- (4) The officer making a designation shall arrange for the demarcation of the cordoned area, so far as is reasonably practicable -
 - (a) by means of tape marked with the word "police"; or
 - (b) in such other manner as an officer of the Force considers appropriate.

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

(6) Where an officer of the Force makes a designation in reliance on paragraph (5) he shall as soon as is reasonably practicable -

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

(7) An officer who is informed of a designation in accordance with paragraph (6)(b)-

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

ARTICLE 29

Duration

(1) A designation under Article 28 has effect, subject to paragraphs (2) to (5), during the period-

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

(2) The date or time specified under paragraph (1)(b) must not occur after the end of the period of 14 day 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) an officer of the Force of at least the rank of chief inspector.

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

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

ARTICLE 30

Police powers

(1) A police officer may -

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

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

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

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

(5) A person guilty of an offence under paragraph (3) shall be liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 3 on the standard scale,^[9] or both.

Information and evidence

ARTICLE 31

Powers

Schedule 5 shall have effect to confer powers required for the purposes of a terrorist investigation.

ARTICLE 32

Financial information

Schedule 6 shall have effect to confer powers required to obtain financial information.

ARTICLE 33

Account monitoring orders

Schedule 7 shall have effect to confer further powers to obtain information regarding terrorist finance.

ARTICLE 34

Information about acts of terrorism

(1) This Article 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;
- (b) in securing the apprehension, prosecution or conviction of another person, in the Island, 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 paragraph (3).

(3) Disclosure is in accordance with this paragraph if it is made to an officer of the Force.

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

(5) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 5 years or to a fine, or both.

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

(7) Where -

- (a) a disclosure is made; and

(b) a failure to have made it would have constituted an offence under this Article,
the disclosure is not to be taken to breach any restriction on the disclosure of information (however imposed).

ARTICLE 35

Tipping off and interference with material

(1) Paragraph (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) Paragraph (4) applies where a person knows or had reasonable cause to suspect that a disclosure has been or will be made under any of Articles 20 to 22.

(4) The person commits an offence if he -

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

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

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

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

(b) that he had a reasonable excuse for the disclosure or interference.

(6) Paragraphs (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 Article shall be liable to imprisonment for a term not exceeding 5 years or to a fine, or both.

(8) For the purposes of this Article -

(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 5

COUNTER-TERRORIST POWERS

Suspected terrorists

ARTICLE 36

Interpretation of Part 5: “terrorist”

- (1) In this Part “terrorist” means a person who -
 - (a) has committed an offence under any of Articles 12, 13, 15 to 18 or 50 to 55; or
 - (b) is or has been concerned in the commission, preparation or instigation of acts of terrorism.

(2) The reference in paragraph (1)(b) to a person who has been concerned in the commission, preparation or instigation of acts of terrorism includes a reference to a person who has been, whether before or after the passing of this Law concerned in the commission, preparation or instigation of acts of terrorism within the meaning given by Article 2.

ARTICLE 37

Arrest and detention of suspected terrorists

- (1) A police officer may arrest a person whom he reasonably suspects to be a terrorist.
- (2) Where a person is arrested under this Article the provisions of Schedule 9 shall apply to regulate his detention.
- (3) Subject to paragraphs (4) to (7), a person detained under this Article 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 Article; or
 - (b) if he was being detained under Schedule 8 when he was arrested under this Article, with the time when his examination under that Schedule began.
- (4) If on a review of a person’s detention under Part 2 of Schedule 9 the review officer does not authorize continued detention, the person shall (unless detained in accordance with paragraph (5) or (6) or under any other power) be released.
- (5) Where a police officer intends to make an application for a warrant under paragraph 25 of Schedule 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 25 or 32 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 25 or 32 of Schedule 9 is granted in respect of a person’s detention, he may be detained, subject to paragraph 33 of that Schedule, during the period specified in the warrant.
- (8) The refusal of an application in respect of a person’s detention under paragraph 25 or 32 of Schedule 9 shall not prevent his continued detention in accordance with this Article.

ARTICLE 38

Warrant for search of premises for terrorist

- (1) The Bailiff may on the application of a police officer issue a warrant in relation to specified premises if he is satisfied that there are reasonable grounds for suspecting that a person whom the police officer reasonably suspects to be a terrorist is to be found there.
- (2) A warrant under this Article shall authorize any police officer to enter and search the specified premises for the purpose of arresting the person referred to in paragraph (1) under Article 37.

ARTICLE 39

Search of suspected terrorist

(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 Article 37 to discover whether he has in his possession anything which may constitute evidence that he is a terrorist.

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

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

Power to stop and search

ARTICLE 40

Authorization to stop and search to prevent acts of terrorism

(1) An authorization under this paragraph authorizes an officer of the Force in uniform to stop a vehicle in an area or at a place specified in the authorization 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.

(2) An authorization under this paragraph authorizes any officer of the Force in uniform to stop a pedestrian in an area or at a place specified in the authorization and to search -

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

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

(4) An authorization may be given by an officer of the Force of at least the rank of chief inspector.

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

ARTICLE 41

Exercise of power

(1) The power conferred by an authorization under Article 40(1) or (2)-

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

(2) An officer of the Force may seize and retain an article which he discovers in the course of a search by virtue of Article 40(1) or (2) and which he reasonably suspects is intended to be used in connection with terrorism.

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

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

(5) Where an officer of the Force proposes to search a person or vehicle by virtue of Article 40(1) or (2) he may detain the person or vehicle for such time as is reasonably required to permit the search to be carried out at or near the place where the person or vehicle is stopped.

(6) Where -

(a) a vehicle or pedestrian is stopped by virtue of Article 40(1) or (2); and

(b) the driver of the vehicle or the pedestrian applies for a written statement that the vehicle was stopped, or that he was stopped, by virtue of Article 40(1) or (2),

the written statement shall be provided.

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

ARTICLE 42

Duration of authorization

(1) An authorization under Article 40 has effect, subject to paragraphs (2) to (7), during the period-

(a) beginning at the time when the authorization is given; and

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

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

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

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

(a) it shall cease to have effect at the end of that period; but

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

(5) Where the Committee confirms an authorization it may substitute an earlier date or time for the date or time specified under paragraph (1)(b).

(6) The Committee may cancel an authorization with effect from a specified time.

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

ARTICLE 43

Offences

(1) A person commits an offence if he -

(a) fails to stop a vehicle when required to do so by an officer of the Force in the exercise of the power conferred by an authorization under Article 40(1);

(b) fails to stop when required to do so by an officer of the Force in the exercise of the power conferred by an authorization under Article 40(2);

(c) wilfully obstructs an officer of the Force in the exercise of the power conferred by an authorization under Article 40(1) or (2).

(2) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 on the standard scale,^[10] or both.

Parking

ARTICLE 44

Interpretation of Articles 45 to 48

In Articles 45 to 48 -

“disabled person’s badge” means such a badge issued pursuant to an Order made under Article 32C of the Road Traffic (Jersey) Law 1956;^[11]

“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;

“parking place” means a place under the administration of a public or parochial authority where vehicles may be parked;

“traffic sign” has the same meaning as in the Road Traffic (Jersey) Law 1956.^[12]

ARTICLE 45

Authorization to prohibit or restrict parking

(1) An authorization under this Article authorizes a police officer to prohibit or restrict the parking of vehicles on a road specified in the authorization.

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

(3) An authorization may be given by an officer of the Force of at least the rank of chief inspector.

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

ARTICLE 46

Exercise of powers

(1) The power conferred by an authorization under Article 45 shall be exercised by placing a traffic sign on the road concerned.

(2) A police officer exercising the power conferred by an authorization under Article 45 may suspend a parking place.

(3) Where a parking place is suspended under paragraph (2), the suspension shall be treated as a restriction imposed by Article 45 for the purposes of Article 31 of the Road Traffic (Jersey) Law 1956^[13] and of any Order made under it.

(4) A police officer not in uniform shall, if requested by a person affected by the exercise by him of the power conferred by an authorization under Article 45, produce proof of his authority.

ARTICLE 47

Duration of authorization

- (1) An authorization under Article 45 has effect, subject to paragraphs (2) and (3), during the period specified in the authorization.
- (2) The period specified shall not exceed 28 days.
- (3) An authorization may be renewed in writing by the person who gave it or by a person who could have given it and paragraphs (1) and (2) shall apply as if a new authorization were given on each occasion on which the authorization is renewed.

ARTICLE 48

Offences

- (1) A person commits an offence if he parks a vehicle in contravention of a prohibition or restriction imposed by virtue of Article 45.
- (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 Article 45; and
 - (b) he fails to move the vehicle when ordered to do so by a police officer.
- (3) It is a defence for a person charged with an offence under this Article 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 paragraph (3).
- (5) A person guilty of an offence under paragraph (1) shall be liable to a fine not exceeding level 4 on the standard scale.^[14]
- (6) A person guilty of an offence under paragraph (2) shall be liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 3 on the standard scale,⁴ or both.

Port controls

ARTICLE 49

Port controls

- (1) Schedule 8 shall have effect to confer powers exercisable at ports.
- (2) The States may by Regulations repeal paragraph 13 of Schedule 8.
- (3) The powers conferred by Schedule 8 shall be exercisable notwithstanding the rights conferred by section 10 of the Immigration Act 1971.

