



## PRESS RELEASE

No: 791/2018

Date: 14th December 2018

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### **Chief Minister's Speaking Note for the Terrorism Bill 2018**

Mr Speaker

I beg to move that the Bill for a Terrorism Act 2018 be read a second time.

Mr Speaker, unfortunately we are all too aware that we live in dangerous times.

Just this week in Strasbourg, terrorism has struck again.

Even during our General Election campaign, the Honourable Mr Feetham and I – the then leader of the GSD – had to agree to suspend campaigning as a result of an attack on Paris.

Berlin.

London.

Barcelona.

Manchester.

All of these great cities have suffered the scourge of terrorism in the past five years.

And in our own lives, we have seen our Police armed with machine guns.

We have seen Jersey barriers going up in our pedestrianised areas.

Thank God our most fractious debate in this respect has been whether or not our style of Jersey barriers is more or less attractive.

This terms of this Bill, Mr Speaker, came about from a request by the Royal Gibraltar Police for the provision of certain powers that are available to their UK counterparts. As such this Bill contains provisions which are found in the UK's Terrorism Act 2000, Anti-Terrorism, Crime and Security Act 2001, Terrorism Act 2006 and Counter-Terrorism Act 2008.



The Bill will also repeal and replace our own Terrorism Act 2005, and some of those provisions are retained.

Mr Speaker, given the length of the Bill I propose to speak to the various parts and not descend into the relevant sections unless it is necessary to do so.

## **PART 1 PRELIMINARY**

Aside from the procedural elements this Part defines what constitutes “terrorism” and also “terrorist property”.

Terrorism, as defined in clause 4 is the use or threat of action where–

- (a) the action falls within subsection (2);
- (b) the use or threat is designed to coerce, compel or undermine the government or an international governmental organisation or to intimidate the public or a section of the public; and
- (c) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.

Subclause (2) sets out the acts, namely if it-

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

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

The definition is cast so that it is transnational in nature, that is the actions property or risks need not occur in Gibraltar for the Bill to treat it as terrorism.

Clause 5 defines what is to constitute terrorist property and as read with clause 3 property is given a very wide meaning and includes electronic and digital.



## **PART 2 PROSCRIBED ORGANISATIONS**

This Part makes an organisation that is a proscribed organisation under the terms of the United Kingdom's Terrorism Act 2000 a proscribed organisation in Gibraltar.

Few organisations are proscribed in the United Kingdom and the reason for this is that prior to designating an organisation as a proscribed organisation the United Kingdom undertakes considerable work with its international partners so that it only targets appropriate organisations.

Much of this work is undertaken at very high level of security clearance and subject to strict limits of confidentiality arising from the needs of security.

For these reasons, and as an exception to our normal practice we have decided to accept, as a matter of Gibraltar law, a UK designation of a proscribed organisation.

We are simply unable to make a proper determination in this respect that would withstand challenge.

It follows that an aggrieved person has to be given a remedy. Since Gibraltar is not the custodian of the information that lead to the designation, a person who is aggrieved is directed to make an application for deproscription to the Secretary of State in the United Kingdom. Should this not be successful and aggrieved person will be able to appeal to the Proscribed Organisations Appeal Commission. These are closed proceedings where the interested party is represented by a Special Advocate. Due to the sensitive nature of the information, limitations on it being divulged and the steps required in order to maintain security of such information, it is not possible for Gibraltar to create a domestic regime.

This Part also creates offences in connection with belonging to or supporting a proscribed organisation.

## **PART 3 OFFENCES RELATING TO ACTS OF TERRORISM**

This Part contains four groups of terrorist offences.

Clauses 12 to 15 create offences concerning the encouragement of terrorism.

Clauses 16 to 24 create offences concerning the preparation of terrorist acts and terrorist training (including travelling abroad, funding travelling and facilitating travel for terrorist training).

Clauses 25 to 29 provide for radioactive and nuclear terrorism related offences.

Clauses 30 to 34 are miscellaneous terrorist offences and include the use of noxious substances and hostage-taking. These provisions also cover the collection of information of a kind likely to be useful



to a person committing or preparing an act of terrorism and cover the eliciting, publishing or communicating of information about members of the police and other law enforcement agencies.