PART 6

FURTHER TERRORIST OFFENCES

ARTICLE 50

Weapons training

- (1) Subject to paragraph (5), a person commits an offence if he provides instruction or training in the making or use of -
- (a) firearms;
 - (b) radioactive material or weapons designed or adapted for the discharge of any radioactive material;
 - (c) explosives; or
 - (d) chemical, biological or nuclear weapons.
- (2) Subject to paragraph (5), a person commits an offence if he receives instruction or training in the making or use of -
- (a) firearms;
 - (b) radioactive material or weapons designed or adapted for the discharge of any radioactive material;
 - (c) explosives; or
 - (d) chemical, biological or nuclear weapons.
- (3) Subject to paragraph (5), a person commits an offence if he invites another to receive instruction or training and the receipt -
- (a) would constitute an offence under paragraph (2); or
 - (b) would constitute an offence under paragraph (2) but for the fact that it is to take place outside the Island.
- (4) For the purpose of paragraphs (1) and (3) -
- (a) a reference to the provision of instruction includes a reference to making it available either generally or to one or more specific persons; and
 - (b) an invitation to receive instruction or training may be either general or addressed to one or more specific persons.
- (5) It is a defence for a person charged with an offence under this Article in relation to instruction or training to prove that his action or involvement was wholly for a purpose other than assisting, preparing for or participating in terrorism.
- (6) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 10 years or to a fine, or both.
- (7) A court by or before which a person is convicted of an offence under this Article may order the forfeiture of anything which the court considers to have been in the person's possession for purposes connected with the offence.
- (8) Before making an order under paragraph (7) a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner of or otherwise interested in anything which can be forfeited under that paragraph.
- (9) An order under paragraph (7) shall not come into force until there is no further possibility of it being varied or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time).
- (10) In this Article -
- “biological weapon” means anything to which section 1(1)(b) of the Biological Weapons Act 1974, as it is extended to the Island by Order in Council, applies;
- “chemical weapon” has the meaning given by section 1 of the Chemical Weapons Act 1996 as it is extended to the Island by Order in Council;

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

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

ARTICLE 51

Directing terrorist organization

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

(2) A person guilty of an offence under this Article is liable to imprisonment for life.

ARTICLE 52

Possession for terrorist purposes

(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 Article 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 Article, if it is proved that an article -

(a) was on any premises at the same time as the accused; or

(b) was on premises of which the accused was the occupier or which he habitually used otherwise than as a member of the public,

the court may assume that the accused possessed the article, unless 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 Article shall be liable to imprisonment for a term not exceeding 10 years or to a fine, or both.

ARTICLE 53

Collection of information

(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 Article “record” includes a photographic or electronic record.

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

(4) A person guilty of an offence under this Article shall be liable to imprisonment for term not exceeding 10 years or to a fine, or both.

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

(6) Before making an order under paragraph (5) a court must give an opportunity to be heard to any person, other

than the convicted person, who claims to be the owner of or otherwise interested in anything which can be forfeited under that paragraph.

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

ARTICLE 54

Inciting terrorism overseas

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

(2) Those offences are -

- (a) murder;
- (b) grave and criminal assault;
- (c) malicious damage to property.

(3) A person guilty of an offence under this Article shall be liable to any penalty to which he would be liable on conviction of the offence listed in paragraph (2) which corresponds to the act which he incites.

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

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

ARTICLE 55

Terrorist bombing: jurisdiction

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

he shall be guilty of the offence.

(2) The offences referred to in paragraph (1)(b) are-

- (a) an offence under Article 2 or 3 of the Loi (1884) sur les matières explosives;^[15]
- (b) an offence under section 1 of the Biological Weapons Act 1974, as it is extended to the Island by Order in Council;
- (c) an offence under section 2 of the Chemical Weapons Act 1996, as it is extended to the Island by Order in Council.

PART 7

GENERAL

ARTICLE 56

Police powers

- (1) A power conferred by virtue of this Law on a police officer -
 - (a) is additional to powers which he has at customary 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 Law (apart from paragraph 2 of Schedule 8).

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

ARTICLE 57

Exercise of officers' powers

An authorized officer or an examining officer within the meaning of Schedule 8 may -

- (a) enter a vehicle for the purpose of exercising any functions conferred on him by virtue of this Law; and
- (b) use reasonable force for the purpose of exercising a power conferred on him by virtue of this Law (apart from paragraph 2 of Schedule 8).

ARTICLE 58

Powers to stop and search

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

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

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

(4) A person guilty of an offence under paragraph (3) shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 on the standard scale, ^[16] or both.

ARTICLE 59

Defences

(1) Paragraph (2) applies where in accordance with a provision mentioned in paragraph (5) it is a defence for 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) Paragraph (4) applies where in accordance with a provision mentioned in paragraph (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 paragraph (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 paragraphs (2) and (4) apply are Articles 13(4), 35(5)(a), 50, 52 and 53 of this Law.

ARTICLE 60

Evidence

(1) A document which purports to be a notice or direction given under this Law by and signed on behalf of the Committee or by the Lieutenant Governor shall be received in evidence and shall, unless the contrary is proved, be deemed to be made or given by them.

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

ARTICLE 61

Crown servants, regulators, etc.

(1) The Committee may by Order provide for any of Articles 15 to 24, 26 and 35 to apply to persons in the public service of the Crown.

(2) The Committee may by Order provide for either or both of Articles 21 and 34 not to apply to persons who are in its opinion performing or connected with the performance of regulatory, supervisory, investigative or registration functions of a public nature.

(3) Orders under this Article -

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

ARTICLE 62

Aiders, abettors, etc.

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

ARTICLE 63

Offences by body corporate, etc.

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

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

the person shall also be guilty of the offence and, save as provided in paragraph 8 of Schedule 6, liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

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

ARTICLE 64

Consent to prosecution

Proceedings for an offence under this Law shall not be instituted without the consent of the Attorney General.

ARTICLE 65

Orders and Rules

- (1) The Committee may by Order amend the definition “financial institution” in Article 1(1).
- (2) The Committee may by Order prescribe anything that shall or may be prescribed for the purposes of this Law.
- (3) The Subordinate Legislation (Jersey) Law 1960^[17] shall apply to Orders and Rules made under this Law.

ARTICLE 66

Consequential amendments of Drug Trafficking Offences (Jersey) Law 1988 and Human Rights (Jersey) Law 2000

- (1) In Article 21(2) of the Drug Trafficking Offences (Jersey) Law 1988,^[18] for the words “or an order made under paragraph (2), (3) or (4) of Article 12 of the Prevention of Terrorism (Jersey) Law 1996” there shall be substituted the words “or a forfeiture order under Article 26 of the Terrorism (Jersey) Law 2000-”.
- (2) In the Human Rights (Jersey) Law 2000 -
 - (a) in Article 1(1),^[19] for the definition “designated derogation” there shall be substituted the following definition -

“ ‘designated derogation’ means any derogation by the United Kingdom from an Article of the Convention, or of any protocol to the Convention, on the Island’s behalf which is contained in a Designation Order;”;
 - (b) in Article 14(1),^[20] for the words “amended or replaced” there shall be substituted the words “amended, replaced or withdrawn”;
 - (c) in Article 14(3),²⁰ the words “Schedule 2 to” shall be deleted; and
 - (d) Schedule 2^[21] shall be repealed.

ARTICLE 67

Repeal and transitional provisions

- (1) In this Article -

“1996 Law” means the Prevention of Terrorism (Jersey) Law 1996;^[22]

“commencement date” means the date this Law comes into force.
- (2) The 1996 Law²² shall be repealed.
- (3) Where, immediately before the commencement date, a person is being detained by virtue of a provision of the 1996 Law the provisions of that Law shall continue to apply to him, in place of the corresponding provisions of this Law, until his detention comes to an end.
- (4) Proceedings instituted, before the commencement date, for an application for registration of an order under paragraph 8 or 9 of the Fourth Schedule to the 1996 Law may be continued as if this Law had not come into force.

(5) An order registered, either before the commencement date or pursuant to an application described in paragraph (4), under paragraph 8 or 9 of the Fourth Schedule to the 1996 Law may be enforced as if this Law had not come into force.

(6) Where, pursuant to Article 19(2) of the Interpretation (Jersey) Law 1954,^[23] an investigation is instituted or continued by an authorized investigator under the 1996 Law, any code of practice made under paragraph 7 of the Eighth Schedule to the 1996 Law shall continue to have effect in connection with the investigation.

ARTICLE 68

Citation and commencement

This Law may be cited as Terrorism (Jersey) Law 200- and shall come into force on such day or days as the States by Act appoint and different days may be appointed for different provisions of this Law and for different purposes.

SCHEDULE 1

(Article 6)

PROSCRIBED ORGANIZATIONS

The Irish Republican Army.

Cumann na mBan.

Fianna na hEireann.

The Red Hand Commando.

Saor Eire.

The Ulster Freedom Fighters.

The Ulster Volunteer Force.

The Irish National Liberation Army.

The Irish People's Liberation Organisation.

The Ulster Defence Association.

The Loyalist Volunteer Force.

The Continuity Army Council.

The Orange Volunteers.

The Red Hand Defenders.

Al-Qa'ida.

Egyptian Islamic Jihad.

Al-Gama'at al-Islamiya.

Armed Islamic Group (Groupe Islamique Armée) (GIA).

Salafist Group for Call and Combat (Groupe Salafiste pour la Prédication et le Combat) (GSPC).

Babbar Khalsa.

International Sikh Youth Federation.

Harakat Mujahideen.

Jaish e Mohammed.

Lashkar e Tayyaba.

Liberation Tigers of Tamil Eelam (LTTE).

Hizballah External Security Organisation.

Hamas-Izz al-Din al-Qassem Brigades.

Palestinian Islamic Jihad - Shaqaqi.

Abu Nidal Organisation.

Islamic Army of Aden.

Mujaheddin e Khalq.

Kurdistan Workers' Party (Partiya Karkeren Kurdistan) (PKK).

Revolutionary Peoples' Liberation Party - Front (Devrimci Halk Kurtulus Partisi-Cephesi) (DHKP-C).

Basque Homeland and Liberty (Euskadi ta Askatasuna) (ETA).

17 November Revolutionary Organisation (N17).

Note: The entry for The Orange Volunteers refers to the organization which uses that name and in the name of which a statement described as a press release was published on 14th October 1998.

SCHEDULE 2

(Article 8)

THE PROSCRIBED ORGANIZATIONS APPEAL COMMISSION

Constitution

- 1.-(1) The Commission shall consist of members appointed by the Bailiff.
- (2) The Bailiff shall appoint one of the members as chairman.
- (3) A member shall hold and vacate office in accordance with the terms of his appointment.
- (4) A member may resign at any time by notice in writing to the Bailiff.

Officers, etc.

2. The Human Resources Committee may appoint officers and servants for the Commission.

Expenses

3. The Finance and Economics Committee -
 - (a) may pay sums by way of remuneration, allowances, pensions and gratuities to or in respect of members, officers and servants;
 - (b) may pay compensation to a person who ceases to be a member of the Commission if it thinks it appropriate because of special circumstances; and
 - (c) may pay sums in respect of expenses of the Commission.

Sittings

- 4.-(1) The Commission shall sit at such times and in such places as the Bailiff may direct.
- (2) At each sitting of the Commission -
 - (a) 3 members shall attend;
 - (b) one of the members shall be an ordinary judge of the Court of Appeal;
 - (c) the chairman or another member nominated by him shall preside and report the Commission's decision.

Procedure

- 5.-(1) The Bailiff may make Rules
 - (a) regulating the exercise of the right of appeal to the Commission;
 - (b) prescribing practice and procedure to be followed in relation to proceedings before the Commission;
 - (c) providing for proceedings before the Commission to be determined without an oral hearing in specified circumstances;
 - (d) making provision about evidence in proceedings before the Commission (including provision about the burden of proof and admissibility of evidence);
 - (e) making provision about proof of the Commission's decisions.
- (2) In making Rules the Bailiff shall, in particular, have regard to the need to secure -

- (a) that decisions which are the subject of appeals are properly reviewed; and
- (b) that information is not disclosed contrary to the public interest.
- (3) The Rules shall make provision permitting organizations to be legally represented in proceedings before the Commission.
- (4) The Rules may, in particular -
 - (a) provide for full particulars of the reasons for proscription or refusal to deproscribe to be withheld from the organization or applicant concerned and from any person representing it or him;
 - (b) enable the Commission to exclude persons (including representatives) from all or part of proceedings;
 - (c) enable the Commission to provide a summary of evidence taken in the absence of a person excluded by virtue of clause (b);
 - (d) permit preliminary or incidental functions to be discharged by a single member;
 - (e) permit proceedings for permission to appeal under Article 9 to be determined by a single member;
 - (f) make provision about the functions of persons appointed under paragraph 7;
 - (g) make different provision for different parties or descriptions of party.
- (5) In this paragraph a reference to proceedings before the Commission includes a reference to proceedings arising out of proceedings before the Commission.

Conduct of proceedings

- 6.-(1) This paragraph applies to
 - (a) proceedings brought by an organization before the Commission; and
 - (b) proceedings arising out of proceedings to which clause (a) applies.
- (2) Proceedings shall be conducted on behalf of the organization by a person designated by the Commission (with such legal representation as he may choose to obtain).
- (3) In paragraphs 5 and 8, a reference to an organization includes a reference to a person designated under this paragraph.

Representation of excluded person in proceedings

- 7.-(1) The Attorney General may appoint a person to represent the interests of an organization or other applicant in proceedings in relation to which an order has been made by virtue of paragraph 5(4)(b).
- (2) A person shall not be eligible for appointment under this paragraph unless he is an advocate or solicitor of the Royal Court.
- (3) A representative appointed under this paragraph shall not be responsible to the organization or other applicant whose interests he is appointed to represent.
- (4) In paragraphs 5 and 8, a reference to a representative does not include a reference to a person appointed under this paragraph.

Evidence

- 8.-(1) Article 10(1) of the Interception of Communications (Jersey) Law 1993 shall not apply in relation to

- (a) proceedings before the Commission; or
 - (b) proceedings arising out of proceedings to which clause (a) applies.
- (2) Evidence admitted by virtue of sub-paragraph (1) shall not be disclosed to -
- (a) the organization concerned;
 - (b) the applicant (where the organization is not also the applicant); or
 - (c) any person representing the organization concerned or the applicant.

SCHEDULE 3

(Article 26(8))

FORFEITURE ORDERS RELATING TO PROPERTY

Implementation and enforcement

1.-(1) Where the Royal Court makes an order under Article 26 (in this Schedule referred to as "forfeiture order") it may make an order -

- (a) requiring any property to which the forfeiture order applies to be paid or handed over to the Viscount;
- (b) directing any such property other than money or immovable property to be sold or otherwise disposed of in such manner as the Royal Court may direct and the proceeds paid to the Viscount;
- (c) directing that any such property which is immovable property -
 - (i) shall vest in the Viscount, subject to such conditions and exceptions as may be specified by the Royal Court, and
 - (ii) shall be realized by the Viscount in such manner as the Royal Court may further direct;
- (d) directing a specified part of any property which is money, or of the proceeds of sale, disposal or realisation of any property to be paid by the Viscount to or for a specified person falling within Article 26(7);
- (e) making such other provision as appears to the Royal Court to be necessary for giving effect to the forfeiture order or to any order made by virtue of clause (a), (b), (c) or (d).

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

(3) The balance of any sums in the hands of the Viscount by virtue of an order made under sub-paragraph (1) shall, after making payment (where appropriate) under sub-paragraph (1)(d) be treated as if it were a fine imposed by the Royal Court.

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

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

Liability etc. of Viscount

2.-(1) Where the Viscount takes any action-

- (a) in relation to property which is not subject to forfeiture being action which he would be entitled to take if it were such property;
- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

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

(2) The Viscount is entitled to be paid his remuneration and expenses out of the proceeds of realisation of the property.

Restraint orders

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

(2) A restraint order may apply -

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

(3) A restraint order may be made where -

- (a) proceedings have been instituted against a person for an offence under any of Articles 15 to 18;
- (b) the proceedings have not been concluded; and
- (c) either a forfeiture order has been made or it appears to the Royal Court that a forfeiture order may be made in the proceedings.

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

- (a) a criminal investigation has been started in the Island with regard to an offence under any of Articles 15 to 18; and
- (b) it appears to the Royal Court that a forfeiture order may be made in any proceedings for the offence.

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

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

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

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

(8) For the purposes of this paragraph proceedings for an offence are instituted -

- (a) when the Bailiff issues a warrant in respect of the offence for the arrest of a person who is out of the Island;
- (b) when a person is arrested for and charged with the offence;
- (c) when a summons in respect of the offence is served on a person at the instance of the Attorney General or in accordance with Article 8 of the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949,^[24]

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

(9) For the purposes of this paragraph and paragraph 5(2) proceedings are concluded-

- (a) when a forfeiture order has been made in those proceedings and effect has been given to it in respect of all the property to which it applies; or

- (b) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a forfeiture order being made in the proceedings.

Procedure for restraint order

4. A restraint order -

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

Discharge or variation of restraint order

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

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

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

- (a) if no proceedings in respect of offences under any of Articles 15 to 18 are instituted within such time as the Royal Court considers reasonable; and
- (b) if all proceedings in respect of offences under any of Articles 15 to 18 have been concluded.

Effect of restraint order

6.-(1) Where the Royal Court has made a restraint order, an officer of the Force may seize any property subject to the order for the purpose of preventing it from being removed from the Island.

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

Further effect and registration of order affecting immovable property

7.-(1) A restraint order in respect of immovable property shall have effect as an injunction restraining any person from disposing of or hypothecating the property.

(2) Where the Royal Court makes a restraint order affecting immovable property in the Island it shall direct the Judicial Greffier, in accordance with Rules of Court, to place a copy of the order, until it is discharged, in a file which shall form part of the Public Registry.

Compensation

8.-(1) Where

- (a) a restraint order is discharged under paragraph 5(3); or
- (b) proceedings are instituted against a person for an offence under any of Articles 15 to 18 and either -
 - (i) the proceedings do not result in his conviction for any such offence, or
 - (ii) where he is convicted of one or more such offences, the conviction or convictions are quashed, or he is pardoned by Her Majesty in respect of the conviction or convictions concerned,

the Royal Court may, on application by a person who had an interest in any property which was subject to a forfeiture or restraint order made in or in relation to those proceedings, and subject to sub-paragraphs (2) and (3), order compensation to

be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to do so.

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

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

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

(4) Compensation payable under this paragraph shall be paid out of the annual income of the States.

Enforcement of orders made elsewhere in the British Islands

9. In the following provisions of this Schedule -

“an English order” means -

- (a) an order made in England or Wales under section 23 of the 2000 Act (an “English forfeiture order”);
- (b) an order made under paragraph 5 of Schedule 4 to the 2000 Act (an “English restraint order”); or
- (c) an order made under any other provision of Part I of that Schedule in relation to an English forfeiture or restraint order;

“a Scottish order” means -

- (a) an order made in Scotland under section 23 of the 2000 Act (a “Scottish forfeiture order”);
- (b) an order made under paragraph 18 of Schedule 4 to the 2000 Act (a “Scottish restraint order”); or
- (c) an order made under any other provision of Part II of that Schedule in relation to a Scottish forfeiture or restraint order;

“a Northern Irish order” means -

- (a) an order made in Northern Ireland under section 23 of the 2000 Act (a “Northern Irish forfeiture order”);
- (b) an order made under paragraph 30 of Schedule 4 to the 2000 Act (a “Northern Irish restraint order”); or
- (c) an order made under any other provision of Part III of that Schedule in relation to a Northern Irish forfeiture or restraint order;

“an Islands order” means –

- (a) an order made in any of the Islands under a provision of the written law of that Island corresponding to Article 26 of this Law;
- (b) a restraint order made in any of the Islands under a provision of the written law of that Island corresponding to paragraph 3 of this Schedule;
- (c) an order made in any of the Islands under a provision of the written law of that corresponding to any of the other foregoing paragraphs of this Schedule.

Procedures and enforcement for orders made elsewhere in the British Islands

10.-(1) An English, Scottish, Northern Irish or Islands order shall, subject to this paragraph, have effect in the law of the Island but shall be enforced in the Island only in accordance with this paragraph and any rules of court as to the manner

in which and the conditions subject to which such orders are to be enforced in the Island.

(2) The Royal Court shall on an application made to it in accordance with rules of court for the registration of an English, Scottish, Northern Irish or Islands order, direct that the order shall, in accordance with such rules, be registered in the Royal Court.