This Part has retained and added to the offences under Part IV of the Terrorism Act 2005.

Schedule 1 sets out a list of “Terrorist offences” that are referred to in Part 3. These represent the parallel offences in Gibraltar law to those offences mentioned in the Council of Europe Convention on the Prevention of Terrorism.

## **PART 4 TERRORIST PROPERTY**

This Part deals with finance offences as well as with forfeiture.

With respect to the former, the financing offences include fund-raising and other kinds of financial support for terrorism. Clause 39 is a money laundering offence that is committed with terrorist property and will be familiar to those conversant with money laundering provisions elsewhere. Along with the offence there are corresponding provisions for disclosure to the authorities where a person has a belief or suspicion that arises in the course of a trade, business, profession or employment.

Clauses 56 to 61 make provision for a court to order forfeiture of any money or other property connected with the offences and also for the issue of restraint orders.

This Part replaces and adds to Part II of the Terrorism Act 2005.

Schedule 2 defines the regulated sector and the supervisory authorities.

Schedule 3 gives details of forfeiture procedures.

## **PART 5 FORFEITURE AND FREEZING ORDERS**

This Part includes powers to forfeit and freeze terrorist property and monitor the accounts of terrorists and suspected terrorists.

Clause 62 and Schedules 4 and 8 of the Bill contain provisions to prevent terrorists from gaining access to their money. They ensure that investigative and freezing powers are available wherever funds could be used to finance terrorism.

The Bill gives law enforcement agencies the power to seize terrorist cash, and the power to freeze assets at the start of an investigation, rather than when the person is about to be charged, reducing the risk that funds will be used or moved before they can be frozen.

Clause 63 enables the Minister to freeze the assets of overseas governments or residents who have taken, or are likely to take, action to the detriment of Gibraltar's economy or action constituting a threat to the life or property of a Gibraltarian or resident of Gibraltar.



Schedule 5 makes further provision about the contents of freezing orders.

Schedule 8 introduces account monitoring orders enabling the police to require financial institutions to provide information on accounts for up to 90 days. The existing requirement to report knowledge or suspicion of terrorist financing has been strengthened, for the regulated sector, so that it is an offence not to report where there were “reasonable grounds” for suspicion.

## **PART 6 DISCLOSURE OF INFORMATION**

This Part and Schedule 6 of the Act deal with information disclosure provisions for public authorities. Clause 71 clarifies and extends a number of existing provisions for disclosure of information from public authorities to agencies involved in criminal investigations and proceedings. The gateways ensure that public authorities can disclose information which is subject to a statutory restriction on disclosure for the purposes of a criminal investigation or criminal proceedings. Clause 73 creates a new gateway giving the Commissioner of Income Tax and the Collector of Customs a general power to disclose information held by them for law enforcement purposes and to the intelligence services for their purposes.

Schedule 6 deals with information disclosure provisions for public authorities.

## **PART 7 TERRORIST INVESTIGATIONS**

Clauses 79 and 83 confer investigatory powers included in Schedule 7 (under which a financial institution may be obliged to provide customer information in aid of an investigation) and Schedule 8 (under which an account monitoring order may be obtained).

## **PART 8 COUNTER-TERRORIST POWERS**

This Part is subdivided into five areas. The first, (clauses 84 to 88) under the subheading “suspected terrorists”, provides the police with powers to arrest without a warrant and to detain suspected terrorists, it also includes search powers in respect of premises, persons and vehicles. Under section 85, a police officer may arrest someone without a warrant if he reasonably suspects that person to be a terrorist. When a person is arrested under that section the provisions of Schedule 9 apply.