(3) Rules of court shall also make provision -

- (a) for cancelling or varying the registration of an English, Scottish, Northern Irish or Islands forfeiture order when effect has been given to it (whether in the Island or elsewhere) in respect of all or, as the case may be, part of the property to which the order applies;
- (b) for cancelling or varying the registration of an English, Scottish, Northern Irish or Islands restraint order which has been discharged or varied by the court by which it was made.

(4) If an English, Scottish, Northern Irish or Islands forfeiture order is registered under this paragraph, the Royal Court shall have in relation to that order, the same powers as it has under paragraph 1(1) in relation to a forfeiture order made by it (and paragraph 2 applies accordingly).

(5) The balance of any sums received by the Viscount by virtue of an order made under sub-paragraph (4) shall after making payment (where appropriate) under paragraph 1(1)(d) or 2(2), be paid by him to the Treasurer of the States.

(6) Paragraphs 3(5), 6 and 7 apply to a registered English, Scottish, Northern Irish or Islands restraint order as they apply to a restraint order, and the Royal Court shall have the same power to make an order for or in relation to the arrest of any property in relation to proceedings brought or likely to be brought for an English, Scottish, Northern Irish or Islands restraint order as it would have if those proceedings had been brought or were likely to be brought in the Royal Court.

(7) Without prejudice to the foregoing provisions, if an English, Scottish, Northern Irish or Islands order is registered under this paragraph -

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

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

(8) The Royal Court may additionally, for the purpose of -

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

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

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

(10) The power to make rules of court under Article 11 of the Royal Court (Jersey) Law 1948^[25] shall include power to make rules for the purposes of this paragraph.

Enforcement of external orders

11.-(1) The States may by Regulations make provision for the purpose of enabling the enforcement in the Island of external orders.

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

SCHEDULE 4

(Article 27)

CIVIL FORFEITURE OF TERRORIST CASH

PART 1

INTRODUCTORY

Application and general interpretation of Schedule 4

1.-(1) This Schedule applies to terrorist cash.

(2) In this Schedule -

“cash” means -

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

found at any place in the Island and also includes any kind of monetary instrument which is found at any place in the Island, if the instrument is prescribed;

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

“forfeiture order” means an order made under paragraph 8;

“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 13;

“property earmarked as terrorist property” is to be read in accordance with Part 5 of this Schedule;

“terrorist cash” means cash which –

- (a) is intended to be used for the purposes of terrorism;
- (b) consists of resources of an organization which is a proscribed organization; or
- (c) is property earmarked as terrorist property;

“value” means market value.

(3) In this Schedule, any references to a person’s property and to obtaining and disposing of property shall be construed in accordance with paragraphs 2 and 3.

(4) 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.

(5) References to anything done for the purposes of terrorism include anything done for the purposes of a proscribed organization.

(6) An organization's resources include any cash which is applied or made available, or is to be applied or made available, for use by the organization.

(7) Where property earmarked as terrorist property belongs to joint tenants, a joint tenant who obtained the property in circumstances in which it would not (as against him) be earmarked is referred to as an excepted joint owner; and references to his share of the earmarked property are to so much of the property as would have been his if the tenancy had been converted into a tenancy in common.

Meaning of person's property

2.-(1) 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.

(2) In relation to land, it is a reference to any interest which he holds in the land.

(3) 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.

Meaning of obtaining and disposing of property

3.-(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) 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.

(3) 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.

PART 2

SEIZURE AND DETENTION

Seizure of cash

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

(2) An authorized 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

5.-(1) While the authorized 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) The period for which the cash or any part of it may be detained may be extended by an order made by the Bailiff; but the order may not authorize the detention of any of the cash -

(a) beyond the end of the period of 3 months beginning with the date of the order;

- (b) in the case of any further order under this sub-paragraph, beyond the end of the period of 2 years beginning with the date of the first order.
- (3) An order under sub-paragraph (2) must provide for notice to be given to persons affected by it.
- (4) An application for an order under sub-paragraph (2) may only be made by or with the consent of the Attorney General, and the Bailiff may make the order if satisfied, in relation to any cash to be further detained, that one of the following conditions is met.
 - (5) The first condition is that there are reasonable grounds for suspecting that the cash is intended to be used for the purposes of terrorism and that either -
 - (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the Island 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.
 - (6) The second condition is that there are reasonable grounds for suspecting that the cash consists of resources of an organization which is a proscribed organization 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 the Island 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.
 - (7) 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 the Island or elsewhere) proceedings against any person for an offence in respect of the terrorism with which it 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) Proceedings against any person for an offence are concluded for the purpose of this paragraph when -
 - (a) the person is convicted or acquitted;
 - (b) the prosecution is discontinued; or
 - (c) the jury, if any, is discharged without a finding.

Payment of detained cash into an account

- 6.-(1) If cash is detained under this Schedule for more than 48 hours, it is to be held in an interest-bearing account and the interest accruing on it is to be added to it on its forfeiture or release.
 - (2) In the case of cash seized under paragraph 4(2), the authorized 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) Sub-paragraph (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

- 7.-(1) This paragraph applies while any cash is detained under this Schedule.

(2) The Bailiff 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 5 for the detention of cash are no longer met in relation to the cash to be released.

(3) An authorized officer, having first obtained the consent of the Attorney General, may release the whole or any part of the cash 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 is made under this Schedule, until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded; or

(b) if (in the Island or elsewhere) proceedings are started against any person for an offence with which the cash is connected, until the proceedings are concluded.

(5) Proceedings against any person for an offence are concluded for the purpose of sub-paragraph (4)(b) when-

(a) the person is convicted or acquitted;

(b) the prosecution is discontinued; or

(c) the jury, if any is discharged without a finding.

PART 3

FORFEITURE

Forfeiture

8.-(1) While cash is detained under this Schedule, an application for the forfeiture of the whole or any part of it may be made by the Attorney General to the Royal Court.

(2) The Royal Court may order the forfeiture of the cash or any part of it if satisfied that the cash or part is terrorist cash.

(3) The Royal Court must decide on a balance of probabilities whether it is proved -

(a) that any person intended to use any cash for the purposes of terrorism; or

(b) that any matters alleged to constitute acts of terrorism, or acts carried out for the purposes of terrorism, have occurred.

(4) 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 Royal Court thinks is attributable to the excepted joint owner's share.

Appeal against forfeiture

9.-(1) Any party to proceedings in which a forfeiture order is made (other than the Attorney General) who is aggrieved by the order may appeal to the Court of Appeal.

(2) An appeal under sub-paragraph (1) must be made -

(a) within the period of 30 days beginning with the date on which the order is made; or

(b) if sub-paragraph (6) applies, before the end of the period of 30 days beginning with the date on which the order under Article 6(3)(b) referred to in that sub-paragraph comes into force.

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

- (4) The Court of Appeal may make any order it thinks appropriate.
- (5) If the Court of Appeal upholds the appeal, it may order the release of the cash.
- (6) Where a successful application for a forfeiture order relies (wholly or partly) on the fact that an organization is proscribed, this sub-paragraph applies if -
 - (a) a deproscription appeal under Article 8 is allowed in respect of the organization;
 - (b) an order is made under Article 6(3)(b) in respect of the organization in accordance with an order of the Commission under Article 8(4); and
 - (c) the forfeited cash was seized under this Schedule on or after the date of the refusal to deproscribe against which the appeal under Article 8 was brought.

Application of forfeited cash

10.-(1) Cash forfeited under this Schedule, and any accrued interest on it shall be paid into the annual income of the States.

- (2) But it is not to be paid in -
 - (a) before the end of the period within which an appeal under paragraph 9 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

11.-(1) A person who claims that any cash detained under this Schedule, or any part of it, belongs to him may apply for the cash or part to be released to him under this paragraph.

- (2) The application may be made in the course of proceedings under paragraph 5 or 8 or at any other time.
- (3) An application made in the course of proceedings under paragraph 5 shall be made to the Bailiff and any other application shall be made to the Royal Court.
- (4) If it appears to the Bailiff or Royal 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 Bailiff or Court may order the cash to be released to the applicant (and, where the application is made in the course of proceedings under paragraph 8, must do so instead of making a forfeiture order).

Compensation

12.-(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 Royal Court for compensation.

- (2) If the Royal Court is satisfied that the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional it may order compensation to be paid to him.
- (3) The amount of compensation to be paid under sub-paragraph (2) is the amount the Court thinks reasonable

having regard to the loss suffered, the amount of any interest paid under this Schedule and any other relevant circumstances.

(4) Compensation payable under this paragraph shall be paid out of the annual income of the States.

(5) 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.

(6) This paragraph does not apply if the Royal Court makes an order under paragraph 11.

PART 5

PROPERTY EARMARKED AS TERRORIST PROPERTY

Property obtained through terrorism

13.-(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

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

Tracing property

15.-(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 original property or property which (by virtue of this Part of this Schedule) represents the original property; and
- (b) he obtains other property in place of it,

the other property represents the original property.

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

Mixing property

16.-(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) for the purpose of merging or extinguishing interests in land.

Accruing profits

17.-(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

18.-(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 the Island 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 sub-paragraph, 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 made under Article 2 of the Criminal Justice (Compensation Orders) (Jersey) Law 1994^[26] or pursuant to any like order made under any other enactment; and
- (b) apart from this sub-paragraph, the sum received would be earmarked as terrorist property,

the property ceases to be earmarked.

(4) Where -

- (a) a person enters into a transaction to which paragraph 15(2) applies; and
- (b) the disposal is one to which sub-paragraph (1) applies,

this paragraph does not affect the question whether (by virtue of paragraph 15(2)) any property obtained on the transaction in place of the property disposed of is earmarked.

Granting interests

19.-(1) 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.

- (2) Accordingly, on his granting an interest in the property (the “property in question”) -
 - (a) where the property in question is property obtained through terrorism, the interest is also to be treated as obtained through that terrorism;
 - (b) where the property in question represents in his hands property obtained through terrorism, the interest is also to be treated as representing in his hands the property so obtained.

SCHEDULE 5

(Article 31)

TERRORIST INVESTIGATIONS: INFORMATION

Searches

Warrant for search of premises

1.(1) An officer of the Force may apply to the Bailiff for the issue of a warrant under this paragraph for the purposes of a terrorist investigation.

(2) A warrant under this paragraph shall authorize any officer of the Force -

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

(3) For the purpose of sub-paragraph (2)(c) material is relevant if the officer of the Force has reasonable grounds for believing that -

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

(4) A warrant under this paragraph shall not authorize-

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

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

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

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

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

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

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

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

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

Search of premises within cordoned area

3.-(1) Subject to sub-paragraph (2), an officer of the Force of at least the rank of chief inspector may by a written authority signed by him authorize a search of specified premises which are wholly or partly within a cordoned area.

(2) An officer of the Force who is not of the rank required by sub-paragraph (1) may give an authorization under this paragraph if he considers it necessary by reason of urgency.

(3) An authorization under this paragraph shall authorize any officer of the Force -

(a) to enter the premises specified in the authority;

(b) to search the premises and any person found there; and

(c) to seize and retain any relevant material (within the meaning of paragraph 1(3)) which is found on a search under clause (b).

(4) The powers under sub-paragraph (3)(a) and (b) may be exercised-

(a) on one or more occasions; and

(b) at any time during the period when the designation of the cordoned area under Article 28 has effect.

(5) An authorization under this paragraph shall not authorize -

(a) the seizure and retention of items subject to legal privilege;

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

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

(7) A person guilty of an offence under sub-paragraph (6) shall be liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 3 on the standard scale,^[27] or both.

Order for production of material

4.-(1) An officer of the Force may, for the purposes of a terrorist investigation, apply to the Royal Court for an order under sub-paragraph (2) in relation to particular material or material of a particular description.

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

(a) produce it to an officer of the Force for him to take away; or

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

(3) The conditions referred to in sub-paragraph (2) are-

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

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

- (i) to the benefit likely to accrue to the investigation if the material is obtained, and
- (ii) to the circumstances under which the person in possession of the material holds it, that the material should be produced or that access to it should be given; and
- (c) that the material does not consist of or include items subject to legal privilege.

(4) An order under sub-paragraph (2) may relate to material expected to come into existence or to become available to the person concerned in the period of 28 days beginning with the date of the order; and in this case the order shall require that person to notify a named officer of the Force as soon as possible after the material comes into existence or becomes available to that person.

(5) The period to be specified in an order under sub-paragraph (2) shall be 7 days from the date of the order or, in the case of an order made by virtue of sub-paragraph (4), from the notification to the named officer of the Force, unless it appears in either case to the Royal Court that a longer or shorter period would be appropriate in all the circumstances.

(6) Where the Royal Court makes an order under sub-paragraph (2)(b) in relation to material on any premises, it may, on the application of an officer of the Force, order any person who appears to it to be entitled to grant entry to the premises to allow an officer of the Force to enter the premises to obtain access to the material.

Rules of court for orders under paragraph 4

5.-(1) The power to make rules of court under Article 11 of the Royal Court (Jersey) Law 1948^[28] shall include a power to make rules as to -

- (a) the discharge and variation of orders made under paragraph 4;
- (b) proceedings relating to such orders.
- (2) Pending the making of such rules -
 - (a) an order under paragraph 4 may be discharged or varied by the Royal Court on a written application made by any person subject to the order; and
 - (b) unless the Royal Court otherwise directs on grounds of urgency, the applicant shall, not less than 48 hours before making the application, send a copy of it and a notice in writing of the time and place where it is to be made to the Attorney General and to the officer of the Force on whose application the order to be discharged or varied was made or to any other officer of the Force.
- (3) Where the material to which an application under paragraph 4 relates consists of information contained in a computer -
 - (a) an order under paragraph 4(2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
 - (b) an order under paragraph 4(2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (4) An order under paragraph 4 -
 - (a) confers no right to production of, or access to, items subject to legal privilege;
 - (b) has effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any enactment or otherwise.
- (5) An order may be made under paragraph 4 in relation to material in the possession, custody or control of a Committee of the States and any such order (which shall be served as if the proceedings were civil proceedings against the Committee of the States concerned) may require any officer of the Committee, whether named in the order or not, who may for the time being have in his possession, custody or control the material concerned, to comply with the order.

Explanations

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

(2) An order under this paragraph shall not require any person to disclose any information which he would be entitled to refuse to disclose on grounds of legal professional privilege.

(3) However, a lawyer may be required to provide the name and address of his client.

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

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

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

Offence

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

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

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

(2) A person guilty of an offence under sub-paragraph (1) shall be liable to imprisonment for a term not exceeding 2 years or to a fine, or both.

Urgent cases: authority for search

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

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

(a) that the case is one of great emergency; and

(b) that immediate action is necessary.

(3) Where an order is made under this paragraph, particulars of the case shall be notified as soon as is reasonably practicable to the Committee, the Bailiff and the Attorney General.

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

(5) A person guilty of an offence under sub-paragraph (4) shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 on the standard scale,^[29] or both.

Urgent cases: explanations

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

(2) Paragraph 6(2) to (4) and paragraph 7 shall apply to a notice under this paragraph as they apply to an order under paragraph 6.

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

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

(5) A person guilty of an offence under sub-paragraph (3) shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 on the standard scale,²⁹ or both.

Supplementary

10.-(1) An application may only be made under paragraph 1(1), 4 or 6 with the consent of the Attorney General.

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

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

SCHEDULE 6

(Article 32)

FINANCIAL INFORMATION

Order to provide customer information

1.-(1) Where an order has been made under this paragraph in relation to a terrorist investigation, an officer of the Force 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 officer of the Force may specify; and
- (b) notwithstanding any restriction on the disclosure of information imposed by any enactment or otherwise.

(4) An institution which fails to comply with a requirement under this paragraph shall be guilty of an offence.

(5) It is a defence for an institution charged with an offence under sub-paragraph (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 sub-paragraph (4) shall be liable to a fine not exceeding level 4 on the standard scale.^[30]

Procedure

2. An order under paragraph 1 may be made on the application of an officer of the Force of at least the rank of chief inspector.

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

4. An application for an order under paragraph 1 may only be made with the consent of Attorney General.

5. The power to make rules of court under Article 11 of the Royal Court (Jersey) Law 1948^[31] shall include power to make provision about the procedure for an application under paragraph 1.

Criteria for making order

6. The Bailiff may only make an order under paragraph 1 if satisfied that -

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

Customer information

7.-(1) In this Schedule “customer information” means (subject to sub-paragraph (3)) -

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

(2) For the purposes of this Schedule there is a business relationship between a financial institution and a person if (and only if) -

- (a) there is an arrangement between them designed to facilitate the carrying out of frequent or regular transactions between them; and
 - (b) the total amount of payments to be made in the course of the arrangement is neither known nor capable of being ascertained when the arrangement is made.
- (3) The States may by Regulations provide for a class of information -
- (a) to be customer information for the purposes of this Schedule; or
 - (b) to cease to be customer information for the purposes of this Schedule.

Offence by body corporate, etc.

8. Where an individual is convicted of an offence under paragraph 1(4) by virtue of this paragraph and Article 63, he shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 on the standard scale, ^[32] or both.

Self-incrimination

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

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

SCHEDULE 7

(Article 33)

ACCOUNT MONITORING ORDERS

Account monitoring orders

1.-(1) The Bailiff may, on an application made to him by an officer of the Force of at least the rank of chief inspector, make an account monitoring order if he is satisfied that -

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

(2) An application for an order under sub-paragraph (1) may only be made with the consent of the Attorney General.

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

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

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

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

(5) An account monitoring order is an order that the financial institution specified in the application for the order 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 officer of the Force named in the order.

(6) 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

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

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

Discharge or variation

- 3.-(1) An application to discharge or vary an account monitoring order may be made to the Bailiff by
- (a) the officer who applied for the order or another officer of the Force of at least the rank of chief inspector;
 - (b) any person affected by the order.
- (2) The Bailiff may confirm, vary or discharge the order.

Rules of court

4. The power to make rules of court under Article 11 of the Royal Court (Jersey) Law 1948^[33] shall include power to make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

Effect of orders

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

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

Statements

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

- (2) But sub-paragraph (1) does not apply -
 - (a) in the case of proceedings for contempt of court;
 - (b) in the case of proceedings under Article 26 where the financial institution has been convicted of an offence under any of Articles 15 to 18;
 - (c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in sub-paragraph (1).
- (3) A statement may not be used by virtue of sub-paragraph (2)(c) against a financial institution unless-
 - (a) evidence relating to it is adduced; or
 - (b) a question relating to it is asked,

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

SCHEDULE 8

(Article 49)

PORT CONTROLS

Interpretation

1.-(1) In this Schedule

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

“examining officer” means any of the following -

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

“port” includes an airport.

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

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

Power to question

2.-(1) An examining officer may question a person to whom this paragraph applies for the purpose of determining whether he appears to be a person falling within Article 36(1)(b).

(2) This paragraph applies to a person if -

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

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

(4) An examining officer may exercise his powers under this paragraph whether or not he has grounds for suspecting that a person falls within Article 36(1)(b).

Requirement to give information

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

- (a) give the examining officer any information in his possession which the officer requests;
- (b) give the examining officer on request either a valid passport which includes a photograph or another document which establishes 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 stop and detain

4.-(1) For the purposes of exercising a power under paragraph 2 an examining officer may-

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

(2) For the purpose of detaining a person under this paragraph, an examining officer may authorize the person's removal from a ship, aircraft or vehicle.

(3) Where a person is detained under this paragraph the provisions of Part 1 of Schedule 9 shall apply.

(4) A person detained under this paragraph shall (unless detained under any other power) be released not later than the end of the period of 9 hours beginning with the time when his examination begins.

Search of ship or aircraft

5. For the purpose of satisfying himself whether there are any persons whom he may wish to question under paragraph 2 an examining officer may-

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

Search of person

6.-(1) An examining officer who questions a person under paragraph 2 may, for the purpose of determining whether he falls within Article 36(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 clause (b);
 - (e) search a vehicle;
 - (f) search anything in or on a vehicle;
 - (g) search anything which he reasonably believes has been, or is about to be, in or on a vehicle.
- (2) A search of a person under this paragraph must be carried out by someone of the same sex.