The second, (clauses 89 to 94) under the subheading “Powers to stop and search in specified locations”, contain broad powers to stop and search vehicles and pedestrians in specified areas or places, and these powers are subject to a code of practice. The Commissioner of Police may give an authorisation under section 89 in relation to a specified area or place if a police officer reasonably suspects that an act of terrorism will take place; and reasonably considers that the authorisation is necessary to prevent such an act. The specified area must be no bigger, and the duration of the authorisation no longer, than is necessary to prevent such an act. An authorisation under this section may authorise any police officer in uniform to stop a vehicle or a pedestrian and anything



carried by the pedestrian. A police officer may then seize and retain anything which the officer discovers in the course of a search and reasonably suspects may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or the person concerned is or has been concerned in the commission, preparation or instigation of acts of terrorism.

The third relates to parking restrictions. The fourth relates to Port and Border Controls and contains a single clause, 100, and is supplemented by Schedule 10. This provides examination powers at ports and borders for police officers, customs officers and borders and coastguard officers.

The fifth comprises clauses 101 to 107 and taken together with Schedule 9 set out the regime for granting bail following arrest in addition to periods of detention and the treatment of suspects who are detained.

A suspect's detention must be periodically reviewed in accordance with Schedule 9. The first review must be carried out as soon as is reasonably practicable after the person's arrest and all subsequent reviews must be carried out at intervals of not more than 12 hours. A review officer may authorise a person's continued detention only if satisfied that it is necessary on one of the grounds set out in paragraph 30 of Schedule 9 (these include, but are not limited to, the need to obtain further evidence; to preserve evidence; to allow for the result of an examination or analysis; and to decide whether the detained person should be charged with an offence).

Extensions of detention must be authorised by the court by the issue of a warrant of further detention but the total amount of time a person may be detained is up to 17 days. This is significantly longer than for other crimes however it is the same period that applies in the UK.

## **PART 9 NOTIFICATION REQUIREMENTS**

This Part, comprised of clauses 108 to 133, makes provision about the notification of information to the police by certain individuals convicted of terrorism (clause 109) or terrorism-related offences (clause 110). When in the community, such individuals must provide the police with certain personal information, must notify any subsequent changes to this information and confirm its accuracy annually. An individual who has had a notification requirement imposed on him may make an application for review; the Commissioner of Police and the court may amend the notification requirements or make an order which ceases the notification requirements.

Schedule 12 makes provision for notification orders. A notification order might be sought in respect of a national of Gibraltar who has been convicted of a foreign terrorism offence and who is deported to Gibraltar on release from prison abroad. It might also be sought in respect of a foreign national with such a conviction who is in or is coming to Gibraltar.



Schedule 13 makes provision for foreign travel restriction orders which may, in specified circumstances, be made by a court in respect of a person subject to the notification requirements, restricting that person's overseas travel.

Schedule 14 lists the offences in which, during sentencing, a terrorist connection is to be considered as an aggravating factor.

## **PART 10 TERRORISM OVERSEAS**

As suggested by the title, this Part makes provision for conduct that takes place overseas, and in part gives effect to UN Conventions for the Suppression of Terrorist Bombings and for the Suppression of the Financing of Terrorism. An amendment I will proposing at Committee stage introduces a provision along the lines of section 25 of our Terrorism Act 2005 to ensure that our extradition laws may be used in relation to offences under this Part.

## **PART 11 GENERAL**

This Part (clauses 141 to 151) contains further technical provisions relating to police powers, consent to prosecutions, defences, corporate liability etc.

Schedule 15 provides general powers for police, customs and borders and coastguard officers including powers for them to exchange information.

## **PART 12 SUPPLEMENTARY PROVISIONS**

This Part provides for ancillary provisions to ensure the functionality of the Bill. It houses the powers for the Minister to make orders and regulations and provides for amendment of such and of any section in or schedule to the Act. It also provides for repeal of the Terrorism Act 2005 and for consequential, transitional and savings provisions due to that repeal. A further amendment I will be proposing at Committee stage amends the Proceeds of Crime Act to clarify the intelligence functions of the Gibraltar Financial Intelligence Unit.

Mr Speaker, it is regrettable that we need this legislation, but this is the unfortunate reality of the world in which we live.

Our first duty as Parliamentarians is to ensure the safety and security of our citizens.

This legislation gives our police the power and the tools to ensure that safety and provide that security in respect of terrorist activities.

Mr Speaker, with a heavy heart, I commend the Bill to the House.