Power to examine goods

7.-(1) An examining officer may examine goods to which this paragraph applies for the purpose of determining whether they have been used in the commission, preparation or instigation of acts of terrorism.

- (2) This paragraph applies to goods which have arrived in or are about to leave the Island.
- (3) In this paragraph "goods" includes -
 - (a) property of any description; and
 - (b) containers.

(4) An examining officer may board a ship or aircraft or enter a vehicle for the purpose of determining whether to exercise his power under this paragraph.

Person authorized to carry out search etc.

8.-(1) An examining officer may authorize a person to carry out on his behalf a search or examination under any of paragraphs 5 to 7.

(2) A person authorized under this paragraph shall be treated as an examining officer for the purposes of paragraphs 7(4) and 9 of this Schedule.

Detention of property

9.-(1) This paragraph applies to anything which

- (a) is given to an examining officer in accordance with paragraph 3(d);
- (b) is searched or found on a search under paragraph 6; or
- (c) is examined under paragraph 7.

(2) An examining officer may detain the thing -

- (a) for the purpose of examination, for a period not exceeding 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 Lieutenant Governor whether to make a deportation order under the Immigration Act 1971.

Designated ports

10.-(1) This paragraph applies to any journey to or from the Island.

(2) Where a ship or aircraft is employed to carry passengers for reward on a journey to which this paragraph applies the owners or agents of the ship or aircraft shall not arrange for it to call at a port in the Island for the purpose of disembarking or embarking passengers unless -

- (a) the port is a designated port; or
- (b) an authorized officer approves the arrangement.

(3) Where an aircraft is employed on a journey to which this paragraph applies otherwise than to carry passengers for reward, the captain of the aircraft shall not permit it to call at or leave a port in the Island unless -

- (a) the port is a designated port; or
- (b) he gives at least 12 hours' notice in writing to an officer of the Force.

(4) A designated port is a port which appears in the Table at the end of this Schedule.

(5) The Committee may by Order -

- (a) add an entry to the Table;
- (b) remove an entry from the Table.

Designation of control areas

11.-(1) The Committee, after consultation with the Lieutenant Governor, may by notice in writing to the owners of

agents of ships or aircraft -

- (a) designate control areas in any port in the Island;
 - (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 sub-paragraph (1) in relation to a port they shall take all reasonable steps to ensure, in respect of the ship or aircraft -
- (a) that passengers do not embark or disembark at the port outside a control area; and
 - (b) that any specified conditions are met and any specified restrictions are complied with.
- (3) The Committee may by notice in writing to persons concerned with the management of a port (“the port managers”) -
- (a) designate control areas in the port;
 - (b) require the port managers to provide at their own expense specified facilities in a control area for the purposes of the embarkation or disembarkation of passengers or their examination under this Schedule;
 - (c) require conditions to be met and restrictions to be complied with in relation to the embarkation or disembarkation of passengers in a control area;
 - (d) require the port managers to display, in specified locations in control areas, notices containing specified information about the provisions of this Schedule in such form as may be specified.
- (4) Where port managers receive notice under sub-paragraph (3) they shall take all reasonable steps to comply with any requirements set out in the notice.
- (5) The Committee shall inform the Harbours and Airport Committee of any designations made and requirements imposed under this paragraph.

Duty of captain on arrival and departure

12.-(1) This paragraph applies to a ship employed to carry passengers for reward, or an aircraft, which

- (a) arrives in the Island;
 - (b) leaves the Island.
- (2) The captain shall ensure -
- (a) that passengers and members of the crew do not disembark at a port in the Island unless either they have been examined by an examining officer or they disembark in accordance with arrangements approved by an examining officer;
 - (b) that passengers and members of the crew do not embark at a port in the Island except in accordance with arrangements approved by an examining officer;
 - (c) where a person is to be examined under this Schedule on board the ship or aircraft, that he is presented for examination in an orderly manner.
- (3) Where paragraph 27 of Schedule 2 to the Immigration Act 1971 applies, the requirements of sub paragraph (2)(a) are in addition to the requirements of paragraph 27 of that Schedule.

Carding

13.-(1) The Committee may by Order make provision requiring a person to whom this paragraph applies, i required to do so by an examining officer, to complete and produce to the officer a card containing such information in such form as the Order may specify.

(2) An Order under this paragraph may require the owners or agents of a ship or aircraft employed to carry passengers for reward to supply their passengers with cards in the form required by virtue of sub-paragraph (1).

(3) This paragraph applies to a person -

- (a) who disembarks in the Island from a ship or aircraft; or
- (b) who embarks in the Island on a ship or aircraft.

Provision of passenger information

14.-(1) This paragraph applies to a ship or aircraft which arrives or is expected to arrive in the Island or leaves or is expected to leave the Island.

(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 Committee and which relates -

- (a) to passengers;
- (b) to crew; or
- (c) to vehicles belonging to passengers or crew.

(5) A passenger or member of the crew on a ship or aircraft shall give the captain any information required for the purpose of enabling the owners or agents to comply with a request under this paragraph.

(6) Sub-paragraphs (2) and (5) shall not require the provision of information which is required to be provided under or by virtue of paragraph 27(2) of Schedule 2 to the Immigration Act 1971.

Offences

15.-(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 to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 3 on the standard scale,^[34] or both.

TABLE

DESIGNATED PORTS

Seaports

St. Helier, harbours

Gorey harbour

Airports

Jersey Airport

SCHEDULE 9

(Article 37 and Schedule 8)

DETENTION

PART I

TREATMENT OF PERSONS DETAINED UNDER ARTICLE 37 OR SCHEDULE 8

Place of detention

1.-(1) The Committee shall designate places at which persons may be detained under Article 37 or Schedule 8.

(2) In this Schedule a reference to a police station includes a reference to any place which the Committee has designated under sub-paragraph (1) as a place where a person may be detained under Article 37.

(3) Where a person is detained under Schedule 8, 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 the Island.

(4) A police officer who arrests a person under Article 37 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 8.

Identification

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

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

(2) In sub-paragraph (1) "authorized person" means any of the following -

- (a) a police officer;
- (b) a prison officer;
- (c) a person authorized by the Committee; and
- (d) in the case of a person detained under Schedule 8, an examining officer (within the meaning of that Schedule).

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

Recording of interviews

3.-(1) The Committee shall

- (a) issue a code of practice about the audio recording of interviews to which this paragraph applies; and

- (b) make an Order requiring the audio recording of interviews to which this paragraph applies in accordance with any relevant code of practice under clause (a).
- (2) The Committee may make an Order requiring the video recording of interviews to which this paragraph applies.
- (3) An Order under sub-paragraph (2) shall specify whether the video recording which it requires is to be silent or with sound.
- (4) Where an Order is made under sub-paragraph (2)-
 - (a) the Committee shall issue a code of practice about the video recording of interviews to which the Order applies; and
 - (b) the Order shall require the interviews to be video recorded in accordance with any relevant code of practice under clause (a).
- (5) Where the Committee has made an Order under sub-paragraph (2) requiring certain interviews to be video recorded with sound, it need not, but may, make an order under sub-paragraph (1)(b) in relation to those interviews.
- (6) This paragraph applies to any interview by an officer of the Force of a person detained under Article 37 of Schedule 8 if the interview takes place in a police station.

Code of practice - supplementary

- 4.-(1) When the Committee proposes to bring into operation a code of practice, it shall prepare and publish a draft of that code, shall consider any representations made to it about the draft and may modify the draft accordingly.
- (2) After the Committee has complied with sub-paragraph (1), it may bring the code into operation by Order.
- (3) The Committee may revise a code and issue the revised code, and sub-paragraphs (1) and (2) shall apply to the revised code as they apply to the first code brought into operation.
- (4) The failure by an officer of the Force to observe a provision of a code shall not of itself make him liable to criminal or civil proceedings.
- (5) A code shall be admissible in evidence in all criminal proceedings, and if any provision of a code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.

Status

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

Right to have someone informed when detained

- 6.-(1) Subject to paragraph 8, a person detained under Article 37 or Schedule 8 at a police station shall be entitled if he so requests, to have one named person informed as soon as is reasonably practicable that he is being detained there.
- (2) The person named must be -
 - (a) a friend of the detained person;
 - (b) a relative; or
 - (c) a person who is known to the detained person or who is likely to take an interest in his welfare.
- (3) Where a detained person is transferred from one police station to another, he shall be entitled to exercise the right under this paragraph in respect of the police station to which he is transferred.

Access to legal advice

7.-(1) Subject to paragraph 8, a person detained under Article 37 or Schedule 8 at a police station shall be afforded facilities, if he so requests, to consult a legal representative in private at any time, by telephone, in writing or in person.

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

Authority to delay rights under paragraphs 6 and 7

8.-(1) Subject to subparagraph (2), an officer of the Force at least the rank of chief inspector may authorize a delay -

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

(2) But where a person is detained under Article 37 he must be permitted to exercise his rights under paragraphs 6 and 7 before the end of the period mentioned in paragraph (3) of that Article.

(3) Subject to sub-paragraph (5), an officer may give an authorization under sub-paragraph (1) only if he has reasonable grounds for believing -

- (a) in the case of an authorization under sub-paragraph (1)(a), that informing the named person of the detained person's detention will have any of the consequences specified in sub-paragraph (4); or
- (b) in the case of an authorization under sub-paragraph (1)(b), that the exercise of the right under paragraph 7 at the time when the detained person desires to exercise it will have any of the consequences specified in sub-paragraph (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 Article 26;
- (e) interference with the gathering of information about the commission, preparation or instigation of acts of terrorism;
- (f) the alerting of a person and thereby making it more difficult to prevent an act of terrorism; and
- (g) the alerting of a person and thereby making it more difficult to secure a person's apprehension, prosecution or conviction in connection with the commission, preparation or instigation of an act of terrorism.

(5) An officer may also give an authorization under sub-paragraph (1) if he has reasonable grounds for believing that -

- (a) the detained person has committed an offence mentioned in the First Schedule to the Proceeds of Crime (Jersey) Law 1999;^[35]
- (b) the detained person has benefited from the offence within the meaning of that Law; and
- (c) by informing the named person of the detained person's detention (in the case of an authorization under sub-paragraph (1)(a)), or by the exercise of the right under paragraph 7 (in the case of an authorization under sub-paragraph (1)(b)), the recovery of the value of that benefit will be hindered.

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

(7) Where an authorization under sub-paragraph (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 authorizing delay ceases to subsist there may be no further delay in permitting the exercise of the right in the absence of a further authorization under sub-paragraph (1).

Meaning of “serious offence”

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

(2) The following offences are always serious -

(a) any offence of -

(i) treason,

(ii) murder,

(iii) manslaughter,

(iv) rape,

(v) kidnapping,

(vi) incest with a girl under the age of 13,

(vii) sodomy with a person under the age of 16,

(viii) gross indecency

(ix) indecent assault,

(x) publication of obscene material,

whether under customary law or under any enactment;

(b) any offence under -

(i) Articles 2 and 3 of the Loi (1884) sur les matières explosives,^[36]

(ii) Article 2 of the Loi (1895) modifiant le droit criminel,^[37]

(iii) Articles 38 and 39 of the Firearms (Jersey) Law 2000,^[38]

(iv) Section 1 of the Taking of Hostages Act 1982 as extended to the Island by Order in Council,

(v) Section 1 of the Aviation Security Act 1982 as extended to the Island by Order in Council,

(vi) Section 1 of the Aviation and Maritime Security Act 1990 as extended to the Island by Order in Council,

(vii) Articles 14A and 15A of the Road Traffic (Jersey) Law 1956,^[39]

- (viii) Article 1 of the Torture (Jersey) Law 1990,^[40]
- (ix) Article 2 of the Protection of Children (Jersey) Law 1994,^[41]
- (x) the Official Secrets (Jersey) Law 1952;^[42]
- (c) any of the offences mentioned in the definition “drug trafficking offence” in Article 1(1) of the Drug Trafficking Offences (Jersey) Law 1988.^[43]
- (3) Subject to sub-paragraph (4), any other offence is serious only if its commission-
 - (a) has led to any of the consequences specified in sub-paragraph (5); or
 - (b) is intended or is likely to lead to any of those consequences.
- (4) An offence which consists of making a threat is serious if carrying out the threat would be likely to lead to any of the consequences specified in sub-paragraph (5).
- (5) The consequences mentioned in sub-paragraphs (3) and (4) are -
 - (a) serious harm to the security of the British Islands or to public order;
 - (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
 - (c) the death of any person;
 - (d) serious injury to any person;
 - (e) substantial financial gain to any person;
 - (f) serious financial loss to any person.
- (6) Loss is serious for the purposes of this paragraph if, having regard to all the circumstances, it is serious for the person who suffers it.
- (7) In this paragraph “injury” includes any disease and any impairment of a person’s physical or mental condition.
- (8) Any offence of conspiring or attempting to commit a serious offence or aiding, abetting, counselling or procuring the commission of a serious offence is a serious offence.
- (9) The States may, by Regulations, amend sub-paragraph (2)(a) and (b).

Direction regarding access to legal advice

- 10.-(1)** A direction under this paragraph may provide that a detained person who wishes to exercise the right under paragraph 7 may only consult a legal representative in the sight and hearing of a qualified officer.
- (2) A direction under this paragraph may be given by an officer of the Force of at least the rank of chief inspector where the person is detained at a police station.
 - (3) A direction under this paragraph may be given only if the officer giving it has reasonable grounds for believing that, unless the direction is given, the exercise of the right by the detained person will have any of the consequences specified in paragraph 8(4) or the consequence specified in paragraph 8(5)(c).
 - (4) In this paragraph “a qualified officer” means an officer of the Force who is of at least the rank of inspector and, in the opinion of the officer giving the direction, has no connection with the detained person’s case.

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

Fingerprints and samples

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

- (a) with the appropriate consent given in writing; or
- (b) without that consent, under sub-paragraph (3).

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

- (a) with the appropriate consent given in writing; or
- (b) without that consent, under sub-paragraph (3).

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

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

- (a) he is detained at a police station;
- (b) the appropriate consent is given in writing;
- (c) an officer of the Force of at least the rank of chief inspector authorizes the sample to be taken; and
- (d) subject to paragraph 14(2) and (3), the sample is taken by a police officer.

(5) Subject to sub-paragraph (6), an officer may give an authorization under sub-paragraph (3) or (4)(c) only if-

- (a) in the case of a person detained under Article 37, the officer reasonably suspects that the person has been involved in an offence under any of the provisions mentioned in Article 36(1)(a), and the officer reasonably believes that the fingerprints or sample will tend to confirm or disprove his involvement; or
- (b) in any case, the officer is satisfied that the taking of the fingerprints or sample from the person is necessary in order to assist in determining whether he falls within Article 36(1)(b).

(6) An officer may also give an authorization under sub-paragraph (3) for the taking of fingerprints if-

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

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

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

Right to be informed

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

- (a) that the fingerprints or sample may be used for the purposes of paragraph 15(3), or checked against any fingerprints or samples or the information derived from samples taken and contained -

- (i) in records held by or on behalf of the Force,
 - (ii) in any similar records held by a police force elsewhere in the British Islands or in Northern Ireland, or
 - (iii) in any similar records held by any other police force or authority, body or person specified pursuant to sub-paragraph (4);
- (b) where the fingerprints or sample are to be taken under paragraph 11(1)(a), (2)(a) or (4)(b), of the reason for taking the fingerprints or sample.
- (2) Before fingerprints or a sample are taken from a person upon an authorization given under paragraph 11(3) or (4)(c), he shall be informed -
- (a) that the authorization has been given;
 - (b) of the grounds upon which it has been given; and
 - (c) where relevant, of the nature of the offence in which it is suspected that he has been involved.
- (3) After fingerprints or a sample are taken under paragraph 11, there shall be recorded as soon as is reasonably practicable any of the following which apply -
- (a) the fact that the person has been informed in accordance with sub-paragraphs (1) and (2);
 - (b) the reason referred to in sub-paragraph (1)(b);
 - (c) the authorization given under paragraph 11(3) or (4)(c);
 - (d) the grounds upon which that authorization has been given; and
 - (e) the fact that the appropriate consent has been given.
- (4) The Committee may prescribe, for the purposes of sub-paragraph (1)(a)(iii)-
- (a) any police force of a country or territory outside the British Islands and Northern Ireland;
 - (b) any person or public authority in the British Islands or Northern Ireland having functions which consist of or include the provision of criminal intelligence, the prevention and detection of serious crime, the investigation of crimes and the charging of offences;
 - (c) any person or public authority of a country or territory outside the British Islands and Northern Ireland whose functions correspond to those of a police force or otherwise consist of or include the investigation of conduct contrary to the law of that country or territory, or the apprehension of persons guilty of such conduct;
 - (d) any person with functions under any international agreement which consist of or include -
 - (i) the investigation of conduct which is unlawful under the law of one or more places, prohibited by such an agreement or contrary to international law, or
 - (ii) the apprehension of persons guilty of such conduct.

Intimate samples: further provisions

13.-(1) This paragraph applies where

- (a) 2 or more non-intimate samples suitable for the same means of analysis have been taken from a person under paragraph 11;
- (b) those samples have proved insufficient; and
- (c) the person has been released from detention.

- (2) An intimate sample may be taken from the person if -
 - (a) the appropriate consent is given in writing;
 - (b) an officer of the Force of at least the rank of chief inspector authorizes the sample to be taken; and
 - (c) subject to paragraph 14(2) and (3), the sample is taken by a police officer.

(3) Paragraphs 11(5) and (6) and 12 shall apply in relation to the taking of an intimate sample under this paragraph and a reference to a person detained under Article 37 shall be taken as a reference to a person who was detained under Article 37 when the non-intimate samples mentioned in sub-paragraph (1)(a) were taken.

Inference from refusal of consent

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

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

(2) An intimate sample other than a sample of urine or a dental impression may be taken under paragraph 11 or 13 only by a person registered as a medical practitioner under the Medical Practitioners (Registration) (Jersey) Law 1960^[44] acting on the authority of a police officer.

(3) An intimate sample which is a dental impression may be taken under paragraph 11 or 13 only by a person registered as a dentist under the Dentists (Registration) (Jersey) Law 1961^[45] acting on the authority of a police officer.

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

Use of fingerprints or samples

15.-(1) This paragraph applies to

- (a) fingerprints or samples taken under paragraph 11 or 13; and
 - (b) information derived from those samples.
- (2) The fingerprints, samples or information may be used only for the purpose of a terrorist investigation.
- (3) The fingerprints, samples or information may be checked, subject to sub-paragraph (2), against -
- (a) other fingerprints or samples taken under paragraph 11 or 13 or information derived from those samples;
 - (b) any of the fingerprints, samples and information held by any police force, authority, body or person mentioned in or specified for the purposes of paragraph 12(1)(a).

Interpretation of paragraphs 11 to 15

16. In the application of paragraphs 11 to 15 -

“appropriate consent” means -

- (i) in relation to a person who has attained the age of 17 years, the consent of that person,

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

(iii) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian;

“fingerprints” includes palm prints;

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

“intimate sample” means -

(i) a sample of blood, semen or any other tissue fluid, urine or pubic hair,

(ii) a dental impression,

(iii) a swab taken from a person’s body orifice other than the mouth;

“non-intimate sample” means -

(i) a sample of hair other than pubic hair,

(ii) a sample taken from a nail or from under a nail,

(iii) a swab taken from any part of a person’s body including the mouth but not any other body orifice,

(iv) saliva,

(v) a footprint or a similar impression of any part of a person’s body other than a part of his hand.

PART 2

REVIEW OF DETENTION UNDER ARTICLE 37

Requirement for review

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

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

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

Postponement

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

(a) the detained person is being questioned by a police officer and an officer is satisfied that an interruption of the questioning to carry out the review would prejudice the investigation in connection with which the person is being detained;

(b) no review officer is readily available; or

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

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

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

Grounds for continued detention

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

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

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

(4) In sub-paragraph (1)(a) and (b) "relevant evidence" means evidence which -

- (a) relates to the commission by the detained person of an offence under any of the provisions mentioned in Article 36(1)(a); or
- (b) indicates that the detained person falls within Article 36(1)(b).

(5) In sub-paragraph (1) "deportation notice" means notice of a decision to make a deportation order under the Immigration Act 1971.

Review officer

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

(2) In the case of a review carried out within the period of 24 hours beginning with the time of arrest, the review officer shall be an officer of the Force of at least the rank of inspector.

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

Directions by officer of higher rank

21.-(1) This paragraph applies when-

- (a) the review officer is of a rank lower than chief inspector;
- (b) an officer of higher rank than the review officer gives directions relating to the detained person; and
- (c) those directions are at variance with the performance by the review officer of a duty imposed on him under

this Schedule.

- (2) The review officer shall refer the matter at once to the Chief Officer of the Force.

Representations

22.-(1) Before determining whether to authorize a person's continued detention, a review officer shall give either of the following persons an opportunity to make representations about the detention -

- (a) the detained person; or
- (b) any legal representative representing 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

23.-(1) Where a review officer authorizes continued detention he shall inform the detained person-

- (a) of any of his rights under paragraphs 6 and 7 which he has not yet exercised; and
- (b) if the exercise of any of his rights under either of those paragraphs is being delayed in accordance with the provisions of paragraph 8 of the fact that it is being so delayed.

(2) Where a review of a person's detention is being carried out at a time when his exercise of a right under either of those paragraphs is being delayed -

- (a) the review officer shall consider whether the reason or reasons for which the delay was authorized continue to subsist; and
- (b) if in his opinion the reason or reasons have ceased to subsist, he shall inform the officer who authorized the delay of his opinion (unless he was that officer).

Record of review

24.-(1) A review officer carrying out a review shall make a written record of the outcome of the review and of any of the following which apply -

- (a) the grounds upon which continued detention is authorized;
- (b) the reasons for postponement of the review;
- (c) the fact that the detained person has been informed as required under paragraph 23(1);
- (d) the officer's conclusions on the matter considered under paragraph 23(2)(a);
- (e) the fact that he has taken action under paragraph 23(2)(b); and
- (f) the fact that the detained person is being detained by virtue of Article 37(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 authorizing continued detention, and if he is, of his grounds.

(3) Sub-paragraph (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 3

EXTENSION OF DETENTION UNDER ARTICLE 37

Warrant of further detention

25.-(1) An officer of the Force of at least the rank of chief inspector may apply to the Bailiff for the issue of warrant of further detention under this Part.

- (2) A warrant of further detention -
 - (a) shall authorize the further detention under Article 37 of a specified person for a specified period; and
 - (b) shall state the time at which it is issued.
- (3) The specified period in relation to a person shall end not later than the end of the period of 7 days beginning -
 - (a) with the time of his arrest under Article 37; or
 - (b) if he was being detained under Schedule 8 when he was arrested under Article 37, with the time when his examination under that Schedule began.

Time limit for application

26.-(1) An application for a warrant shall be made

- (a) during the period mentioned in Article 37(3); or
- (b) within 6 hours of the end of that period.

(2) The Bailiff hearing an application made by virtue of sub-paragraph (1)(b) shall dismiss the application if he considers that it would have been reasonably practicable to make it during the period mentioned in Article 37(3).

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

Notice of application

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

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

Grounds for extension

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

- (a) there are reasonable grounds for believing that the further detention of the person to whom the application

relates is necessary to obtain relevant evidence whether by questioning him or otherwise or to preserve relevant evidence; and

(b) the investigation in connection with which the person is detained is being conducted diligently and expeditiously.

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

(a) relates to his commission of an offence under any of the provisions mentioned in Article 36(1)(a); or

(b) indicates that he is a person falling within Article 36(1)(b).

Representation

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

(a) be given an opportunity to make oral or written representations to the Bailiff about the application; and

(b) subject to sub-paragraph (3), may be legally represented at the hearing.

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

(a) he is not legally represented; and

(b) he wishes to be so represented.

(3) The Bailiff may exclude any of the following persons from any part of the hearing -

(a) the person to whom the application relates;

(b) anyone representing him.

(4) The Bailiff 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 sub-paragraph (5) as may be specified in the direction and not in the presence (apart from by those means) of the applicant, of the person to whom the application relates or of any legal representative of that person.

(5) A means of conducting the hearing and of making representations falls within this sub-paragraph 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 sub-paragraph (3))-

(a) to see and hear the Bailiff and the making of representations to him by other persons; and

(b) to be seen and heard by the Bailiff.

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

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

(8) The Bailiff shall not give a direction under sub-paragraph (4) unless he has been informed that facilities are available at the place where the person to whom the application relates is held for the Bailiff to conduct a hearing by means

falling within sub-paragraph (5).

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

Information

30.-(1) The officer who has made an application for a warrant may apply to the Bailiff for an order that specific 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 sub-paragraph (3), the Bailiff may make an order under sub-paragraph (1) in relation to specific information only if satisfied that there are reasonable grounds for believing that if the information were disclosed -

- (a) evidence of an offence under any of the provisions mentioned in Article 36(1)(a) would be interfered with or harmful;
- (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 Article 26 would be hindered;
- (d) the apprehension, prosecution or conviction of a person who is suspected of falling within Article 36(1)(a) or (b) would be made more difficult as a result of his being alerted;
- (e) the prevention of an act of terrorism would be made more difficult as a result of a person being alerted;
- (f) the gathering of information about the commission, preparation or instigation of an act of terrorism would be interfered with; or
- (g) a person would be interfered with or physically injured.

(3) The Bailiff may also make an order under sub-paragraph (1) in relation to specified information if satisfied that there are reasonable grounds for believing that -

- (a) the detained person has committed an offence referred to in the First Schedule to the Proceeds of Crime (Jersey) Law 1999,^[46]
- (b) the detained person has benefited from the offence within the meaning of that Law; and
- (c) the recovery of the value of that benefit would be hindered, if the information were disclosed.

(4) The Bailiff shall direct that the following be excluded from the hearing of the application under this paragraph -

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

Adjournments

31.-(1) The Bailiff may adjourn the hearing of an application for a warrant only if the hearing is adjourned to date before the expiry of the period mentioned in Article 37(3).

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

Extensions of warrant

32.-(1) An officer of the Force of at least the rank of chief inspector may apply to the Bailiff for the extension of further extension of the period specified in a warrant of further detention.

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

(3) The specified period shall end not later than the end of the period of 7 days beginning-

(a) with the time of the person's arrest under Article 37; or

(b) if he was being detained under Schedule 8 when he was arrested under Article 37 with the time when his examination under that Schedule began.

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

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

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

Effect of warrant or order

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

Detention - conditions

34. A person detained by virtue of a warrant issued under this Part shall (unless detained in accordance with Article 37(5) or (6) or under any other power) be released immediately if the officer having custody of him becomes aware that any of the grounds under paragraph 28(1)(a) and (b) upon which the Bailiff authorized his further detention have ceased to apply.

[1] Volume 1999, page 552.

[2] Volume 1999, page 194.

[3] Volume 1998, pages 231 and 283, Volume 1999, page 401 and Volume 2001, page 177.

[4] Tome VIII, page 581 and R & O 7878.

[5] Volume 1961-1962, page 110, Volume 1984-1985, page 187 and Volume 2001, page 48.

[6] Tome VII, page 552 and Volume 1996-1997, page 489.

[7] Tome VII, page 550 and Volume 1996-1997, pages 172 and 489.

[8] Volume 1992-1993, page 437.

[9] Volume 1992-1993, page 437.

[10] Volume 1992-1993, page 437.

[11] Tome VIII, page 618 and R & Os 7004, 7072 and 8077.

[12] Tome VIII, page 581 and R & Os 9294 and 9308.

[13] Tome VIII, page 615.

[14] Volume 1992-1993, page 437.

[15] Tomes IV-VI, page 50 and Volume 1979-1981, page 201.

[16] Volume 1992-1993, page 437.

[17] Tome VIII, page 849 and Volume 2001, page 4.

- [18] Volume 1988-1989, page 292 and Volume 1996-1997, page 474.
- [19] Volume 2000, page 662.
- [20] Volume 2000, page 676.
- [21] Volume 2000, page 690.
- [22] Volume 1996-1997, page 177.
- [23] Tome VIII, page 384.
- [24] Tome VII, page 548 and Volume 2000, page 846.
- [25] Tome VII, page 510, Volume 1996-1997, page 147 and Volume 2001, page 7.
- [26] Volume 1994-1995, page 16.
- [27] Volume 1992-1993, page 437.
- [28] Tome VII, page 510, Volume 1996-1997, page 147 and Volume 2001, page 7.
- [29] Volume 1992-1993, page 437.
- [30] Volume 1992-1993, page 437.
- [31] Tome VII, page 510, Volume 1996-1997, page 147 and Volume 2001, page 7.
- [32] Volume 1992-1993, page 437.
- [33] Tome VII, page 510, Volume 1996-1997, page 147 and Volume 2001, page 7.
- [34] Volume 1992-1993, page 437.
- [35] Volume 1999, page 193.
- [36] Tomes IV-VI, page 50 and Volume 1979-1981, page 201.
- [37] Tomes IV-VI, page 134 and Volume 1996-1997, page 1053.
- [38] Volume 2000, pages 118 and 142.
- [39] Tome VIII, pages 602 and 603 and R & Os 9116 and 9294.
- [40] Volume 1990-1991, page 1.
- [41] Volume 1994-1995, page 76 and Volume 1996-1997, page 1060.
- [42] Tome VIII, page 53.
- [43] Volume 1988-1989, page 261, Volume 1996-1997, page 431 and Volume 1999, page 627.
- [44] Tome VIII, page 829 and Volume 1992-1993, page 267.
- [45] Volume 1961-1962, page 135, Volume 1982-1983, page 143 and Volume 1992-1993, page 243.
- [46] Volume 1999, page 193.